

**IN THE COURT OF SH. SACHIN SOOD
DISTRICT JUDGE- 01 (CENTRAL), TIS HAZARI COURT, DELHI**



**ARB No. 84168/2016
CNR No. DLCT01 000484 2015**

M/s Ganpati Industrial Pvt Ltd.
through its authorized signatory
Having its registered office at
2, Hare Street, Nicco House,
3rd Floor, Kolkata-700001

Works At:
Plot No 65 & 66, Sector-C,
Urla Industrial Area,
Raipur-493221

....PETITIONER

V E R S U S

1. Union of India
Acting Through
Dy. CE/C/TS,
Northern Railway (Construction)
Kashmere Gate, Delhi.

2. Shri A K Sirohi,
Learned Sole Arbitrator &
Dy. CMM/Sign/C-1
Northern Railway,
Baroda House,
New Delhi-110001.

....RESPONDENTS

Date of Institution	: 18.05.2026
Date on Reserving	: 29.05.2026
Date of Decision	: 29.05.2026

J U D G M E N T

- 1) The present petition under Section 34 of Arbitration and Conciliation Act 1996 (*hereinafter referred to as the Act*) has been filed by the Petitioner seeking setting aside of the Arbitration Award dated 05.02.2015 passed by Sh A.K. Sirohi, Ld. Sole Arbitrator.
- 2) **Background of the present petition are *inter-alia* as under:**
 - (a) That the petitioner is an approved by RDSO, Lucknow in part-I category in respect of manufacturing and supplying fish plates, combination fish plates and joggled fish plates. The petitioner is also a SSI Unit Registered with NSIC, Bhopal having registration certificate no NSIC/RYP/GP/RS/CG/G-007/10-11/4566 dated 05/08/2010.
 - (b) That the respondent floated a tender being tender No. Track/8/C/P.Way/2006-07 for supply of 212.5 sets of combination fish plates 52 KG/90R CSO/C-1900 & CSO/C-1901(M), 4234 Nos. of Fish Plates 522 Kg. 1 Mtr. Long T-5915, 20097 Nos. of 610 MM long Fish Plates 52 Kg. T-090 (M) and 1064 Nos. of Joggled Fish Plates T-5848. The last date for submission of tender was 25.08.2006.
 - (c) That the petitioner participated in the tender and submitted its quotation being No GIPL/2006-2007/06/1141 dated 18.08.2006.
 - (d) That the petitioner's quotation being the lowest was accepted by the respondent who issued purchase order in favour of the petitioner being No

187-S/425/A/CAO/C/P.way/2006-07 dt 20.11.2006 for supply of 212.5 sets of combination fish plate, 52 Kg/90R CSO/C-1900 & CSO/C-1901(M), 4234 Nos. of Fish Plates 52 Kg. 1 Mtr. Long T-5915, 20097 Nos. of 610 MM long Fish Plates 52 Kg. T-090 (M) and 1064 Nos. of Joggled Fish Plates T-5848. The entire tendered material was to be supplied within six months from the date of issue of the purchase order i.e. upto 22.05.2007.

(e) That the petitioner thereafter supplied 70% of the ordered quantity within original delivery period i.e. within 22.05.2007. The petitioner supplied the following materials within 22.05.2007.

S no	Material	Quantity ordered	Quantity supplied	Quantity Due
1	Combination Fish Plates	212.5 sets	Entire material supplied	Nil
2	Fish plate 52 Kg. 1 Mtr long	4234 Nos.	3850 Nos.	384 Nos.
3	610mm long Fish Plate 52 Kg.	20097 Nos.	14150 Nos.	5947 Nos.
4	Joggled Fish Plate	1064 Nos.	Entire material supplied	Nil

(f) Despite the abnormal increase in the price of steel, the entire material was supplied by the Petitioner by 22/05/2007, including the balance 5947 Nos of 610 mm long fish plates but the same had to be taken back since some of the material was underweight. In this connection a photocopy of letter No. 187-S/425-A/CAO/C/P.way/2006-07 dated 22/02/2007 issued by

the respondent to the Petitioner is also placed on record and the Petitioner was willing to rectify the defect and to supply the material again.

(g) That the respondent suddenly requested the Petitioner to supply the remaining quantity instead of canceling as promised. Since the Petitioner was assured over the phone that said order had been canceled, the Petitioner was not prepared to supply the remaining material and sought an extension of time to supply the remaining material without recovery of Liquidated Damages (L/D). Though the respondent extended the delivery period four (4) times against the aforesaid order, all the extensions were granted subject to recovery of L/D. Ultimately, the respondent vide its letter dated 25.02.2008 stated that if the supply is not commenced within 15 days, the same shall be canceled under 0702 of IRS condition of contract without any further reference or notice and the balance quantity shall be purchased at the petitioner's risk and conditions of the contract.

(h) That the Petitioner vide its letter dated 03.03.2008 duly replied to the letter of the respondent stating therein that unilateral extension with recovery of the L/D was not acceptable to the Petitioner. It was further stated that risk purchase action should have been taken by the respondent within 09 months from the date of expiry of the original period i.e., 22.05.2007 as per clause No. 0702(B) of the IRS conditions of Contract and the said 09 months period has already expired on 22.02.2008. It is

pertinent to mention that in the said letter the Petitioner categorically stated that "in the event of dispute, the said dispute may be referred to arbitration under clause No. 2900 of IRS conditions of Contract."

(i) That said letter was duly replied to by the respondent vide its letter dated 18.03.2008 but the respondent did not make any reply to the stand taken by the Petitioner to refer the matter to arbitration. The Petitioner again, vide its letter dated 27.03.2008 reiterated that the unilateral extension of time granted by the respondent on various occasions had not been granted as per the request of the Petitioner.

(j) That the respondent vide letter No. 187-S/425-A/CAO/C/P.way/2006-07 dated 30.04.2008 canceled the aforesaid order at the risk and cost of the petitioner.

k) Thereafter to the utter surprise and shock of the Petitioner, the respondent vide his letter No. 187-S/425-A/CAO/C/P.way/2006-07 dated 23/09/2008 requested the Petitioner to deposit Rs. 7,25,335/- towards difference of the purchase order for quantity not supplied. The difference of the cost has been worked out as per purchase order No. 50-08-2066-1-50578-36 dated 04/06/2008 placed by Northern Railway, Baroda House, New Delhi opened on 24/01/2008. Moreover, no detail as to how the respondent has calculated the general damage was given by the respondent in the said letter.

l) That the Petitioner immediately challenged the said arbitrary demand of the respondent vide letter No. GIPL/2008-2009/1817 dated 03/10/2008. It is stated by the Petitioner that the purchase order No. 50-08-2066-1-50578-36 dated 04/06/2008 under which the respondent has allegedly worked out the difference of cost against the Petitioner was placed by some different organization of the railway and the terms, conditions, descriptions, and specifications of the materials covered by said purchase order are completely different. The petitioner also stated that while claiming general damages it is imperative on the part of the respondent to have suffered actual loss, while in the instant case the respondent has not incurred any loss so the claim for general damages raised by the respondent is not tenable under the eye of law.

m) Being aggrieved with the arbitrary demand towards general damages raised by the respondent, the Petitioner also got a notice dated 10.12.2008.

n) The respondent vide their letter No. 187-S/425-A/CAO/C/P.way/2006-07, dated 28.01.2009 for the first time furnished the detailed calculation in respect of Rs. 7,25,335/- being demanded by the respondent towards general damages. After perusal of the detailed calculation, the Petitioner observed that the description, drawing number, length, and specification of the materials covering Northern Railway, Baroda House's order No. 50-08-2066-1-50578-36 dated 04/06/2008 under which the respondent allegedly

worked out the cost difference against the Petitioner, is totally different that of description, drawing number, length, and specification of the materials.

o) Thereafter, the Petitioner issued letter No.GIPL/2008-2009//06/2955 GIPL/2008-2009//06/2955 dated 13/02/2009 challenged the respondent's arbitrary action of demanding Rs. 7,25,335/- towards general damages from the Petitioner and also referred Paragraph 6 of Clause No. 4.13 dealing with recovery of risk purchase loss and general damages appearing in "Rules for Entering into Supply Contract" issued by the Railway Board, New Delhi, which is set out as follows:

Where no loss has been suffered but the suppliers can be held responsible for the breach and the indenter has reported inconvenience which, however, could not be quantified in terms of money.	The legal advice is that no general damage can be claimed as no loss has been suffered. The case should be closed with the approval of the next higher officer in consultation with finance but the question of taking suitable administrative decision against the firm will have to be considered where necessary."
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p) The Petitioner vide the said letter, also called upon the respondent to immediately withdraw their previous letter dated 18/11/2008 and 23/09/2008 requesting the petitioner to deposit a sum of Rs 7,25,335/- towards general damages.

q) Thereafter no communication was received by the petitioner from the respondent for a considerable period of time and after a gap of 1 year and 8 months the petitioner came to know that the respondent would be passing an order to withheld a sum of Rs 7,25,335/- and to adjust the same from the

bills raised by the petitioner. Thereafter the petitioner immediately issued a notice dt 06.10.2010 under Section 11 of The Arbitration and Conciliation Act on the respondent to refer the dispute to Arbitration and the copy of the same was served on 07.10.2010. The respondent immediately on receiving the said letter passed an order on 07.10.2010 itself and instructed FA & CAO (Con.) Northern Railway, Kashmere Gate, Delhi to withhold an amount of Rs 7,25,335/- towards alleged general damages from the pending bills of the petitioner. The said letter dated 07.10.2010 issued by the respondent was received by the petitioner on 20.10.2010. As per the petitioner the respondent though exercised the option of risk purchase and called for a tender however the said tender could not be finalized within the stipulated 09 months period of time from the date of failure to deliver/cancellation of contract as per Clause 0702B of IRS conditions of Contract.

t) Clause 0702B of IRS conditions of Contract is reproduced herein as below for ready reference:

- (b) 1. Risk Purchase clause is deleted for all orders for safety items, as levy of 10 % Security deposit has been made compulsory in all such order/(except in case of vendors registered with NSIC upto the monetary limit of their registration for the items ordered). In case of failure of contract, Security Deposit shall be forfeited. Such failure shall be recorded and will be considered by Railways on merit in future cases.

2. In respect of orders for materials other than safety items which 10 % security deposit has been taken from firms, Risk Purchase clause is deleted and in case of default by such firms, the Security Deposit shall be forfeited.
3. In such cases as covered under (1) and (2) above, the quantities unsupplied shall be procured independently without risk and cost of the original firm/supplier.
4. Adverse performance of such firms will be recorded and intimated to the approving authority and also to be taken into account in future tender cases on merit.
5. Such cases which are not covered under Para (1) & (2) above. Risk Purchase provisions shall continue for them as per existing guideline as given below.

Note: In respect of the stores which are not easily available in the market and where procurement difficulties are experienced the period for making risk purchase shall be nine months instead of six months provided above.

- r) Thereafter the respondent sprang into action and immediately vide their letter no 187-S/425-A/CAO/C/P.way/2006-07 dated 02.11.2010 communicated the petitioner about the appointment of sole arbitrator by General Manager, Northern Railway, Delhi to adjudicate the disputes arising out of the said order. The Ld. Sole Arbitrator appointed by the general manager entered reference vide letter dated 08.06.2011.
- u) Since as per the petitioner an amount of Rs 7,25,335/- has been unlawfully deducted and since the petitioner was entitled to the said amount the petitioner submitted its statement of claim on the lines as aforesaid, before Ld Sole Arbitrator thereby claiming the recovery of an amount of Rs 7,25,335/- togetherwith interest @ 18% per annum and cost of litigation.

- v) The respondent filed its statement of defence contending that the claimant had been granted 4 extensions even after the expiry of original delivery period 22.05.2007 but the claimant failed to complete the supply as per the purchase order.
- w) The respondent further stated that it was compelled to cancel the contract at the risk and cost of the petitioner who had failed to fulfill the contractual obligations in accordance with Clause 0702(b) of IRS conditions of Contract vide its letter dt 30.04.2008.
- x) As per the respondent, the petitioner vide its letter dt 07.05.2008 requested the respondent to cancel the balance quantity under the purchase order after imposing general damages. As per the respondent, the general damages/risk and cost amount was computed by the respondent at Rs 7,25,335/- on the basis of the assessment of market value of the stores during the period of breach based upon the accepted purchase order.
- 3) On merits, the respondent had submitted that the extension of the delivery period was granted upon the specific request of the petitioner which has been extended upto 08.02.2008 hence the action of risk purchase/imposition of damages is well within the period of 9 months after the termination of the contract on 30.04.2008 i.e. on 23.09.2008. It is thus prayed that since

rightful termination of the contract has been carried out the claim petition is liable to be dismissed.

- 4) The petitioner filed rejoinder to the statement of defence as filed by the respondent, to which a rejoinder had been filed by the respondent herein.
- 5) The petitioner thereafter, filed its written submissions under the cover of the letter dated 15.03.2012, which written submissions were also filed by the respondent on 27.03.2012. The petitioner thereafter, filed its final written submissions once again on 28.03.2012.
- 6) Since, the Arbitrator even after filing of the written submission did not publish an award even after the conclusion of the hearings on 21.03.2013. The petitioner herein filed an application under Section 12 & 13 of The Arbitration and Conciliation Act dated 19.04.2013 alleging that the Arbitrator holds a place of profit in the respondent and that is the reason the Arbitrator is reluctant to pass an order against his employer. It was further contended that the Arbitrator is completely biased and is totally under the control of respondent. It was further contended that the Arbitrator at the time of entering reference has failed to disclose in writing about the circumstances likely to give rise to justifiable doubts as to his independence and impartiality. It was thus prayed that the Arbitrator should disclose all the circumstances in writing which are likely to give rise to justifiable

doubts as to his independence and impartiality and should immediately withdraw from his Office.

- 7) The respondent filed its reply to the said application dated 09.05.2013 not agreeing with the grounds of challenge as raised by the petitioner and requested the Sole Arbitrator to publish the award and also contending that the final hearing was held on 21.03.2012. The respondent also submitted a certificate dated 09.05.2013 to the effect that they have been given full opportunity by the Ld. Sole Arbitrator to represent its case and to produce documents and evidence as was considered necessary. It was further certified that they have been fully heard and they have nothing more to add and requested the Ld. Sole Arbitrator to publish the award.
- 8) The Ld. Sole Arbitrator vide its letter dated 22.05.2013, dismissed the application as filed by the petitioner on the ground that at no point of time during the arbitration proceedings and even after filing of the written submissions allegations of bias since had not been leveled upon the Ld. Sole Arbitrator, the arbitration proceedings were completed in a fair and transparent manner and also on the ground that the respondent has not agreed to the said challenge. The Ld. Sole Arbitrator vide the said letter also directed the petitioner to submit the stamp papers latest by 31.05.2013. It was also directed by the Ld. Sole Arbitrator that as advised in the last arbitration meeting held on 21.03.2012 the petitioner should submit the

statement towards conclusion of arbitration proceedings which performa was issued by the Ld. Sole Arbitrator alongwith the said letter. The petitioner thereafter, submitted the certificate as directed by Ld. Sole Arbitrator stating that they have been given full opportunity to represent their case and to produce evidence and documents that was considered necessary. It is also certified by the petitioner that they have been fully heard and have nothing more to add and requested Ld. Sole Arbitrator to publish the award. The petitioner also lodged his protest in response to the letter dated 22.05.2013 as issued by Ld. Sole Arbitrator stating that they were never asked to submit the stamp papers for publishing the award or for submitting any statement towards the conclusion of the arbitration proceedings who stated that they were only supplied the minutes of last arbitration meeting held on 21.03.2013, on 23.03.2012. The petitioner alongwith the said letter dated 31.05.2013 submitted the stamp papers as desired by Ld. Sole Arbitrator.

- 9) Since, even after lodging of the protest and submission of the certificate on the performa having been filed by the petitioner vide letter dated 29.01.2014, the petitioner giving the entire history has reproduced herein once again lodged its protest with the arbitrator that even despite the final hearing which was concluded on 21.03.2012 and even after the expiry of a period of 07 months the arbitral award since has not been passed the same

be published. The aforesaid letter was issued by the petitioner to the general manager of the respondent, who was requested to prevail upon the Ld. Sole Arbitrator so that the award be published. The Deputy Chief Engineer acting for Chief Administrative Officer of the respondent vide its letter dated 07.02.2014 requested the Ld. Sole Arbitrator to apprise the status of the case so that the matter be kept before the competent authority.

- 10) Only after the issuance of the letter dated 07.02.2014 as issued by Deputy Chief Engineer acting for Chief Administrative Officer of the respondent to the Ld. Sole Arbitrator, Ld. Sole Arbitrator issued letter dated 21.02.2014 to the parties seeking clarification with respect to loss having been suffered by the respondent and asking upon the respondent to submit its response by 28.02.2014 and also directing the petitioner to submit its response to the said clarification as sought from the respondent. The Ld. Sole Arbitrator vide the said letter dated 21.02.2014 fixed the hearing on 19.03.2014.
- 11) Thereafter, the respondent under the cover of its letter dated 25.02.2014, submitted additional documents which had not been submitted by the respondent during the conclusion of arbitration proceedings.
- 12) The petitioner aggrieved by the conduct of the Ld. Sole Arbitrator requested the general manager to look into the matter who submitted that even after the conclusion of the hearings on 21.03.2012 and even after submission of certificate by both the parties as stated in the aforesaid the conduct of the

Ld. Sole Arbitrator was unfair and violative of the principles of natural justice.

- 13) The Ld. Sole Arbitrator thereafter, issued another letter dated 28.03.2014 noting the absence of the petitioner fixed the next date of final hearing on 14.04.2014. Upon receipt of the letter dated 28.03.2014 the petitioner once again lodged its protest alleging that it did not received the notice of the hearing scheduled for 19.03.2014 and sought the proof of delivery of the said letter. The petitioner lodged its protest with respect to the conduct of the Ld. Sole Arbitrator and sought clarifications with respect to non-receipt of alleged letters being issued by Ld. Sole Arbitrator. The petitioner also clearly stated that in the absence of the clarifications and non-receipts of the letters, the petitioner would not be able to participate in the arbitration proceedings since the Ld. Sole Arbitrator had not acted impartially and judiciously. Thereafter, since 14.04.2014 was declared holiday the Ld. Sole Arbitrator vide its letter dated 09.04.2014 re-scheduled the final hearing for 16.04.2014. That vide letter dated 15.04.2014 the Ld. Sole Arbitrator informed the petitioner that meeting scheduled for 14.04.2014 is essential for facilitating the publishing of the arbitral award. Vide letter dated 04.06.2014, the Ld. Sole Arbitrator called upon the petitioner to once again furnish the non-judicial stamp papers, who vide letter dated 21.10.2014 called upon the respondent to submit the non-judicial stamp papers. The

respondent vide its letter dated 03.11.2014 declined to submit the same. The petitioner vide its letter dated 27.09.2014 addressed to the Chairman, Railway Board lodged a protest alleging that even after the alleged final hearing held on 16.04.2014 the award still has not been published. The award finally came to be published on 05.02.2015.

- 14) Vide the said award dated 05.02.2015, the Ld. Sole Arbitrator held that the invocation of the provisions of general damages in the contract and consequently imposition of the general damages by the respondent to be valid and rejected the claim of the petitioner seeking refund of Rs. 7,25,335/-, however, the respondent was directed to work out the general damages amount afresh and to refund the excess amount within 90 days from the date of the award. The Ld. Sole Arbitrator while returning the aforesaid conclusion has return the findings that since four extensions in the date of supply had been granted to the petitioner i.e. two with token LD and two with full LD and that to at the specific request of the petitioner, the contract/purchase order remained in force till its cancellation effected vide letter dated 30.04.2008. It was further held by the Ld. Sole Arbitrator that thus the extension in the delivery period were in order. Ld. Sole Arbitrator further rejected the contention of the petitioner that risk purchase action was beyond Clause 700 of the SCC since the same was beyond the expiry of a period of 09 months of the original delivery period (22.05.2007). The Ld.

Sole Arbitrator also rejected the contention of the petitioner to the effect that since the purchase order had a specific provision of risk purchase, the option of claiming general damages cannot be exercised by the respondent since the Clause by way of a special condition (prescribed for recovery of general damages in case risk purchase is not feasible). The Ld. Sole Arbitrator has further rejected the contention of the petitioner herein that the specification of the material drawing number, length etc. was different than the specification, material drawing number, length of the purchase order dated 04.06.2008 issued to M/s Bhaskar Industrial Development Limited holding that the basic raw material under the two purchase orders to be the same. The Ld Sole Arbitrator has not mentioned the effect of the minor variation in the material as per the specification in the original purchase order and of the specification in purchase order of M/s Bhaskar Industrial Development. The Ld. Sole Arbitrator returned the finding that with respect to the price variation clause the date of breach of the contract is sacrosanct. The Ld. Sole Arbitrator on the aspect of price variation clause laid down the formula for calculating the same and left it open for the respondent to work out the general damages afresh in terms of the said formula and directed that in case the general damages amount works out to be lesser than Rs. 7,25,335/-, the excess amount shall be refunded by the respondent to the claimant. Accordingly, the claim of the petitioner for the refund of an

amount of Rs. 7,25,335/- was rejected. The Ld. Sole Arbitrator further directed that in view of the rejection of the refund of the recovered claim the petitioner is not entitled to interest.

15) Aggrieved by the rejection of its claims vide award dated 05.02.2015, the present petition has been maintained by the petitioner on the following grounds:

a) That the award as passed by Ld. Sole Arbitrator is patently illegal since the same is contrary to fundamental policy of law, justice and morality.

b) That the award is unfair and unreasonable, hence, the same is opposed to public policy in India.

c) That the application as filed by the petitioner under Section 12 & 13 of The Arbitration & Conciliation Act, has been rejected by the Ld. Sole Arbitrator illegally and arbitrarily.

d) That the Ld. Sole Arbitrator has failed to compare the terms and conditions of the original purchase order with the terms and conditions of the purchase order dated 04.06.2008 placed upon M/s Bhaskar Industrial Development Limited which comparison has not been made by the Ld. Sole Arbitrator, who has merely brushed aside the same holding the same to be minor differences.

e) That the Ld. Sole Arbitrator after having obtained the certificate of completion of arbitration proceedings in the month of April 2012 illegally

and arbitrarily sought additional documents from the respondent and proceeded with the hearings even after obtaining the stamp papers from the petitioner.

f) That the Ld. Sole Arbitrator has passed an incomplete and inconclusive award, whereby, no adjudication has been rendered upon the claim of the petitioner seeking recovery of an amount of Rs. 7,25,335/-.

- 16) A reply to the present petition has been filed on behalf of the respondent, who has supported the award. However, the respondent on the aspect of Section 12 & 13 of the Arbitration & Conciliation Act, has contended that the Ld. Sole Arbitrator has rightly dismissed the application and as such no grounds to set aside the award has been made out under Section 34 of the Arbitration & Conciliation Act.

ARGUMENTS OF THE PETITIONER:

- 17) Ld counsel for the petitioner has argued that since the Ld Sole Arbitrator had failed to make the disclosures either at the time when he was approached in connection with his appointment as the Sole Arbitrator or at the time of entering reference the award is liable to be set aside u/s 12 of the Arbitration and Conciliation Act. It has further been contended that given the fact that Ld Sole Arbitrator being a serving employee of the railways was under a duty to disclose in writing the circumstances likely to give rise to justifiable doubts as to his independence and impartiality. It has further been contended

that the Arbitrator was completely biased in favour of the respondent which fact can be gauged by the fact that the Arbitral proceedings concluded on 21.03.2012 and yet the Ld Sole Arbitrator did not pass any award till the year 2015. It has further been contended that the disclosure of the circumstances giving rise to justifiable doubts as to the independence and impartiality continues during the entire arbitral proceedings. It has further been contended that even despite the petitioner filing an application u/s 12 & 13 of the Arbitration and Conciliation Act, the Ld Sole Arbitrator proceeded to dismiss the same vide order dt 22.05.2013 who even at the time of dismissal of the said application did not disclose the fact that the Ld Sole Arbitrator was holding a place of profit under the respondents and was under the control of the respondents who as is evident from letters dt 07.02.2014 & 15.10.2014 where the respondents are seen to be inquiring about the status of the arbitral proceedings from the Ld Sole Arbitrator. It has further been contended that only after the issuance of letter dt 05.01.2015 as issued by the respondent, Ld Sole Arbitrator has published the award on 05.02.2015. It has further been contended that biasness on the part of Ld Sole Arbitrator is evident from the fact that even after conclusion of arbitral proceedings in the year 2012 and even despite submission of the certificate of the respondent dt 09.05.2013 to the effect that the respondent have produced evidence and documents as was deemed necessary and have nothing more to

add and that award be published the Ld Sole Arbitrator vide letter dt 21.02.2014 directed the respondents to file documents towards the loss if any, suffered by them. It is thus contended that the facts and circumstances of the present case discloses an inherent bias of the arbitrator who was none other than an employee (Dy CMM/SIG/C-1) under the respondents and was under the control of the respondents.

ARGUMENTS OF THE RESPONDENT:

- 18) On the other hand, Ld Counsel for respondent has submitted that there is no infirmity in the award as passed by Ld Sole Arbitrator. It has further been contended that under the pre amended Section 12 the respondent had unfettered discretion to appoint its employees as a Sole Arbitrator. It has further been contended that in the present matter Section 12 (5) is not applicable as the award was passed on 05.02.2015 when the amendment to Section 12 (5) had not been carried out. It has further been contended that the two schedules i.e. Schedule V & Schedule VII have only been inserted after the Amendment Act of 2015 had come into existence. It is thus submitted that the award as passed by Ld Sole Arbitrator is beyond the pale of challenge since this court exercising powers does not act as an appellate court and has to remain within the bounds of Section 34 of the Arbitration and Conciliation Act. In support of this contention Ld Counsel for the respondent has placed reliance upon Central Organization for

ANALYSIS AND FINDINGS

- 19) I have heard the submissions of both the parties and have gone through the complete record.
- 20) Before proceeding to analysis the rival contentions of the parties it is relevant to re-produce unamended Section 12 & 34 of The Arbitration & Conciliation Act, 1996 as follows:

Section 12 Ground for challenge-

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence and impartiality.

(2) An arbitrator from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub Section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if -

(a) Circumstances exist that give rise to justifiable doubts as to its independence or impartiality, or

(b) He does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him or on whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Section 13 Challenge procedure-

(1) Subject to (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub Section (1), a party who intends to challenge an arbitrator shall within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any

circumstances referred to in sub Section (3) of Section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub Section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub Section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub Section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34.

(6) Where an arbitral award is set aside on an application made under sub Section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

- 21) It is not in dispute between the parties that petitioner issued a notice dated 06.10.2010 to the respondent to appoint an arbitrator. The appointment of an arbitrator is governed by Clause 2900 of the Standard Conditions of Contract which reads as under:

(a) Arbitration- In the event of any question, dispute, or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions), the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board; and by the Head of the Organisation in respect of contracts entered into by the Other organizations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator, however, will not be one of those who had an opportunity to deal with the matters to which the contract relates or who, in the course of their duties as railway servants, have expressed views on all or any of the matters under dispute or difference. The arbitrator's award shall be final and binding on the parties to this contract.

(b) In the event of the arbitrator dying, neglecting, or refusing to act, or resigning, or being unable to act for any reason, or if their award is set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is a further term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if, for any reason, that is not possible, the matter is not to be referred to arbitration at all

(d) The arbitrator may, from time to time, with the consent of all the parties to the contract, extend the time for making the award.

(a) Upon every and any such reference, the assessment of the cost incidental to the reference and award, respectively, shall be in the discretion of the arbitrator.

(f) Subject to the above, the Arbitration Act of 1940 and the rules thereunder, and any statutory modifications thereof for the time being in force, shall be deemed to apply to the arbitration proceedings under this clause.

(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator, at his discretion, may determine.

(h) In this clause, the authority to appoint the arbitrator includes, if there is no such authority, the officer who is, for the time being, discharging the functions of that authority, whether in addition to other functions or otherwise.

22) In the present matter, the Ld. Sole Arbitrator was appointed by the general manager, Northern Railway, Baroda House, New Delhi vide letter dated 02.11.2010. The Ld. Sole Arbitrator appointed by the general manager

entered reference vide letter dated 08.06.2011. As is evident from the letter dated 08.06.2011, at the time of entering reference or prior thereto, the Ld. Sole Arbitrator did not disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. Admittedly, at the time of his nomination and at the time of entering reference the Ld. Sole Arbitrator was working with Northern Railways as Dy. CMM/SIG/C-1. The Ld. Sole Arbitrator after having entered reference and as recorded in the arbitral award dated 05.02.2015 prior to the year 2014 held three hearings i.e. on 18.01.2012, 16.02.2012 and 21.03.2012. In terms of directions given vide letter dated 13.03.2012 by the Ld. Sole Arbitrator, the parties were directed to file their written submissions before the date scheduled on 13.03.2012. The claimant/petitioner herein filed its written submissions on 15.03.2012 and the respondent also filed its written submissions on 27.03.2012.

- 23) Since, the Arbitrator even after filing of the written submission did not publish an award even after the conclusion of the hearings on 21.03.2013, the petitioner herein filed an application under Section 12 & 13 of The Arbitration and Conciliation Act dated 19.04.2013 alleging that the Arbitrator holds a place of profit in the respondent and that is the reason the Arbitrator is reluctant to pass an order against his employer. It was further contended that the Arbitrator is completely biased and is totally

under the control of respondent. That the Ld. Sole Arbitrator is completely biased, who is thus incapacitated to hold arbitration proceedings against the respondent. It was further contended that the Arbitrator at the time of entering reference has failed to disclose in writing about the circumstances likely to give rise to justifiable doubts as to his independence and impartiality. It was further contended that thus there exists circumstances which give rise to a justifiable doubt with respect to the independence and impartiality of the Ld. Sole Arbitrator. It was thus prayed that the Arbitrator should disclose all the circumstances in writing which are likely to give rise to justifiable doubts as to his independence and impartiality and should immediately withdraw from his Office.

- 24) The respondent filed its reply to the said application dated 09.05.2013 not agreeing with the grounds of challenge as raised by the petitioner and requested the Sole Arbitrator to publish the award and also contending that the final hearing was held on 21.03.2012. The respondent also submitted a certificate dated 09.05.2013 to the effect that they have been given full opportunity by the Ld. Sole Arbitrator to represent its case and to produce documents and evidence as was considered necessary. It was further certified that they have been fully heard and they have nothing more to add and requested the Ld. Sole Arbitrator to publish the award.

25) The Ld. Sole Arbitrator vide its letter dated 22.05.2013 without disclosing the circumstances in writing likely to give rise to justifiable doubts as to his independence and impartiality, dismissed the application as filed by the petitioner on the ground that at no point of time during the arbitration proceedings and even after filing of the written submissions allegations of bias since had not been leveled upon the Ld. Sole Arbitrator, the arbitration proceedings were completed in a fair and transparent manner and also on the ground that the respondent has not agreed to the said challenge. The Ld. Sole Arbitrator vide the said letter/order also directed the petitioner to submit the stamp papers latest by 31.05.2013. It was also directed by the Ld. Sole Arbitrator that as advised in the last arbitration meeting held on 21.03.2012, the petitioner should submit the statement towards conclusion of arbitration proceedings which proforma was issued by the Ld. Sole Arbitrator himself alongwith the said letter. The petitioner thereafter, submitted the certificate on the proforma as sent by the Ld Sole Arbitrator stating that they have been given full opportunity to represent their case and to produce evidence and documents that was considered necessary. It is also certified by the petitioner that they have been fully heard and have nothing more to add and requested Ld. Sole Arbitrator to publish the award. The petitioner also lodged his protest in response to the letter dated 22.05.2013 as issued by Ld. Sole Arbitrator stating that they were never

asked to submit the stamp papers for publishing the award or for submitting any statement towards the conclusion of the arbitration proceedings who stated that they were only supplied the minutes of last arbitration meeting held on 21.03.2012, on 23.03.2012. The petitioner alongwith the said letter dated 31.05.2013 submitted the stamp papers as desired by Ld. Sole Arbitrator.

26) Since, even after lodging of the protest and submission of the certificate on the proforma having been submitted by the petitioner on 31.05.2013, vide letter dated 29.01.2014, the petitioner giving the entire history has reproduced hereinabove once again lodged its protest with the general manager, Northern Railway of which a copy was also marked to Ld. Sole Arbitrator that even despite the final hearing having been concluded on 21.03.2012 and even after the expiry of a period of 07 months from the date of submission of the stamp papers, issuance of certificate towards conclusion of the arbitration proceedings, the arbitral award since has not been passed, the same be published. Vide the aforesaid letter, the general manager was requested to prevail upon the Ld. Sole Arbitrator so that the award be published.

27) The Deputy Chief Engineer acting for Chief Administrative Officer of the respondent vide its letter dated 07.02.2014 requested the Ld. Sole

Arbitrator to apprise the status of the case so that the matter be kept before the competent authority.

- 28) Only after the issuance of the letter dated 07.02.2014 as issued by Deputy Chief Engineer acting for Chief Administrative Officer of the respondent to the Ld. Sole Arbitrator, Ld. Sole Arbitrator issued letter dated 21.02.2014 to the parties seeking clarification with respect to loss having been suffered by the respondent and asking upon the respondent to submit its response by 28.02.2014 and also directing the petitioner to submit its response to the said clarification as sought from the respondent. The Ld. Sole Arbitrator vide the said letter dated 21.02.2014 fixed the hearing on 19.03.2014.
- 29) Thereafter, the respondent under the cover of its letter dated 25.02.2014, submitted additional documents i.e within 4 days from the said letter despite having issued a certificate to the Ld. Sole Arbitrator that they had no further documents to submit and the award be published.
- 30) The petitioner aggrieved by the conduct of the Ld. Sole Arbitrator vide letter dated 11.03.2014 requested the general manager to look into the matter who submitted that even after the conclusion of the hearings on 21.03.2012 and even after submission of certificate by both the parties as stated in the aforesaid the conduct of the Ld. Sole Arbitrator was unfair and violative of the principles of natural justice.

- 31) The Ld. Sole Arbitrator thereafter, issued another letter dated 28.03.2014 noting the absence of the petitioner fixed the next date of final hearing on 14.04.2014. Upon receipt of the letter dated 28.03.2014, the petitioner once again lodged its protest vide letter dated 31.03.2014, alleging that it did not received the notice of the hearing scheduled for 19.03.2014 and sought the proof of delivery of the said letter. The petitioner lodged its protest with respect to the conduct of the Ld. Sole Arbitrator and sought clarifications with respect to non-receipt of alleged letters being issued by Ld. Sole Arbitrator. The petitioner also clearly stated that in the absence of the clarifications and non-receipts of the letters, the petitioner would not be able to participate in the arbitration proceedings since the Ld. Sole Arbitrator had not acted impartially and judiciously.
- 32) Thereafter, since 14.04.2014 was declared holiday the Ld. Sole Arbitrator vide its letter dated 09.04.2014, re-scheduled the final hearing for 16.04.2014.
- 33) Vide letter dated 10.04.2014, the petitioner lodged its protest with respect to holding further final hearing in the matter without any reason on 16.04.2014 despite the arbitral proceedings having been concluded on 21.03.2012 and also stated that in absence of any clarification being made by the Ld. Sole Arbitrator the petitioner would be unable to appear before Ld. Sole Arbitrator.

- 34) That vide letter dated 15.04.2014, the Ld. Sole Arbitrator informed the petitioner that meeting scheduled for 14.04.2014 is essential for facilitating the publishing of the arbitral award. The meeting scheduled for 16.04.2014 was attended by the respondent.
- 35) Vide letter dated 04.06.2014, the Ld. Sole Arbitrator intimated the petitioner that the hearing have been completed and the award is to be published and called upon the petitioner to once again furnish the non-judicial stamp papers, who vide letter dated 21.10.2014 called upon the respondent to submit the non-judicial stamp papers. The respondent vide its letter dated 03.11.2014 declined to submit the same.
- 36) The petitioner vide its letter dated 27.09.2014 addressed to the Chairman, Railway Board lodged a protest alleging that even after the alleged final hearing held on 16.04.2014 the award still has not been published and it was requested that the Chairman, Railway Board prevail upon the Ld. Sole Arbitrator so that the award be published. The award finally came to be published on 05.02.2015.
- 37) The aforesaid facts in themselves are sufficient to demonstrate that the conduct of the Ld Sole Arbitrator was not impartial and he acted under the influence of the Respondents. The Ld Sole Arbitrator was an employee of the Respondents did not disclose in writing the circumstances likely to give rise to justifiable doubts as to his independence or impartiality as

enjoined under section 12 of the Arbitration and Conciliation Act, 1996. Even after filing of an application, the Ld Sole Arbitrator did not declare his position of holding an office of profit under the Respondents who simply took shelter behind the Petitioner not raising any allegations of bias against him during the arbitral proceedings which concluded on 21.03.2012. The bias on the part of the Ld Sole Arbitrator is also evident of the fact that he did not publish the award for a long period of 03 years even after the conclusion of the hearing and submission of the arguments by both the parties on 27.03.2012. The bias on the part is further evident by the fact in order to get away with the allegations of bias he impressed upon the Petitioner to issue him the certificate upon the proforma stating that the Petitioner has been given full opportunity to represent their case and to produce evidence and documents that was considered necessary and also that it has been fully heard and have nothing more to add. Besides extorting the certificate from the Petitioner in the terms as stated, the Ld Sole Arbitrator took a flimsy ground that the Petitioner despite having been asked to submit the said certificate in the hearing held on 21.03.2012 had not submitted the same. The said excuse is clearly falsified from the records of the arbitral proceedings where no such direction had been stated to have been issued by the Ld Sole Arbitrator and also from the protest lodged by the Petitioner vide its letter dated 31.05.2013.

38) The bias on the part of the Ld Sole arbitrator is also evident by the fact that even after the submission of the Certificate of conclusion of proceedings by both the parties and also of the stamp papers, the Ld Sole Arbitrator till the issuance of the letter dated 29.01.2014 did not publish the award, who thereafter vide letter dated 21.02.2014 directed the respondent to submit the facts and documents towards any loss having been sustained by them despite the conclusion of proceedings on 21.03.2012. Once the hearing in the present matter stood concluded on 21.03.2012 and the parties had submitted even the certificate of conclusion of proceedings as per the proforma sent to them by the Ld. Sole Arbitrator, the Ld. Sole Arbitrator was required to pass the award in terms of the documents already on record and on the basis of written submissions having been filed by the parties, who could not have proceeded to take further evidence after the conclusion of the proceedings and that to without any application having been filed by the respondent. Thus, from the aforesaid it can be concluded that the Ld. Sole Arbitrator was not only occupying an office of profit under the respondents but was also under the influence of the respondents since the respondents themselves have been impressing upon the Ld. Sole Arbitrator to pass the award. The Ld. Sole Arbitrator despite the petitioner filing an application under Section 12 & 13 of Arbitration and Conciliation Act wrongfully without disclosing his interest/impartiality and

independence proceeded to dismiss the same, who was under the duty throughout the arbitral proceedings to disclose to the parties in writing the circumstances giving rise to justifiable doubts as to his independence or impartiality.

- 39) Unamended Section 12 of The Arbitration and Conciliation clearly imposes a duty upon the person who has been approached in connection with his possible appointment as an arbitrator to disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. The independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental principles of natural justice which apply to all judicial as well as quasi judicial proceedings. In order to enumerate the reasons/factors giving rise to reasonable doubts as to the impartiality and independence of the arbitrator, Section 12 was amended vide the Amendment Act of 2016. Two separate schedules such as the 5th schedule and the 7th schedule have been inserted vide the said amendment. The aforesaid schedules clearly elaborates the grounds which give rise to justifiable apprehension/doubts as to the independence and impartiality of arbitrators. One of the ground in the 5th schedule is that the arbitrator is an employee of a party. The fact that at the time of his appointment as an arbitrator and also at the time of his entering reference the Ld. Sole

Arbitrator was the employee of the respondent corporation was under a duty to disclose the said fact to the petitioner, who even after filing of an application under Order 12 & 13 of The Arbitration & Conciliation Act at no point of time disclose the said fact to the petitioner herein. Besides the Ld. Sole Arbitrator since withheld the publication of the award for a long period of merely 03 years in itself gave petitioners ground to believe that the Ld. Sole Arbitrator was not impartial and independence. The further conduct of Ld. Sole Arbitrator as stated in the aforesaid affirms the existence of his being biased who not only misconducted himself but have tried to set up a case in favour of the respondent long after the arbitral proceedings having been concluded and certificate to that effect having been issued by the parties.

- 40) The act of the Ld. Sole Arbitrator in further simplicitor dismissing the application of the petitioner filed under Section 12 & 13 of The Arbitration & Conciliation Act without having made any disclosures as to his independence and impartiality is further violative of Section 12 (2) of the Act which does not get exhausted by a pre-reference disclosure but enures throughout the arbitral proceedings. Thus, in the considered opinion of the Court the Ld. Sole Arbitrator having failed to make any disclosures to the effect of his holding an office of profit in the respondent and also of his being under the control of the respondent and also having acted with bias

in as much as directing the respondent to file documents even after the conclusion of the proceedings and even after having been issued with a certificate by the respondents clearly stating that they have nothing further to add, vitiates the award as passed by the Ld. Sole Arbitrator. Accordingly, in view of the same the petitioner's challenge on the ground of violation of Section 12 of the Act is liable to succeed.

- 41) I am fortified by the views taken by me in the aforesaid by the judgment passed by Hon'ble High Court of Delhi in the matter of IJM Gayatri Joint Venture Vs National Highways Authority of India ILR (2012) III Delhi 721 affirmed by the Hon'ble Division Bench by order dt 10.07.2012 in FAO (OS) No 285/2012 wherein it was held that requirement u/s 12 (2) of the Act was mandatory and the Arbitrator is mandatorily required to without delay from the time of his appointment and throughout the Arbitral proceedings, disclose to the parties in writing any circumstances referred to in Sub Section (1) unless they have already been informed of them by him. It was further held that it was mandatory for an Arbitrator to disclose 'without delay' to the parties and in writing 'any circumstances' that are 'likely to give rise to justifiable doubts as to his independence or impartiality'. The ratio laid down in the matter of IJM Gayatri Joint Venture Vs National Highways Authority of India has been quoted with

approval in the matter of M/s Lacno-Rani (JV) Vs National Highways Authority of India 2016 235 DLT 509.

- 42) For the reasons stated, **the petition is allowed and the impugned award dated 05.02.2015 is set aside.** The parties are at liberty to take such remedies as available to them under law. There will however be no order as to costs.
- 41) File be consigned to Record Room after due necessary compliance.

**Announced in the open court
on 29th May 2026.**

(Sachin Sood)
DJ-01 (Central)
THC, Delhi.