



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 19<sup>TH</sup> DAY OF JUNE, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE R DEVDAS**

**CIVIL MISC. PETITION NO. 282 OF 2022**

**BETWEEN:**

M/S PARAMOUNT GARMENT PROCESSING UNIT  
A REGISTERED FIRM  
REP BY ITS MANAGING DIRECTOR  
SRI.D.MAHESH KUMAR  
S/O. SRI. D. GANESH SHANKAR,  
AGED 44 YEARS,  
R/AT FLAT NO.502, 5TH FLOOR,  
INDIRA IRIS  
THANISANDRA MAIN ROAD,  
SARAIPALYA, BENGALURU-560 077.

...PETITIONER

(BY SRI. HARISH KUMAR M.S., &  
SRI. V P KULKARNI., ADVOCATES)

**AND:**

1. SOUTH WESTERN RAILWAY  
THE GENERAL MANAGER  
(FINAL COMPETENT AUTHORITY)  
H.Q.OFFICE RAILSODHA,  
GADAG ROAD,  
HUBBALLI-580020.
2. SENIOR DIVISIONAL MECHANICAL ENGINEER  
(AGREEMENT HOLDER)  
SOUTH WESTERN RAILWAY, 3RD FLOOR,

Digitally signed  
by JUANITA  
THEJESWINI

Location: HIGH  
COURT OF  
KARNATAKA



MECHANICAL BRANCH,  
BENGLAURU-560023.

3. SRI R P SHARMA  
RETD., PCEE/CR  
B3/1103, PALM GROVE HEIGHTS  
ARDEE CITY, SECTOR 52  
GURGAON-122011
4. SRI.HEMANT KUMAR SINGH  
RETD ADDL. DIRECTOR GENERAL  
106A ASHOK NAGAR  
BASHARATPUR  
GORAKPUR-273004 U.P.STATE
5. SRI.HARSH KUMAR  
FA AND CAO/C-1/N.RLY  
C/O MR.ATUL KUMAR  
HOUSE NO.82-LA, NEW COLONY,  
GURUGRAM-122 001.

...RESPONDENTS

(BY SRI. SHIVAKUMAR., CGC FOR R2  
R1 SERVED – UNREPRESENTED  
THE RESPONDENTS NO.3 TO 5 HAS BEEN REMOVED  
AS PER THE ORDER OF THIS HON'BLE COURT  
ORDER DT.21/11/2022)

THE ADVOCATE FOR THE PETITIONER HAS FILED THE ABOVE CIVIL MISC. PETITION UNDER SEC. 11(5) & 11(6) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING THAT THIS HON'BLE COURT BE PLEASED TO APPOINT A SOLE ARBITRATOR WHO IS A RETIRED JUDGE FROM THE PANEL OF ARBITRATION CENTRE, BENGALURU TO ADJUDICATE ALL THE ORIGINAL NINE CLAIMS PUT FORTH BY THE PETITIONER VIDE LETTER DT.24/12/2017 I.E., ANNEXURE-C AS PER THE AGREEMENT VIDE ANNEXURE-B AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

**R.DEVDAS J., (ORAL):**

This Civil Miscellaneous Petition is filed under Sections 11(5) & 11 (6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the Act' for short) seeking appointment of a sole Arbitrator in terms of the arbitration clause contained in the 'Agreement for Works' dated 02.11.2016 at Annexure-B.

2. In the memorandum of writ petition, it is stated that a claim was raised at the hands of the petitioner in terms of letter dated 24.12.2017. By another representation dated 19.05.2018, the petitioner sought appointment of a sole arbitrator other than any person employed in the railways. After enormous delay, the first respondent-General Manager, South Western Railway responded on 19.06.2019 calling upon the petitioner to go for conciliation in terms of arbitral clause. The petitioner responded by stating that conciliation after a lapse of about two years may not be feasible and therefore, once again requested for appointment of a sole arbitrator.



Nevertheless, the first respondent gave a written communication on 15.11.2019 nominating four retired officers for constitution of the arbitral tribunal and called upon the petitioner to suggest two names out of the four. The petitioner suggested only one person out of the four and the first respondent once again called upon the petitioner to suggest another name. The petitioner under protest suggested another name by a communication dated 22.01.2020.

3. It is contended that the first respondent disregarded the request made by the petitioner to appoint a sole arbitrator and proceeded to constitute an arbitral tribunal consisting of three members. The presiding arbitrator sent instructions to the parties for conducting the arbitration, in terms of communication dated 14.05.2020. The petitioner gave a written reply on 29.05.2020 refusing to accept the appointment of the arbitrator tribunal consisting of three members and requested for appointment of a sole arbitrator.



4. To cut short the facts, it is clear from the memorandum of writ petition that the petitioner did not accept the arbitrator tribunal constituted by the first respondent and the petitioner is before this Court seeking appointment of a sole arbitrator.

5. Learned Counsel for the respondent-railways would submit that having regard to clause 17(1) of the contract, provision is made for appointment of a gazetted railway officer and therefore, even if this Court were to appoint a sole arbitrator it should be one of the gazetted railway officer.

6. In a recent decision of this Court in the case of ***SURYA WIRES PRIVATE LIMITED Vs. KARNATAKA STATE RURAL LIVELIHOOD PROMOTION SOCIETY***, in ***CMP No.367/2023*** dated 07.06.2024, this Court has held as under:

"4. Today learned counsel for the petitioner seeks to place reliance on the decision of the Hon'ble Apex Court in ***GLOCK ASIA-PACIFIC LIMITED /VS./ UNION OF INDIA –(2023) 8 SCC 226*** and



submits that having regard to insertion of Schedule 'A' and the amendment brought to the provisions contained in Section 12, it was held that the principles of impartiality and independence cannot be discarded at any stage of the proceedings, specifically at the stage of constitution of the Arbitral Tribunal, it would be incongruous to say that party autonomy can be exercised in complete disregard of these principles - even if the same has been agreed prior to the disputes having arisen between the parties. Further, having regard to the expressed provisions now contained in sub-section (5) of Section 12 that notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator.

7. Having regard to the law laid down by the Hon'ble Supreme Court and in view of the fact that the gazetted officer of the railway, cannot be appointed as an arbitrator in view of the admitted relationship of employer and employee between the said officer and the respondent



railway, a Gazetted Officer of the Railways cannot be appointed as an arbitrator to resolve the disputed between the parties herein.

8. This Court has gone through the Annexures filed along with the memorandum of Civil Miscellaneous Petition. This Court is satisfied that the petitioner has fulfilled the requirements as provided under Section 11(4) of the Act, 1996.

9. In the light of the aforesaid clause of arbitration and the contentions advanced by the petitioner, this Court proceeds to pass the following:

**ORDER**

- (a) The Civil Miscellaneous Petition is ***allowed*** appointing Hon'ble Mr. Justice P.Vishwanatha Shetty, Former Judge, High Court of Karnataka, as the sole Arbitrator to enter reference of the disputes between the petitioner and the respondents and conduct proceedings at



the Arbitration and Conciliation Centre (Domestic and International), Bengaluru according to the Rules governing the said Arbitration Centre.

- (b) All contentions inter se parties are left open for adjudication in the arbitration proceedings.
- (c) The office is directed to communicate this order to the Arbitration and Conciliation Centre and to Hon'ble Mr. Justice P.Vishwanatha Shetty, Former Judge, High Court of Karnataka, as required under the Arbitration and Conciliation Centre Rules, 2012.

10. Pending I.As., if any, stand disposed of.

**Sd/-  
JUDGE**

DL  
CT: JL