

Singhania Enterprises Vs. the Chief Engineer, Hq Chief Engineer Siliguri Zone

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Court : Kolkata

Decided On : Jan-08-2014

Judge : Sanjib Banerjee

Appellant : Singhania Enterprises

Respondent : The Chief Engineer, Hq Chief Engineer Siliguri Zone

Judgement :

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ORDER

SHEET A.P.No.864 of 2013 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE SINGHANIA ENTERPRISES Versus THE CHIEF ENGINEER, HQ CHIEF ENGINEER SILIGURI ZONE BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date : 8th January, 2014.

Appearance : Ms.Hasnuhana Chakraborty, Adv.Mr.Swagata Datta, Adv.The Court : The petitioner complains of the failure on the part of the appointing authority to nominate the arbitrator in terms of the arbitration agreement between the parties.

The present request under Section 11 of the Arbitration and Conciliation Act, 1996 was carried to the Chief Justice of this Court or his designate after the appointing authority or the respondent had suggested that the petitioner had no right to

invoke the arbitration agreement.

The petition under Section 11 was dismissed for default on August 14, 2013 and restored upon notice to the respondent on September 6, 2013.

The respondent says that notwithstanding the earlier stand taken by the respondent or the appointing authority, an arbitrator was named on September 29, 2013.

The petitioner says that after the request was already in Court, the appointing authority could not have appointed an arbitrator, particularly since the petition had been restored upon notice to the respondent.

The relevant clause requires a serving officer having degree in engineering or equivalent or having passed final/direct final examination of subdivision-II of Institution of Surveyors (India) recognised by the Government of India to be appointed as an arbitrator.

The appointing authority is the Engineer-in-Chief or Director General of works.

In view of the failure of the appointing authority to appoint an arbitrator within reasonable time of the petitioners request, the appointing authority lost the right to make the appointment and the subsequent appointment of September 29, 2013 during the pendency this request in Court cannot be accepted and is set aside.

As a consequence, the arbitrator appointed on November 25, 2013 upon the original arbitrator resigning is also set aside.

However, since the arbitration agreement requires a person possessing certain qualifications to be appointed as arbitrator, the Engineer-in-Chief of Military Engineering Services, Siliguri Zone is requested to name an arbitrator other than either the person named in the order dated September 29, 2013 or November 25, 2013 to take up the reference in accordance with the arbitration agreement between the parties.

The name of the arbitrator should be communicated to the petitioner within a period of four weeks from date.

AP No.864 of 2013 is allowed as above without any order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) SBI

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