



AR No.12 of 2026

2026:KER:42048

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 12<sup>TH</sup> DAY OF JUNE 2026 / 22ND JYAISHTA, 1948

AR NO. 12 OF 2026

PETITIONER:

MS.AMBICA PRAVEESH  
AGED 46 YEARS  
PROPRIETRIX OF AMBICA CONSTRUCTIONS & CONTRACTORS  
909, 9TH FLOOR, BARTON CENTRE NO 84, M G ROAD,  
BENGALURU, PIN - 560001

BY ADVS.  
SMT.K.LATHA  
SMT.LALITHA A.  
SMT.GAYATHRI NARENDRANATH  
SRI.B.G.BHASKAR

RESPONDENT:

BMH CARE HOSPITAL LTD  
BY ITS MANAGING DIRECTOR K J ALEXANDER, 5/3432,  
BABY MEMORIAL HOSPITAL, INDIRA GANDHI ROAD,  
KOZHIKODE, PIN - 673004

BY ADVS.  
SRI.ANIL SEBASTIAN PULICKEL  
SHRI.SANTHOSH MATHEW (SR.)  
SRI.ARUN THOMAS  
SMT.VEENA RAVEENDRAN



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SMT.KARTHIKA MARIA  
SHRI.SHINTO MATHEW ABRAHAM  
SMT.LEAH RACHEL NINAN  
SHRI.MATHEW NEVIN THOMAS  
SHRI.KARTHIK RAJAGOPAL  
SHRI.KURIAN ANTONY MATHEW  
SMT.APARNNA S.  
SHRI.NOEL NINAN NINAN  
SHRI.ADEEN NAZAR  
SHRI.ARUN JOSEPH MATHEW  
SHRI.ROHAN MATHEW

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION  
ON 08.06.2026, THE COURT ON 12.06.2026 DELIVERED THE  
FOLLOWING:



**S.MANU, J.**

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AR No.12 of 2026  
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Dated this the 12<sup>th</sup> day of June, 2026

**ORDER**

Conflict of views among the arbitrators nominated by the petitioner and respondent regarding appointment of a third arbitrator has led to the filing of this arbitration request, the third one filed before this Court pertaining to the same dispute.

2. The petitioner and the respondent entered into a contract for construction of a hospital building at Perumbavoor. A copy of the agreement has been produced as Annexure A3. Clause 15 of Annexure A3 reads as under:

**"15. Dispute Resolution:**

The parties agree that in case of any dispute arising in respect of this Lease, the matter shall be referred for conciliation. The conciliation panel would consist of one representative each of the Lessor and the Lessee. If the dispute remains unresolved for a period of 21 days



thereafter, then the same shall be referred to a sole arbitrator as mutually agreed upon by the Parties. In case of a dispute regarding the appointment of the arbitrator, each party may nominate 1 Arbitrator, and the two Arbitrators so appointed shall mutually agree upon and appoint a third Arbitrator who shall preside over the Arbitration proceedings. The venue of arbitration shall be at Calicut. The proceedings shall be conducted in the English language. The cost of the Arbitration proceedings as determined by the Arbitrator, shall be borne by the parties. Further, the competent Civil Courts at Calicut alone will have jurisdiction to entertain the dispute.”

3. In order to resolve the disputes between the parties, the petitioner issued a notice on 12.12.2024 invoking the arbitration clause and nominating an Engineer as the arbitrator chosen by it. The respondent was called upon to inform its nominee. By a letter dated 18.12.2024 the respondent suggested the name of a learned retired Judge of this Court referring to an earlier letter dated 04.10.2024 issued by the petitioner proposing another learned retired Judge as the sole arbitrator. Thereafter the petitioner issued another notice on 23.12.2024 stating that there was no consensus on the sole arbitrator and hence



the alternative procedure of a three-member panel stated in the arbitration clause became applicable. Thereafter AR No.9 of 2025 was filed and this Court disposed the same by order dated 21.03.2025. This Court directed that a panel of three arbitrators shall be constituted and nominated an Engineer suggested by the petitioner as also a learned former Chief Justice of this Court suggested by the respondent. It was further directed that the said two arbitrators shall decide and appoint the third arbitrator. Subsequently the Engineer-arbitrator nominated expressed inability to bear the burden of being a member of the panel. Hence AR No.169 of 2025 was filed by the petitioner for substituting the said arbitrator. By order dated 22.08.2025 this Court nominated another Engineer and further directed that the remaining terms shall be as ordered in AR No.9 of 2025. Though there were discussions among the two arbitrators nominated by this Court for



nominating the third arbitrator, their views were divergent. The Engineer nominated is of the view that the third arbitrator shall also be an Engineer and on the other hand the learned former Chief Justice of this Court is of the opinion that the third arbitrator shall be a former Chief Justice of a High Court or a retired Judge of the Hon'ble Supreme Court. In view of the standoff, the arbitration request on hand has been filed.

4. Heard Sri.B.G.Bhaskar, learned counsel for the petitioner and Sri.Santhosh Mathew, learned Senior Counsel for the respondent.

5. The learned counsel for the petitioner submitted that the dispute is regarding construction of a hospital building and the petitioner had executed the work strictly in accordance with the instructions given by the Architect from time to time. He explained the various disputed aspects and contended that to analyze all those issues,



technical knowledge is essential. He further submitted that every significant point of dispute in the case is factual in nature. According to the learned counsel, presence of a learned former Chief Justice in the three member panel is sufficient to address the legal aspects involved and the nature of the dispute being predominantly technical, the third arbitrator shall also be an Engineer for proper and effective adjudication of the disputes between the parties. The learned counsel submitted that the Judges have no technical expertise to resolve and decide disputes involving technical intricacies. He also submitted that for the sole reason that a former Chief Justice of this Court is a member of the panel, the presiding arbitrator need not be necessarily a former Chief Justice or a retired Judge of the Hon'ble Supreme Court. The learned counsel referred to some observations of a Division Bench of this Court in **Navayuga Engineering Company Ltd. (M/s.) v. Union**



**of India** [2021 KHC 857] in support of his contentions. He placed heavily reliance on the following paragraph of the judgment of the Hon'ble Supreme Court in **National Highways Authority of India and Another v Bumihiway DDB Ltd. (JV) and Others** [2006 (10) SCC 763].

"44. As rightly pointed out by the appellants, the High Court failed to appreciate that in accordance with S.15(2) of the Act on the termination of the mandate of the presiding arbitrator, the two nominated arbitrators were first required to reach a consensus and on their failure to arrive at a consensus only respondent no.2 was authorized to make the appointment. Unless respondent no.2 failed to exercise its jurisdiction, the High Court could not assume jurisdiction under S.11(6) of the Act. Respondent no.1 has wrongly invoked the jurisdiction of this Court without first following the procedure agreed to between the parties. Thus no cause of action had arisen in the facts of the case to seek the appointment from the High Court under S.11(6) of the Act and thus the said petition was premature. The High Court also is not correct in relying on the contention of the respondent no.1 that in case one of the arbitrators is retired chief Justice, the presiding arbitrator should be at least a retired chief Justice or a retired Judge of a High Court with considerable experience. It was submitted by learned Solicitor General appearing for the appellants that the said finding of the High Court is self contradictory inasmuch as if the presiding arbitrator is a retired Judge of the High Court and one of the arbitrators is a retired Chief Justice of the High Court, the member of hierarchy is upset. Even otherwise, there does not exist



any such provision in law which requires that if one of the arbitrators is a retired Judge the presiding arbitrator also has to be a retired Judge. The parties have entered into a contract after fully understanding the import of the terms so agreed to from which there cannot be any deviation. The courts have held that the parties are required to comply with the procedure of appointment as agreed to and the defaulting party cannot be allowed to take advantage of its own wrong.”

6. The learned Senior Counsel for the respondent contended that the petitioner had initially suggested a learned former Judge as the sole arbitrator. He contended that though it is open to the petitioner to take a different view at a subsequent point of time, the fact that it also chose a retired Judge as the arbitrator at the first instance would belie its contention that in the nature of the disputes involved, only a technically trained mind can adjudicate the dispute. He also submitted that the Engineer – arbitrator initially nominated, had suggested to the learned former Chief Justice of this Court, names of a retired Judge of the Telengana High Court as also of a former Judge of this Court as the third arbitrator by its letter dated 25.06.2025.



He, therefore, submitted that the insistence of the petitioner to nominate an Engineer as the third arbitrator is an afterthought. The learned Senior Counsel refuted the contention of the learned counsel for the petitioner that the disputes involved are purely technical in nature. He submitted that serious legal issues are also involved apart from some issues having technical ramifications. He hence submitted that a former Judge, as suggested by the learned former Chief Justice who has already been nominated as an arbitrator may be nominated as the third arbitrator.

7. Sri.B.G.Bhaskar, in response to the contentions of the learned Senior Counsel for the respondent, submitted that in view of Section 29 of the Arbitration and Conciliation Act, 1996, the presiding arbitrator has no special role in the arbitral proceedings. Any decision of the tribunal shall be made by a majority of its members as per Section 29(1). If authorized by parties or all members of the arbitral



tribunal, questions of procedure may be decided by the presiding arbitrator as provided under Section 29(2). He hence submitted that even if an Engineer is nominated as the third arbitrator and he presides over the arbitral proceedings as provided under the arbitration clause, no prejudice will be caused to any of the parties and there will not be any impropriety or illegality. The learned counsel further submitted that the Engineer – arbitrator initially appointed cannot be considered as an agent of the respondent so that his view regarding nomination of the third arbitrator can be reckoned as that of respondent.

8. It is clear from the arbitration clause that the third arbitrator nominated by the two arbitrators chosen by the parties shall preside the tribunal. The learned counsel for the petitioner is correct in contending that the presiding arbitrator has no noteworthy superior role compared to the other arbitrators except in the matter of deciding the



questions of procedure, provided he is authorized by the parties or all the members of the tribunal in that regard. In view of the law laid down by the Hon'ble Supreme Court in **National Highways Authority of India and Another** (Supra), it cannot be insisted that when a member of the arbitral tribunal is a learned retired Chief Justice, the presiding arbitrator should be at least a retired Chief Justice or a retired Judge with considerable experience.

9. In the case at hand, thrust of the contention of the petitioner is regarding the technical nature of the disputes involved. Nevertheless, it is very relevant to note that at the first instance it opted to nominate a learned retired Judge of this Court as the sole arbitrator. Though of the submissions of the learned counsel for the petitioner that the Engineer – arbitrator initially nominated cannot be treated as an agent of the respondent and hence his suggestion to nominate a retired Judge of this Court or



another of the Telengana High Court cannot bind the respondent is also correct, fact remains that the technically qualified arbitrator initially nominated also was of the view that the third member shall also be a former Judge. Under these circumstances, I am of the view that a former Judge can be nominated as the third arbitrator and the apprehension of the petitioner that highly technical issues and disputes will crop up for determination by the tribunal can be addressed by leaving it open to the arbitral tribunal to seek assistance of suitable experts, if required. Therefore, I dispose of the arbitration request with the following directions:

1. The Kerala High Court Arbitration Centre is directed to nominate a former Judge from Panel I as the third arbitrator to resolve the disputes that have arisen between the petitioner and the respondent under Annexure A3 agreement.



2. All other directions issued in AR No.9 of 2025 shall continue to govern the arbitral proceedings.
3. Further it is clarified that the arbitral tribunal will be at liberty to seek the assistance of any expert if required to decide the disputes/issues between the parties.
4. The arbitration centre shall obtain disclosure statement from the third arbitrator and follow the due procedure.

**Sd/-**

**S.MANU  
JUDGE**

MC



APPENDIX OF AR NO. 12 OF 2026

**PETITIONER ANNEXURES**

- Annexure A1 TRUE COPY OF THE ORDER IN AR NO 169 OF 2025 DATED 22.08.2025
- Annexure A2 TRUE COPY OF THE LETTER SENT BY THE NOMINEE OF THE RESPONDENT TO THE PETITIONER DATED 26.12.2025 EVIDENCING THE DISAGREEMENT
- Annexure A3 THE TRUE COPY OF THE CONSTRUCTION AGREEMENT DATED 14TH DAY OF APRIL 2023 BETWEEN THE PETITIONER AND THE RESPONDENT
- Annexure A4 True copy of the termination order, dated 17.09.2024
- Annexure A5 True copy of the order by the arbitration panel referred to in para 31 supra dated 23.12.2019
- Annexure 6 True copy of the data sheet downloaded from Google showing the seniority of Variava J dated 04.05.2026

**RESPONDENT ANNEXURES**

- Annexure R1(A) True copy of the A.R. No. 9 of 2025 filed by the petitioner on 15.01.2025 before this Hon'ble Court
- Annexure R1(B) True copy of the Counter Affidavit filed by the respondent on 19.02.2025 in A.R. No. 9 of 2025 before this Hon'ble Court
- Annexure R1(C) True copy of the Order dated 21.03.2025 of this Hon'ble Court in A.R. No. 9 of 2025
- Annexure R1(D) True copy of A.R. No. 169 of 2025 filed by the petitioner on 23.07.2025 before this Hon'ble Court