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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13.10.2025

+ **O.M.P. (T) (COMM.) 61/2025 &I.A. 17133/2025**
SPML INFRA LIMITED

.....Petitioner

Through: Mr. Siddhant Jaiswal, Adv.

versus

POWER GRID CORPORATION OF INDIA LIMITED

.....Respondent

Through: Sh. S. B. Upadhyay, Sr. Adv with Sh.
Pranay, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 14 (1)(a) of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking substitution of the Arbitral Tribunal and stay of proceedings before the Arbitral Tribunal.
2. Mr. Jaiswal, learned counsel for the petitioner states that the primary ground for alleging bias against the Presiding Arbitrator is that the Presiding Arbitrator has passed adverse orders against the petitioner in earlier arbitration proceedings in matters related to *Araria* and *Gaya*. The said averment is based on the observations of Arbitral Tribunal in its order dated 01.06.2023. Additionally, the petitioner had also opposed the unilateral enhancement of fee by the Arbitral Tribunal.
3. As regards the averment of unilateral enhancement of fee is concerned,



the same has already been set aside by this Court *vide* Order dated 27.11.2024. The only contention remaining to be decided is allegation of bias.

4. The dispute in the present case are in relation to the rural electrification works in Kaimur district of Bihar under the Government of India Scheme of Rajiv Gandhi Gramin Vidyutikaran Yojana (“***Kaimur project***”)
5. Since there were disputes between the parties, the Arbitral Tribunal was constituted on 22.06.2018 and thereafter, proceedings were held. The arbitration proceedings are now at the stage of rejoinder arguments of the petitioner.
6. *Vide* Order dated 01.06.2023, the Arbitral Tribunal dismissed the application filed by the petitioner for conduct of arbitration proceeding for the original agreed fees and observed as under:-

“At this juncture, it may be pertinent to note that it appears that the Claimant has various arbitrations vis-a-vis the Respondent. In some of the said arbitrations, Justice Deepak Verma (Retd.) has been the Presiding Arbitrator, with different co-arbitrators, and in two matters specifically thereof, Arbitral Awards have been passed, which are partially in favour of the Claimant. It appears that the Claimant, on account of not being satisfied with the earlier Awards passed by the Tribunal, in which Justice Deepak Verma (Retd.) was the Presiding Arbitrator, has sought the relief (a) in the Application. The conduct of the Claimant speaks volumes and the present Application filed by it cannot be said to be bona fide as the word "withdraw" in prayer (a)



reveals that the intention of the Claimant appears to be to ensure that the present matter and the other connected matter should now not be heard by this Tribunal of which Justice Deepak Verma (Retd.) is the Presiding Arbitrator. But this cannot be countenanced as the other matters in which Justice Deepak Verma (Retd.) acted as the Presiding Arbitrator were decided on the basis of their own facts and legal points involved therein. Further, it cannot be a valid ground for the Presiding Arbitrator Justice Deepak Verma (Retd.) to withdraw the portion of the Order dated 28.10.2022, whereby the additional fees was directed to be paid.”

7. Based on the said order, the petitioner filed a Section 14 petition being OMP (T) 79/2023 alleging bias. The said petition was dismissed by this Court *vide* Order dated 27.11.2024 holding that the issue of bias was not raised before the Arbitral Tribunal and hence, the Section 14 petition was not maintainable on the said grounds.
8. Subsequently, the petitioner filed an application under Section 12 read with Section 13 of the 1996 Act before the Arbitral Tribunal. The same was dismissed *vide* Order dated 27.03.2025. Relevant paragraphs of the said Order are reproduced below:

“17. Claimant has based its allegation of bias on two grounds, basis the observation recorded in the Tribunal's Order dated 01.06.2023: (i) its disagreement with the Tribunal regarding the enhancement of arbitral fees, and (ii) the observations recorded concerning Claimant's dissatisfaction with partial awards



rendered in separate arbitration proceedings involving the same parties, with the Presiding Arbitrator being common to those proceedings. However, in our view, these allegations do not fall within the circumstances enumerated in the Fifth or Seventh Schedule of the Act. In the absence of any additional factors demonstrating a lack of independence or impartiality, these grounds, in isolation, in our considered opinion, do not meet the statutory threshold of 'justifiable doubts' as contemplated under Section 12(3) of the Act. At this juncture, it is apposite to refer to the observations made by the Hon'ble Supreme Court's in Chennai Metro Rail Ltd. v. Transtonnelstroy Afcons (JV), wherein similar grounds as those raised by Claimant in the present case, alleging bias against the arbitrators were rejected in the following manner:

"35. The ruling in ONGC IONGC v. Afcons Gunanusa JV, (2024) 4 sec 481 is undoubtedly clear that fee increase can be resorted to only with the agreement of parties,' in the event of disagreement by one party, the Tribunal has to continue with the previous arrangement, or decline to act as arbitrator. Yet, whether the breach of that rule, as in the present case, by insisting that the increase of fee should prevail does not in this Court's opinion, amount to a per se ineligibility, reaching to the level of voiding the Tribunal's appointment, and terminating its mandate. This can be illustrated with the facts in HRD [HRD Corpn. v. GAIL, (2018) 12SCC 471



:(2018) 5 SCC (Civ) 401), where the challenge was on the ground of existence of factors mentioned in the Fifth Schedule i.e. rendering of opinion by a former Chief Justice, to one of the parties to the dispute, in relation to an unconnected case. The Court rejected the plea of ineligibility. Similarly, the objection to the continuance of another arbitrator, a former Judge, because he had rendered an award in a previous reference between the same party, and the assumption that he would have some kind of subject-matter bias, was overruled. The other case, where this Court noted that a fee increase was sought and was warranted, because of revision of fee in a schedule referred to (or the purpose of ascertaining fee, became the focus of dispute. The Tribunal noted the need to increase the fee; yet after justifying it, declined to actually direct its increase, because of a previous High Court judgment to the contrary. This Court held that such conduct did not render the Tribunal ineligible from continuing and deciding the reference.

41. The attempt by Chennai Metro to say that the concept of de jure ineligibility because of existence of justifiable doubts about impartiality or independence of the Tribunal on un enumerated grounds [or other than those outlined as statutory ineligibility conditions in terms of Section 12(5)f, therefore cannot be sustained. We can hardly conceive of grounds other than those mentioned in



the said schedule, occasioning an application in terms of Section 12(3). In case, this Court were in fact to make an exception to uphold Chennai Metro's plea, the consequences could well be an explosion in the court docket and other unforeseen results. Skipping the statutory route carefully devised by Parliament can cast yet more spells of uncertainty upon the arbitration process. In other words, the de jure condition is not the key which unlocks the doors that bar challenges, mid-stream, and should "not to unlock the gates which shuts the court out" [Union of India v. Hindustan Development Corpn.,(1993) 3 SCC 499 - so said in a different context, about the applicability of the doctrine of legitimate expectation.] from what could potentially become causes of arbitrator challenge, during the course of arbitration proceedings, other than what the Act specifically provides for."

18. Further, the argument of justifiable doubts regarding the impartiality of the Tribunal and the alleged pre-determined mindset of the Tribunal must be assessed from the lens of a "reasonable man". In S. Parthasarathi v. State of A.P., it has been held that the test of likelihood of bias is based on the reasonable apprehension of a reasonable man fully cognizant of the facts and that the question of whether the real likelihood of bias exists is to be determined on the probabilities to be inferred from the objective circumstances by a court or based on impressions that might reasonably be left on the minds of the



aggrieved party or the public at large. In HRD Corporation v. GAIL (India) the Hon'ble Supreme Court explained the application of the real likelihood of bias test to determine the issue of arbitrator bias as below:

"20. [. . .) As has been pointed out by us hereinabove, the items contained in the Schedules owe their origin to the IEA Guidelines, which are to be construed in the light of the general principles contained therein- that every arbitrator shall be impartial and independent of the parties at the time of accepting his/her appointment. Doubts as to the above are only justifiable if a reasonable third person having knowledge of the relevant facts and circumstances would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case in reaching his or her decision. This test requires taking a broad commonsensical approach to the items stated in the Fifth and Seventh Schedules. This approach would, therefore, require a fair construction of the words used therein, neither tending to enlarge or restrict them unduly."

(emphasis supplied)

19. More recently, in Central Organisation for Railway Electrification v. ECI SPICSMO MCML (JV) A Joint Venture Company, the Apex Court while reaffirming the above has clarified that "the consideration of possible "doubts " must be undertaken from the perspective of a fair-minded and informed



person" rather than the subjective views of the parties or the arbitrators."

20 A careful examination of the relevant legal principles and prevailing jurisprudence relating to ascertaining bias establishes that an allegation of bias can be sustained only in exceptional circumstances, where a tribunal's predisposition or pre conception is so evident that it adjudicates the matter without due consideration of the merits, solely on the basis of preconceived notions. The threshold for proving bias is inherently high and requires the existence of unequivocal and compelling indicia demonstrating actual or probable unfairness in the tribunal's conduct in the eyes of a reasonable person. Thus, any allegation of bias must be assessed against this high threshold and can only be substantiated when there exists clear and categorical circumstances that indicate a lack of impartiality or a predetermined disposition on the part of the tribunal regarding the substantive merits of the dispute.

21. In any event, following the Tribunal 's Order dated 01.06.2023 , which, as per Claimant, forms the basis for its alleged apprehension of bias, multiple hearings were conducted before the Tribunal on 26.06.2023, 08 .08 .2023, 16.08.2023 ,02.12.2024, 09.01.2025, and 01.03 .2025, prior to the filing of the present Application on 20.03.2025. During these proceedings, Claimant did not raise any objection or assert allegations of bias against the Tribunal. Furthermore, following the Tribunal's Order dated 01.06.2023, Claimant



repeatedly sought adjournments at the eleventh hour on multiple occasions when the matter was listed for final arguments, as reflected in the Tribunal 's Orders dated 16.08.2023, 09.01.2025, and 01.03 .2025. Notwithstanding these repeated delays, the Tribunal, in the interest of justice, accommodated Claimant's requests for adjournment without passing any adverse orders. Additionally, Claimant has neither pleaded nor substantiated the existence of any other circumstances, apart from the findings recorded in the Tribunal's Order dated 01.06.2023, that could give rise to justifiable doubts regarding the Tribunal's independence and impartiality. Thus, the Tribunal finds no merit in Claimant's contentions regarding alleged bias or lack of impartiality.

22. In light of the above, the Tribunal holds that Claimant's assertion of a reasonable apprehension of bias or the existence of justifiable doubts concerning the Tribunal's independence and impartiality is unfounded and deserves to be dismissed. Consequently, the present Application is not only barred by limitation but is also devoid of merit and accordingly, stands rejected.

9. It is this order which is being challenged before this Court. In a connected matter i.e. with respect to Rohtas Project, similar matrix has already been adjudicated *vide* OMP(T)(COMM) 136/2024, by the Coordinate Bench. The relevant paragraphs of the same are reproduced as under:-



“25. SPML has been unable to establish that the Presiding Arbitrator suffers from any inherent or apparent legal disability which prevents him from acting as an Arbitrator in the present arbitration. At best, it can be said that SPML harbours an apprehension of bias. The apprehension of bias cannot serve as a ground to assert de jure inability of the Presiding Arbitrator and thereby invoke Section 14 of the A&C Act seeking substitution of the Presiding Arbitrator / reconstitution of the arbitral tribunal. The avenue for SPML to agitate the aspect of alleged bias, is by moving an appropriate application in terms of Section 13 read with Section 12 of the A&C Act before the Arbitral Tribunal. The same shall be dealt with in the manner prescribed in the A&C Act and in the event of the same being rejected, it shall be open to SPML to agitate this aspect in proceedings under Section 34 of the A&C Act, after the award has been made.

26. In the circumstances, this Court finds no merit in the petition [OMP (T)(COMM) 136/2024] filed under Section 14(1)(a) read with Section 15 of the A&C Act seeking substitution of the Presiding Arbitrator; the same is, accordingly, dismissed.”

10. The said Order was also challenged before the Hon’ble Supreme Court and the SLP also has been dismissed.
11. Once a plea of bias on similar grounds has already been raised by the petitioner before this Court and adjudicated against the petitioner, I am of the view that the same will be binding upon this Court. The Coordinate Bench in the above judgement has held that the allegations of the petitioner can be at best be considered as “Apprehension of Bias”



without there being any tangible material to show the bias of the Presiding Arbitrator. “Apprehension of Bias” is not a ground under Section 14 of the 1996 Act to declare that an Arbitrator has become *de-jure* unable to perform his functions.

12. Even on merits, the petitioner’s allegations of bias are not maintainable. There is no compelling evidence to show that the Presiding Arbitrator suffers from any inherent legal incapacity to prevent him from acting as an Arbitrator. The only allegation against the Arbitral Tribunal is repeated challenge to their orders and observations of the Arbitral Tribunal in its order dated 01.06.2023. The challenges made in accordance with law to the orders passed by the Arbitral Tribunal is a statutory right available to the petitioner. The petitioner exercising its right cannot lead to an inference that the Arbitral Tribunal would be biased due to the said exercise. The observations in the order dated 01.06.2023 are again observations in the passing and cannot be construed as bias. The contention raised by the petitioner at best reflects a subjective apprehension of bias, which in law cannot constitute a ground to establish *de jure* inability of the Presiding Arbitrator under Section 14 of the 1996 Act. Mere apprehension, not substantiated by any evidence of prejudice or partiality, cannot warrant substitution of the Arbitral Tribunal.
13. The petition is dismissed with pending applications, if any.

JASMEET SINGH, J

OCTOBER 13, 2025 / (MS)



(Corrected and released on 23.10.2025)