

[3255]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE ELEVENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

ARBITRATION APPLICATION NO: 231 OF 2022

Between:

UltraTech Cement Limited, B-wing, Ahura Centre, 2nd Floor, Mahakali Caves
Road, Andheri (East), Mumbai - 400093.

As per court order Dt. 11/08/2025 in IA 1/2025.

...APPLICANT

AND

South Central Railway, Office of the Principal Chief Commercial Managar,
First Floor, Commercial Branch, Rail Nilayam, Secunderabad-500025
Represented by the Deputy Chief Commercial Manager/FS.

...RESPONDENT

Arbitration Application filed under Section 11(6) of the Arbitration and
Conciliation Act, 1966 R/w Scheme for Appointment of Arbitrator, 1996 for the
reasons mentioned in the accompanying affidavit, praying that this Hon'ble Court
may be pleased to:

- (i) Allow the present Application and appoint the Sole Arbitrator to
constitute the Arbitral Tribunal for adjudication of all disputes between
the Parties under Clause 15 of the 2009 Agreement;
- (ii) Set aside the unilateral appointment of Shri Vijender Kumar Jain, Retd.
PCCM/Central Railway as sole arbitrator by the Respondent vide the
letter dated 11.11.2022;

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings initiated by Shri Vijender Kumar Jain, Retd. PCCM/Central Railway vide his letter dated 25.11.2022, pending disposal of the present Arbitration Application.

Counsel for the Petitioner: M/s. Link Legal Advocates

Counsel for the Respondent: Sri V. T. Kalyan

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR

Arbitration Application No.231 of 2022

ORDER:

Heard the learned counsel for the parties and with their consent this Arbitration Application is disposed of.

2. This Arbitration Application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, read with scheme for Appointment and Arbitrator, 1996 to (i) allow the present Application and appoint the Sole Arbitrator to constitute the Arbitral Tribunal for adjudication of all disputes between the parties under Clause 15 of the 2009 Agreement; (ii) set aside the unilateral appointment of Shri Vijender Kumar Jain, Retd., PCCM/Central Railway as sole arbitrator by the respondent vide the letter dated 11.11.2022.

3. Brief facts of the case are that the Applicant executed the agreement dated 03.08.2009 (hereinafter referred to as 'the 2009 Agreement') with the respondent for transportation of Fly Ash in the Bulk Cement Carrier Wagon (BCCW) pursuant to the Liberalized Wagon Investment Scheme (LWIS) dated 15.04.2008. From the above agreement, a debit note was received on 11.11.2019 for empty haulage charges for financial year 2013-14 amounting to INR Rs.8,49,56,827/- which was opposed by the Applicant vide letters dated 18.11.2019 and 11.12.2019. The said opposition towards empty haulage charges was arising out the agreed understanding between the parties captured in Clause 2.5 of the 2009 Agreement, wherein it was agreed that no

charges are leviable for empty haulage for movement of wagons between a nominated unloading and loading points and requested the respondent to withdraw the said debit notes. However, the said requests were not acceded by the respondent. It is submitted that such empty haulage charges are being unilaterally imposed by the respondent since 12.02.2021 and keeping in view the long standing business relationship, the Applicant deposited a sum of Rs.1,07,08,567/- under protest for the period between 12.02.2021 to 19.08.2021. Thereafter, communications were exchanged between the Applicant and the respondent and the respondent vide its letter dated 16.11.2021 refused to refund the aforesaid charges, which is completely contrary to Clause 2.5 of the 2009 Agreement.

4. It is further submitted that the respondent vide its letter dated 11.11.2022 informed the Applicant for unilateral nomination of Shri Vijender Kumar Jain, Retd., PCCM/Central Railway as the sole Arbitrator for which the Applicant made an objection vide letter dated 29.11.2022. The said sole Arbitrator indicated his acceptance vide his letter dated 20.11.2022 and vide notice dated 25.11.2022 informed the parties that the Arbitral Tribunal has entered into reference with the issue of the said notice for which, the Applicant reiterated its objection vide letter dated 01.12.2022.

5. The learned counsel for the Applicant would submit that nomination or appointment of an Arbitrator by an interested party to the dispute which will form subject matter of the arbitration is *ex facie*

invalid. The respondent vide its letter dated 11.11.2022 has nominated the said sole Arbitrator for adjudication of disputes between the parties. Evidently, the said sole Arbitrator nominated by the respondent is an interested party to the dispute and will thus, have a direct impact on the said arbitration proceedings. It is further submitted that it is settled law that a party to the agreement would be disentitled to make any appointment of an Arbitrator on its own. Therefore, the unilateral appointment of the sole Arbitrator by the respondent vide letter dated 11.11.2022 is *non-est* being in conflict with Section 12(5) read with Seventh Schedule of the Act and thus, void *ab initio*. Thus, the Applicant filed the present Arbitration Application seeking to set aside the unilateral appointment of said sole Arbitrator and to appoint another sole Arbitrator for adjudication of the disputes, claims, counterclaims of all parties arising out of the Agreement.

6. On behalf of the respondent, while denying the averments made in the Arbitration Application, counter affidavit has been filed, *inter alia*, stating that the appointment of retired employees as Arbitrators on apprehension of bias cannot be assailed merely because an Arbitrator is a retired employee of one of the parties.

7. The learned counsel appearing for the respondent has reiterated the counter averments and substantiated the claim of the respondent.

8. For better appreciation of the case, it is pertinent to note the arbitration clause 15 of the Agreement 2009 reads as under:

“15. ARBITRATION FOR SOLVING DISPUTE

- a) If any dispute or difference of any kind whatsoever arises among parties hereto in connection with or arising out of this agreement parties hereto shall promptly and in good faith negotiate with a view to its amicable resolution and settlement.
- b) In the event no amicable resolution and settlement is reached within a period of 90 days from the date of which the dispute/difference arose, a demand shall be made for arbitration. The dispute/difference or either party shall be referred to the arbitral tribunal appointed by General Manager, South Central Railway, who shall be Railway Gazetted Officer within 60 days from the date of request/demand.
- c) The Gazetted Railway Officer to be appointed as an Arbitrator, however, will not be one those who had an opportunity to deal with the matter to which the contract relates.
- d) It is a term of this agreement that in the event of Arbitrator to whom matter is originally referred being transferred or vacating his office or being unable to act for any reason, General Manager of this Railway shall appoint

another person to act as arbitrator in accordance with the terms of this agreement.

e) The existence of any dispute or difference or the initiation or continuance of the arbitration proceedings shall not postpone or delay performance by parties of their respective obligations pursuant to the agreement.

f) Parties agree that the Arbitrator(s) shall determine and make an award as to the cost of the arbitration proceedings."

9. The learned counsel for the Applicant has placed reliance on the following judicial pronouncements.

10. **Central Organisation for Railway Electrification v. ECI-SPIC-SMO MCML (JV)** a Joint Venture Company (Para 169) (2024 SCC OnLine SC 3219); **Lombardi Engineering Limited v. Uttarakhand Jal Vidyut Nigam Limited** ((2024) 4 SCC 341) (Paras 7, 85-86, 102); **Glock Asia Pacific Limited v. Union of India** ((2023) 8 SCC 26) (Paras 6, 21, 24); **JSW Steel Limited v. South Western Railway and Anr.** (2022 SCC OnLine SC 1973) (Paras 6-7); **Union of India v. Tania Constructions Limited** (2021 SCC OnLine SC 271) (Paras 1-2); **Perkins Eastman Architects DPC & Anr. v. HSCC India Limited** ((2020) 20 SCC 760) (Paras 2.2, 21, 30); **Central Organisation for Railway Electrification v. ECI-SPIC-SMO MCML (JV) a Joint Venture Company** ((2020) 14 SCC 712) (Paras 17,18, 27, 36-38); **TRF Limited v. Energo Engineering Projects Limited** (2017)

8 SCC 377 (Paras 8, 54) (2017); **Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd.** (2017) 4 SCC 665 (paras 7, 26, 38); **Kamladityya Construction Pvt. Ltd. v. Rail Land Development Authority** (2024 SCC OnLine Del 5182) (para 3, 19); **Velji Ratna Sorathia Infra Pvt. Ltd. v. Union of India and Ors.** (MANU/MP/3474/2023) (paras 8-10); **Knight Frank (India) Pvt. Ltd. v. Punjab Heritage and Tourism Promotion Board** (2024 SCC OnLine P&H 528) (Paras 6, 9); **Globe Ground India Private Limited Vs. Airports Authority of India and Ors.** (MANU/TN/2343/2024) (Paras 53, 54, 97); **Govind Singh v. Satya Group Private Limited** (2023 SCC OnLine Del 37) (Paras 13, 17-18, 21); **Babu Lal & Anr. v. Cholamandalam Investment and Finance Company Ltd. & Anr.** (2023 SCC OnLine Del 7239) (Paras 6, 9, 11); **SBI General Insurance Co. Ltd. v. Krish Spinning** (2024 SCC OnLine SC 1754) (Paras 93, 122).

11. In a recent judgment of the Hon'ble Suprme Court in the case of **Central Organisation for Railway Electrification** (2024 SCC OnLine SC 3219, decided on November 8, 2024), held as under:

"J. Conclusion

170. In view of the above discussion, we conclude that:

170.1. The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;

170.2. The Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs;

170.3. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;

170.4. In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in *CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712]* is unequal and prejudiced in favour of the Railways;

170.5. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

170.6. 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; and

170.7. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals.

171. The reference is answered in the above terms.

172. Pending application(s), if any, shall stand disposed of."

12. In view of the above, it is clear that unilateral appointment in public-private contracts are violative of Article 14 of the Constitution. In the instant case, the core issue as contended by the Applicant is that the respondent has unilaterally nominated the sole Arbitrator vide letter dated 11.11.2022, who is a retired Railway employee. Taking into consideration of the above judicial pronouncement, unilateral appointment of the sole Arbitrator Shri Vijender kumar Jain, Retd., PCCM/Central Railways as the sole Arbitrator is set aside and the disputes in the agreement dated 03.08.2009 shall have to be decided by the sole Arbitrator in view of the law laid down by the Hon'ble Supreme Court in the case of **Central Organisation** (supra).

13. Accordingly, the Hon'ble Sri Justice C. Praveen Kumar, Door No.8-2-293/82/NL/149-B, MLA & MP Colony, Vijaya Co-operative Society, Road No.10-C, Jubilee Hills, Hyderabad - 500 033 (Phone

No.9491399984) is appointed as the sole Arbitrator to resolve the disputes between the parties.

14. The parties shall appear before the said sole Arbitrator along with this order, who shall initiate arbitral proceedings and pass orders, in accordance with law.

15. Accordingly, this Arbitration Application is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

Sd/- I. NAGA LAKSHMI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

- To,
1. Sri Justice C. Praveen Kumar, Door No. 8-2-293/82/NL/149-B, MLA & MP Colony, Vijaya Co-operative Society, road No. 10-C, Jubilee Hills, Hyderabad-500 033. (By Special Messenger) (Along with a Copy of affidavit and material papers)
 2. UltraTech Cement Limited, B-wing, Ahura Centre, 2nd Floor, Mahakali Caves Road, Andheri (East), Mumbai - 400093.
 3. South Central Railway, Office of the Principal Chief Commercial Managar, First Floor, Commercial Branch, Rail Nilayam, Secunderabad-500025 Represented by the Deputy Chief Commercial Manager/FS.
 4. One CC to M/s. Link Legal Advocates, Advocate [OPUC]
 5. One CC to Sri V. T. Kalyan, Advocate [OPUC]
 6. Two CD Copies

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HIGH COURT

DATED: 11/08/2025

ORDER

ARBAPPL.No.231 of 2022



**DISPOSING OF
ARBITRATION
APPLICATION**

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