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Arb.O.P.(Com.Div.) No.495 of 2023

In the High Court of Judicature at Madras

Reserved On:
26.2.2026

Delivered on:
06.3.2026

Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.495 of 2023

Adani Global Pte Ltd.,
a company regd. Under
the laws of Singapore
rep.by its Authorized
Signatory Mr.Nair Manoj
Chandrasekaran
having office at
3, Anson Road, #22-01,
Springleaf Tower,
Singapore-079909.

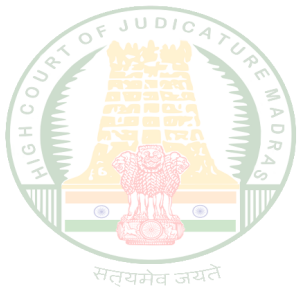
...Petitioner

Vs

Tamil Nadu Power Generation
Corporation Ltd., a Public
Sector Undertaking having
office at Government of
Tamil Nadu, 144, Anna Salai,
Chennai-2.

**(cause title amended as per order
dated 03.3.2025 in A.No.1023
of 2025 by AQJ)**

...Respondent



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PETITION under Section 34(1) and (2) of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 16.8.2023 passed by the Arbitral Tribunal comprising of the learned sole Arbitrator to the extent of the findings pertaining to the claims of the petitioner as filed before the Arbitral Tribunal.

For Petitioner : Mr.Sathish Parasaran, SC for
Mr.Gautam S.Raman
For Respondent : Mr.Om Prakash, SC for
Mrs.J.Hemalatha Gajapathy,
Standing Counsel

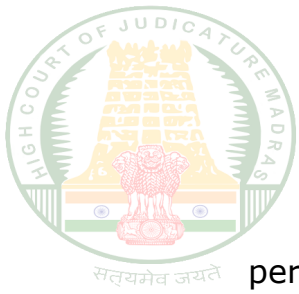
ORDER

The petitioner has assailed the award dated 16.8.2023 passed by the sole Arbitrator by filing this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act).

2. Heard both.

3. The facts leading to filing of this petition are as follows:

(i) The respondent, through a tender specification dated 05.2.2016, invited bids for supply of total guaranteed quantity of 39.00 lakh tonnes of imported steam coal of any origin for the



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period from May 2016 to November 2016. A pre-bid meeting was held and later, the petitioner emerged as the successful bidder in the said tender. The price was ultimately fixed at USD 61 per MT on cost insurance and freight (CIF) charges. The respondent issued a purchase order on 29.2.2016 in favour of the petitioner for the supply of material.

(ii) The petitioner furnished the security deposit, which included earnest money deposit (EMD) of a total sum of USD 5.673 million. The petitioner supplied the entire quantity of coal and the last shipment completed its discharge of coal on 23.6.2017.

(iii) Disputes and differences arose between the parties on account of deduction of amount towards alleged delay in discharge of cargo, deduction towards liquidated damages, etc. Since the disputes and differences were not able to be amicably resolved between the parties, a notice invoking arbitration dated 18.6.2020 was issued on behalf of the petitioner in terms of Clause 28 of the purchase order.

(iv) Pursuant to that, the Arbitral Tribunal was constituted and the petitioner filed the statement of claim before the sole Arbitrator by making the following claims:



Claim No.	Head of Claim	Amount (US\$)
1	Interest for delayed payment of 95% of invoice value @ 9%	1241314.26
	Interest for delay in payment of balance 5% @ 9%	490,009.01
2	Demurrage for pre-berthing delays	867,592.85
	Despatch deducted for alleged faster discharge of vessels	44,476.00
3	Price variation loss due to frequent change in delivery schedule	24,908,637.20
4	Wrongful deductions a/c MMTC	793,788.00
5	Wrongful LD imposed	493,007.00
6	BG charges for extra 13 months	73,607.00
	Total	28,912,431.33

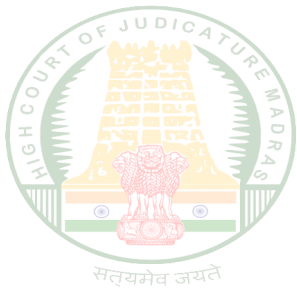
In the claim statement, the petitioner/claimant relied upon 157 documents.

(v) Before the sole Arbitrator, the respondent filed a statement of defence and also made a counter claim for USD 26,478,530.04 with interest. The respondent relied upon 95 documents.

(vi) The sole Arbitrator, on considering the pleadings, framed the following issues:

"(1) Whether the claimant is entitled to any interest on the alleged delayed payments by the respondent?

(2) Whether the claimant is entitled to claim demurrage charges for the delay in berthing the vessels at the discharge port and for refund of dispatch money deducted alleging faster discharge of the vessel?



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(3) Whether the claimant is entitled to any amount towards alleged losses suffered by them on account of frequent modification in the delivery schedule?

(4) Whether the claimant is entitled to claim towards alleged wrongful deductions by the respondent on account of alleged excessive customs duty?

(5) Whether the claimant is entitled to any amount towards the deduction made by the respondent on account of alleged liquidated damages?

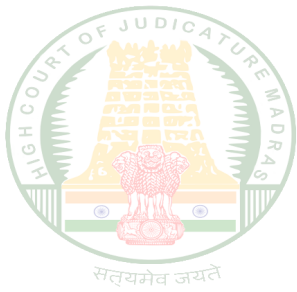
(6) Whether the claimant is entitled to any amount towards additional expenses incurred by the claimant for renewal of the performance guarantee?

(7) Whether the claimant is entitled to any interest from the date of cause till the date of receipt?

(8) Whether the claimant can make any claims beyond the admitted terms and conditions of the contract between the parties?

(9) Whether the respondent is justified in the deductions made on account of the alleged breach of obligations under the contract?

(10) Whether the claimant is entitled to various claim amounts set out by them in the claim statement or to what extent they are entitled to any claim? And



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(11) Whether the respondent is entitled to the counterclaim on the alleged loss suffered on account of escalated payments under the guise of FIRM price?"

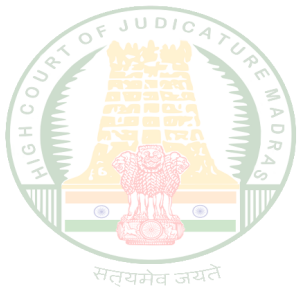
(vii) The sole Arbitrator, on considering the facts and circumstances of the case and on appreciation of evidence, passed the impugned award dated 16.8.2023 rejecting both the claims as well as the counter claims. Aggrieved by that, the above original petition came to be filed before this Court by the petitioner/claimant.

4. When this petition came up for final hearing on 06.2.2026, this Court passed the following order after hearing the learned Senior Counsel appearing on behalf of the petitioner/claimant:

"Heard Mr.Sathish Parasaran, learned Senior Counsel appearing on behalf of the petitioner.

2. The present petition has been filed challenging the award passed by the sole Arbitrator dated 16.08.2023 rejecting the claim made by the petitioner.

3. The learned Senior Counsel appearing for the petitioner raised a preliminary issue regarding the maintainability of the award itself



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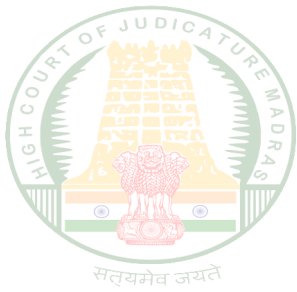
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by pointing out the judgment of the Apex Court in **Bhadra International (India) Pvt. Ltd. And Ors. Vs. Airports Authority of India reported in (2026) SCC Online SC 7** on the ground that, it is in violation of Section 12(5) of the Arbitration and Conciliation Act, 1996 [in short, 'the Act'].

4. The learned Senior Counsel submitted that Clause 28.0 of the Purchase Order provides for referring the dispute to arbitration and for better appreciation, the said clause is extracted hereunder:

'28.0 ARBITRATION: Any dispute and interpretation of clauses of the contract occurring during the Initial Term of this Agreement and dispute on principles and facts determined by documents, records etc. shall be discussed and resolved at Management level. If it is not resolved it shall be finally settled by arbitration in accordance with the provisions of the "Arbitration and Conciliation Act 1996" or any statutory modification thereto and shall be conducted by the sole arbitrator to be appointed by the Purchaser. The arbitration proceedings shall be held in Chennai, Tamil Nadu, India.'

5. The learned Senior Counsel pointed out the trigger notice issued by the petitioner under Section 21 of the Act dated 18.06.2020, wherein the petitioner had suggested 3 names for



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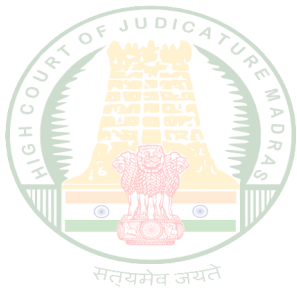
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appointment as sole Arbitrator to refer the dispute between the parties. On receipt of this notice, the respondent through reply dated 25.06.2021 informed the petitioner that as per Clause 28 of the Purchase Order, the respondent has already appointed the sole Arbitrator and that, due to Covid -19 pandemic, it will not be feasible to conduct the proceedings and that the petitioner has to await further intimation from the sole Arbitrator.

6. In the meantime, the petitioner moved the Apex Court for appointment of an Arbitrator and this application came up for hearing on 28.06.2021 and the Court was informed that a sole Arbitrator has already been appointed by the respondent. In view of the same, this application was dismissed as withdrawn.

7. The learned Senior Counsel pointed out the communication dated 29.06.2021, which was marked as Annexure C-10 and for better appreciation, the relevant portions are extracted hereunder:

'2. Please note that pursuant to the aforesaid letter of TANGEDCO dated 25.06.2021, the appointment of Shir Thiru K.S.Sripathi, IAS (Retired) as sole arbitrator is acceptable to M/s. Adani Global Pte Ltd. for settlement of disputes/ differences/claims arising out of the Purchase Order No.107 dated 29.02.2016.



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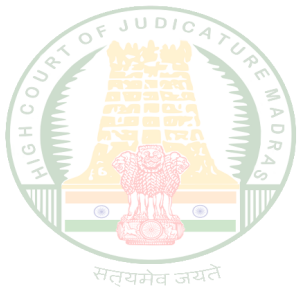


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3. Accordingly, you are requested to kindly provide us the email address of Hon'ble Sole Arbitrator so that a request can be made to the Hon'ble Sole Arbitrator to enter into reference and hold a preliminary meeting between the parties. Further, in view of the prevailing Covid-19 situation, it is requested that the arbitration hearing be conducted through Video Conference on a platform as may be convenient to both the parties and Hon'ble Sole Arbitrator, until the present situation improves and become conducive for normal hearing in future.'

8. It is submitted that if at all there is consent on the side of the petitioner for appointment of sole Arbitrator suggested by the respondent, this is the only material available and that this material by itself will not satisfy the requirement under Section 12(5) of the Act. The learned Senior Counsel submitted that by virtue of the judgment in **Bhadra International, referred supra**, the consent must be both in form and in substance and in the absence of the same, the very constitution of the Arbitral Tribunal will become non-est in the eye of law. Consequently, the award passed by such an Arbitral Tribunal will be null and void.

9. In order to appreciate the above submission made by the learned Senior Counsel



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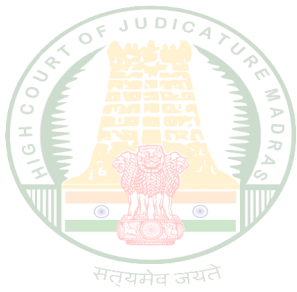
*appearing for the petitioner, it will be beneficial to extract paragraph No.123 of the **Bhadra International' s case**, where the conclusions were given by the Apex Court:*

"VIII. CONCLUSION 123. A conspectus of the aforesaid detailed discussion on the position of law as regards Section 12 of the Act, 1996, is as follows:-

i. The principle of equal treatment of parties provided in Section 18 of the Act, 1996, applies not only to the arbitral proceedings but also to the procedure for appointment of arbitrators. Equal treatment of the parties entails that the parties must have an equal say in the Constitution of the arbitral tribunal.

ii. Sub-Section (5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having any interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid.

iii. The words "an express agreement in writing" in the proviso to Section 12(5) means that the right to object to the appointment of an



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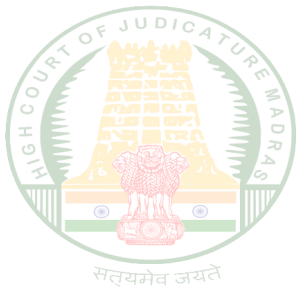
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ineligible arbitrator cannot be taken away by mere implication. The agreement referred to in the proviso must be a clear, unequivocal written agreement.

iv. When an arbitrator is found to be ineligible by virtue of Section 12(5) read with the Seventh Schedule, his mandate is automatically terminated. In such circumstance, an aggrieved party may approach the court under Section 14 read with Section 15 for appointment of a substitute arbitrator. Whereas, when an award has been passed by such an arbitrator, an aggrieved party may approach the court under Section 34 for setting aside the award.

v. In arbitration, the parties vest jurisdiction in the tribunal by exercising their consent in furtherance of a valid arbitration agreement. An arbitrator who lacks jurisdiction cannot make an award on the merits. Hence, an objection to the inherent lack of jurisdiction can be taken at any stage of the proceedings.'

*10. The learned Senior Counsel also brought to the notice of this Court the judgment of the Delhi High Court in **Airports Authority of India Vs. Sikka Associates Architects [O.M.P.(COMM) 482 of 2023, dated 13.01.2026]**. It is submitted that the Delhi High Court has now taken a view that even in a*



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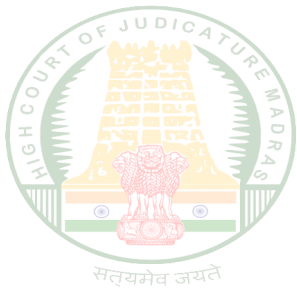


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*case, where a party has appointed the sole Arbitrator unilaterally, the same party can turn around and challenge the award on the ground that it violates Section 12(5) of the Act. The Delhi High Court while dealing with this issue took into consideration the earlier Division Bench judgment in **Mahavir Prasad Gupta & Sons Vs. Government of NCT of Delhi reported in 2025 SCC Online Delhi 4241**. The relevant portions are extracted hereunder:*

'81. Accordingly, the party that unilaterally appointed the arbitrator cannot be deemed to have agreed in writing to waive the ineligibility of the arbitrator by act of appointment. When appointment itself is ineligible under the provisions of Section 12(5) of the Act read with Seventh Schedule of the Act, it does not take away the right of the party to challenge such an appointment merely because that party had made the appointment in absence of express agreement in writing between the parties to waive the applicability of Section 12(5) of the Act.

82. Hence, a party which unilaterally appointed the arbitrator has right to object to such appointment irrespective of fact that that party itself made the appointment of the arbitrator. Mere fact of making appointment in writing will not make the ineligible appointment



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a valid appointment unless there is express agreement in writing waiving such ineligibility.'

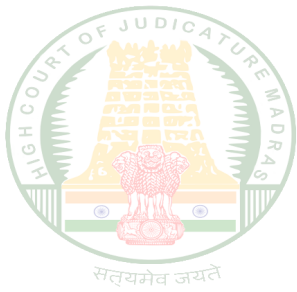
11. The learned Senior Counsel apart from raising the above preliminary issue also went into the merits of the award and contended that almost all the findings rendered by the sole Arbitrator suffers from perversity and patent illegality, which warrants interference of this Court in exercise of its jurisdiction under Section 34 of the Act.

12. The learned counsel appearing for the respondent submitted that they are led by a senior Counsel and hence, sought for time.

*13. In the considered view of this Court, unless and otherwise the respondent crosses the impregnable barrier that has now laid down by the Apex Court in **Bhadra International's case**, it will not be necessary for this Court to go into the merits of the case.*

Hence, post this case under the caption 'Part-Heard Cases' on 23.02.2026 at 2.15 p.m."

5. When the matter was taken up for hearing on 26.2.2026, this Court heard the learned Senior Counsel appearing on behalf of the respondent and also the reply arguments of the learned Senior Counsel appearing on behalf of the petitioner/claimant.



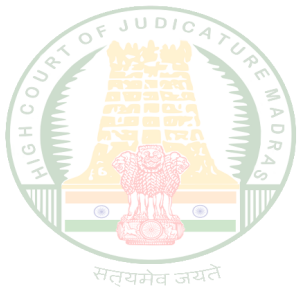
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6. The learned Senior Counsel appearing on behalf of the respondent submitted as follows:

(a) The petitioner/claimant, while invoking the arbitration clause through letter dated 18.6.2020, specifically took a stand that though, as per Clause 28 of the purchase order, it was only the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) - original respondent, which could appoint the sole Arbitrator, since the TANGEDCO was interested in the outcome of the dispute, it was ineligible by operation of law to appoint the sole Arbitrator for settlement of the dispute. Accordingly, the petitioner/claimant suggested the names of three retired Judges of the Hon'ble Supreme Court.

(b) Later, the petitioner/claimant moved a petition under Section 11(6) of the Act before the Hon'ble Apex Court for appointment of an Arbitrator. When the said petition was pending, on 25.6.2021, the respondent appointed the sole Arbitrator. Thereafter, the petitioner/claimant withdrew the petition filed before the Hon'ble Apex Court without questioning the appointment of the sole Arbitrator by the respondent.



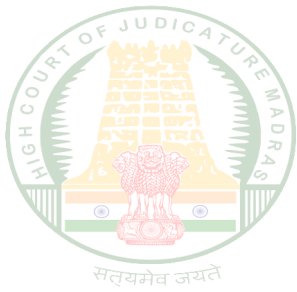
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(c) Apart from that, the petitioner/claimant sent a communication dated 29.6.2021 informing that the appointment of the sole Arbitrator by the respondent was acceptable to them and also sought for the address of the sole Arbitrator to enter into a reference and to hold the preliminary meeting between the parties.

(d) Thus, the petitioner/claimant, in spite of being aware of the fact that it was the original respondent, which appointed the Arbitrator, did not question the same before the Hon'ble Apex Court, and instead proceeded to withdraw the petition and thereafter gave a written consent by accepting the appointment of the sole Arbitrator by the respondent.

(e) He relied upon the judgments of the Hon'ble Apex Court in ***Central Organization for Railway Electrification Vs. EPI SPIC SMO MCL (JV), a Joint Venture Company [reported in 2025 (4) SCC 641]*** and in ***Bhadra International (India) Pvt. Ltd.,*** and submitted that the petitioner/claimant, having consented in writing for the appointment of the sole Arbitrator made by the respondent, cannot be now allowed to turn around and question the award on the ground that the sole Arbitrator was unilaterally appointed by the respondent.

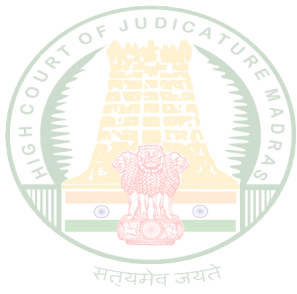


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7. This Court has carefully considered the submissions of the learned counsel on either side as to the preliminary objection raised on the side of the petitioner regarding the jurisdiction of the sole Arbitrator in passing the award.

8. It is worthwhile to refer to the judgment of the Hon'ble Apex Court in ***Perkins Eastman Architects DPC Vs. HSCC (India) Ltd. [reported in 2020 (20) SCC 760]***, the relevant portions of which, are extracted as hereunder:

"20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. [TRF Ltd. v. Energo Engg. 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



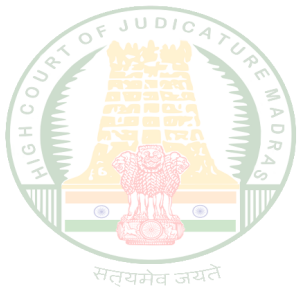
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relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of 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., 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. 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



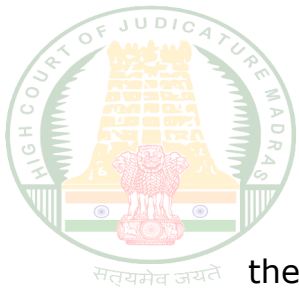
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act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The 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.”

9. The above judgment of the Hon’ble Apex Court in **Perkins Eastman Architects DPC** was once again reiterated and followed in



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the decision of the Hon'ble Apex Court in ***Bhadra International (India) Pvt. Ltd.,*** wherein the relevant portions are extracted as hereunder:

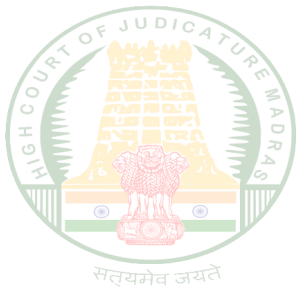
"68. We are in complete agreement that the present case is squarely covered by the decisions of this Court in Perkins Eastman (supra) and Bharat Broadband (supra) respectively. The unilateral appointment of a sole arbitrator is void ab initio, and the sole arbitrator so appointed is de jure ineligible to act as an arbitrator in terms of Section 12(5) read with the Seventh Schedule of the Act, 1996.

.....

75. The essentials of the proviso to Section 12(5) are:—

- i. The parties can waive their right to object under sub-section (5) of Section 12;*
- ii. The right to object under the sub-section can be waived only subsequent to a dispute having arisen between the parties;*
- iii. The waiver must be in the form of an express agreement in writing.*

76. The proviso to sub-section (5) of Section 12 stipulates that parties, after disputes have arisen, must expressly agree in writing to waive the ineligibility of the proposed arbitrator. This impliedly means that the parties are



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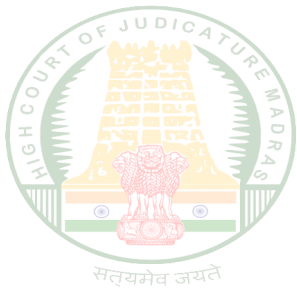
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waiving their right to object to the arbitrator's ineligibility in terms of Section 12(5) of the Act, 1996.

77. Waiver means the intentional giving up of a right. It involves a conscious decision to abandon an existing legal right, benefit, claim, or privilege that a party would otherwise have been entitled to. It amounts to an agreement not to enforce that right. A waiver can occur only when the person making it is fully aware of the right in question and, with complete knowledge, chooses to give it up. [See : State of Punjab v. Davinder Pal Singh Bhullar, [\(2011\) 14 SCC 770](#)].

78. What flows from the aforesaid is when a right exists, i.e., the right to object to the appointment of an ineligible arbitrator in terms of Section 12(5), such a right cannot be taken away by mere implication. For a party to be deprived of this right by way of waiver, there must be a conscious and unequivocal expression of intent to relinquish it. Needless to say, for a waiver to be valid, it is necessary that the actor demonstrates the intention to act, and for an act to be intentional, the actor must understand the act and its consequences.

79. The expression "express agreement in writing" demonstrates a deliberate and informed act that although a party is fully aware of the



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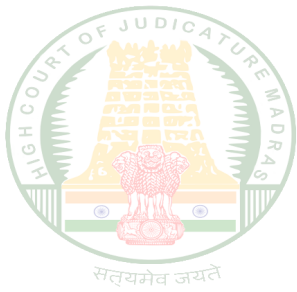


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arbitrator's ineligibility, yet it chooses to forego the right to object against the appointment of such an arbitrator. The requirement of an express agreement in writing has been introduced as it reflects awareness and a conscious intention to waive the right to object under Sub-Section (5) of Section 12. A clear manifestation of the expression of waiver assumes greater importance in light of the fact that the parties are overcoming a restriction imposed by law.

80. It is in the same breath we say that appointment of an arbitrator with the consent of both parties is the general rule, while unilateral appointment is an exception. When one party appoints an arbitrator unilaterally, even if its own consent is implicit, the consent of the opposite party stands compromised, and the choice of the former is effectively imposed upon the latter.

81. It is only through an express agreement in writing, waiving the bar under Sub-Section (5) of Section 12, that the other party can be said to have voluntarily consented to the unilateral appointment of such an arbitrator. The proviso conveys that the arbitrator, although ineligible to be appointed, yet can continue to perform his functions, as it is oriented towards facilitating party autonomy.



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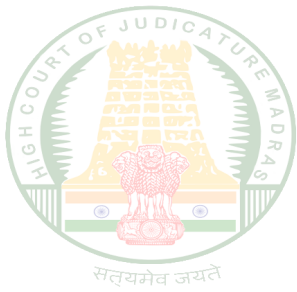
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Thus, the proviso reinforces party autonomy and equal treatment of parties in arbitration.

82. In other words, even though the appointment had been made by one of the parties, by the act of entering into an agreement in writing, the other party expresses its consent. The manner of the agreement prescribed by the statute demonstrates voluntariness by the parties.

83. In a case of unilateral appointment, the waiver mentioned in the proviso is an indication of party autonomy in two ways : first, that the parties, by entering into an agreement, are waiving the bar under Section 12(5). Secondly, by the act of entering into an agreement, the parties, more particularly, the non-consenting party, are expressing their consent for appointment of the proposed arbitrator.

84. Undoubtedly, the statute does not prescribe a format for the agreement. However, the absence of a prescribed format cannot be construed to mean that the waiver may be inferred impliedly or through conduct. We say so because the legislature has consciously prefaced the term "agreement" with the word "express" and followed it with the phrase "in writing". This semantics denote the intention of the legislature that the waiver under the proviso to Section



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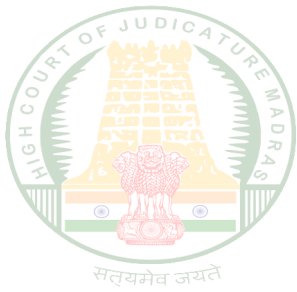


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12(5) must be made only through an express and written manifestation of intention.

85. The conscious use of the prefatory expression also serves to differentiate such waiver from 'deemed waiver' as stipulated under Section 4 of the Act, 1996. We must be mindful of the fact that if the legislature intended that waiver under Section 12(5) could similarly arise by implication or conduct as mentioned under Section 4, it would have refrained from introducing a heightened and mandatory requirement, more particularly, in light of the rigours of the Seventh Schedule. The statutory design therefore makes it evident that the bar under Section 12(5) can be removed only by a clear, unequivocal, and written agreement executed after the dispute has arisen, and not by any form of tacit acceptance or procedural participation.

86. The mandate of an express agreement in writing in the present case may looked at from one another angle. The unilateral appointment of an arbitrator is assessed from the viewpoint of the parties. However, when the parties later execute an express written agreement waiving the ineligibility of the proposed arbitrator, the position gets altered. Such written waiver supplies the very consent that was previously missing, thereby placing the



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appointment on the same footing as a mutually agreed appointment and addresses concerns regarding neutrality and fairness.

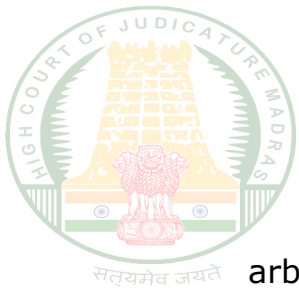
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89. What can be discerned from the above discussion is that the ineligibility of an arbitrator can be waived only by an express agreement in writing. In the present case, there is no agreement in writing, after the disputes arose, waiving the ineligibility of the sole arbitrator or the right to object under Section 12(5) of the Act, 1996.

.....

123. (it has already been extracted in the previous order passed by this Court on 06.2.2026 in the above petition)."

10. The Hon'ble Apex Court, in the decision in ***Bhadra International (India) Pvt. Ltd.***, broadly dealt with two categories of cases. The first category is where an Authority is named in the arbitration clause to act as an arbitrator and such Authority, by virtue of the position that he holds, suffers a disqualification under Section 12(5) read with 7th Schedule of the Act. That is a case where there is a *de jure* ineligibility prescribed under the Act. *Ex consequenti*, if such Authority appoints another person as an



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arbitrator, such person will also face a disqualification.

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11. In the second category of cases, if the official belonging to an organization is not specifically mentioned to function as an arbitrator, but is empowered or authorized to appoint any other person of his choice, even then, such invalidity will operate since there is an element of exclusivity in determining or charting the course for dispute resolution. In other words, a person, who is interested in the outcome or decision of the dispute, must not be vested with the power to appoint the sole arbitrator.

12. The other principle that comes out of the judgment referred to supra is that the other party has a right to object to the appointment of an ineligible arbitrator, that such a right cannot be taken away by mere implication, that in order to deprive such a right, there must be a conscious and unequivocal expression of intent to relinquish the right and that it must be by way of an express agreement in writing. To put it in simple words, a consent or waiver cannot be inferred impliedly or through conduct and it has to be made only through an express and written manifestation of



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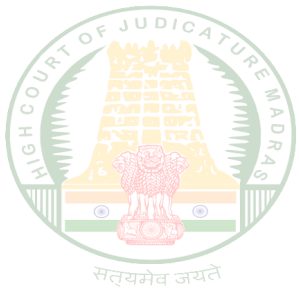
intention.

13. The judgment of the Delhi High Court, which was taken note of in the earlier order of this Court dated 06.2.2026, was rendered following the above judgments of the Hon'ble Apex Court and hence, this Court will focus on the judgments of the Hon'ble Apex Court and apply it to the facts of the present case.

14. The relevant arbitration clause in the purchase order is extracted as hereunder:

"28.0 ARBITRATION:

Any dispute and interpretation of clauses of the contract occurring during the Initial Term of this Agreement and dispute on principles and facts determined by documents, records etc. shall be discussed and resolved at Management level. If it is not resolved, it shall be finally settled by arbitration in accordance with the provisions of the "Arbitration and Conciliation Act 1996" or any statutory modification thereto and shall be conducted by the sole arbitrator to be appointed by the Purchaser. The arbitration proceedings shall be held in Chennai, Tamil Nadu, India."



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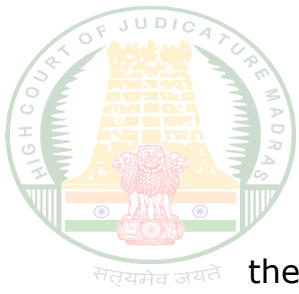
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15. A careful reading of the above clause would show that it was only the original respondent namely the TANGEDCO, which could appoint the sole arbitrator to decide the dispute between the parties.

16. The learned Senior Counsel appearing on behalf of the respondent submitted that the relevant clause in the purchase order neither identified an official of the TANGEDCO to act as an arbitrator nor vested with any right on such official to appoint any other person as the arbitrator, that in view of the same, the appointment of the sole Arbitrator could not be held to be unilateral and that the proposition in the judgments of the Hon'ble Supreme Court referred to above would not strictly apply to the facts of the present case.

17. This Court finds it difficult to accept the above submission of the learned Senior Counsel appearing on behalf of the respondent.

18. The case in hand does not certainly fall under the first category, which has been explained supra. However, it falls under



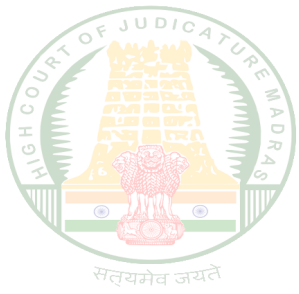
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the second category where, even though no specific official has been named to act as an arbitrator, the relevant clause empowers/authorizes the respondent to appoint any person of their choice as an arbitrator.

19. The respondent is an organization, which has to function only through a human agency. Therefore, just because the arbitration clause does not specifically mention the official, who will appoint the sole Arbitrator, it is a pure common sense that such process would be undertaken only by some official belonging to the original respondent – the TANGEDCO. The purchase order was issued on behalf of the TANGEDCO by the Chief Engineer and therefore, the natural corollary is that it is the Chief Engineer, who will appoint the sole Arbitrator in line with Clause 28.0 of the purchase order. Hence, there is no doubt in the mind of this Court that the facts of the present case fall under the second category.

20. Having rendered the above finding, this Court has to move on to the next issue as to whether the petitioner/claimant agreed in writing for appointment of the sole Arbitrator by the respondent.



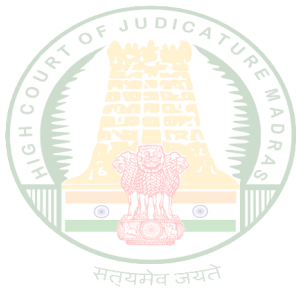
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21. After the disputes arose between the parties, the petitioner/claimant invoked the arbitration clause through the trigger notice dated 18.6.2020, the relevant portions of which are extracted as hereunder:

"5. It is noted that as per clause 28.0 of the P.O.No.107, any dispute raised by a party to arbitration shall be adjudicated by a Sole Arbitrator appointed by TANGEDCO. You may please note that it is a settled law that a person who has an interest in the outcome or decision of the disputes must not have the power to appoint a sole arbitrator. In the present case, TANGEDCO has an interest in the outcome of the dispute and thus TANGEDCO is ineligible by operation of law to appoint a sole arbitrator for settlement of aforesaid dispute/difference which remained unresolved between the parties.

6. Accordingly, our client hereby proposes to nominate the following list of persons, out of which you are requested to accept one person (within 30 days of receipt of the present notice), to act as the Sole Arbitrator to adjudicate the present disputes:

- i. Mr. Justice Dipak Misra (Retd.)*
- ii. Mr. Justice K.S.P.Radhakrishnan (Retd.)*
- iii. Mr. Justice A.R.Lakshmanan (Retd.)."*

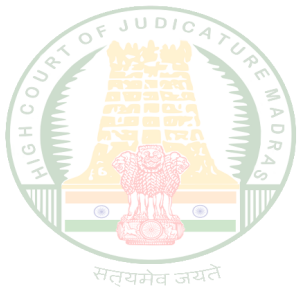


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22. The petitioner/claimant once again issued a notice dated 19.7.2020 requesting for a response from the respondent for the earlier notice dated 18.6.2020. In this letter, the petitioner also stated that if they did not receive the consent for appointment of one of the persons suggested by them as the sole Arbitrator, they would be constrained to approach the Hon'ble Apex Court for appointment of the sole Arbitrator since it involved an international commercial arbitration. Since there was no response from the respondent, the petitioner/claimant filed Petition for Arbitration (Civil) No. 15/2021 before the Hon'ble Apex Court for appointment of an Arbitrator.

23. The respondent, through communication dated 25.6.2021, informed the petitioner/claimant about the appointment of Thiru K.S.Sripathy, IAS (Retired) as the sole Arbitrator. When Petition for Arbitration (Civil) No.15/2021 came up for hearing on 28.6.2021, the petitioner/claimant, without contesting, withdrew the same on the ground that the respondent had already appointed an arbitrator. Accordingly, Petition for Arbitration (Civil) No.15/2021 was dismissed by the Hon'ble Apex Court as withdrawn on 28.6.2021.



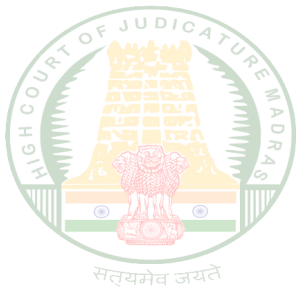
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24. As a follow up, the petitioner/claimant issued a communication dated 29.6.2021 to the respondent. The relevant portions of the said communication read thus:

"1. We, Adani Global Pte Ltd. (AGPTE), are in receipt of your letter dated 25.06.2021, referred at SN (vii) above, vide which Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) has appointed Shri Thiru K.S. Sripathi, IAS (Retired) to settle through arbitration the disputes/differences/claims arising out of the Purchase Order No.107 dated 29.02.2016.

2. Please note that pursuant to the aforesaid letter of TANGEDCO dated 25.06.2021, the appointment of Shri Thiru K.S.Sripathi, IAS (Retired) as sole arbitrator is acceptable to M/s. Adani Global Pte Ltd. for settlement of disputes/differences/claims arising out of the Purchase Order No.107 dated 29.02.2016.

3. Accordingly, you are requested to kindly provide us the email address of Hon'ble Sole Arbitrator so that a request can be made to the Hon'ble Sole Arbitrator to enter into reference and hold a preliminary meeting between the parties. Further, in view of prevailing Covid-19 situation, it is requested that the arbitration hearing be conducted through Video Conference on a platform as may be



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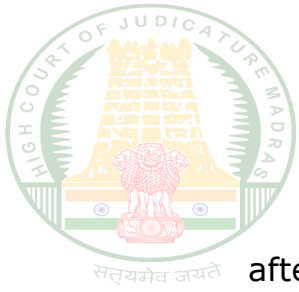


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convenient to both the parties and Hon'ble Sole Arbitrator, until the present situation improves and become conducive for normal hearing in future."

25. While issuing the trigger notice dated 18.6.2021, the petitioner/claimant was aware of their right to oppose the appointment of the sole Arbitrator exclusively by the respondent under Clause 28.0 of the purchase order. That is the reason as to why the petitioner/claimant suggested three names and thereafter followed it up by filing a petition before the Hon'ble Apex Court for appointment of the arbitrator. However, for reasons best known to the petitioner/claimant, they did not prosecute it and instead, withdrew the same by informing the Hon'ble Apex Court that the sole arbitrator had already been appointed by the original respondent – TANGEDCO.

26. The next act that was performed by the petitioner/claimant has a lot of significance in this case. That is the communication dated 29.6.2021 sent by the petitioner/claimant to the respondent. In this communication, the petitioner/claimant,



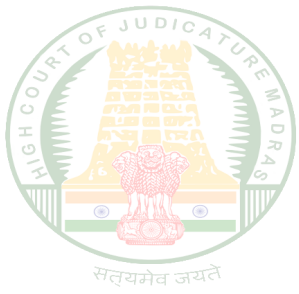
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after referring to all the earlier communications, specifically stated that the appointment of the sole Arbitrator by the respondent was acceptable to them. Thereafter, without any demur, they filed the statement of claim and agitated the dispute before the sole Arbitrator.

27. The learned Senior Counsel appearing on behalf of the petitioner/claimant submitted that such a letter dated 29.6.2021 was written by them without knowing about their rights to oppose the unilateral appointment of the sole Arbitrator, which has been recognized by the Hon'ble Apex Court time and again and that the communication dated 29.6.2021 could not be construed as an agreement in writing as contemplated in the judgment of the Hon'ble Apex Court in ***Bhadra International (India) Pvt. Ltd.***

28. This Court is not in agreement with the above submissions made by the learned Senior Counsel appearing on behalf of the petitioner/claimant.

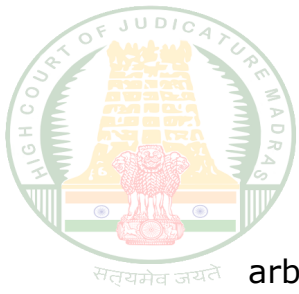


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29. If the consent/waiver was not expressly in writing, obviously such consent/waiver could not have been put against the petitioner/claimant merely based on inference or conduct of the petitioner/claimant. In other words, had the communication dated 29.6.2021 not been issued by the petitioner/claimant to the respondent, this case would have perfectly fitted into the second category and the award passed by the sole Arbitrator would stand vitiated in the light of the judgment of the Hon'ble Apex Court in ***Bhadra International (India) Pvt. Ltd.***

30. The communication dated 29.6.2021 was not issued by virtue of ignorance of the rights of the petitioner/claimant to oppose the appointment of the sole Arbitrator by the respondent. The petitioner was very much aware of their rights to oppose such appointment and the same is evident from their earlier communication dated 18.6.2020 and their subsequent conduct in approaching the Hon'ble Apex Court by filing a petition for appointment of the sole arbitrator. In spite of being aware of their rights, the petitioner/claimant, vide communication dated 29.6.2021, expressly agreed in writing the appointment of the sole



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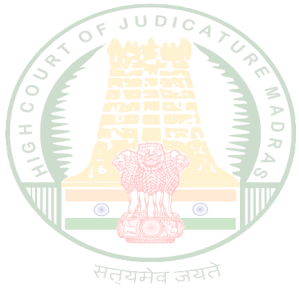
arbitrator by the respondent. As a result, both the appointment of the sole Arbitrator by the respondent as well as the award passed by the sole Arbitrator cannot be held to be, *ex facie*, invalid.

31. In the case in hand, the sole Arbitrator, who had decided the dispute, does not fall within any of the disqualification prescribed in the 7th Schedule and therefore, it cannot be held that the sole Arbitrator is *de jure* ineligible to act as an arbitrator.

32. In the light of the above discussions, this Court rejects the preliminary objection raised on the side of the petitioner as to the jurisdiction of the sole Arbitrator. This Court holds that the appointment of the sole Arbitrator is not in violation of Section 12(5) of the Act. In view of the above finding, both sides will have to make their submissions on the merits of the case on the next date of hearing. Post the case under the caption 'for further hearing' on **13.3.2026.**

06.3.2026

Index : Yes
Neutral Citation : Yes



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N.ANAND VENKATESH,J

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