



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL UNDER ARBITRATION ACT NO. 6 OF 2022

State of Goa, Rep. By Executive Engineer,
Public Works Department, Works Division
VI (NH), Near Patto Bridge, Patto, Panaji, ... Appellant
Goa.

Versus

M/s. U. P. State Bridge Corporation Ltd.,
Setu Bhavan, 16, Madan Mohan Malariya ... Respondent
Marg, Lucknow – 226 001.

Mr. Manish Salkar, Government Advocate for the Appellant.

Mr. Shivan Desai, Advocate with Ms. Maria Cotta Viegas, Advocate for the Respondent.

CORAM: SUMAN SHYAM, J
RESERVED ON : 5th FEBRUARY, 2026
PRONOUNCED ON : 27th FEBRUARY, 2026

JUDGMENT

1. This Appeal preferred by the State of Goa, under Section 37 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as '*the Act of 1996*'), is directed against the Judgment and Order dated 22.02.2016, passed by the learned Principal District Judge (PDJ), North Goa, in Arbitration and Conciliation Petition No. 2 of 2012, rejecting the objection filed by the Appellant under Section 34 of the Act of 1996. This case has a chequered history. Therefore, in order to appreciate the legal issues involved in the matter, it would be

necessary to briefly narrate the facts and circumstances giving rise to the filing of the Appeal.

(i) It appears from the record that the State of Goa had floated a tender inviting bids for construction of the new Mandovi Bridge on NH-17. On evaluation of the bids, the contract was awarded to the Respondent-Corporation pursuant where to, a contract was signed by and in between the parties. Although copy of the contract Agreement is not available on record, yet, it appears from the material on record that the Contract Agreement was signed on 21.02.1987. The bridge was eventually opened for the public on 23.07.1992. However, Span 11 of the bridge had collapsed on 14.10.1990 when the same was still under construction. During the execution of the contract, sudden disputes and differences arose by and between the parties. Therefore, in view of Clause 67 of the Agreement dated 21.02.1987 containing the Arbitration Clause, the disputes were referred to Arbitration.

(ii) As per the Arbitration Agreement, the Arbitral Tribunal was required to be constituted by a Committee of three Members of Arbitrators out of which, one Arbitrator each, was required to be nominated by each of the contracting parties, whereas the Chairman was to be nominated by the Director General (Road Development), Ministry of Surface and Transport, Government of India. Accordingly, the claimant-contractor i.e. the Respondent herein, had nominated Shri Shitala Sharan, as its nominee in the Arbitral

Tribunal, whereas the Appellant had nominated Shri N. N. Shrikhande. Shri H. R. Bapu Satyanarayana was nominated on 21.07.1993 as the Chairman of the three Member Panel. In this manner, the three Member Arbitral Tribunal was constituted.

(iii) On 09.01.1996, an objection was filed before the Arbitral Tribunal by the Appellant raising question pertaining to appointment of Shri Shitala Sharan as an Arbitrator nominated by the Respondent, on the ground that his neutrality and independence was under cloud. Although there is no order of the Tribunal on the said objection available on record, yet, it is the admitted position of fact that the Arbitral Tribunal had rejected the objection on 16.01.1996, whereafter, the Arbitration proceedings had proceeded. Eventually, on 08.08.1997, an Arbitral Award was passed by the Tribunal. The operative part of the Arbitral Award dated 08.08.1997 is re-produced herein below for ready reference :

“i) a) We award that the Respondent i.e. the State of Goa represented by the Executive Engineer, Works Division VII (NH), Panaji, Goa to pay to the Claimant M/s. U.P. State Bridge Corporation Ltd. the amount of

- Rs.1,31,73,200/- (Rupees One Crore Thirty-One Lakhs Seventy-Three Thousand and Two Hundred only) against the various claims, and
- Rs.1,20,34,600/- (Rupees One Crore Twenty Lakhs Thirty-Four Thousand and Six Hundred only) towards interest on the above upto the date of the Award.

b) Out of the above Award amount, the amount of Rs. 1,31,73,200/- (Rupees one crore thirty-one lakhs Seventy-

three thousand two hundred only) shall bear an interest at 18% (eighteen percent) from the date of this Award till the date of decree by the Competent Court on this Award or till the date of payment of the Award amount, whichever is earlier.

ii) a) The Respondent is directed to write to The New India Assurance Co. Ltd. withdrawing the Respondent's letter No. 1/1/92/Ce (MHP)/PWD/439 dt. 14.8.1992 addressed by the Chief Engineer (MBP), PWD to the Manager of the Insurance Co. at Panaji and asking the Insurance Co. to pay the already sanctioned claim of Rs. 23.48 lakhs to the claimant.

b) The Respondent shall pay an interest at 18% (eighteen percent) of the above insurance amount from the date of the Award to the date of communication to be addressed by the Respondent to the Insurance Co. as stated in (a) above.

(iii) The Respondent is directed to return the following Bank Guarantees (since expired) to the Claimant

* No. 3/87 and 5/89 of State Bank of Indore for performance.

* No. 14/92 of Oriental Bank of Commerce for security.

iv) The parties to bear their own costs.”

(iv) The Arbitral Tribunal had, however, rejected the counter claims made by the Appellant. The reason for passing the Arbitral Award was furnished by the Tribunal separately.

(v) It would be pertinent to note herein that when the Arbitral proceeding had commenced, the Arbitration Act of 1940 was in force. The Arbitration and Conciliation Ordinance dated 16.01.1996 came into force w.e.f. 25.01.1996, which was subsequently replaced by the Act of 1996 w.e.f. 22.08.1996. Since the Arbitration proceedings had commenced under the Arbitration Act of 1940, hence, the Arbitral Tribunal had filed the Award dated 08.08.1987

before the Court of Civil Judge, Senior Division, Panaji, for making the Award a rule of the Court. Based on the same, Civil Miscellaneous Application no. 280/1997/A was registered. However, the claimant-contractor-Respondent herein, had filed an application before the Civil Court for returning the Award on the ground that after the enactment of the Act of 1996, the provisions of the Act of 1940 would no longer be applicable and, therefore, the Civil Court would not have any jurisdiction to pass any order on the Award.

(vi) Taking note of the above objection raised by the Respondent, the learned Civil Court had passed Order dated 20.04.1999 holding that after the coming into effect of the Act of 1996, the Civil Court did not have any jurisdiction to entertain the said application. Therefore, the Arbitral Award was returned to the Arbitral Tribunal to be presented before the proper forum.

(vii) Aggrieved by the Order dated 20.04.1999, the Appellant had preferred Civil Revision Petition No. 149/1999 before the High Court of Bombay at Goa, which was rejected by the Order dated 17.02.2000, thus upholding the order of the Civil Court. After the rejection of the Civil Revision, the Appellant had filed objection against the Award under Section 34 of the Act of 1996 before the Court of Principal District Judge, on 28.04.2000 i.e. nearly three years after the Arbitral Award dated 08.08.1997 was passed.

However, the objection filed under Section 34 of the Act of 1996 was not accompanied by any application for condonation of delay.

(viii) The Respondent filed affidavit before the learned Court below questioning the maintainability of the objection filed under Section 34 of the Act of 1996 on the ground that the same was barred by time. After taking note of the stand taken by the Respondent, the learned Principal District Judge, by Order dated 03.10.2001, dismissed the objection filed by the Appellant under Section 34 of the New Act by holding that the same was barred by time.

(ix) Assailing the Order dated 03.10.2001, the Appellant had approached this Court by filing Appeal from Order no. 23/2002, which was also dismissed by the Order dated 26.09.2002 passed by this Court, whereby it was held that the objection filed by the State was barred by time and the provisions of Section 14 of the Limitation Act, 1963, would not be applicable to a proceeding under the Act of 1996.

(x) The State of Goa i.e. the Appellant herein, had challenged the Order dated 26.09.2002 by filing Special Leave Petition before the Hon'ble Supreme Court. It appears that at that stage, a few other similar Petitions, filed by the Appellant, raising the same issue, were pending before the Supreme Court. After hearing the parties on the facts of the leading case, which is **State of Goa vs. Western**

Builders¹, the Apex Court had disposed of all the pending Petitions by the Judgment dated 05.07.2006, by holding that the provisions of Section 14 of the Limitation Act would be attracted to matters under the provisions of the Act of 1996. Liberty was, therefore, granted to the Appellant-State to prefer applications under Section 14 read with Section 5 of the Limitation Act, before the Court of Principal District Judge in the objections under Section 34 of the Act of 1996, which were filed beyond the time prescribed by Section 34(3) of the Act of 1996.

(xi) In the wake of the Order dated 05.07.2006 passed by the Apex Court, the objection of the Appellant under Section 34 of the Act of 1996 was revived. However, significantly enough, there was no application under Section 14 of the Limitation Act ever filed by the State, explaining the delay in the case. Be that as it may, considering the fact that the Respondent-claimant/contractor had also not raised any objection on the ground of non-filing of application under Section 14 of the Limitation Act, the learned Principal District Judge had considered the objection of the Appellant on merit and thereafter, by Judgment dated 22.02.2016, rejected the objection by recording reasons with regard to each of the objections. Aggrieved thereby, the present Appeal has been filed by the State under Section 37(1) of the Act of 1996.

1 (2006) 6 SCC 239

2. A perusal of the material brought on record goes to show that the objections raised by the Appellant with regard to the Arbitral Award dated 08.08.1997 were *inter-alia* on the grounds that the Arbitral Tribunal had travelled beyond the reference; that the Arbitral Tribunal had acted outside the bounds of the contract and, therefore, the award was without jurisdiction; that the Tribunal had failed to give reasons with regard to the basis on which the amounts have been awarded; that the Tribunal did not have jurisdiction to direct the Government to write to the Insurance Company, that the appointment of Shri Shitala Sharan was vitiated on account of *bias* and, consequently, the Award was liable to be set aside. However, at the time of hearing of this Appeal, Mr. Salkar, learned Government Advocate appearing for the Appellant, has confined his submissions only with regard to one objection i.e. the plea of *bias* of Shri Shitala Sharan, having a vitiating effect on the award by submitting that the other grounds in the Appeal are not being pressed by the Appellant. In view of the above, it will not be necessary for this Court to record any finding or to make any comment as regard the other objections taken by the Appellant before the learned PDJ.

3. In support of the objection of the State pertaining to the appointment of Shri Shitala Sharan, Mr. Salkar has argued that Shri Shitala Sharan was earlier working as the Managing Director of the claimant-contractor and he was also a consultant for the claimant-

contractor. That apart, Shri Shitala Sharan had also deposed as a witness before the Commission of Enquiry, which was enquiring into the incident of collapse of Span 11 of the new Mandovi Bridge before the Justice Pendse Commission of Enquiry. He was also instrumental in designing the new Mandovi Bridge. In view of the above, Shri Shitala Sharan had close links with the claimant and, therefore, he cannot be said to be an impartial Arbitrator. Consequently, the Arbitral Award would also stand vitiated due to the *bias-ness* on the part of one of the Arbitrator i.e. Shri Shitala Sharan, who was the nominee of the claimant-Contractor.

4. By referring to the provisions of Section 12 of the Act of 1996, Mr. Salkar has argued that although the Arbitral proceedings had commenced before the coming into effect the Act of 1996, yet, by the own showing of the Respondent, the said Act would govern the proceedings w.e.f. 25.01.1996 when the ordinance was promulgated which was later replaced by the Act of 1996. As such, in view of Section 12 of the Act of 1996, there was a duty cast upon the Arbitrator Shitala Sharan to disclose all such circumstances, as noted above, which he had failed to do. Mr. Salkar has further argued that in view of Section 13(4) and (5), failure on the part of the Arbitrator to disclose the circumstances as regards his relationship or interest in any of the parties or in relation to the subject matter of the dispute, would lead to perceived *biasness* and hence, would be a valid ground

to set aside the Arbitral Award. On such count, the Appellant-State has prayed for setting aside the Arbitral Award dated 08.08.1997.

5. In support of his above arguments, Mr. Salkar has referred to and relied upon the decisions of the Bombay High Court rendered in the cases of **Union of India vs. Tolani Bulk Carriers Limited**², **Mohan Govind Chitale vs. Nirmala Anand Deodhar**³, **Ganesh Builders, Nagpur vs. Nagorao S/o Motiram Kaware & Ors.**⁴ and **Murlidhar Roongta & Ors. vs. S. Jagannath Tibrewala & Ors.**⁵

6. *Per contra*, Mr. Shivan Desai, learned Counsel appearing for the Respondent-Claimant has argued that the appointment of Shri Shitala Sharan as an Arbitrator was made on 21.07.1993 with due information to the Engineer of the employer (Appellant), to which there was no objection. Thereafter, the objection raised by the Appellant before the Arbitral Tribunal was overruled. But the Appellant did not avail any remedy under Section 5 or Section 30 of the Act of 1940 to challenge the said order. Therefore, the plea of the Appellant is barred by the principles of waiver, estoppel and acquiescence.

² (2002) 2 Bom CR 256

³ 2008 SCC OnLine Bom 1712

⁴ 2019 SCC OnLine Bom 1730

⁵ 2004 SCC OnLine Bom 727

7. It is also the submission of Mr. Desai that at the time when the Arbitrators were appointed, the Act of 1996 was not in force. Therefore, the provision of Section 12(1) would also not have any application in the present case. Moreover, according to Mr. Desai, in the absence of any cogent material brought on record to show that the award was vitiated by *bias-ness*, mere allegation of *bias* would not be sufficient to set aside the Arbitral Award. Contending that the Arbitral Award was passed unanimously by the three Member Arbitral Tribunal, which also included the nominee of the Appellant as well as the Chairman of the Tribunal nominated by an Authority of the Government of India, Mr. Desai submits that the allegation that the Arbitral Award is vitiated by *bias*, on the part of one of the Arbitrators, is wholly untenable in the eyes of law.

8. According to Mr. Desai, the learned PDJ has passed the impugned Judgment, rejecting all the objection of the State, after a threadbare analysis of all the grounds taken therein including the objections as regards the neutrality of the Arbitrator Shri Shitala Sharan by giving sufficient reason. As such, there is no scope for this Court to interfere with the Arbitral Award.

9. In support of his argument, Mr. Desai, has referred to and relied upon the following decisions :

(i) Asiatic Salvors vs. Dodsall Private Ltd.⁶

⁶ 1987 SCC OnLine Bom 185

- (ii) **Ladli Construction Company Pvt. Ltd. vs. Punjab Police Housing Corporation Limited & Ors.**⁷
- (iii) **Jiwan Kumar Lohia & anr. vs. Durga Dutt Lohia & Ors.**⁸
- (iv) **Raipur Development Authority & Ors. vs. M/s. Chokhamal Contractors & Ors.**⁹
- (v) **K. P. Poulose vs. State of Kerala**¹⁰
- (vi) **Central Organisation for Railway Electrification vs. ECI-SPIC-SMO-MCML (JV)**¹¹
- (vii) **TRF Limited vs. Energo Engineering Projects Limited**¹²
- (viii) **Perkins Eastman Architects & anr. vs. HSCC (India) LTD.**¹³
- (ix) **Glock Asis – Pacific Limited vs. UOI**¹⁴
- (x) **S. P. Singla Constructions Private Limited vs. State of Himachal Pradesh & anr.**¹⁵

10. At the very outset, it must be noted herein that the objection of the Appellant pertaining to the Arbitral Award, is only on the ground that one of the Arbitrators, viz. Shitala Sharan, had failed to disclose his interest in the subject matter of Arbitration resulting into *biasness* having a vitiating effect on the award. Such contention has been advanced by Appellant by relying upon Section 12 and 13 of the Act of 1996. Therefore, it would be apposite to reproduce the aforesaid provisions herein below :

7 (2012) 4 SCC 609

8 (1992) 1 SCC 56

9 (1989) 2 SCC 721

10 (1975) 2 SCC 236

11 (2020) 14 SCC 712

12 (2017) 8 SCC 377

13 (2020) 20 SCC 760

14 (2023) 8 SCC 226

15 (2019) 2 SCC 488

“Section 12 – Grounds for challenge-

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.]

(2) An Arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

Section 13 – Challenge procedure.- 1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.”

11. As has been noted herein above, the Appellant is assailing before this Court, the impugned Judgment dated 22.02.2016 and to that extent, the Arbitral Award dated 08.08.1997, on the sole ground that having failed to make a disclosure as per Section 12(1) & (2) of the Act of 1996, the Arbitrator-nominee of the Contractor, viz. Shitala Sharan has demonstrated his *bias* and pre-disposition towards the claimant-contractor thus vitiating the Arbitral Award. However,, it must be noted herein that in the present case, the appointment of Arbitrators have been made by following the prescription of Clause 67 of the Agreement, which contains the Arbitration clause. Clause 67 is re-produced herein below for ready reference :

“Clause 67 - All disputes or differences in respect of which the decision, if any, of the Engineer has not come binding as aforesaid shall, on the initiative of any party be referred to the adjudication to the Committee of three Arbitrators. The Committee shall be composed of one Arbitrator to be nominated by the employer, one to be nominated by the Contractor and the third who will also act as the Chairman of the Committee to be nominated by the Director General (Road Development) Department of Surface Transport, Government of India. If either of the parties abstain or fail to appoint his Arbitrator within 60 days after receipt of the notice for the appointment of such Arbitrators then the Director General (Road Development), Ministry of Transport, Department of Surface

Transport (Road Wing) Government of India himself shall also appoint such arbitrator.”

12. Under the aforesaid clause, the claimant-contractor and the State of Goa had the right to appoint/nominate one Arbitrator each. That was the procedure agreed upon by and between the parties. Accordingly, the claimant-contractor-Respondent, had nominated Shri Shitala Sharan to act as an Arbitrator. Therefore, the appointment procedure has been strictly in accordance with the Arbitration clause. It is nobody’s case that Shitala Sharan was not eligible to act as an Arbitrator in this case.

13. Insofar as the allegation brought against Shri Shitala Sharan, questioning his neutrality by alleging that he was earlier serving as the Managing Director of the Company and also rendered service as a consultant, he had deposed before the Commission of Enquiry on behalf of the claimant-contractor/Respondent and was also instrumental in designing the Mandovi Bridge, it is to be borne in mind it is not in dispute that all these facts were well within the knowledge of the Appellant at the time when Shri Shitala Sharan was nominated as an Arbitrator. Not only that, when the nomination of Shri Shitala Sharan as an Arbitrator was intimated to the employer, no objection was raised by the Appellant-State on such count. The question of making a disclosure by the Arbitrator would arise only when certain facts are not within the knowledge of the other party.

Duty of disclosure, however, will not extend to disclose those facts which are already within the knowledge of the other side. The fact that all the above circumstances were within the knowledge of the Appellant herein is not specifically denied by the Appellant at any stage.

14. It is also to be noted herein that either on the date on which the Arbitral Tribunal was constituted or for that matter, the objection was raised by the Appellant regarding appointment of Shri Shitala Sharan, neither the Arbitration and Conciliation Ordinance nor the Act of 1996 were in force. Therefore, it cannot be said that there was any duty on the part of the Arbitrator(s) under Section 12(1) of the Act of 1996 to make any disclosure. If that be so, the question of Section 13(5) of the Act of 1996 having any applicability would also not arise in the facts of the present case.

15. It would be further pertinent to note herein that the Arbitral Award is an unanimous Award. There is nothing on record to show that the award was vitiated by *bias* or any likelihood of *bias* on the part of one of the Arbitrators i.e. Shri Shitala Sharan. Even assuming that there was any *bias* on the part of the nominee of the claimant-contractor, viz. Arbitrator Shri Shitala Sharan, even then, the same stood sufficiently neutralised and counterbalanced by the presence of the other two members of the Panel of Arbitrators viz. nominees of

the Appellant-State as well as the Chairman of the Arbitral Tribunal, both of whom were admittedly independent and neutral persons and had unanimously passed the same Award.

16. In the case of **TRF Limited vs. Energo Engineering Projects Limited** (supra), a question arose before the Supreme Court as to whether, the named Arbitrator i.e. the Managing Director of the Corporation, who falls under the categories specified in the VIIth Schedule of the Act and therefore, had become ineligible to act as an Arbitrator in view of Section 12(5) of the Act of 1996, would still remain eligible to nominate an Arbitrator in his place. By answering the said question in the negative, the Supreme Court has observed that a person who is statutorily ineligible, cannot nominate another person as Arbitrator. However, that was a case where Section 12(5) of the Act of 1996 was applicable.

17. By considering the decision rendered in the case of **TRF Limited vs. Energo Engineering Projects Limited** (supra), and while drawing a distinction between a three member Arbitral Tribunal and an Arbitral Tribunal of Sole Arbitrator, in the context of the (Amendment) Act of 2015, the Supreme Court has observed in the case of **Perkins Eastman Architects** (supra), in paragraph 21 as follows :-

“21. But, in our view that has to be the logical deduction from *TRF Ltd. [TRF Ltd. v. Energo Engg. 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 ineligible 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.*”

18. It would be further pertinent to note herein that even as per the language of Section 12 of the Act of 1996, the duty of an Arbitrator to make a disclosure arises either at the stage when he is approached in connection with his possible appointment as an Arbitrator or, in terms of sub-section (2) of Section 12, from time to time, throughout the arbitral proceedings, whenever circumstances likely to give rise to

justifiable doubts as to his independence or impartiality would come into existence.

19. In the above context, it would be significant to mention herein that the Arbitration proceeding in this case had evidently and admittedly commenced before the coming into effect of the Act of 1996. Therefore, one of the pertinent questions that would arise for consideration of this Court in the present matter is as to whether the Act of 1996 would at all be applicable in the present case. This question would have great significance on account of the fact that if the Act of 1996 is held to be not applicable in this case, then the question of making disclosures under Section 12 of the Act of 1996, would also not arise and consequentially, there would be no scope for setting aside the Arbitral Award on the ground mentioned under Section 13(5) of the Act.

20. Section 85 of the Arbitration Act, 1940, contains the repeal and saving provisions. Sub-section (2) of Section 85 reads as follows :

“85. Repeal and Saving -

(1) ...

(2) Notwithstanding such repeal,—

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.

21. By interpreting the said provision, the Supreme Court in the case of **Shetty's Constructions Co. Pvt. Ltd. vs. Konkan Railway Construction & anr.**¹⁶ has held as follows :

“A mere look at sub-section (2)(a) of Section 85 shows that despite the repeal of Arbitration Act, 1940, the provisions of the said enactment shall be applicable in relation to arbitration proceedings which have commenced prior to the coming into force of the new Act. The new Act came into force on 26-1-1996. The question therefore, arises whether on that date the arbitration proceedings in the present four suits had commenced or not. For resolving this controversy we may turn to Section 21 of the new Act which lays down that unless otherwise agreed to between the parties, the arbitration suit in respect of arbitration dispute commenced on the date on which the request for referring the dispute for arbitration is received by the respondents. Therefore, it must be found out whether the requests by the petitioner for referring the disputes for arbitration were moved for consideration of the respondents on and after 26-1-1996 or prior thereto. If such requests were made prior to that date, then on a conjoint reading of Section 21 and Section 85(2)(a) of the new Act, it must be held that these proceedings will be governed by the old Act. As seen from the afore noted factual matrix, it at once becomes obvious that the demand for referring the disputes for arbitration was made by the petitioners in all these cases months before 26-1-1996, in March and April 1995 and in fact thereafter all the four arbitration suits were filed on 24-8-1995. These suits were obviously filed prior to 26-1-1996 and hence they had to be

16 (1998) 5 SCC 599

decided under the old Act of 1940. This preliminary objection, therefore, is answered by holding that these four suits will be governed by the Arbitration Act, 1940 and that is how the High Court in the impugned judgments has impliedly treated them.”

22. Similar view has been taken by the Supreme Court in a subsequent decision in the case of **Thyssen Stah Lunion GMBH vs. Steel Authority of India**¹⁷, wherein also, it has been categorically held that where the arbitration proceedings have commenced before the coming into force of the new Act, it is open to the parties to agree that the new Act will be applicable as otherwise, the provisions of old Act i.e. the Act of 1940 shall apply to such proceedings.

23. In the present case, there is nothing on record to show that there was any agreement between the parties providing that the new Act would be applicable after it comes into force. Rather, as has been stated above, the Arbitral Award was sent to the Court to make it a Rule of the Court in terms of the provisions of the Act of 1940. It is a different matter that the same was returned by the learned Civil Court on an objection raised by the Respondent claiming applicability of the Act of 1996. However, such a claim of the Respondent was after the conclusion of the Arbitration Proceeding and an Award was passed. Therefore, such a stand of the Respondent cannot be construed to bring into the fore an agreement to the effect that the

17 (1999) 9 SCC 334

Act of 1996 would govern the Arbitration Proceeding. It is also not the case of the Appellant that the parties had at any point of time, mutually agreed that the Act of 1996 would be applicable to the Arbitration Proceeding.

24. In view of the law laid down in the case of **Shetty's Constructions Co. Pvt. Ltd.** (supra) and **Thyssen Stah Lunion GMBH** (supra), this Court is of the un-hesitant opinion that the Act of 1996 did not have any application in the Arbitration Proceeding which had culminated in the Arbitration Award dated 08.08.1997. Therefore, the question of Sections 12 and 13 of the Act of 1996 having a relevant bearing on the Arbitration Proceeding in question also did not arise in the eyes of law.

25. In the decisions relied upon by Mr. Salkar, in the case of **Union of India vs. Tolani Bulk Carriers Limited** (supra), **Mohan Govind Chitale** (supra) and **Ganesh Builders, Nagpur** (supra), the Court was dealing with cases where Section 12(1) of the Act of 1996 was applicable. In those decisions, it was observed that the Arbitrator had a duty to disclose all such circumstances that may give rise to a justifiable doubt as regards his neutrality and independence. There can be no quarrel with the aforesaid proposition of law. In every arbitral proceeding which had commenced after the 1996 Act came into force or where the Act of 1996 is applicable, the Arbitrator would be duty bound under Section 12 of the Act of 1996 to

disclose all such circumstances within his knowledge that may give rise to a justifiable doubt as to his independence and impartiality to act as an Arbitrator. Upon such disclosure, it will be open to the other side either to continue with the said Arbitrator or to seek his removal. If the challenge to the Arbitrator is turned down, then the same can be taken as a ground to assail the Arbitral Award itself under Section 13(5) of the Act of 1996. However, those decisions are all distinguishable on facts as the Act of 1996 would not have any application in the present case insofar as the conduct of the Arbitration Proceeding is concerned.

26. In **Jiwan Kumar Lohia** (supra), the Hon'ble Supreme Court has observed that with regard to *bias* in relation to a Judicial Tribunal, the test that is applied is not whether in fact a *bias* has affected the judgment but whether a litigant could reasonably apprehend that a *bias* attributable to a member of the tribunal might have operated against him in the final decision.

27. In **Ranjit Thakur vs. Union of India & Ors.**¹⁸, the Supreme Court has laid down that “*test of likelihood of bias*” is whether a reasonable person, in possession of relevant information could have thought that *bias* was likely.

18 (1987) 4 SCC 611

28. In the present case, no facts have been brought on record to show that Shri Shatala Sharan had any personal or financial interest either in the Respondent-Corporation or in the subject matter of the Arbitration Proceeding. There is also nothing on record to show that the previous association or acquaintance of the Respondent company with Shri Shitala Sharan had, in any manner, translated into demonstrable *bias* having a vitiating effect on the Award. It must be noted herein that the Respondent is not a Private Company but a State owned Corporation. Therefore, in the absence of any material brought on record to demonstrate *bias-ness*, the mere fact that a former employee of the Corporation has been nominated as an Arbitrator, by itself, would not be enough to raise a justifiable doubt as regards his neutrality, so as to vitiate the Award.

29. There are innumerable instances of three Member Arbitral Tribunal being constituted with each of the parties nominating one Arbitrator with a Presiding Arbitrator acting as the Chairman. Under the Act of 1996, in case of a three member Tribunal, the two Arbitrators nominated by both the parties can nominate the third Arbitrator referred to as the Umpire. The idea behind composing such an Arbitral Tribunal, appears to be that both the parties get an opportunity to nominate an Arbitrator of their choice so as to ensure a balanced and better understanding of the issues and also to bring on board the requisite technical knowledge so as to project and

appreciate the dispute from the perspective of each of the contesting parties. Such nomination would, however, be subject to the provision of the Seventh Schedule of the Act of 1996. Therefore, merely because the Arbitrator so nominated has been a former employee of the organisation that would not automatically lead to the conclusion that the Arbitrator would have a predisposition in favour of the party which has nominated him. Even if there was any element of doubt in this regard, the fact that there is a nomination of Arbitrator made by the other party as well, such a possibility would automatically be neutralised, thus ruling out the possibility of any *bias* on the part of the one of the Arbitrators.

30. In the present case, the presence of a neutral Presiding Arbitrator or a Chairman was sufficient to ensure fairness in the conduct of the proceedings. It is an unanimous Award and there is no allegation of *biasness* against the Presiding Arbitrator. In view of the above, the grounds urged by the Appellant, in the opinion of this Court, cannot be said to be of such nature which, in the absence of any further material to demonstrate *bias* or lack of neutrality on the part of Shri Shitala Sharan, can automatically lead to the conclusion that one of the Arbitrator was *bias*.

31. In case of **S. P. Singla Constructions** (supra), dealing with an issue of similar nature, the Supreme Court has made the following observations in paragraph 11, which is re-produced herein below :

“11. Likewise, there is no merit in the contention of the appellant contractor that the appointed arbitrator is an employee in service of H.P. PWD which the provision of Section 12(5) of the 1996 Act (as amended w.e.f. 23-10-2015) bars at the threshold itself. In a catena of judgments, the Supreme Court held that arbitration clauses in government contracts providing that an employee of the department will be the sole arbitrator are neither void nor unenforceable. [*Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd.* [*Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd.*, (2009) 8 SCC 520 : (2009) 3 SCC (Civ) 460] , *ACE Pipeline Contracts (P) Ltd. v. Bharat Petroleum Corpn. Ltd.* [*ACE Pipeline Contracts (P) Ltd. v. Bharat Petroleum Corpn. Ltd.*, (2007) 5 SCC 304] , *Union of India v. M.P. Gupta* [*Union of India v. M.P. Gupta*, (2004) 10 SCC 504]] The fact that a named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or lack of independence on his part. The arbitration agreements in government contracts providing that an employee of the department or a higher official unconnected with the work or the contract will be the arbitrator are neither void nor unenforceable.”

32. From the above it is clear that in the absence of any contrary stipulation in the Arbitration Agreement, appointment of a former employee to act as an Arbitrator would be permissible.

33. By the Amendment Act of 2015, Section 12(5) of the Act of 1996 has been amended. The Seventh Schedule to Section 12(5) contains the list of persons and their relationship to the parties who shall be ineligible to be appointed as Arbitrator notwithstanding any prior agreement to the contrary. However, in the case of **S. P. Singla Constructions Private Limited** (supra), the Supreme Court has clarified that the amendment to Section 12(5) will not have any retrospective operation in Arbitral Proceedings which had commenced prior to the amendment unless the parties otherwise agree.

34. Section 5 of the Act of 1996 puts limitations on the power of judicial authority to interfere in any matter governed by Part-I of the Act of 1996. Sections 12, 13 as well as 34 of the Act of 1996 comes under Part-I of the Act of 1996. If that be so, there is clear legislative mandate in the Act of 1996 against judicial intervention in Arbitration Proceedings except as provided by the statute. Therefore, an Arbitral Award also cannot be interfered with save and except on such grounds as laid down in Section 34 of the Act of 1996.

35. While dealing with the issue of limited scope of the Court to interfere with an Arbitral Award, the Hon'ble Supreme Court in the case of **Reliance Infrastructure Pvt Ltd vs. State of Goa**¹⁹, after taking note of several earlier decisions on the subject, has held that

¹⁹ (2024) 1 SCC 479

the jurisdiction of the Court is even more circumscribed in an appeal under Section 37 of the Act. The observations made in paragraph 33 are as follows:-

“33. Keeping in view the aforementioned principles enunciated by this Court with regard to the limited scope of interference in an arbitral award by a Court in the exercise of its jurisdiction under Section 34 of the Act, which is all the more circumscribed in an appeal under Section 37, we may examine the rival submissions of the parties in relation to the matters dealt with by the High Court.

36. After a careful reading of the Judgment and Order dated 22.02.2016, this Court is of the opinion that the learned Principal District Judge has dealt with each of the objection raised by the State and thereafter, decided the matter in accordance with law by furnishing proper reasoning. The impugned Judgment and Order dated 22.02.2016 also does not suffer from perversity of any form, warranting interference by this Court.

37. For the reasons stated above, this Appeal is held to be devoid of any merits. The same is accordingly dismissed.

38. Parties to bear their own costs.

39. Records and Proceedings be sent back

SUMAN SHYAM, J