



WEB COPY



C.R.P.No.1040 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1040 of 2025
and C.M.P.No.6002 of 2025

Gurugappa Transport,
Rep. by its proprietor,
V. Revathy, W/o. Late K.M. Viswanathan,
No.1/107, Kullampalayam Post,
Gobichettipalayam Taluk, Erode District.

... Petitioner

Vs

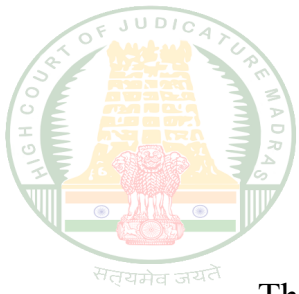
Amit Garg
Director (Marketing) of M/s. Hindustan Petroleum Corporation Limited,
Rep. by Shri Ravuri Venu Madhav,
General Manager-Installation,
Mangalore LPG Import Facility,
Village Balla, Mangalore – 575 030, Karnataka.

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, pleased to struck off the execution proceedings in EPR No.18 of 2024 pending on the file of the III Additional District Court at Gobichettipalayam is not maintainable, by allowing the present civil revision petition.

For Petitioner : Mr.Ma.P.Thangavel

For Respondent : Mr.M.Vijayan
for M/s.King & Partridge



C.R.P.No.1040 of 2025

ORDER

This Civil Revision Petition has been filed seeking to strike off the execution proceedings in EPR No.18 of 2024 pending on the file of the III Additional District Court at Gobichettipalayam as not maintainable.

2. The petitioner is the Judgment Debtor in E.P.R No.18 of 2024 filed by the respondent/Decree Holder seeking to execute the Arbitration Award CSS/ARB dated 01.06.2017 in the matter of HPCL, LTD vs. M/s. Gurugappa Transport. The main ground raised by the petitioner in the revision petition is that the respondent had unilaterally and perversely appointed the sole Arbitrator and thereby, making the arbitration unconstitutional and prayed that the Arbitration Award is liable to be set aside. Yet another ground raised by the petitioner is that the copy of the Award has not been served on the petitioner.

3. Learned counsel appearing for the petitioner further submitted that the Hon'ble Apex Court in the cases of *TRF Ltd. vs. Energo Engg. Projects Ltd.*, reported in (2017) 8 SCC 377 and *Perkins Eastman Architects DPC vs. HSCC (India) Ltd.*, reported in (2020) 20 SCC 760, has held that the awards based on



C.R.P.No.1040 of 2025

the Arbitration agreements which are against public policy considerations are void under Section 27 of the Contract Act and further the awards obtained without jurisdiction is illegal and unenforceable in law. He further submitted that steps are being taken to set aside the award before the courts of Maharashtra and thereby would seek to strike off the execution proceedings in EPR No.18 of 2024.

4. Per contra, the learned counsel appearing for the respondent submitted that though the Constitution Bench of the Hon'ble Supreme Court in the case of *Central Organisation for Railway Electrification vs. ECI SPIC SMO MCML (JV)*, a joint venture company reported in (2024)6 CTC 495, in a majority view has held that unilateral appointment clauses in public private contracts are violative of Article 14 of the Constitution has also held that the law laid down in the said judgment will apply prospectively to arbitrator appointments to be made after the date of the judgment and thereby, since the Award has been passed as early as on 2017, the judgment of the Constitutional Bench will not operate as against the petitioner. He also submitted that the copy of the Arbitration Award has been served on the petitioner by a Registered A.D dated 01.06.2017 and it has also been duly acknowledged by the petitioner vide letter dated 10.03.2020. He further



submitted that the award has been passed in the year 2017 and it has not been challenged and the maximum period of 120 days which has been granted for setting aside the Award has expired and till date, the petition to set aside the award has not been filed. Hence, he opposed for allowing the revision petition.

5. At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner, being a lady, may also be permitted to move for mediation before the Executing Court.

6. Heard both sides and perused the materials available on record.

7. The main ground raised by the petitioner for striking the execution proceedings is that the appointment of the Arbitrator is unilaterally made and thereby, unconstitutional and against public policy and thereby, liable to be set aside. The petitioner also contended that a copy of the Award has not been served on her, Perusal of the records show that the petitioner had been served with the



C.R.P.No.1040 of 2025

Award and she has also acknowledged the same vide letter dated 10.03.2020.

WEB COPY

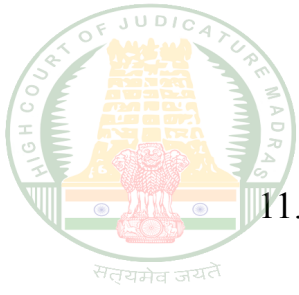
8. A Constitutional Bench of the Hon'ble Supreme Court in the case of *Central Organisation for Railway Electrification vs. ECI SPIC SMO MCML (JV)*, a joint venture company reported in (2024)6 CTC 495, in a majority view has held that unilateral appointment clauses in public private contracts are violative of Article 14 of the Constitution and the principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an Arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the *nemo judex rule*. The Hon'ble Supreme Court has, however, held that “the law laid down in the said judgment will apply prospectively to arbitrator appointments to be made after the date of the judgment. This only will apply prospectively to arbitrator appointments to be made after the date of this judgment. The doctrine of prospective overruling was specifically made by the Hon'ble Supreme Court taking note of the fact that change in law may have the effect of distorting established rights and commercial bargains between parties. To avoid large-scale social and economic disruption, this Court can



exercise its discretionary jurisdiction under Article 142 to give prospective effect to its decisions.”

9. Though, the Constitutional Bench of the Hon'ble Apex Court, in a majority view has held that unilateral appointment clauses in public private contracts are violative of Article 14 of the Constitution, the Court has also held that the law laid down in the said judgment will apply prospectively to arbitrator appointments to be made after the date of the judgment. In the case in hand, the Arbitration Award has been passed on 01.07.2017 and it has been duly served on the petitioner and duly acknowledged by her and till date it has not been challenged and in such circumstances the claim sought by the petitioner seeking to strike off the execution petition cannot be sustained.

10. In view of the above, the Civil Revision Petition stands dismissed. However, the petitioner is at liberty to seek mediation before the Court below.



C.R.P.No.1040 of 2025

11. Consequently, connected miscellaneous petition is closed. No costs.

WEB COPY

24.04.2025

Note : Registry is directed to return the original papers to the counsel for the petitioner.

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

ham

To

1. The III Additional District Court,
Gobichettipalayam.
2. The Section Officer,
VR Section, High Court of Madras.



WEB COPY



C.R.P.No.1040 of 2025

A.D.JAGADISH CHANDIRA, J.

ham

**C.R.P.No.1040 of 2025
and C.M.P.No.6002 of 2025**

24.04.2025