

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ARBITRATION CASE No. 91 of 2025

CONTINENTAL TELEPOWER INDUSTRIES LIMITED

Versus

UNION OF INDIA AND OTHERS

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Appearance:

Shri R.K. Verma - Senior Advocate along with Shri Bhuvnesh Sharma,- Advocate for the Petitioner.

Shri Sunil Jain - Additional Solicitor General through Video Conferencing with Shri Satyendra Kumar Patel - Central Government Standing Counsel for the Respondent.

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ORDER

**(Reserved on 26.11.2025)
(Pronounced on 22.12.2025)**

The present petition under Section 14 of Arbitration and Conciliation Act 1996, (for short referred to as 'Act 1996') has been filed for declaring that the mandate of Arbitral Tribunal stands terminated.

2. The present petition has been filed by the contractor who was given a contract for supply of PVC insulated armored underground signalling cables to the Indian Railways and certain disputes and differences arose in

the matter of execution of the said contract. The petitioner requested for arbitration in the matter and vide Annexure A-15, the Railway sent an e-mail to the petitioner seeking waiver in terms of Section 12 (5) of the Act 1996, which was refused by the petitioner. It is the case of the petitioner that thereafter the respondent vide letter dated 05.01.2024 forwarded a panel of four names and called upon the petitioner to propose any two names from among the said Ex-Officers of the Railways out of which the Railways would select one to act as petitioner's nominee for constituting a three-member Arbitral Tribunal. The petitioner chose two names, i.e. Shri R. C. Meena and Shri B. P. Gupta, both retired Railway Officers. However, it is contended that in absence of waiver by the petitioner under section 12(5) of the Act 1996, such nomination/selection holds no legal validity.

3. It is further contended that on 22-04-2024, the Railways sent a letter to the petitioner that the Arbitral Tribunal has been constituted comprising Shri R. C. Meena as presiding arbitrator and two other arbitrators namely Shri Anil Kumar Agrawal and Shri Chander Mohan Jindal, which was objected by the petitioner that the constitution of the Tribunal is not in accordance with the Act of 1996. This objection was vide Annexure A-17 and petitioner demanded constitution of a legally valid Arbitral Tribunal. However, the Tribunal entered into reference on 10.05.2024 and continued with its proceedings. The learned counsel for the petitioner has submitted

that left with no choice, the petitioner filed its statement of claim before the Tribunal and is now before this Court under Section 14 of the Act of 1996 being aggrieved by the illegal continuation of proceedings before the illegally constituted Tribunal and therefore, now by way of this petition, a declaration is sought that the mandate of the Tribunal stands terminated because the arbitrators are *De-Jure* unable to perform their functions as there are circumstances which give rise to justifiable doubts as to independence and impartiality of the Tribunal.

4. The case of the petitioner is that party autonomy cannot be achieved in absence of basic principles of rule against bias and the arbitrators have to be unbiased and their integrity and impartiality has to be above board. Though the arbitrators may be utterly impartial and with impeccable integrity but there is reasonable apprehension in mind of the petitioner once all the three arbitrators are retired Railway Officers. Because justice should not only be done but it should also be seen to have been done, the mandate of the arbitrators be terminated and by further exercising powers, this Court may appoint a substituted suitable sole arbitrator to continue the arbitration proceedings between the petitioner and the Railways.

5. *Per contra*, it is vehemently contended by Shri Sunil Jain, learned Additional Solicitor General that though recently the similar type of agreement by the Railways has been considered by Constitution Bench of

the Hon'ble Apex Court in case of *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)*, (2025) 4 SCC 641 (for short, "**CORE**") and it has been held that the Railways cannot force the contractor to select the arbitrator from its panel but as per Para-170.7, the Constitution Bench has been pleased to restrict the operation of the said judgment only prospectively i.e. only for those arbitrations where arbitrator appointment is to be made after the date of this judgment, but because in the present case, the arbitrator(s) had already been appointed prior to date of this judgment in the earlier part of the year 2024, whereas the judgment was delivered on 8-12-2024, therefore the Arbitral Tribunal has rightly and correctly entered into reference.

6. It is further argued that the petitioner was bound by the terms of agreement and the Railways has only acted as per terms of the agreement. Later on, it was interpreted by the Hon'ble Supreme Court that applying *nemo judex* rule and doctrine of bias, that one side cannot force the other side to choose arbitrators from its panel, but since this direction applies prospectively, therefore this Court need not interfere in the appointment of arbitrators in this present case because otherwise there is no illegality in appointment of arbitrator and it was done in accordance with the agreement. It is argued that the Hon'ble Supreme Court has saved earlier appointments prior to the date of the judgment in the case of **CORE**

(supra) delivered by the Constitution Bench. It is further contended that as per 7th Schedule to Act of 1996, there is no specific bar to appoint a retired Officer/employee and such a relationship is not prohibited relationship as per 7th Schedule.

7. Heard.

8. In the present case, a prayer is made to terminate the mandate of the Arbitral Tribunal under Section 14 of Act of 1996 on the ground that the Tribunal has become *de-jure* unable to perform its functions because the Arbitral Tribunal is ineligible to conduct the arbitration and its mandate deserves to be declared terminated under Section 14 of Act of 1996.

9. In the present case, disputes between the parties arose and a Writ Petition came to be filed between the parties being WP.13556 of 2019 and at the time of disposal of the said petition on 29.8.2023, it transpired that since the arbitral proceedings have already commenced before the Arbitrator, therefore all the disputes will be settled by the Arbitrators only. Prior to that, the petitioner had issued a notice for appointment of arbitrators vide Annexure A-13 dated 20.03.2023. In pursuance to the said notice, the Railways sent a letter Annexure R-16 dated 28.03.2023 seeking waiver as per Section 12(5) and 31-A(5) of the Act of 1996. The petitioner replied to this request of the Railways vide Annexure A-15 dated 20.09.2023 wherein it was specifically mentioned that the petitioner does

not agree to waive of the applicability of Section 12(5) of Act of 1996. Despite this refusal of the petitioner to waive of the applicability of Section 12(5), the respondents went ahead and sent a letter Annexure R-18 dated 5-01-2024 forwarding panel of four names and advising the petitioner to select at least two of the above four officers. Nothing was disclosed in this letter that whether these are serving or retired officers of the Railways. The petitioner replied vide Annexure R-19 indicating two names, i.e. Shri B.P. Gupta and Shri R.C. Meena and then the Arbitral Tribunal has been constituted comprising Shri R.C. Meena as presiding arbitrator and two retired officers namely Shri Anil Kumar Agrawal and Shri Chander Mohan Jindal as co-arbitrators in the Tribunal comprising three arbitrators. The presiding arbitrator Shri R.C. Meena is also a retired Officer of the Railways, residing at Jaipur.

10. It is contended by the counsel for the Railways that the appointment of one out of two Arbitrators proposed by the petitioner and the two being out of panel of four proposed by the Railways, is something which is duly authorized as per the agreement executed between the parties.

11. However, in the present case, initially a declaration was sought from the petitioner, that whether he desires to waive off Section 12(5) and he specifically denied that he does not waive off the applicability of Section 12(5) and no doubt after judgment of the Constitution Bench in **CORE**

(*Supra*) appointment of retired Railway Officers is held to be violative of Section 12(5).

12. The situation would have been different if the petitioner had either agreed to or acquiesced in appointment of retired Railway Officers as arbitrators. In the present case, despite mentioning in clear terms vide Annexure A-15 that he refuses to waive off Section 12(5) the petitioner had further sent a letter to the Railways vide Annexure A-17 dated 02-07-2024 that the Arbitral Tribunal constituted under the said clause is *non-est* and void and is ineligible to conduct arbitration and prayed for appointment of a legally constituted Tribunal. This objection of the petitioner has to be read in continuation of his refusal to waive-off Section 12(5) and this objection is also taken at the very inception of arbitration proceedings i.e. on 2-07-2024 which is not in dispute.

13. This Court would not be impressed by the argument about only prospective applicability of judgment in the case of **CORE (Supra)**, because in the present case not only the petitioner had refused to waive off applicability of Section 12(5) as far back as on 20.09.2023 but had also written a letter to the Railways vide Annexure A-17 dated 2-07-2024 that he does not agree to the Tribunal which has been appointed by the Railways and that a proper Arbitral Tribunal be appointed in the matter. This letter has been sent by the petitioner to the Railways almost

immediately after the Arbitral Tribunal had been appointed by the Railways on 22.04.2024 by raising objection on 02.07.2024. It is not the case that he after having participated in arbitration proceedings for substantial period has raised the aforesaid objection.

14. The Division Bench of Delhi High Court in the case of ***Mahavir Prasad Gupta & Sons v. State (NCT of Delhi)***, 2025 SCC OnLine Del 4241 has considered the similar issues and has held that the objection as to appointment of arbitrator can be made at any point of time even at the stage of Section 34 or during enforcement proceedings under Section 36 of Act of 1996. It is further held that the waiver can only be done by express agreement in writing after arising of disputes between the parties. The Delhi High Court held as under:-

“83. Although it appears disingenuous, a party appointing an the sole or presiding arbitrator unilaterally can challenge the award on the ground that the award has been rendered in contravention of Section 12(5) of the Act read with Seventh Schedule of the Act notwithstanding that the said party itself made such an appointment. When the Arbitral Tribunal inherently lacked jurisdiction to act, the arbitration proceedings are void ab initio, rendering the award unenforceable irrespective of which party made such unilateral appointment. The arbitral proceedings and an award made by an unilaterally appointed sole or presiding arbitrator, who is de jure ineligible to be appointed as an arbitrator by virtue of the Seventh Schedule of the Act are void ab initio. The waiver under the proviso to Section 12(5) of the Act must be express and subsequent to the

disputes having been arisen between the parties. Hence, the party which appointed the sole or presiding arbitrator unilaterally can also challenge the award under Section 34 of the Act on the ground of such ineligibility.”

15. In the case of **CORE (supra)** the Hon’ble Constitution Bench held as under:-

“137. Given the above discussion, it needs reiteration that the Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs. The PSUs can give a choice to the other party to select its arbitrators from the curated list provided the other party expressly waives the applicability of the nemo judex rule.”

16. Consequently, this Court has no hesitation to hold that the constitution of Arbitral Tribunal by the Railways is unilateral constitution despite of refusal of the petitioner to waive off applicability of Section 12(5) of Act of 1996. The application under Section 14 of Act of 1996 therefore, deserves to be and is hereby **allowed**. The mandate of the arbitrators appointed by the Railways vide Annexure A-19 dated 22.04.2024 stands terminated. If any fees has already been paid to the said arbitrators, they will be entitled to retain the already paid fees, but will not claim any remainder fees.

17. Section 14 of the Act applies when an Arbitrator becomes *de jure* or *de facto* unable to perform their duties, fails to act without undue delay, withdraws from office, or the parties agree to terminate their

mandate. In such scenarios, the Arbitrator's mandate terminates. Section 15 provides for the termination of the arbitrator's mandate and the appointment of a substitute arbitrator. This substitution allows the arbitration proceedings to continue from where the original arbitrator left off. These provisions ensure that arbitration can proceed efficiently by replacing arbitrators who are unable to fulfill their roles. In the present case, this Court has only terminated the mandate of the Arbitrators, and not the “Arbitral proceedings” as such. Therefore, a substitute Arbitrator is required to be appointed so as to maintain the continuity of Arbitration proceedings.

18. The original mechanism cannot be put in service now, as that relates to appointment of Arbitrators by one of the parties, and that cannot be done for the reasons as detailed in this order supra. Therefore, it is a fit case where the Court would have to appoint an arbitrator to continue the proceedings.

19. This Court proposes to appoint *Shri Justice Pritinker Diwakar, Former Chief Justice, Allahabad High Court, Shatabdipuram, In Front of Kesharwani College, Ukhri Road, Vijaynagar, Jabalpur (MP) Mobile-94252-23330, Email: pdiwaker@rediffmail.com*, as sole arbitrator for the disputes arising between the parties in the present case, to take up and conclude the proceedings.

20. The Registrar (Judicial-I) is directed to seek consent and disclosure of proposed Arbitrator in terms of sections 11(8) and 12(1) of the Act of 1996 within ten days. List on **06.1.2026** for further orders.

nks

(VIVEK JAIN)
JUDGE