



Arb.O.P.No.1 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Arb.O.P.No.1 of 2023

Mrs.L.Thirupurasundari
Represented by her Power Agent
Mr.N.Sundar

.. Petitioner

VS.

Mrs.A.Devi
Respondent

..

This Arbitration Original Petition has been filed under section 34 [2] [a], ii and iii of Arbitration and Conciliation Act, 1996 to set aside the arbitral award dated 29.06.2019 passed by the Arbitrator in Arbitration Case No.4 of 2019 and for costs.

For petitioner : Mr.N.D.Sivakumaran

For respondent : Mr.S.Namasivayam



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Arb.O.P.No.1 of 2023

ORDER

Challenging the Arbitral Award dated 29.06.2019 passed by the Arbitrator in Arbitration Case No.4 of 2019, the petitioner has filed the present petition.

2. The award of the arbitrator has been challenged mainly on the ground that no notice is served on the petitioner. It is the further contention of the petitioner that he sole arbitrator has been appointed unilaterally by the respondent and the petitioner has not been made as a party. Hence, submitted that the very appointment of the arbitrator itself is not valid in the eye of law.

3. The learned counsel appearing for the respondent submitted that notice has been served on the petitioner and the same has been indicated in the award itself.



Arb.O.P.No.1 of 2023

WEB COPY

I have perused entire award. It is relevant to note that the arbitral award can be interfered only on the grounds set out in Section 34 of the Arbitration and Conciliation Act. Section 34 subclause 2 of the arbitration and Conciliation Act reads as follows :

(2) An arbitral award may be set aside by the Court only if

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to

which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or



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(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

A careful perusal of the above provision makes it clear that when notice has not been served with regard to the appointment of the arbitrator, the arbitral award can be interfered. It is relevant to note that the reference was made with regard to the so called sale agreement dated 06.05.2017 said to have been executed by the power agent of the respondent. In the entire award



Arb.O.P.No.1 of 2023

WEB COPY

there is no reference to the notice sent to the principal and the principal has not been made a party in the individual capacity and she has been represented only by the power agent. The principal has not been made as a respondent and no notice whatsoever has been served on her.

In such view of the matter, when the notice has not been served on the respondent with regard to the appointment of the arbitrator as well as the proceedings, such an award can be interfered by the Court of law. It is further to be noticed that the sole arbitrator has been appointed unilaterally by the petitioner himself and such course cannot be given legal sanction.

In this regard, Honourable Supreme Court has deprecated appointment of arbitrator unilaterally in **Perkins Eastman Architects DPC Vs. HSCC [India] Ltd.** reported in **[2019] 8 MLJ 623**, in para 15 it has been held as follows :

“15. It was thus held that as the Managing Director



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Arb.O.P.No.1 of 2023

became ineligible by operation of law to act as an arbitrator, he could not nominate another person to act as an arbitrator and that once the identity of the Managing Director as the sole arbitrator was lost, the power to nominate someone else as an arbitrator was also obliterated. The relevant Clause in said case had nominated the Managing Director himself to be the sole arbitrator and also empowered said Managing Director to nominate another person to act Arbitration Application No.32 of 2019 [Perkins Eastman Architects DPC & Anr. v. HSCC \(India\) Ltd.](#) as an arbitrator. The Managing Director thus had two capacities under said Clause, the first as an arbitrator and the second as an appointing authority. In the present case we are concerned with only one capacity of the Chairman and Managing Director and that is as an appointing authority. We thus have two categories of cases. The first, similar to the one dealt with in TRF Limited⁴ 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



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Arb.O.P.No.1 of 2023

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 Limited⁴, all cases having clauses similar to that with which we are presently concerned, Arbitration Application No.32 of 2019 [Perkins Eastman Architects DPC & Anr. v. HSCC \(India\) Ltd.](#) 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.

16. But, in our view that has to be the logical deduction from TRF Limited.”

Considering the above, this Court is of the view that that award not



Arb.O.P.No.1 of 2023

WEB COPY

only suffers for non service of notice but also unilateral appointment of the arbitrator. Accordingly, this petition is allowed and the award of the sole arbitrator dated 29.06.2019 is set aside. It is open to the respondent to seek for appointment of fresh arbitrator in the manner known to law.

03.01.2024

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Arb.O.P.No.1 of 2023

N.SATHISH KUMAR, J.

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Arb.O.P.No.1 of 2023

03.01.2024