

**ARBITRATION APPLICATION NO: 25 of 2021**

Rashtriya Ispat Nigam Limited

...Applicant

Vs.

Union Of India and Others

...Respondent(s)

Advocate for Applicant:

Mr. W. B. Srinivas, Senior Counsel,
appearing for Mr. V. Subrahmanyam

Advocate(s) for Respondent(s):

Mr. Jupudi V K Yagnadutt (Central
Government Counsel)**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR****DATE : 27.06.2025****P C :**

The present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator to adjudicate upon the disputes arising out of and in connection with the agreement, dated 25.09.2017, as amended by supplementary agreement, dated 27.08.2019.

2. The fact that there was such an agreement and that the agreement did contain an arbitration clause is not denied. The arbitration clause as contained in the agreement reads as under:

“Section 13.5 Arbitration:

In the event of any question, dispute or difference arising out of or under this Contract in connection therewith (except as to matters, the decision to which is specifically provided under this Contract) the same shall be resolved by amicable settlement failing which the matter will be referred to the Sole Arbitrator appointed by the Competent Authority i.e. General Manager of concerned Zonal Railways. The arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 as amended in 2015 and the Rules made thereunder. The decision of the Arbitrator shall be final and binding upon the parties.”

3. It is stated that disputes having arisen between the parties, the respondent – East Coast Railways invoked the arbitration clause *vide* communication, dated 15.04.2021, by forwarding a panel of officers out of which the applicant was required to nominate at least two names, out of which one would be chosen to be appointed as a sole arbitrator.

4. This communication was thereafter responded to by virtue of letter, dated 03.05.2021, wherein the applicant stated that the course adopted by the East Coast Railways in forwarding a panel of officers for nomination was contrary to the provisions of the Arbitration and Conciliation Act, more particularly, Schedule V and VII as also in gross contradiction to the ratio of the judgment rendered by the Apex Court in **Perkins Eastman Architects DPC vs. HSCC (India) Limited**¹.

¹ (2020) 20 SCC 760

In the aforementioned context, the applicant communicated to the respondent that an independent arbitrator, who is not connected in any manner with both the parties, is to be appointed.

5. The stand of the applicant is that despite the communication supra, the respondent proceeded to appoint Mr. B. K. Joshi, retired Railway officer, as a sole arbitrator, who entered upon the reference. By virtue of an interim order passed in the present application on 17.09.2021, the arbitrator was restrained from passing an award. The aforementioned order was extended from time to time and is still in force.

Since there is no dispute regarding the existence of arbitration clause as also existence of the dispute between the two parties, the only question that required to be considered as to whether the appointment of the sole arbitrator by the respondent – East Coast Railways is legally sustainable or not and if not, whether the present application ought to be allowed.

6. Having heard learned counsel for the parties, we have no hesitation in holding that the appointment of a sole arbitrator by the respondent, who is one of the parties to the arbitration agreement, goes contrary to the express ratio of the judgment rendered in the case of **Perkins Eastman Architects DPC** (supra) wherein the Apex Court in para No.20 held as under:

“20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377] where the Managing Director himself is named as an

arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in *TRF Ltd.*, all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.”

7. The ratio of the aforementioned judgment rendered in **Perkins Eastman Architects DPC** was subsequently reaffirmed by a Constitution Bench judgment of the Apex Court in **Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co.**² wherein it is held:

“129. Equal treatment of parties at the stage of appointment of an arbitrator ensures impartiality during the arbitral proceedings. A clause that allows one party to unilaterally appoint a sole arbitrator is exclusive and hinders equal participation of the other party in the appointment process of arbitrators. Further, arbitration is a quasi-judicial and adjudicative process where both parties ought to be treated equally and given an equal opportunity to persuade the decision-maker of the merits of the case. An arbitral process where one party or its proxy has the power to unilaterally decide who will adjudicate on a dispute is fundamentally contrary to the adjudicatory function of arbitral tribunals.

...

169. c. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and

² 2024 SCC OnLine SC 3219

impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;

d. In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators.”

8. The connected issue that arises for consideration is whether the appointment already made by the respondent needs to be challenged in appropriate proceedings especially under Section 13 of the Arbitration and Conciliation Act or whether this Court has power to entertain the present application under Section 11 of the Act.

Even this issue is no longer *res integra*. The Supreme Court in **Bharat Broadband Network LTD v. United Telecoms Ltd**³, in para No.17, held as under:

“17. The scheme of Sections 12, 13, and 14, therefore, is that where an arbitrator makes a disclosure in writing which is likely to give justifiable doubts as to his independence or impartiality, the appointment of such arbitrator may be challenged under Sections 12(1) to 12(4) read with Section 13. However, where such person becomes “ineligible” to be appointed as an arbitrator, there is no question of challenge to such arbitrator, before such arbitrator. In such a case, i.e., a case which falls under Section 12(5), Section 14(1)(a) of the Act gets attracted inasmuch as the arbitrator becomes, as a matter of law (i.e., *de jure*), unable to perform his functions under Section 12(5), being ineligible to be appointed as an arbitrator. ...”

³ (2019) 5 SCC 755

Be that as it may, this Court holds that the appointment of Mr. B. K. Joshi as the sole arbitrator by the respondent is *non est* in the eyes of law.

9. In view of the above, the present application is allowed. Justice Naresh Harishchandra Patil, former Chief Justice of the Bombay High Court, is appointed as an Arbitrator, who shall enter upon the reference and render the Award within the statutory period. The parties shall be free to file detailed claims and counter-claims, before the learned Arbitrator. The learned Arbitrator shall also be entitled to claim the fee in consultation with the parties.

Pending miscellaneous applications, if any, shall stand closed. No costs.

A copy of this order be communicated to the learned Arbitrator on the address mentioned herein below:

Justice Naresh Harishchandra Patil,
Rajgir chambers, 2nd Floor,
Office No.19, Opp. Old Customs House,
Fort, Mumbai – 400001,
Mobile: 94222 10444

DHIRAJ SINGH THAKUR, CJ

akn

78

HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE**Arbitration Application No: 25 of 2021****DATE : 27.06.2025**

AKN