



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

MISCELLANEOUS FIRST APPEAL NO. 7738 OF 2025 (AA)

BETWEEN:

1. UNION OF INDIA,
REPRESENTED BY GENERAL MANAGER,
SOUTH WESTERN RAILWAY,
GADAG ROAD,
HUBBALLI 580020
2. THE CHIEF ADMINISTRATIVE OFFICER,
SOUTH WESTERN RAILWAY,
NO.18, MILLERS ROAD,
BENGALURU- 560046
3. THE CHIEF ENGINEER (WEST)
SOUTH WESTERN RAILWAY,
NO.18, MILLERS ROAD,
BENGALURU- 560046
4. DY.CHIEF ENGINEER (WEST),
SOUTH WESTERN RAILWAY,
NO.18, MILLERS ROAD,
BENGALURU-560046

...APPELLANTS

(BY SRI. KUMAR M N, CGSPC)

Digitally
signed by
NIRMALA
DEVI

Location:
HIGH COURT
OF
KARNATAKA



AND:

1. M/S.HINDUSTAN STEEL WORKS
CONSTRUCTION LTD
NO.1297, 13TH MAIN ROAD,
GKVK POST,
JUDICIAL LAYOUT,
YELAHANKA,
BENGALURU-560065
REPRESENTED BY
MANAGING DIRECTOR
EARLIER AT 15TH FLOOR,
NETAJI SUBHASH CHANDRA
BOSE BUILDING, NO. 12 ,
MAHATHMA GANDHI ROAD,
BENGALURU-560001
2. P.R.S.RAMAN,
PRESIDING ARBITRATOR.
CHIEF PLANNING AND DESIGN ENGINEER,
SOUTH WESTERN RAILWAY,
HUBBALLI-580020
3. C.S.GUPTA,
CO-ARBITRATOR,
SR. DIVISIONAL
ELECTRICAL ENGINEER,
BENGALURU DIVISION,
SOUTH WESTERN RAILWAY,
BENGALURU-560023
4. R.MANJUNATHA RAO,
DY. FINANCIAL ADVISOR
AND CHIEF ACCOUNTS OFFICER/
BOOKS AND BUDGET,
SOUTH WESTERN RAILWAY,
HUBBALLI-580020

...RESPONDENTS



THIS MFA IS FILED U/S.37(1)(c) OF THE ARBITRATION AND CONCILIATION ACT, 1996, AGAINST THE JUDGMENT DT. 30.01.2025 PASSED IN A.S.NO. 161/2017 ON THE FILE OF THE XXX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY (CCH-31), ALLOWING THE SUIT FILED U/S.34 OF THE ARBITRATION AND CONCILIATION ACT.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The present appeal is filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] by the Union of India [**UOI**] represented by the General Manager, South Western Railway [**SWR**] impugning the judgment dated 30.01.2025 [**impugned judgment**] passed in AS No.161/2017 by the learned XXX Additional City Civil and Sessions Judge (CCH-31), Bengaluru, [**Trial Court**] whereunder, the application filed by the respondent No.1 under Section 34 of the A&C Act to set aside the



arbitral award dated 11.08.2017 [**impugned award**] was allowed and the impugned award was set aside.

2. The facts in a nutshell leading to the present appeal are that a tender for the work of "Kadur-Chikamagalur-Sakleshpur BG Line, Kadur-Chikamagalur new railway line" as well as certain other works, was called for by the SWR vide tender notice dated 23.06.2005, respondent No.1 was the successful tenderer. Accordingly, agreement dated 08.02.2007 [**agreement**] was executed between respondent No.1 and SWR. The initial value of the work was ₹18,75,99,033.50, which was to be completed within 18 months.

3. Various disputes arose between the parties arising out of the said agreement, which was referred to arbitration for adjudication in view of the existence of an arbitration clause in the said agreement. The Arbitral Tribunal consisted of Sri P.R.S.Raman, Sri Anil Yadav and Sri K.A.Ananthasubramaniam. Respondent No.1 filed its claim statement on 22.03.2012. The proceedings of the Arbitral Tribunal were concluded on 31.05.2013.



4. Since no award was passed, respondent No.1 got issued a legal notice dated 16.10.2016 terminating the mandate of the Tribunal. SWR nominated Sri R.Manjunatha Rao in place of Sri K.A.Ananthasubramaniam on 20.07.2015 and C.S.Gupta was nominated in place of Anil Yadav on 03.04.2017. The re-constituted Tribunal, without issuing any notice and without hearing the parties, published the impugned award on 11.08.2017, which was communicated to respondent No.1 on 05.09.2017. In the meanwhile, respondent No.1 had filed an application under Section 11 read with Section 12 of the Principal Act and Section 15 of the A&C Act before this Court in CMP No.7/2017. However, the impugned award was rendered during the pendency of the said petition.

5. Being aggrieved by the impugned award, respondent No.1 preferred a petition under Section 34 of the A&C Act being AS No.161/2017. The Trial Court, by the impugned judgment dated 30.01.2025 allowed the said petition and set aside the arbitral award dated 11.08.2017. The Trial Court noticed that in the award there is reference to the substitution of Sri K.A.Ananthasubramaniam by Sri R.Manjunath Rao (which was



vide letter of SWR dated 20.07.2015). It was also noticed that in the award there was no reference to the substitution of Sri C.S.Gupta in place of Sri Anil Yadav.

6. The learned counsel for the appellants does not dispute the fact that after conclusion of the hearing on 31.05.2013, the Arbitral Tribunal was reconstituted. It is further undisputed that consequent to the reconstitution, no fresh hearing of the Arbitral Tribunal took place. Respondent No.1 was also not notified of any proceedings of the reconstituted Arbitral Tribunal.

7. Section 15(2) and (3) of the A&C Act reads as under:

"15. Termination of mandate and substitution of arbitrator.-

(1) xxxx

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal."

8. Sub-section (3) of Section 15 specifically stipulates that where an arbitrator is replaced under sub-section (2), any hearings



previously held may be repeated at the discretion of Arbitral Tribunal.

9. In the present case, the Arbitral Tribunal has not adverted to the stipulations contained in sub-section (3) of Section 15 of the A&C Act and not stated as to why the Tribunal exercised its discretion.

10. In this context, it is also relevant to notice the judgment of Supreme Court in the case of ***Gullapalli Nageswara Rao v. The State of Andhra Pradesh***¹, wherein, it was held as under:

"31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party- appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

¹ 1960(1) SCR 580



11. As noticed by the Supreme Court in the case of ***Gullapalli Nageswara Rao*** (*supra*), a personal hearing is to be afforded by the authority that decides a matter. The Arbitral Tribunal was required to adjudicate the matter between the parties. Admittedly, after the substitution of the arbitrators, the substituted arbitrators had not afforded the parties an opportunity to be heard and proceeded to pass the award.

12. It is also relevant, at this stage, to notice the judgment of the Supreme Court in ***Rasiklal Manickchand Dhariwal and another vs. M/s. M.S.S. Food Products***². The said decision was rendered in the context of the specific provisions of the CPC. The Supreme Court had held that the principle, as set out in ***Gullapalli Nageswara Rao*** (*supra*) – that is, a person who decides must afford a hearing – was not applicable to the hearing of a suit. We may refer to paragraph 32 of the said decision, which reads as under:

"32. The above principle with reference to hearing by a quasi-judicial forum is not applicable to all situations in the hearing of the suit. "Hearing of the suit" as understood is not confined to oral hearing. "Hearing of the suit" begins when the evidence in the suit begins

² (2012) 2 SCC 196



and is concluded by the pronouncement of judgment. The Code contemplates that at various stages of the hearing of the suit, the Judge may change or he may be prevented from concluding the trial and in that situation, the successor Judge must proceed in the suit from the stage the predecessor Judge has left it."

13. As explained by the Supreme Court, the hearing of the suit is not confined to oral hearings but, under the CPC, begins when the evidence of the suit commences and is concluded by the pronouncement of the judgment.

14. Section 19 of the A&C Act expressly provides that the arbitral tribunal is not bound by CPC as it has the power to conduct the proceedings in the manner it considers appropriate. Section 18 of the A&C Act expressly provides that each party shall be given full opportunity to present his case. Sections 18 and 19 of the A&C Act are reproduced below:

"18. Equal treatment of parties.— The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

19. Determination of rules of procedure. —(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.



(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

15. Thus, the hearing before the arbitral tribunal did not commence with the parties leading evidence. Given the procedure adopted by the arbitral tribunal, the award rendered by an arbitral tribunal that did not afford the parties an oral hearing was clearly destructive of the basic principle of judicial procedure as held by the Supreme Court in ***Gullapalli Nageswara Rao*** (*supra*). We are also of the view that this runs contrary to the requirements of Section 18 of the A&C Act, which requires each party be given a full opportunity to present their case. Clearly, if the Tribunal renders an award without hearing the concerned parties, it also denies the parties the opportunity to present their case. We are unable to accept that the impugned award would satisfy the requirements of Section 18 of the A&C Act.

16. In the aforementioned circumstances, we cannot fault the Trial Court for passing the impugned judgment and setting aside the arbitral award.



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17. The appeal is dismissed as being devoid of merit.
18. All pending applications are also disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

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List No.: 1 Sl No.: 5