



CNR: KAHC020126132022

NC: 2026:KHC-D:14276-DB
MFA No. 103181 of 2022

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 31ST DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV

AND

THE HON'BLE MRS JUSTICE K.G.SHANTHI

MISCELLANEOUS FIRST APPEAL NO.103181 OF 2022 (AA)w

BETWEEN:

LOTUS LANDMARKS (INDIA) PVT. LTD.,
REPRESENTED BY ITS DIRECTOR,
SHRI. DILIP S/O PREMARAJ CHANDAK,
AGE. 58 YEARS, OCC. BUSINESS,
R/O. CORPORATE OFFICE AT NO.1,
RICHMOND PARK, OPP: ORCHID SCHOOL,
BANER ROAD, BANER, PUNE-411002.

...APPELLANT

(BY SRI. S.S. NAGANAND, SENIOR COUNSEL FOR
SRI. S.B. HEBBALLI, ADVOCATE)

AND:

1. RVP CITY OWNERS,
REPRESENTED BY SHRI. SHRINIVAS R. PAVUSKAR,
'BHAGYODAY' PLOT NO.6, 7 AND 8, 4TH CROSS,
ADARSH NAGAR, M-VADAGAON, BELAGAVI-587101.
2. SHRI. SHRINIVAS S/O RAMAKRISHNA PAVUSKAR,
AGE. 67 YEARS, OCC. BUSINESS,
R/O. BHAGYODAYA BUILDING, 4TH CROSS,
ADARSH NAGAR, M-VADAGAON, BELAGAVI-587101.
3. SHRI. EKNATH S/O RAMAKRISHNA PAVUSKAR,
AGE. 54 YEARS, OCC. BUSINESS AND AGRICULTURE,
R/O. BHAGYODAYA BUILDING, 1ST CROSS,
SARVODAYA MARG, HINDWADI, BELAGAVI-587101.
4. SMT. VAISHNAVI W/O PRADEEP PAVUSKAR,
AGE. 45 YEARS, OCC. HOUSEHOLD WORK,
R/O. 175/1, BHAGYODAYA BUILDING,
MARATHA MANGAL KARYALAY,
INDRAPRASTH NAGAR, BELAGAVI-587101.





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5. SHRI. SURYANAND S/O PARADEEP PAVUSKAR,
AGE. 32 YEARS, OCC. BUSINESS,
R/O. 175/1, BHAGYODAYA BUILDING,
MARATHA MANGAL KARYALAY,
INDRAPRASTH NAGAR, BELAGAVI-587101.
6. SHRI. SANDEEP S/O PRADEEP PAVUSKAR,
AGE. 28 YEARS, OCC. BUSINESS,
R/O. 175/1, BHAGYODAYA BUILDING,
MARATHA MANGAL KARYALAY,
INDRAPRASTH NAGAR, BELAGAVI-587101.
7. MISS. AISHWARYA D/O PRADEEP PAVUSKAR,
AGE. 19 YEARS, OCC. STUDENT,
R/O. 175/1, BHAGYODAYA BUILDING,
MARATHA MANGAL KARYALAY,
INDRAPRASTH NAGAR, BELAGAVI-587101.
8. ARBITRATOR, SHRI. MALLIKARJUN S. MUDNUR,
AGE. 55 YEARS, OCC. VALUER,
R/O. 1ST FLOOR, BASAVARAJ COMPLEX,
CTS NO.4855/47B, APMC ROAD,
SADASHIV NAGAR, BELAGAVI-587101.

...RESPONDENTS

(BY SRI. ANANT MANDAGI, SENIOR COUNSEL FOR
SRI. MRUTYUNJAYA TATA BANGI, ADVOCATE FOR C/R1 TO C/R7;
NOTICE TO R8 IS SERVED)

THIS MFA IS FILED UNDER SECTION 37(1) (b) OF
ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO SET
ASIDE THE IMPUGNED ORDER DATED 22.04.2022, PASSED IN
ARBITRATION PETITION NO.2/2021 ON THE FILE OF PRL. DISTRICT
JUDGE BELAGAVI AND SET ASIDE THE ARBITRAL AWARD DATED
28.01.2019 PASSED BY THE RESPONDENT NO.8/SOLE ARBITRATOR,
IMPUGNED BEFORE THE LEARNED DISTRICT JUDGE AND REJECT THE
CLAIM PETITION FILED BY THE RESPONDENTS AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON
16.07.2026 COMING ON FOR PRONOUNCEMENT OF JUDGMENT,
THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV
AND
HON'BLE MRS JUSTICE K.G.SHANTHI



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CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV)

The present appeal is by M/s. Lotus Landmarks (India) Pvt. Ltd., calling in question the order dated 22.04.2022 passed in Arbitration Petition No.2/2021 by the Prl. District Judge, Belagavi filed under Section 34 of the Arbitration and Conciliation Act, 1996 ['Arbitration Act']. A.P.No.2/2021 was filed seeking to set aside the arbitral award dated 28.01.2019 passed by the Arbitrator.

2. The parties are referred to as per the rank in the Arbitration Petition for the purpose of convenience.

3. The petitioner M/s. Lotus Landmarks (India) Pvt. Ltd., was a land developer and had entered into a Joint Venture Agreement on 17.04.2016 with the land owners, i.e., respondent no.2 Sri Shrinivas s/o Ramakrishna Pavuskar and the deceased Pradeep Ramkrishna Pavuskar for the development of the layout "RVP City", which land was situated near the Kanbargi



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Road, Belagavi in land bearing R.S. Nos.1282/5, 1282/1B, 1282/4, 1282/6, 1282/3B/1 + 3B/2, 1282/1K and 1282/3A/1 + 3A/2, situated at Kanbargi Road, Belgaum.

4. In terms of the Joint Venture Agreement, there was sharing of the developed residential plots and the Project was to be completed within a period of 24 months from the date of Agreement with a grace period of six months. There was a timeline with default clause.

5. After the death of Sri Pradeep Ramkrishna Pavuskar, it is averred that the dispute arose between the parties and respondent no.2 – Shrinivas Ramkrishna Pavuskar addressed a letter dated 17.11.2017 to stop the development work and called upon the petitioner to pay damages of Rs.1,01,83,435/-. The respondent, based on the Inspection Report, conducted by the K.L.S. Gogte Institute of Technology ['KLS-GIT'] Udyambag, Belagavi, referred the dispute to its nominee Arbitrator. The Arbitral proceedings were conducted by the nominee Arbitrator



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which according to the petitioner was contrary to the procedure envisaged under Clause-25 of the Joint Venture Agreement dated 17.04.2016 which provided for a different procedure.

6. The nominee Arbitrator having passed an Award which was challenged before the Prl. District Judge, Belagavi in Arbitration Petition No.2/2021 filed under Section 34 of the Arbitration Act. The Arbitrator had ordered in terms of the final order as follows:-

"XI. FINAL AWARD:

I, the Sole Arbitrator in the matter of Arbitration for dispute arising out of the work of layout development at RVP City near Kanbargi Road, Belagavi between RVP City Owners (Claimants) & Lotus Landmarks (India) Pvt. Ltd. (Respondents) give my Award as under:

a) The Respondent is liable to pay the Claimants an amount of Rs. 2,21,58,000/- (Rupees two crores twenty one lakhs fifty eight thousand only). The Claimants are entitled to an interest at 18% p.a. until realization of the said amount.



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b) The Respondent is directed to pay the Claimants a sum of Rs. 25,00,000/- (Rupees twenty five lakhs only) towards compensation. The Claimants are entitled to an interest at 18% p.a. until realization of the said amount.

c) The JV Agreement & the General Power of Attorney executed in favour of the Respondent stand terminated.

d) The Respondent shall clear all encumbrances (if any) and also settle outstanding payments (if any) due to labour, material suppliers, etc. involved in the development work at site.

e) Advances collected by the Respondent (if any) by agreement for sale of plots in Respondent's share shall be settled at the risk & costs of the Respondent. It applies to plot Nos. 122 & 123 also.

f) The Respondent shall comply all stipulations laid down by RERA and also enable the Claimants to login RERA website with a valid password.

g) All original documents like JV Agreements - 3 nos., POA - 2 nos., NA orders for RS No.1282 - 5 nos., Approved layout plans - 2 nos.; Receipts for BUDA charges, Receipts for payments made to Govt. Departments, CTS Extracts, KJP Plan & records, etc. to be handed over by the Respondent to the Claimants."



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7. The District Court dealing with the petition under Section 34 framed the following point for consideration:-

(i) Whether the petitioners have made out any of the grounds enumerated under Section 34(2) or 34(2A) of the Arbitration and Conciliation Act, 1996 to set aside the impugned Award?

8. The said issue was held in the negative and the petition was dismissed.

9. The contentions raised by the petitioner and its consideration by the District Court under Section 34 is as follows:-

CONTENTION	RESPONSE OF THE PRL. DISTRICT JUDGE
Main Issue: Whether the petitioners have made out any of the grounds enumerated under Section 34(2) or 34(2A) of the Arbitration and Conciliation Act, 1996, to set aside the impugned award?	Answered in the Negative – [Para-6 and 7]



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Specific Contentions and their corresponding response of the Court with its Reasoning	
Contention 1- Respondent No. 1 is not a party to the Agreement, and therefore the dispute could not have been referred to an arbitrator.	There cannot be any doubt that the dispute was referred to arbitration, and it was on behalf of the owners who were parties to the agreement, and the petitioner very well knew about the identity of the respondent. It is not the case of the petitioner that there were some other agreements between the said parties or with RVP City Owners. Therefore, this objection raised under challenge under Section 34 of the Arbitration and Conciliation Act cannot be entertained [para-16]
Contention 2- there should have been two arbitrators and an umpire, and therefore the appointment of the arbitrator is defective	From a perusal of the agreement, if the arbitrators are not appointed within the time limit outlined in the clause, the arbitrator shall be appointed in accordance with the Arbitration and Conciliation Act (Section 10 of the same). Therefore, since the petitioner failed to appoint his arbitrator within 30 days under Clause 50, the mechanism under Section 10(2) permitted the appointment of a sole arbitrator. Also, in the absence of any material to show that the petitioner herein had objected to the commencement of the arbitral proceedings by the sole arbitrator, it cannot be said that the arbitral proceedings are bad in law. Also, when the petitioner had not suggested his arbitrator within 30 days from the date of notice, he had foregone that right and the provisions of the Arbitration and Conciliation Act would prevail. [Para-17]
Contention 3- The arbitral award is not clear on the point whether the petitioner has waived his right to appoint an	The Court held that the proceedings of the learned arbitrator dated 05.03.2018 clearly show that the petitioner Satish Giri had appeared before the learned arbitrator and put forth his contention before him. He had also participated in the



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arbitrator, and cannot be accepted.	proceedings, and he had not at all raised the point that he had the right to appoint a second arbitrator and that the sole arbitrator does not have the power to arbitrate the dispute. Thus the right to appoint was waived. [para-18]
Contention 4- The petitioner was incapacitated to appear before the learned arbitrator	The Prl. District Judge dismissed this ground on the ground that there was no evidence available on record to show his incapacity, which is one of the grounds available under section 34(2) of the Arbitration and Conciliation Act to interfere with the award. [para-19]
Contention 5- The Respondent has not filed any claim statement before the learned Arbitrator, and therefore the arbitral proceedings are vitiated.	The claim petition need not be in writing, and it may be in the form of a statement made before the learned arbitrator. The Prl. District Judge held that the non-filing of a formal claim petition after the parties appeared before the arbitrator does not constitute a gross violation of arbitral procedure. The arbitrator has documented both the claim statement and the respondent's objection, and the petitioner could have submitted an objection statement to address the disputes now presented to the court, which the petitioner did not challenge. [para-20]
Contention 6- The learned Arbitrator has relied on the report by the GIT, which was not warranted and which was not permissible.	The KLS-GIT report was nothing but a document which was relied upon by the respondents as a piece of evidence in support of their claim. Therefore, unless the document relied upon by the respondents is rebutted by cogent evidence, it could not have been discarded by him. [paras -21 and 22]



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10. The present appeal is filed challenging the order dated 22.04.2022 passed in A.P.No.2/2021 under Section 34 and various contentions are raised including the following:-

(i) The usurpation of the powers by the nominee Arbitrator was contrary to the terms agreed and the procedure of appointment of Arbitrator which vitiates the entire arbitration proceedings;

(ii) Where Joint Venture Agreement provided for appointment of two Arbitrators, one by each of the parties and both nominees were authorised to appoint an umpire, the proceedings by the nominee Arbitrator of only one of the parties is contrary to applicable procedure and vitiates the proceedings.

(iii) That the further finding by the learned District Judge that the petitioner not having suggested his nominee as an Arbitrator within thirty days from the date of notice, the respondent no.2 had foregone



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such right and in terms of Section 10 of Arbitration Act and accordingly, the sole Arbitrator was empowered to arbitrate the dispute, was an erroneous finding.

(iv) The finding of the learned District Judge that the petitioner had consented for the proceedings by the sole/nominee Arbitrator was incorrect and contrary to the records;

(v) The learned District Judge ought not to have relied on the report of the KLS-GIT, as the said report was prepared behind the back of the petitioner and was conducted without notice;

(vi) The Award of interest and compensation was in excess of jurisdiction conferred by virtue of the Joint Venture Agreement;

(vii) That the finding regarding waiver in terms of Section 4 of the Arbitration Act was incorrect;



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11. The respondents on the other hand had contended as follows:-

- (i) That the limited scope under Section 34 and Section 37 would not permit an inquiry into the merits nor it would permit re-appraisal of evidence;
- (ii) That the scope of Section 37 would restrict the power of the Court and unless the Award would "shock the conscience of the court." This Court cannot substitute its own view to that of the Arbitrator.
- (iii) That the petitioner by participating in the proceedings and furnishing documents had explicitly consented to the appointment of the nominee Arbitrator, and by such conduct in not objecting to the constitution of the Tribunal was deemed to have waived the right to object.



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(iv) That the inaction of the petitioner in exercising his right of appointing his nominee Arbitrator would result in pre-empting the necessity of approaching the Court under Section 11(6) of the Arbitration Act;

(v) That the petitioner themselves have given up the contention of disqualification as contemplated under Section 12(5) of the Arbitration Act;

12. Though, the Court under Section 34 of the Arbitration Act has dealt with various aspects including regarding reference to arbitration by competent party, constitution of the tribunal, alleged incapacity of the Petitioner to appear before the arbitrator, illegality in the procedure adopted by the arbitrator, alleged ground of patent illegality raised by the petitioner, however this court confines its finding on aspect of an invalidly constituted Tribunal in light of the law that proceedings by an arbitral Tribunal not constituted as per the Joint Venture Agreement would invalidate the proceedings.



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Accordingly, the analysis and finding is restricted to such aspect.

13. Heard Sri S.S.Naganand, learned Senior Counsel appearing on behalf of Sri S.B.Hebballi for the petitioner and Sri Anant Mandagi, learned Senior Counsel appearing on behalf of Sri Mrutyunjaya Tata Bangi for caveat-respondent Nos.1 to 7.

14. The point for consideration in this appeal is:-

"Whether the Arbitral proceedings by the sole Arbitrator despite procedure prescribed in Clause-25 of the Joint Venture Agreement regarding constitution stood vitiated, giving rise to a ground for interference in the proceedings under Section 34, which having been rejected has made out grounds for interference in the present proceedings under Section 37 of the Arbitration Act?"

15. Clause-25 of the Joint Venture Agreement entered into by the parties provides for arbitration as a



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procedure of resolution of disputes whereby, the party raising the dispute was required to serve a notice on the other party detailing the dispute and nominating in that notice its own nominee Arbitrator. The party receiving the notice was then required to nominate its Arbitrator. It is thereafter that the Arbitrators so appointed would appoint an Umpire.

16. Clause 25 of the Joint Venture Agreement reads as hereunder:-

"25. DISPUTE AND ARBITRATION

That in case of any dispute between the FIRST PARTY and the SECOND PARTY regarding this agreement, it is agreed that the dispute will be resolved amicably between the two parties and supplementary agreements may be subsequently made to mitigate the matter.

And that if the two parties cannot resolve the dispute, the same shall be referred to arbitrators appointed in a manner hereinafter provided;

The party raising the dispute shall serve a notice upon the other party advising that a dispute or difference has arisen and nominate in that notice its



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own arbitrator. The party receiving the notice shall, within 30 days (Thirty days) after receiving such notice, nominate its arbitrator by advising the party raising the dispute and name of the arbitrator appointed by the other party, the arbitrators so appointed shall appoint an umpire if necessary, in terms of rules and meaning of The Arbitration and Conciliation Act, 1996-(hereinafter referred to as the Act). The award of the arbitrators or umpire as the case may be, shall be final, conclusive and binding upon the parties thereto, Arbitration proceeding shall be conducted in accordance with the rules and meaning of the Act and its statutory modification shall or re-enactment thereof in force from time to time. The venue of arbitration shall be decided by the arbitrators having regard to costs and convenience of the parties."

17. Once the dispute arose, the respondent took recourse to Clause-25 of the Joint Venture Agreement. It issued notice to the petitioner on 09.01.2018 and appointed its nominee arbitrator on 10.01.2018. When the petitioner did not respond to the notice within the stipulated period of time, the respondent instructed its



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nominee to take up arbitral proceedings. Admittedly, the petitioner did not appoint its nominee in terms of the agreed procedure under Clause-25 of the Joint Venture agreement. It is further made out that the respondent's nominee took on the role of Sole Arbitrator, conducted proceedings and passed an Award in light of the petitioner not having exercised its option to nominate the Arbitrator.

UNILATERAL APPOINTMENT-

18. The question that then remains is as to whether the proceedings by the sole nominee Arbitrator amounts to a violation of the principle of party autonomy and is in violation of the principle embodied under Section 18 of the Arbitration Act consequently vitiating the entirety of the arbitration proceedings.

19. Though the respondents have contended that the petitioner has forfeited his right by not exercising the option available under Clause-25 to appoint his nominee, and in the alternative, has failed to reveal the name of his



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nominee, nevertheless, the procedure prescribed under Section 11(6) of the Arbitration Act, has not been followed.

20. Where an Arbitration Clause provides for nomination of an Arbitrator by each of the parties, the exercise of such option by one of the parties and non-exercise of such option by the other party does not *ipso facto* lead to abandonment of procedure prescribed under Section 11(6) of the Arbitration Act and resort to proceedings by a nominee of one of the parties is impermissible.

21. Under the dispute resolution clause both parties are entitled to nominate their nominees, inaction by one of the parties to nominate an Arbitrator would not permit the other party's nominee to proceed as sole Arbitrator. In such circumstance, the party having exercised his power to nominate was required to approach the Court under Section 11(6) for appointment of his nominee Arbitrator.



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22. The Apex Court in **Datar Switchgears Ltd., v. Tata Finance Ltd. and Another¹** has expressed such view, which position of law has been reiterated in **Deep Trading Company v. Indian Oil Corporation and Others²**. Para 19 of the decision in **Datar Switchgears Ltd., (supra)** reads as follows:-

"19. So far as cases falling under Section 11(6) are concerned — such as the one before us — no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed under Section 11(4) and Section 11(5) of the Act. In our view, therefore, so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the court under Section 11, that would be sufficient. In other words, in cases arising under Section

¹ (2000) 8 SCC 151

² (2013) 4 SCC 35



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11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application under Section 11 seeking appointment of an arbitrator. Only then the right of the opposite party ceases. We do not, therefore, agree with the observation in the above judgments that if the appointment is not made within 30 days of demand, the right to appoint an arbitrator under Section 11(6) is forfeited."

23. The procedure for appointment of an Arbitrator is a right conferred in furtherance of party autonomy. The recognition of the principle of party autonomy is further reflected in the treatment of parties by the Arbitrator as enshrined under Section 18 of the Arbitration Act. Section 18 provides for parties to be treated with equality and be afforded full opportunity.

24. The Apex Court in **Bhadra International (India) Pvt. Ltd., and Others v. Airports Authority of**



India³ [Bhadra] has observed at paras-33 and 34 as follows:-

33. Section 18 outlines two principles : first, equal treatment of parties; and secondly, right to a fair hearing. The principle of equal treatment of parties applies not only to the arbitral proceedings, but also to the procedure for appointment of arbitrators. The section casts a responsibility on the arbitrator to act impartially, objectively, and without bias, and also on the parties to adhere to standards of fairness. The principle of 'equal treatment of the parties' means that the parties must have the possibility of participating in the constitution of the arbitral tribunal on equal terms.

34. Equal participation of the parties in the process of appointment of arbitrators entails that the contracting parties have an equal say in the constitution of the arbitral tribunal. Such participation eliminates the likelihood of challenges to the arbitrator at a later stage. It is needless to say that independence and impartiality in arbitral proceedings would be served only when the parties participate equally at all stages.

25. Para-34 reflects party autonomy insofar as contracting parties have an equal say in the constitution of

³ (2026) SCC OnLine SC 7



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the Arbitral Tribunal. In the present case, party autonomy and the principle of fairness is sought to be ensured in the process of the constitution of the Arbitral Tribunal by providing for both parties to be vested with the right to make a nomination and the nominees in turn could appoint an umpire.

26. When such procedure of constituting the Arbitral Tribunal is provided, the action of one of the parties in making his nominee as the Sole Arbitrator without invoking the procedure under Section 11(6) of the Arbitration Act on the failure of the other side to exercise option of making its nomination results in constituting a Arbitral Tribunal based on an unilateral appointment.

27. In the present case before us, the petitioner after the proceedings of 05.03.2018 had addressed a letter on 08.03.2018 stating that though proceeding was fixed on 09.03.2018, he had requested for an adjournment to enable appointing of an Arbitrator as his nominee and



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also stating that he would not be able to attend due to his illness.

28. The arbitral proceedings on 09.03.2018 though records petitioner's request for adjournment, there is no reference to request made by him for appointment of an Arbitrator.

29. When the petitioner by his letters dated 26.03.2018 and 12.04.2018 has asserted his intention to make his nomination, the overlooking of such stand by the nominee of the respondent and continuation of proceedings amounts to violation of the principle of parties being treated with equality as contemplated under Section 18 of the Arbitration Act.

30. Where the respondent alone had exercised right to appoint the nominee Arbitrator and petitioner had specifically sought time to appoint his Arbitrator and had communicated such opinion to the respondent's nominee



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Arbitrator, the nominee Arbitrator himself ought to have deferred the proceedings calling upon the parties to follow the procedure prescribed for appointment of an Arbitrator under Clause-25 of the Joint Venture Agreement. Further, where there was inaction by one of the parties to exercise power to nominate, the respondents' nominee Arbitrator ought to have directed the parties to approach the Court under Section 11(6) of the Arbitration Act for appointment of an Arbitrator.

31. Section 11(6) of the Arbitration Act provides for approach to the Court under the following circumstances:-

"11. Appointment of arbitrators.—

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request ...



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a ³[the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] to take necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

32. Section 11(6) of the Arbitration Act ensures the principle of equal treatment of parties by placing the Court incharge of the procedure of appointment of Arbitrators where the party fails to act as required under the procedure as envisaged under Section 11(6)(a) or where the person fails to perform any function entrusted to him under that procedure as per Section 11(6)(c) of the Arbitration Act.

33. Section 11(6) of the Arbitration Act by its procedure preempts unilateral appointments which would have the tendency to violate principles of fairness and



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would render the Awards passed open to be assailed on the principles of "Public Policy of India" and "Fundamental Policy of Indian Law".

34. The observations of the Apex Court in **Dharma Prathishthanam v. Madhok Construction (P) Ltd.,**⁴ would support the view discussed above. Para-12 of the decision is extracted hereinbelow:-

12. On a plain reading of the several provisions referred to hereinabove, we are clearly of the opinion that the procedure followed and the methodology adopted by the respondent is wholly unknown to law and the appointment of the sole arbitrator Shri Swami Dayal, the reference of disputes to such arbitrator and the ex parte proceedings and award given by the arbitrator are all void ab initio and hence nullity, liable to be ignored. In case of arbitration without the intervention of the court, the parties must rigorously stick to the agreement entered into between the two. If the arbitration clause names an arbitrator as the one already agreed upon, the appointment of an arbitrator poses no difficulty. If

⁴ (2005) 9 SCC 686



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the arbitration clause does not name an arbitrator but provides for the manner in which the arbitrator is to be chosen and appointed, then the parties are bound to act accordingly. If the parties do not agree then arises the complication which has to be resolved by reference to the provisions of the Act. One party cannot usurp the jurisdiction of the court and proceed to act unilaterally. A unilateral appointment and a unilateral reference — both will be illegal. It may make a difference if in respect of a unilateral appointment and reference the other party submits to the jurisdiction of the arbitrator and waives its rights which it has under the agreement, then the arbitrator may proceed with the reference and the party submitting to his jurisdiction and participating in the proceedings before him may later on be precluded and estopped from raising any objection in that regard. According to Russell (Arbitration, 20th Edn., p. 104)—

"An arbitrator is neither more nor less than a private judge of a private court (called an Arbitral Tribunal) who gives a private judgment (called an award). He is a judge in that a dispute is submitted to him; ... He is private insofar as (1) he is chosen and paid by the disputants, (2) he does not sit in public, (3) he acts in accordance with privately chosen procedure so far as that is not repugnant to



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public policy, (4) so far as the law allows he is set up to the exclusion of the State courts, (5) his authority and powers are only whatsoever he is given by the disputants' agreement, (6) the effectiveness of his powers derives wholly from the private law of contract and accordingly the nature and exercise of these powers must not be contrary to the proper law of the contract or the public policy of England, bearing in mind that the paramount public policy is that freedom of contract is not lightly to be interfered with."

35. The non-adherence to procedure prescribed for appointment of an Arbitrator and the nominee of one of the parties proceeding further in the arbitration proceedings would have the effect of vitiating the arbitration proceedings.

36. While such action by the Arbitrator is in violation of principle of equal treatment, the jurisdictional flaw is usurpation of the power of the Arbitrator at the instance of only one party without recourse to procedure under Section 11(6) of the Arbitration Act which provides



for the procedure under the clause for appointment of an Arbitrator cannot be followed. Such procedure, whereby, the nominee of one party conducts proceedings overlooking the right of the other party to appoint his nominee provided for under the procedure for constitution of the Arbitral Tribunal would negate the principle of fairness and party autonomy and thus, the constitution of a Arbitral Tribunal by the nominee of only one of the parties would be in violation of the principle of equal treatment and party autonomy which is one part of Section 18 of the Arbitration Act.

37. The Apex Court in ***Bhadra (supra)*** has also sought to balance the principle of party autonomy and equal treatment of parties by observing that the principle of equal treatment of parties extends not only as regards procedure for appointment of Arbitrators, but also in the conduct of arbitral proceedings.



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38. While the latter aspect of extending the principle of equal treatment of parties to the process of conduct of arbitral proceedings would constitute a legal ground for challenge in the proceedings under Section 34 of the Arbitration Act, however, where the principle of equal treatment of parties which also embodies principle of party autonomy stands violated by procedure for constitution of Arbitral Tribunal, which contemplates role to both the parties, such violation would render the foundation of the arbitral proceedings flawed and constitute a jurisdictional lapse vitiating the entirety of the proceedings.

39. Where it is found that in the constitution of the Arbitral Tribunal, there is a violation of the procedure which otherwise guaranteed equal treatment of parties, the proceedings conducted by such Arbitral Tribunal, which is improperly constituted would fail as being proceedings by an incompetent Arbitral Tribunal.



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40. Such violation of procedure would render the Arbitrator legally incapable of performing his function based on the principle 'de jure' inability. The subsequent proceedings of the Arbitrator cannot stand on an edifice of invalidly constituted Arbitral Tribunal. Such proceedings would amount to a nullity. The observations of Apex Court in **Bhadra (supra)** at paras-113 to 116 reflect the position in law and read as follows:-

"c. Challenge to the ineligibility of the arbitrator at any stage of the proceedings

113. A challenge to an arbitrator's ineligibility could be raised at any stage because an award passed in such circumstance is non-est, i.e., it carries no enforceability or recognition in law. We say so because an arbitrator does not possess the jurisdiction to pass an award. In arbitration, the parties vest the jurisdiction in the tribunal by virtue of a valid arbitration agreement and an appointment made in accordance with the provisions of the Act, 1996. This jurisdiction is grounded in the consent of the parties as explained in the foregoing paragraphs of this judgment.



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114. In this context, jurisdiction means the authority of an arbitral tribunal to render a decision affecting the merits of the case. An arbitrator who lacks jurisdiction cannot make an award on the merits. With a view to dispel any doubt and lend clarity, we deem it appropriate to observe that the jurisdiction of the arbitral tribunal is distinct from the admissibility of the dispute, i.e., the arbitrability of the claims.

115. A question pertaining to the jurisdiction of the arbitral tribunal arises when the tribunal is fundamentally incompetent to render any decision at all. In other words, a question of jurisdiction pertains to the ability of the tribunal to hear a case, whereas questions of admissibility presuppose that the tribunal has jurisdiction. An award passed by an arbitrator who does not have jurisdiction strikes at the very authority of the arbitrator.

116. This Court, in catena of decisions, has held that the validity of a decree can be challenged even in execution proceedings if the court passing such decree lacked subject-matter jurisdiction over the dispute. As a decree passed by a court without jurisdiction goes to the root of the matter. Any decision passed by a court lacking jurisdiction would be coram non judice, since a court cannot give itself



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jurisdiction. No act of the parties can cure an inherent lack of jurisdiction.

(emphasis in original)

41. In terms of the communication at Annexure-‘F4’ dated 12.04.2018 which is the letter addressed to the Arbitrator, it is reiterated that the petitioner had sought deferment of proceedings due to his ill health and had averred in the communication that his Arbitrator would be in contact.

42. The petitioner further has addressed another communication to the Arbitrator at Annexure-‘F5’ dated 03.05.2018 again making his stand clear that he did not accept the Arbitrator as “Sole Arbitrator” and asserts that he would wish to appoint his Arbitrator through Court of law, while reiterating his previous letters containing his request to appoint an Arbitrator.

43. The petitioner in his letter addressed to the Arbitrator on 08.05.2018 had registered opposition to the



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continuance of the arbitration proceedings. Such objection was reiterated at a subsequent stage of the same proceedings when the petitioner has expressed opinion by letter dated 04.01.2019, copy of which is produced at Annexure-`G2`, registering opposition to continuance of the arbitration proceedings by the Sole Arbitrator. Despite such objections, the continuance of the proceedings by the Sole Arbitrator renders the proceedings legally flawed.

44. The challenge to the Arbitral Award could be raised in terms of Section 34(2)(a)(v) of the Arbitration Act where the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties. In the present case, as the Sole Arbitrator was a nominee of the respondent and such constitution was in violation of the procedure prescribed, it could be stated that such ground was available and was made out.



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PUBLIC POLICY OF INDIA.-

45. Further, under the principle that the Award violates 'Public Policy of India' or on the ground that it violates 'Fundamental Policy of Indian law', the Award could also be assailed.

46. The interpretation to the above concepts is found in the decision of **Bhadra (supra)** at para-111, which reads as follows:-

"111. An award passed by an arbitrator who is found to be ineligible cannot be enforced. In CORE II (supra), a Constitution Bench of this Court held that the concept of "public policy of India" and "fundamental policy of Indian law" means complying with statutes and judicial precedents, and principles of natural justice. It was categorically held that "the most basic notions of morality and justice" mentioned in the Explanation 1 to Section 34(b) includes bias. The observations of this Court in paragraphs 163 and 164 respectively reproduced hereinbelow squarely apply to the facts of the present case. The relevant extract has been reproduced thus:—

"158. Section 34(2)(b) specifically provides that an arbitral award may be set aside if the court



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finds that the arbitral award conflicts with the public policy of India. The provision further clarifies "public policy of India" to only mean that : (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice.

159. This Court has construed the expression "public policy of India" appearing under Section 34 to mean the "fundamental policy of Indian law". [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131, para 34 : (2020) 2 SCC (Civ) 213; NHAI v. P. Nagaraju, (2022) 15 SCC 1 : (2024) 2 SCC (Civ) 414, para 39] The concept of "fundamental policy of Indian law" has been held to cover compliance with statutes and judicial precedents, adopting a judicial approach, and compliance with the principles of natural justice. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 11 : (2019) 2 SCC (Civ) 293] In OPG Power Generation (India) (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd. [OPG Power Generation (India) (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417 : (2025) 1 SCC (Civ) 54], this Court explained the



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*concept of "fundamental policy of Indian law" thus
: (SCC pp. 467-68, paras 55-56)*

"55. ... The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that
(a) violation of the principles of natural justice;
(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
(c) violating law of India linked to public good or public interest, are considered



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contravention of the fundamental policy of
Indian law."

160. *In Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd. [Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2024) 7 SCC 197, para 34 : (2024) 3 SCC (Civ) 780]*, this Court held that the most basic notions of morality and justice under the concept of "public policy" will include bias.

161. [...] As a corollary, Section 34 places a responsibility on the Arbitral Tribunals to ensure that the arbitral proceedings are consistent with the fundamental policy of Indian law. [*Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, pp. 69-70, para 70*:"70. Arbitrators, like the courts, are equally bound to resolve and decide disputes in accordance with the public policy of the law. Possibility of failure to abide by public policy consideration in a legislation, which otherwise does not expressly or by necessary implication exclude arbitration, cannot form the basis to overwrite and nullify the arbitration agreement. This would be contrary to and defeat the legislative intent reflected in the public policy objective behind the Arbitration Act. Arbitration has considerable advantages as it gives freedom to the parties to choose an arbitrator of their choice, and it is informal, flexible and quick. Simplicity, informality and expedition are hallmarks of arbitration. Arbitrators are required to be impartial and independent, adhere to natural justice, and



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follow a fair and just procedure. Arbitrators are normally experts in the subject and perform their tasks by referring to facts, evidence, and relevant case law.”]

(emphasis in original)

Thus it becomes clear that the expression ‘Fundamental Policy of Indian Law’ is extended to compliance with statutes or ‘Judicial Precedents’.

47. This Court is conscious that the observations made in ***Bhadra (supra)*** is in reference to Section 12(5), but however, the observations made and relied upon are as regards concepts that are not limited to Section 12(5) of the Arbitration Act.

48. The failure to follow procedure contemplated under Section 11(6)(a) and Section 11(6)(c) of the Arbitration Act which is mandated in certain case of defaults and permitting a nominee of one of the parties to conduct proceedings as a Sole Arbitrator would constitute a ground of violation of ‘Fundamental Policy of Indian Law’.



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49. The respondent has contended that the petitioner has not pressed the ground as regards the disqualification under Section 12(5) and if that were to be so, the Award passed with participation of the petitioner cannot be interfered with, *de hors* Section 12(5). Wherever there is violation of the procedure prescribed for appointment of an Arbitrator, the parties are required to approach the Court under Section 11(6)(a) and 11(6)(c) and without following such invocation, there is no provision in law that would permit nominee of one party to assume power to arbitrate. Such usurpation would amount to a unilateral appointment not contemplated in law.

WAIVER UNDER SECTION 4 OF THE ARBITRATION ACT

50. In terms of the contention of waiver under Section 4 of the Arbitration Act, there could be a waiver of the right to object where the party proceeds with the



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arbitration without stating his objection to such non-compliance or non-adhering to the requirement under the Arbitration Clause in the Joint Venture Agreement "without undue delay" or stating his objection within the time-limit provided.

51. Though Section 4 itself refers only to certain procedural requirements which are derogable procedures, as regards such procedure, there could be no waiver if objection is raised at the earliest point of time. Admittedly, the first date of arbitration proceedings itself was on 05.03.2018 and the letter indicating intention to appoint an Arbitrator by the petitioner was expressed on 08.03.2018 itself.

52. The admitted facts would reveal that the petitioner did appear before the Arbitrator on 05.03.2018, but that however was the first date of the proceedings. The practice of settling the procedure is normally on the first date which would include the procedure to be followed



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by the Arbitral Tribunal in conducting proceedings [Section 19(2)], determining period of time agreed upon by the parties for making their claim and putting forth defence [Section 23(1)].

53. It would be relevant to take note of the letter addressed on behalf of the petitioner to the Arbitrator dated 08.05.2018, copy of which is enclosed at Annexure-'G1' in the compilation filed before this Court and is stated to constitute the records of the proceedings under Section 34 of the Arbitration Act. It is specifically stated that the representative of the petitioner Sri Satish Giri, as he was known to the Arbitrator was assured that the meeting fixed on 05.03.2018 would be an "informal mediation", as the Arbitrator was known to both the parties. It is further submitted that, in light of this familiarity with the Arbitrator, the petitioner attended the proceedings without help or support of the legal practitioner. It is also made out that the petitioner was



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not aware as to the formal nature of proceedings on such date.

54. While learned counsel for the respondent has contended that the action of the petitioner in attending the arbitration proceedings would also amount to a deemed waiver under Section 4 of the Arbitration Act which would be an alternative argument, as regards such contention as well, the discussion made supra at paras – 41, 42 and 43 would clearly make out that there is no such waiver factually.

55. The reliance by the respondent on Apex Court's decision in **Vidyawati Construction Company v. Union of India**⁵, in specific, to the observations made in paras- 4, 15 and 17, is misplaced. The observations are extracted as follows:

"4. The proceedings commenced before the sole arbitrator. After filing the statement of defence, an objection to the jurisdiction of the sole arbitrator was

⁵ (2025) 5 SCC 347



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raised on the ground that the arbitration clause in the contract provided for the appointment of three arbitrators. The learned sole arbitrator rejected the said objection.

[...]

15. Hence, there is a clear bar on raising a plea of the lack of jurisdiction of the Arbitral Tribunal after submission of the statement of defence. Therefore, after 14-2-2004, the respondent could not have objected to the jurisdiction of the sole arbitrator. Hence, the objection raised by way of an application dated 24-4-2004 was rightly rejected by the learned arbitrator by the order dated 20-10-2004.

[...]

17. In view of the respondent's conduct and sub-section (2) of Section 16 of the Arbitration Act, Sections 34 and 37 Courts were not right in upholding the respondent's objection to the jurisdiction of the Arbitral Tribunal. Therefore, the impugned judgments [Vidyawati Construction Co. v. Union of India, 2020 SCC OnLine All 1371] cannot be sustained.

56. The above observations were made in the context of an Arbitrator appointed by the Court and in the



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context of an objection raised after filing the statement of defence. In the present case, the Arbitrator has assumed power unilaterally contrary to the procedure and in light of discussion made above at paras - 41, 42 and 43 objections were raised at the early point of time. Further, the participation in the proceedings on one occasion apart from furnishing the documents on two occasions is with the simultaneous objection regarding non-consideration of his request for adjournment till he appoints an Arbitrator. Such objection raised would not entitle the Arbitrator to construe action of the petitioner as amounting to acquiescence.

57. Accordingly, we hold that the learned District Judge while dealing with Section 34 of the Arbitration Act has grossly erred in not recording an appropriate finding regarding objections of the petitioner. The finding at paras-16 and 18 of the order dated 22.04.2022 by the learned Prl. District Judge regarding waiver of right to



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object in terms of Section 4 is erroneous in terms of the discussion at paras-41, 42 and 43.

ILLEGALITY OF THE ORDER UNDER SECTION 34 OF THE ARBITRATION ACT

58. The recourse to Section 10 of the Arbitration Act by the learned Prl. District Judge in the proceedings under Section 34 is erroneous, as Section 10 comes into play where the procedure for appointment results in a even number of Arbitrators. It cannot be extended to the present case where the Arbitration Clause does provide for a valid procedure of both parties appointing a nominee each who would then appoint an umpire. Without resorting to Section 11(6), the respondent could not have called upon his nominee to be the Sole Arbitrator.

59. The finding by the District Court in the proceedings under Section 34 that the petitioner had consented for taking up proceedings by the Sole Arbitrator



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is contrary to the material on record consisting of letters dated 24.03.2018 , 12.04.2018, 03.05.2018, 08.05.2018.

60. What flows from the above discussion is that the Arbitral Tribunal which has conducted the proceedings suffered from *de jure* invalidity in so far as procedure under Clause-25 of the Joint Venture Agreement was not followed. Once finding is returned as regards to invalidity of constitution of tribunal, the proceedings would amount to a nullity. An objection regarding such aspect raised at any stage goes to the root of jurisdiction and having being dealt with and held in favour of the Petitioner, the other findings raised in Section 34 proceedings need not be dealt with. Such approach maybe necessary as the power of the Court under Section 37 for interference is narrowly circumscribed. If the interference is to stand on the jurisdictional aspect the very scope of proceedings under Section 34 and Section 37 may not require finding on other aspects.



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61. In light of the above discussion, the question for consideration raised is answered in the affirmative.

62. Accordingly, the order dated 22.04.2022 passed in A.P.No.2/2021 by the Prl. District Judge, Belagavi under Section 34 of the Arbitration Act as well as the "Final Arbitration Award" passed on 28.01.2019 by the Sole Arbitrator Sri Mallikarjun S. Mudnur, are set aside. Liberty is reserved to the respondents take out appropriate proceedings under the Joint Venture Agreement dated 17.04.2016 afresh for redressal of their grievance as is permissible in law.

Accordingly, the appeal is ***disposed of.***

Sd/-
(S.SUNIL DUTT YADAV)
JUDGE

Sd/-
(K.G.SHANTHI)
JUDGE

VGR