



WEB COPY



ARB O.P. (COM.DIV.) No.144 OF 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-07-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

ARB O.P. (COM.DIV.) No.144 of 2025

and

A No. 1363 of 2025

M/s Surface Tech (India) Private Limited,
2nd Floor, Goyal Bhawan, GS Road,
Bhangagarh, Guwahati-781005. (Assam)

Petitioner (s)

Vs

Union of India,
Represented by HQ Chief Engineer (CG),
Military Engineer Services,
D.No.39-4-2/2, Plot No.18,
Near Varma Complex, Murali Nagar,
Visakapatnam-530007.

Respondent(s)

PRAYER

Petition filed under Sections 34(2)(a)(v), 34(2)(b)(ii) and 34(2-A) of the Arbitration and Conciliation Act, 1996,

(a)to set aside the Arbitral Award dated 04.11.2024 passed by the Ld.Sole Arbitrator;

(b)to direct the respondent to pay costs of the present petition.

For Applicant(s): Mr Sricharan Rangarajan
Senior Counsel
For M/s.Chambers 28 - advocates



WEB COPY



ARB O.P. (COM.DIV.) No.144 OF 2025

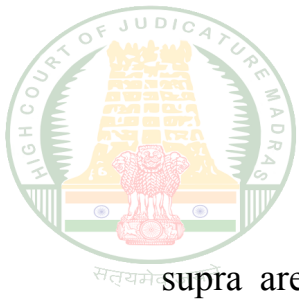
For Respondent(s): Mr.V.Ashok Kumar
Senior panel counsel

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, challenging the impugned arbitral award passed against the petitioner in favour of the respondent. The petitioner has challenged the arbitral award on the following grounds:

- (a) Impugned arbitral award has been passed by an arbitrator appointed unilaterally by the respondent;
- (b) The impugned arbitral award has been passed beyond the statutory period as prescribed under Section 29A of the Arbitration and Conciliation Act, 1996;
- (c) The impugned arbitral award has been passed against the petitioner despite the arbitral claim being barred by law of limitation.

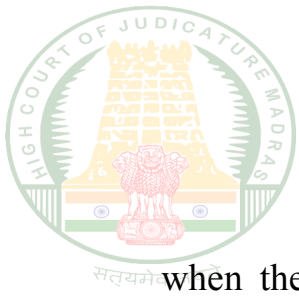
2.The learned senior counsel appearing for the petitioner drew the attention of this Court to the various letters sent by the petitioner to the sole arbitrator, who has passed the impugned arbitral award, questioning his authority to adjudicate the dispute on the ground that he has been appointed unilaterally by the respondent. The letters filed along with this petition as stated



supra are dated 19.11.2022, 22.06.2023, 01.07.2023, 14.08.2023, 20.03.2024 and 04.04.2024 and in all the aforementioned letters, it is noticed that the petitioner had objected to the appointment of the sole Arbitrator by the respondent.

3.The learned senior counsel appearing for the petitioner also drew the attention of this Court to the letter dated 10.12.2018 sent by the respondent to the petitioner wherein the petitioner has been informed by the respondent that they have appointed the sole Arbitrator to adjudicate the dispute between the petitioner and the respondent. The learned senior counsel appearing for the petitioner then drew the attention of this Court to another letter dated 25.10.2022 sent by the respondent to the petitioner wherein the respondent has informed the petitioner that they are appointing another Arbitrator in the place of the earlier Arbitrator to adjudicate the dispute between the parties.

4.The learned senior counsel for the petitioner would further submit that the claim made by the respondent before the Arbitrator is hopelessly barred by the law of limitation. Since the Arbitrator appointed earlier by the respondent through its letter dated 10.12.2018 did not act upon the reference, the respondent had chosen to once again appoint another Arbitrator through their letter dated 25.10.2022, after a lapse of almost four years from 10.12.2018,



WEB COPY

when the respondent had earlier appointed the sole Arbitrator. The learned senior counsel for the petitioner also drew the attention of this Court to the arbitration clause, contained in the General conditions of the contract, which is applicable to the contract dated 18.09.2010 entered into between the petitioner and the respondent and would submit that as seen from the said clause, it is clear that only the respondent can appoint an Arbitrator to adjudicate the dispute between the parties. Therefore, he would submit that being an unilateral appointment, in view of the judgments rendered by the Hon'ble Supreme Court in *Perkins Eastman Architects DPC and another Vs. HSCC (India) Limited* reported in (2020) 20 SCC 760 as well as *Central Organisation for Railway Electrification Vs. ECI SPIC SMO MCML (JV) A Joint Venture Company* reported in 2024(6) CTC 495, an award passed by an Arbitrator appointed unilaterally by one party to the dispute without obtaining the consent of the other is legally not permissible in law. By raising the aforementioned grounds, learned senior counsel for the petitioner would submit that the impugned arbitral award has to be set aside by this Court.

5. On the other hand, learned standing counsel for the respondent would submit that the petitioner having failed to enter appearance in the arbitration, despite the notice having been served on him by the Arbitrator, cannot now take a plea that Arbitrator who has passed the impugned arbitral award was



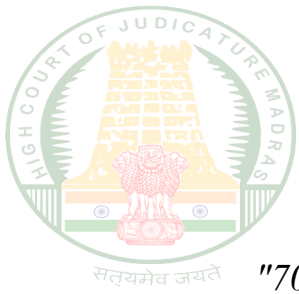
appointed unilaterally by the respondent. He would also submit that the time limit prescribed under Section 13 of the Arbitration and Conciliation Act for challenging the Arbitrator having got expired, the petitioner cannot raise a plea in this Section 34 Petition that the Arbitrator was appointed unilaterally by the respondent. Therefore, he would submit that the grounds raised by the petitioner in this petition will not fall within the purview of Section 34 of the Arbitration and Conciliation Act, 1996.

Discussion:

6.The following are the undisputed facts:

(a)The petitioner had sent several representations to the Arbitrator which has been recorded by this Court in the second paragraph of this order, wherein the petitioner had at the first instance itself questioned the authority of the Arbitrator to act upon the Arbitral reference on the ground that he was appointed unilaterally by the respondent. Though a reply was sent by the Arbitrator, the Arbitrator did not give reasons with regard to his unilateral appointment and as to why he can act as an arbitrator despite being appointed unilaterally by the respondent.

7.The arbitration clause based on which the arbitral reference was made by the respondent is reproduced hereunder:

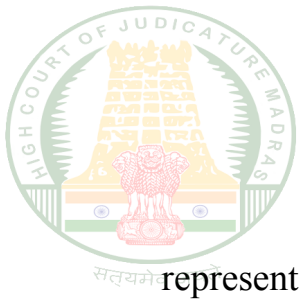


WEB COPY

"70.Arbitration - All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of a [Serving Officer having degree in Engineering or equivalent or having passed final/direct final examination of sub-Division II of Institution of Surveyor (India) recognised by the Govt. of India] to be appointed by the authority mentioned in the tender documents."

As seen from the arbitration clause, the exclusive power to appoint an arbitrator is vested only with the respondent and the said arbitrator is none else than the respondent's own employee. Admittedly, the petitioner did not give consent for the nominee of the respondent to be appointed as the Arbitrator.

8.The law is now well settled by the decisions rendered by the Hon'ble Supreme Court in *Perkins Eastman Architects DPC and another Vs. HSCC (India) Limited* reported in (2020) 20 SCC 760 as well as *Central Organisation for Railway Electrification Vs. ECI SPIC SMO MCML (JV) A Joint Venture Company* reported in 2024(6) CTC 495 wherein the Hon'ble Supreme Court has held that a party to the dispute cannot appoint an Arbitrator unilaterally without obtaining the consent of the other party to the dispute. Admittedly, in the instant case, the Arbitrator was appointed unilaterally by the respondent without obtaining the consent of the petitioner. The petitioner had also given several



WEB COPY

representations to the Arbitrator raising objections with regard to his appointment as a sole Arbitrator. Since the Arbitrator, who has passed the impugned arbitral award, was appointed unilaterally by the respondent and in view of the well settled law as laid down by the Hon'ble Supreme Court, the impugned arbitral award has to be set aside by this Court.

9.It is also to be noticed from the impugned arbitral award that though the claim statement was filed on 03.12.2022 and the petitioner was set exparte on 24.10.2024 and the impugned arbitral award came to be passed on 04.11.2024. On a *prima facie* consideration, this Court finds that Arbitrator has also exceeded the time limit prescribed for pronouncement of arbitral award under Section 29A of Arbitration and Conciliation Act, 1996, without obtaining extension from this Court for the pronouncement of the arbitral award by the Arbitrator. It is also to be noted from the dates and events filed by the learned senior counsel for the petitioner before this Court that even though the respondent had originally appointed the Arbitrator on 10.12.2018 itself, they have chosen to appoint a fresh Arbitrator only through their letter dated 25.10.2022 on the ground that the earlier arbitrator has withdrawn from arbitration on the ground of his unilateral appointment. While appointing the fresh Arbitrator through their letter dated 25.10.2022, the respondent has also not given particulars about the stage of the arbitration before the earlier



Arbitrator appointed by the respondent through their letter dated 10.02.2018.

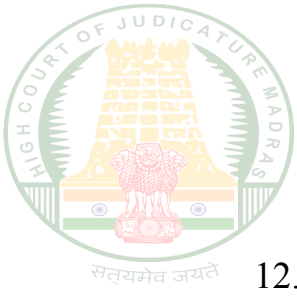
The fresh Arbitrator was appointed after a lapse of almost four years from the date when the respondent had earlier appointed an Arbitrator i.e., 10.12.2018.

For the foregoing reasons, necessarily the impugned award has to be set aside by this Court and this petition has to be allowed due to the following reasons

- (a) Unilateral appointment of the Arbitrator by the respondent.
- (b) The impugned award has been passed beyond the period of limitation as prescribed under Section 29A of the Arbitration and Conciliation Act.

10.The limitation plea taken by the petitioner is a mixed question of law and fact and that plea can be taken only before the arbitrator and therefore, this Court is not giving its finding in this petition.

11.Accordingly, the impugned arbitral award dated 04.11.2024 passed against the petitioner is hereby set aside and this petition is allowed. However parties are granted liberty to initiate fresh arbitration, if so advised in accordance with law. The period spent by both the parties before the Arbitrator who has passed the impugned arbitral award as well as this Court in this petition shall stand excluded for the purpose of saving limitation under Section 14 of the limitation Act.



ARB O.P. (COM.DIV.) No.144 OF 2025

12.In view of the order passed in this Petition, the stay petition in
A.No.1363 of 2025 is closed. No costs.

09-07-2025

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

sai

To

The HQ Chief Engineer (CG),
Military Engineer Services,
Union of India,
D.No.39-4-2/2, Plot No.18,
Near Varma Complex, Murali Nagar,
Visakapatnam-530007.



WEB COPY



ARB O.P. (COM.DIV.) No.144 OF 2025

ABDUL QUDDHOSE J.

sai

**ARB O.P. (COM.DIV.) No.144 of 2025
and A No. 1363 of 2025**

Dated: 09-07-2025