

[2022 LiveLaw \(SC\) 693](#)

IN THE SUPREME COURT OF INDIA

UDAY UMESH LALIT; J., S. RAVINDRA BHAT; J., SUDHANSHU DHULIA; J.

Petition for Special Leave to Appeal (C) No.9462/2022; 16-08-2022

STEEL LIMITED versus SOUTH WESTERN RAILWAY & ANR.

Arbitration & Conciliation Act 1996 - Can a person who is ineligible to be an arbitrator nominate another arbitrator? Supreme Court refers issue to larger bench.

(Arising out of impugned final judgment and order dated 23-12-2021 in CMP No.100015/2021 passed by the High Court of Karnataka Circuit Bench at Dharwad)

For Petitioner(s) Mr. K.V. Viswanathan, Sr. Adv. Ms. Anushka Sharda, Adv. Mr. Rohit Ghosh, Adv. Mr. Madhav Khosla, Adv. M/s. Khaitan & Co., AOR

For Respondent(s) Mr. K.M. Nataraj, ASG Mr. Shailesh Madiyal, Adv. Mr. Kanu Agrawal, Adv. Mr. Amit Sharma, Adv. Mr. Amrish Kumar, AOR

ORDER

1. The basic issue involved in the instant matter is whether the appointment of the Arbitrator was in conformity with the law laid down by this Court in **TRF Ltd. v. Energo Engineering Projects Ltd, (2017) 8 SCC 377**; and, **Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760**.

2. The High Court has gone by the decision rendered by a Bench of three-Judges of this Court in **Central Organisation For Railway Electrification v. ECL-SPIC-SMO-MCML (JV), A Joint Venture Company, (2020) 14 SCC 712**, which decision had distinguished the applicability of **TRF Ltd. (supra)** and **Perkins Eastman Architects DPC (supra)** to the fact situation involved therein.

3. It has been brought to our notice that subsequently, a Bench of three-Judges of this Court in **Union of India v. M/s. Tania Constructions Ltd., [SLP (Civil) No.12670 of 2020]**, vide its order dated 11.01.2021, *prima facie* expressed its disagreement with the view taken in **Central Organisation For Railway Electrification (supra)** and requested the Hon'ble the Chief Justice of India to constitute a larger Bench to look into the correctness of the decision in **Central Organisation For Railway Electrification (supra)**.

4. In the present case, after the appointment of the Arbitrator nominated by the respondent herein, the proceedings took place before the Arbitrator and award was passed on 30.03.2022.

5. The copy of the Award shows that there was no participation on part of the present petitioner. Further, none had stepped into the box on behalf of the respondents in support of its case.

6. We need not, at this stage, go into the correctness of such Award, as those questions are not presently arising for our consideration. It is however, quite clear that the correctness of the decision in **Central Organisation For Railway Electrification (supra)**, based on which the appointment of the Arbitrator was made and the matter had proceeded before the Arbitrator, was doubted by a subsequent Bench of three Judges.

7. In the circumstances, we direct that the papers of the present matter be placed before the Hon'ble the Chief Justice of India for constituting a larger Bench.
8. Since the issue has been re-occurring, we may observe that it would be in the fitness of things that the question is resolved at an early date.
9. Pending such consideration, the effect and operation of the Award dated 30.03.2022 shall remain stayed.

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