



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 24-06-2026**

CORAM

**THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**Arb O.P(COM.DIV.) No. 114 of 2026**

M/s.RSR Infra Works (India) Pvt. Ltd.,  
No.79-15-8/2, Prasanthi Estates,  
Tilak Road, Rajamahendravaram,  
Andhra Pradesh-533 103.  
Rep by its  
Managing Director R.Gopalakrishna

..Petitioner(s)

Vs

- Union of India  
Rep by
1. The General Manager,  
Southern Railway,  
Park Town,  
Chennai - 600 003.
  2. The Chief Administrative Officer  
(Construction)  
Southern Railway,  
Egmore,  
Chennai - 600 003.
  3. The Chief Engineer/CN/West  
Southern Railway,  
Egmore,  
Chennai - 600 003.
  4. The Deputy Chief Engineer/CN/TBM  
Southern Railway,  
Tambaram,  
Chennai - 600 045.

..Respondent(s)

Arbitration Original Petition under Section 11(5&6) of Arbitration  
and Conciliation Act, 1996, praying to constitute DAB and SAT under



Section-11 (5 & 6) of Arbitration and Conciliation Act 1996 as amended from time to time in order to resolve the disputes between the petitioner and respondents arising out of and in connection with the subject contract agreement No.SR/SRC/Civil/2024/0055 dated 09-12-2024.

For Petitioner(s): M/s.A.Madhumathi

For Respondent(s): M/s. M.P.Jaisha,  
Central Government Standing Counsel

### **ORDER**

This Arbitration Original Petition has been filed to constitute DAB and SAT under Section-11 (5 & 6) of Arbitration and Conciliation Act 1996 as amended from time to time in order to resolve the disputes between the petitioner and respondents arising out of and in connection with the subject contract agreement No.SR/SRC/Civil/2024/0041 dated 10-07-2024.

2. Heard both sides.

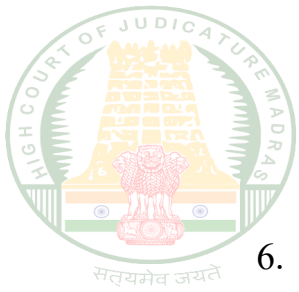
3. The learned counsel appearing for the petitioner would submit that the parties had entered into an agreement containing an arbitration clause and that disputes had arisen between the parties out of the said agreement, for which notices had also been issued by the petitioner as per the terms of the agreement and the conciliation proceedings envisaged under the agreement had also failed. Thereafter, the respondent had called upon the petitioner to select its Arbitrator from the curated panel, which according to the petitioner would not result in a



fair arbitration proceedings, in view of the fact that the curated panel of Arbitrators had been brought from the employees of the respondent Department and such a procedure contemplated under the arbitration clause are held to be bad by the Hon'ble Apex Court in Civil Appeal Nos.9486-9487 of 2019. Hence, the present application has been filed and the learned counsel for the petitioner seeks the indulgence of this Court to appoint an Arbitrator.

4. Countering the arguments, Mr. M.P.Jaisha, learned Central Government Standing Counsel appearing for the respondent, would submit that the arbitration clause provides for a three-member Arbitration Panel of which a five member curated panel will be sent to the contractor, namely the petitioner, from whom he has to select the Arbitrator. From the very same panel, the respondent would select its Arbitrator and the said Arbitrators would jointly select the Presiding Arbitrator from the very same panel.

5. Violating the said procedure, the petitioner is attempting to appoint an Arbitrator and in that regard, she would submit that an agreement that had been voluntarily entered into between the parties could not be altered by the Court, as held in various judgments. She would further submit that it is only the petitioner, who is at fault in complying with its obligations under the agreement, which had led to the disputes, and for that reason also the present application is not maintainable. Hence, she seeks dismissal of the application.



6. I have considered the submissions made by the learned counsel appearing on either side and the materials available on record.

7. The primordial objection of the respondent is that appointment of an Arbitrator would have to be only in reference with the arbitration agreement and there can be no appointment of an Arbitrator beyond the terms of the agreement.

8. During the course of arguments, the learned Central Government Standing Counsel for the respondent had also indicated that the judgment relied upon by the petitioner could only be applied prospectively and not to concluded agreements that had been entered into between the parties earlier.

9. A thorough perusal of the judgment of the Hon'ble Apex Court relied upon would indicate that under the Arbitration Clause, a mandate requiring the other party to select its Arbitrator from a curated panel had been deprecated. In coming to the said conclusion, the Hon'ble Apex Court had given a finding that in such a situation there is no effective counterbalance, as the parties do not participate equally in the process of appointing an Arbitrator. The Court further held that when a Public Sector Undertaking exercises its discretion to curate a panel and a very factor that they choose only a certain number of persons as



potential Arbitrators, which a reasonable doubt in the mind of a fair-minded person.

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10. For better appreciation, the relevant paragraphs in the case of ***Central Organisation for Railway Electrification Vs. M/s.ECI SPIC SMO MCML (JV) A Joint Venture Company, made in Civil Appeal Nos.9486-9487 of 2019 reported in 2024 INSC 857*** are extracted hereunder:

“132. In *Voestalpine (supra)* and *CORE (supra)*, one of the parties curated a panel of arbitrators and mandated the other party to select their arbitrator from the panel. Since the curation of the list is exclusively undertaken by one party, the other party is effectively excluded from the process of curating the panel from which exclusively, the appointment of an arbitrator is to be made. The other party has to mandatorily select its arbitrator from a curated panel, restricting their freedom to appoint an arbitrator of their choice. This is against the principle of equal treatment contained under Section 18. In this situation, there is no effective counter-balance because both parties do not participate equally in the process of appointing arbitrators. The party curating the panel can restrict the choice of the party only to a person who is on the panel selected by the other party and to no other person.

133. Many PSUs are regularly involved in arbitration disputes and constantly need the services of arbitrators. Such institutions often maintain a pool of potential arbitrators with



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*the sole object of having a ready pool of qualified professionals who have committed their time and consented to act as arbitrators for fixed fees. The Arbitration Act does not prohibit parties to an arbitration agreement from maintaining a curated panel of potential arbitrators. However, the problem arises when the PSUs make it mandatory for other parties to select their nominees from the curated panel of arbitrators. When a PSU exercises its discretion to curate a panel, the very factor that the PSU is choosing only a certain number of persons as potential arbitrators and not others will raise a reasonable doubt in the mind of a fair-minded person. The PSUs may conceivably have nominated a person on the panel of potential arbitrators because they have a certain predisposition in favour of the former. This doubt is reinforced when the other party is given no choice but to select its arbitrator from the curated panel.*

*134. In **CORE** (supra), the three-member tribunal was sought to be constituted in the following manner: (i) the Railways would suggest at least four names of retired railway officers; (ii) the contractor would select two names out of the panel for appointment as their arbitrator; (iii) The General Manager (of the Railways) would thereafter choose at least one person out of the two to be appointed as the contractor's arbitrator; and (iv) The General Manager would proceed to appoint the balance arbitrators from the panel or outside the panel and also indicate the presiding arbitrator.*

*135. Such an arbitrator-appointment clause is likely to give rise to justifiable doubts as to the independence and*



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impartiality of arbitrators for two reasons: (i) the contractor is restricted to choosing its arbitrator from the panel of four arbitrators nominated by the party who is a disputant, and (ii) the contractor's choice is further constrained because it is made subject to the decision of the General Manager who will choose one among the two persons suggested by the party. Since the contractor has to select its arbitrator from a curated panel, the arbitration clause does not allow the contractor equal participation in the appointment of their arbitrator. Moreover, the clause allows the General Manager to appoint the balance arbitrators from either the panel or outside the panel. Thus, the process of appointing the arbitrators is unequal because the General Manager can go beyond the panel of four potential arbitrators, while the contractor is bound by the names enlisted in the panel.

136. In a three-member tribunal, the independence and impartiality of a third or presiding arbitrator are prerequisites to the integrity of the arbitral proceedings. In **CORE** (supra), the arbitration clause allowed the General Manager to unilaterally nominate the presiding officer out of the panel of three arbitrators. The clause does not countenance any participation from the contractor in the process of appointing or nominating the presiding officer. Thus, the process of appointing and nominating the presiding officer is unequal and prejudiced in favour of the Railways. The fact that the General Manager is nominating the presiding officer gives rise to a reasonable doubt about the independence and impartiality of the entire arbitration proceedings.



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137. *Given the above discussion, it needs reiteration that 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. The PSUs can give a choice to the other party to select its arbitrators from the curated list provided the other party expressly waives the applicability of the nemo judex rule.”*

11. On the aforesaid findings, the Hon'ble Apex Court concluded that an arbitration clause cannot mandate the other party to select its Arbitrator from a panel curated by a Public Sector Undertakings.

12. In the present case, the clause of arbitration, particularly Clauses 24.3.1 and 24.3.2 dealing with the appointment of Arbitrators, reads as follows.

*“24.3.1 The arbitration proceedings shall be conducted as per ‘The Arbitration and Conciliation Act, 1996’. The Arbitral Tribunal shall consist of a panel of three Retired Railway Officers not below senior administrative grade (SAG). The Standing Arbitral Tribunal shall be formed within 90 days of signing of Contract document. For this purpose, the Authority shall maintain a panel of arbitrators. The complete panel, which shall not be less than five members, shall be sent by Authority to the Contractor to nominate one arbitrator from the panel as*



*Contractor's nominee within two weeks of receipt of the panel.*

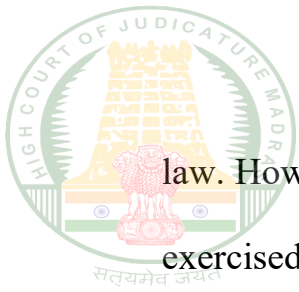
*On receipt of Contractor's nominee, the Authority shall appoint*

*above contractor's nominee as well as another from the same panel as Authority nominee as arbitrators. Both above arbitrators shall jointly select presiding arbitrator from the same panel.*

*24.3.2 If the Contractor fails to select the contractor's nominee from the panel within two weeks of the receipt of the said panel, the Authority shall, after giving one more opportunity to contractor to nominate one as contractor's nominee within next two weeks, appoint two arbitrators from the same panel. Both above arbitrators shall jointly select presiding arbitrator from the same panel."*

13. A reading of the aforesaid clause would indicate that the Arbitral Tribunal would consist of a three-member panel, all of whom are retired Railway Officers. Appointment of Arbitrators from such a panel of retired Railway Officers has been mandated, from whom the contractor/petitioner is forced to appoint an Arbitrator.

14. This, when read with the observations and the law laid down by the Hon'ble Apex Court extracted supra, would only render the said clause bad in



law. However, if the contractor opts to exercise the said option, the same can be exercised.

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15. Coming to the issue raised that the judgment not being applicable to the present facts of the case, as the agreement entered into between the parties was prior to the said judgment, the Hon'ble Apex Court had specifically dealt with the said issue as to whether the judgment would operate prospectively or retrospectively.

16. In that context, the Hon'ble Apex Court had held that, though the law laid down in the present case would have retrospective effect, it would not result in nullifying the ongoing arbitration proceedings and held that the law laid down in the said judgment would be applied prospectively to arbitral appointments to be made after the date of the judgment. For better appreciation, the relevant paragraph in the case of ***Central Organisation for Railway Electrification Vs. M/s.ECI SPIC SMO MCML (JV) A Joint Venture Company, made in Civil Appeal Nos.9486-9487 of 2019 reported in 2024 INSC 857*** is extracted hereunder:

*“168..... We are aware of the fact that giving retrospective effect to the law laid down in the present case may possibly lead to the nullification of innumerable completed and ongoing arbitration proceedings involving three-member tribunals. This will disturb the commercial bargains entered into by both the government and private entities. Therefore, we hold*



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*that 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 only applies to three-member tribunals.”*

17. The present application is one for appointment of an Arbitrator, which has been filed much after the law had been laid down by the Hon'ble Apex Court in the aforesaid judgment.

18. For the aforesaid reasons, taking into consideration the disputes between the parties, this Court deems it appropriate to appoint an Arbitrator. Accordingly, Justice Thiru.N.Kirubakaran, Former Judge of Madras High Court, having address at No:36, 2<sup>nd</sup> Cross Street, Rayala Nagar, Ramapuram, Chennai – 600 089 (Mobile No.94450 25454) is appointed as the Sole Arbitrator.

19. The learned Sole Arbitrator is entitled to fix his fees as per the Schedule-IV of the Act. This Court further requests the learned Sole Arbitrator to endeavour to decide the dispute as expeditiously as possible, however, not later than six(6) months from the date of his entering into reference.



20. In fine, this petition stands ordered. No costs.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

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Southern Railway,  
Park Town,  
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2. The Chief Administrative Officer (Construction)  
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**K.KUMARESH BABU, J.**

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