

OCD 5

ORDER SHEET
AP-COM/985/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S PARNIKA COMMERCIAL AND ESTATES (P) LIMITED
VS
UNION OF INDIA, CENTRAL PUBLIC WORKS DEPARTMENT

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 5th February, 2026.

Appearance:
Mr. Bhupesh Narula, Sr. Adv.
Mr. Anurag Ekka, Adv.
Mr. Soumyajit Mishra, Adv.
...for the petitioner

Mr. Anuran Samanta, Adv.
Mr. Srikumar Chakraborty, Adv.
...for the UOI

The Court:

1. This is an application for appointment of an Arbitrator for settlement of disputes which arose out of an agreement bearing no.13/CE/EE/KCD-IV/2015-16.
2. The petitioner was allotted work for construction of an office building for the Central Forensic Science Laboratory (CFSL) at Rajarhat, Kolkata. The petitioner was the successful bidder. The letter of acceptance was issued on May 21, 2015. The petitioner submitted the performance

guarantee on June 1, 2015. The work order was issued to the petitioner on June 16, 2015. The stipulated date of the start of the contract was June 4, 2015 and end date was December 3, 2016. However, the petitioner contends that the actual date of completion was January 25, 2022. The contract value was approximately Rs.48,47,52,780/-. The final bill raised by the petitioner was due for payment from October 24, 2022. The petitioner claims that the payments were not made. The petitioner requested for release of the payments. It is contended that the Chief Engineer of the respondent had held a meeting to resolve the disputes. By a letter dated September 12, 2023, the claims and demands of the petitioner were rejected.

3. By a letter dated November 20, 2023, the petitioner approached the Chief Engineer seeking intervention of the Dispute Resolution Committee (DRC) for resolution of the dispute between the petitioner and the respondent. The DRC heard the petition, but the dispute remained unresolved. The petitioner proposed the names of Arbitrators from the empanelled list vide letter dated July 12, 2024 and requested the respondent to choose from the list. The respondent ignored the list and proposed another list of Arbitrators. Ultimately, the respondent by a letter dated August 13, 2024, unilaterally appointed a sole Arbitrator and referred the disputes to the said nominated arbitrator. The petitioner filed an objection to the same. Ultimately, the arbitrator so appointed by the respondent recused by a letter dated October 11, 2024. The petitioner once again requested for appointment of an

Arbitrator, but the respondent did not make any appointment. Instead, the respondent cited Clause 25 of the General Clauses of Contract. Upon recusal of the unilaterally appointed Arbitrator, the petitioner requested the Chief Engineer to look into the matter and choose any of the Arbitrators suggested by the petitioner as substantial time has been lost in the process. The petitioner relies on letters dated October 11, 2024 and October 14, 2024 in this regard.

4. Learned advocate for the respondent submits that adhering to the request of the petitioner, an Arbitrator was appointed by the respondent. The petitioner did not cooperate with the Arbitrator, which ultimately led to the recusal of the Arbitrator who was appointed by the respondent. He further relies on the clause to substantiate that the respondent should appoint the arbitrator, and the petitioner had agreed to such procedure.
5. Having considered the rival contentions of the parties and the facts as narrated hereinabove, it appears that there is subsisting dispute between the parties and the parties are bound by the terms and conditions of the General Conditions which provides a mechanism for resolution of dispute arising out of the agreement by way of arbitration. However, the provision of unilateral appointment of an Arbitrator is not permissible in law. Reference is made in this regard to ***Perkins Eastman Architects DPC and Another vs. HSCC (India) Ltd. ; 2019 SCC OnLine SC 1517; and Central Organisation for Railway Electrification vs. ECI SPIC SMO MCML (JV) A joint Venture***

Company reported in 2024 SCC OnLine SC 3219. Unilateral appointment of an arbitrator by one of the parties from its own panel of arbitrators or from its own employees is contrary to law.

The Hon'ble Apex Court in **Central Organization for Railway Electrification (supra)**, held thus:-

"73. The 2015 amendment has introduced concrete standards of impartiality and independence of arbitrators. One of the facets of impartiality is procedural impartiality. Procedural impartiality implies that the rules constitutive of the decision-making process must favour neither party to the dispute or favour or inhibit both parties equally.¹³⁷ Further, a procedurally impartial adjudication entails equal participation of parties in all aspects of adjudication for the process to approach legitimacy.¹³⁸ Participation in the adjudicatory process is meaningless for a party against whom the arbitrator is already prejudiced.¹³⁹ Equal participation of parties in the process of appointment of arbitrators ensures that both sides have an equal say in the establishment of a genuinely independent and impartial arbitral process.

74. Under Sections 12(1) and 12(5), the Arbitration Act recognises certain mandatory standards of independent and impartial tribunals. The parties have to challenge the independence or impartiality of the arbitrator or arbitrators in terms of Section 12(3) before the same arbitral tribunal under Section 13.¹⁴⁰ If the tribunal rejects the challenge, it has to continue with the arbitral proceedings and make an award. Such an award can always be challenged under Section 34. However, considerable time and expenses are incurred by the parties by the time the award is set aside by the courts. Equal participation of parties at the stage of the appointment of arbitrators can thus obviate later challenges to arbitrators.

75. Independence and impartiality of arbitral proceedings and equality of parties are concomitant principles. The independence and impartiality of arbitral proceedings can be effectively enforced only if the parties can participate equally at all stages of an arbitral process. Therefore, the principle of equal treatment of parties applies at all stages of arbitral proceedings, including the stage of the appointment of arbitrators.

* * *

124. The doctrine of bias as evolved in English and Indian law emphasizes independence and impartiality in the process of adjudication to inspire the confidence of the public in the adjudicatory processes. Although Section 12 deals with the quality of independence and impartiality inherent in the arbitrators, the

provision's emphasis is to ensure an independent and impartial arbitral process.”

In ***Perkins Eastman (supra)***, the Hon’ble Apex Court held thus :-

...“20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. [TRF Ltd. v. EnergoEngg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] 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 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 Ltd. [TRF Ltd. v. EnergoEngg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] , all cases having clauses similar to that with which we are presently concerned, 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.

21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. EnergoEngg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other

party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in *TRF Ltd. v. EnergoEngg. Projects Ltd.*, (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]

...

24. In *Voestalpine [Voestalpine Schienen GmbH v. DMRC]*, (2017) 4 SCC 665 : (2017) 2 SCC (Civ) 607, this Court dealt with independence and impartiality of the arbitrator as under : (SCC pp. 687-88 & 690-91, paras 20 to 22 & 30)

“20. Independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental principles of natural justice which applied to all judicial and quasi-judicial proceedings. It is for this reason that notwithstanding the fact that relationship between the parties to the arbitration and the arbitrators themselves are contractual in nature and the source of an arbitrator's appointment is deduced from the agreement entered into between the parties, notwithstanding the same non-independence and non-impartiality of such arbitrator (though contractually agreed upon) would render him ineligible to conduct the arbitration. The genesis behind this rational is that even when an arbitrator is appointed in terms of contract and by the parties to the contract, he is independent of the parties. Functions and duties require him to rise above the partisan interest of the parties and not to act in, or so as to further, the particular interest of either parties. After all, the arbitrator has adjudicatory role to perform and, therefore, he must be independent of parties as well as impartial. The United Kingdom Supreme Court has beautifully highlighted this aspect in *Hashwani v. Jivraj* [*Hashwani v. Jivraj*, (2011) 1 WLR 1872 : 2011 UKSC 40] in the following words : (WLR p. 1889, para 45)

‘45. ... the dominant purpose of appointing an arbitrator or arbitrators is the impartial resolution of the dispute between the parties in accordance with the terms of the agreement and, although the contract between the parties and the arbitrators would be a contract for the provision of personal services, they were not personal services under the direction of the parties.’

21. Similarly, *Cour de Cassation, France*, in a judgment delivered in 1972 in *Consorts Ury* [*Fouchard, Gaillard, Goldman on International Commercial Arbitration*, 562 [Emmanuel Gaillard & John Savage (Eds.) 1999] {quoting *Cour de cassation* [Cass.] [Supreme Court for judicial matters] *Consorts Ury v. S.A. des Galeries Lafayette*, Cass.2e

civ., 13-4-1972, JCP, Pt. II, No. 17189 (1972) (France)}.] , underlined that:

‘an independent mind is indispensable in the exercise of judicial power, whatever the source of that power may be, and it is one of the essential qualities of an arbitrator’.

22. Independence and impartiality are two different concepts. An arbitrator may be independent and yet, lack impartiality, or vice versa. Impartiality, as is well accepted, is a more subjective concept as compared to independence. Independence, which is more an objective concept, may, thus, be more straightforwardly ascertained by the parties at the outset of the arbitration proceedings in light of the circumstances disclosed by the arbitrator, while partiality will more likely surface during the arbitration proceedings.

30. Time has come to send positive signals to the international business community, in order to create healthy arbitration environment and conducive arbitration culture in this country. Further, as highlighted by the Law Commission also in its report, duty becomes more onerous in government contracts, where one of the parties to the dispute is the Government or public sector undertaking itself and the authority to appoint the arbitrator rests with it. In the instant case also, though choice is given by DMRC to the opposite party but it is limited to choose an arbitrator from the panel prepared by DMRC. It, therefore, becomes imperative to have a much broadbased panel, so that there is no misapprehension that principle of impartiality and independence would be discarded at any stage of the proceedings, specially at the stage of constitution of the Arbitral Tribunal. We, therefore, direct that DMRC shall prepare a broadbased panel on the aforesaid lines, within a period of two months from today...”

6. The petitioner appears to have complied with the pre-arbitration mechanism. The application is allowed.
7. All questions with regard to arbitrability of the dispute, admissibility of the claim, limitation etc. are kept open, to be decided by the learned arbitrator, if raised.
8. Accordingly, the Court appoints Mr. Hon’ble Justice Ashim Kumar Banerjee, Former Acting Chief Justice of the High Court at Calcutta, as the Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration

and Conciliation Act, 1996. The learned Arbitrator shall fix his/her own remuneration as per the Schedule of the Act.

9. AP-COM/985/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)