



CGHC010106102026

2026:CGHC:27731

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 13 of 2026

M/s Varsha Contructions A Partnership Firm Having Its Office At Millennium Plaza, II, Floor 25-26, G.E. Road, Raipur, District Raipur, Chhattisgarh Through Its Partner Shri Barun Jain, Aged About 39 Years, S/o Shri Kamal Chand Jain, R/o Barun Kunj, House No. 736, Opposite Laxmi Narayan Temple, Avanti Vihar, Sector-2, Extension, Telibandha, Raipur, 492001, District – Raipur, Chhattisgarh

... Applicant

versus

Dau Shri Vasudev Chandrakar Kamdhenu Vishwavidyalaya Through Its Registrar Situated At Anjora, Durg, G.E. Road, District – Durg, C.G. 491001

... Respondent

For Applicant	: Mr. Siddharth Dubey, Advocate.
For Respondent	: Mr. Ali Asgar, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice **Order on Board**

06.07.2026

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.
2. The facts, in brief, as projected by the applicant are that the present application Arbitrator/Arbitration Board by this Court as per the Section 11 (6) of the Arbitration and Conciliation Act, 1996 so that the Arbitration Clause No. 32 mentioned in the contract by the respondent can come into existence and the dispute(s) between the applicant and the respondent can be resolved in appropriate and prescribed

manner. The applicant Firm is functioning in the name and style of M/S Varsha Constructions and is a registered A-5 category contractor functioning in the State of Chhattisgarh. Respondent No.1 had floated a tender with respect to construction I/C Internal of Research Building Tower, Anjora, Durg, C.G. Electrification, water supply and sanitary, approach road etc. and the applicant firm being successful bidders were awarded the said tender and a contract was executed on 15.02.2017. The amount of the said contract was of Rs. 875.25 lakhs. The said contract was executed by the applicant and the respondent acting through its executive engineer. After passage of some time the applicant Firm started facing hardships with the respondent with respect to non-payments, undue pressurization for completion etc.

3. The present application is being governed by the Arbitration Clause contained in the Agreement which states as under:

“ARBITRATION CLAUSE

Clause-32:-Except as otherwise provided in this contract all question and dispute relating to the meaning of the specification drawings and instructions herein before mentioned and as to thing what so ever, in any way arising out of or relating to the contract designs, drawings, specification estimate. Concerning the work or the execution of failure to execute the same, whether arising during the progress of the work or after the completion or abandonment there of shall be referred of 30 days of such occurrence. There upon the Executive Engineer. Shall give his written in instruction and/or decision within a period or 60 days of such request. This period can be extended by mutual consent of the parties Upon receipt of written instructions or decisions the parties shall properly proceed without delay to comply such instructions of decision? If the Executive Engineer fails to given his instructions or decision in writing within a period of 60 days is a mutually agreed time after being requested if the parties are aggrieved against the decision of Executive Engineer The parties may within 30 days prepare an appeal to the Hon'ble Vice

Chancellor who shall afford an opportunity to the parties of being heard and to offer evidence in support of his appeal. The Vice Chancellor will give his decision within 90 days if any party is not satisfied with the decision of the Vice Chancellor he can refer such disputes for arbitration by an Arbitration Board to be constituted by the State Govt. which shall consist of three members of whom one shall be chosen from among the officers belonging to the department not below the rank of S.E. one Retired Chief Engineer of any Technical department, and one serving officer not below the rank of S.E. belonging to another technical department.”

4. After passage of some time the applicant firm started facing hardships with the non-applicants with respect to non-payments, under pressurization for completion etc. The applicant firm vide letter dated 14.12.2023 had conveyed that an amount of Rs. 12,70,000/- approx. has been received by the applicant firm that too on 11.11.2023 out of the total pending amount of Rs. 2,33,46,998/-and therefore it was requested to kindly clear the outstanding amount at the earliest preferably within a period of 7 days from the receipt of the aforesaid letter (the aforesaid letter was sent via email and post). It was also specifically mentioned in the said letter dated 14.12.2023 that in contingency the remaining amount is not paid within the above stated time frame then the letter dated 14.12.2023 should be treated as a communication raising dispute (with respect to the remaining dues/amount to be paid) tracing strength from clause 32 of the subject contract. The aforesaid clause also places an onus on the respondents to take a decision within 60 days of the receipt of the subject communication raising dispute. It was further stated in the letter dated 14.12.2023 that the aforesaid clause does not place any onus on the applicant firm to continue the subject work during pendency of the dispute before the respondent authorities but in turn places an onus on the respondent to take a decision on the dispute,

but despite the said letter neither any decision was taken by the concerned respondent authority i.e. executive engineer in teeth with clause 32 of the subject contract nor letter dated 14.12.2023 was treated as a communication raising dispute (with respect to the remaining amount/dues to be paid). Being aggrieved by the inaction on the part of the respondent, Executive Engineer, the applicant was forced to file a writ petition before this Court. The writ petition was registered as *Writ Petition (C) 2883 of 2024*, bearing cause title *M/S Varsha Constructions v. State of Chhattisgarh and Ors. Inter-alia* praying for a direction to take decision on the dispute raised, wherein the Hon'ble High Court passed an order dated 14.08.2024, dismissing the writ petition as being not maintainable on the grounds of alternative remedy but the Hon'ble High Court was kind enough to grant liberty to the applicant firm to file an appeal before the Vice-Chancellor as provided under Clause 32 of the agreement. Vide order dated 20.08.2024 the subject contract of construction of Research Tower was rescinded by the respondent authority despite the fact that this Court had passed an order granting liberty to the applicant firm to file an appeal before the Vice Chancellor in accordance with the Clause 32 of the agreement. In compliance of the Hon'ble High Court's order dated 14.08.2024, the applicant filed an Appeal before the Vice Chancellor, and it was decided vide order dated 21.10.2024 without affording any opportunity of hearing to the applicant. The procedures resorted to by the applicant till this stage pertains are nothing but pre-arbitration steps prescribed by Clause 32 itself. WP(C) 5911 of 2024 i.e. *M/s Varsha Constructions versus State of Chhattisgarh and others*, was preferred by the applicant inter-alia posing challenge to the order dated 21.10.2024 which was dismissed

by this Hon'ble Court on 26/08/2025 stating that the remedy under the Arbitration Clause 32 should be resorted and this Hon'ble Court was also kind enough to grant liberty to pursue arbitration proceedings.

5. Against order dated 26/08/2025 the applicant preferred a Special Leave Petition (Civil) bearing No. 30506 of 2025. The aforesaid SLP was dismissed by the Hon'ble Apex Court vide order dated 03.11.2025 affirming the order passed by this Court in WPC 5911/2024 dated 26/08/2025. Vide letter dated 25/11/2025, the applicant formally invoked the Arbitration Clause through its Counsel and suggested the names of two Arbitrators and requested for the confirmation of the Arbitration Board within 15 days from the receipt of the notice. The said notice was sent to all the three concerned entities namely: The Registrar, Vice-Chancellor and the Executive Engineer.
6. The applicant has duly mentioned in the Notice Invoking Arbitration that the provision mentioned in the Arbitration Clause is *de hors* the judgement of the Hon'ble Apex Court. The relevant portion is reproduced herein:

“Clarification on Clause-32:

Although Clause-32 of the Agreement prescribes the constitution of a three-member Arbitration Board-one officer of the Department not below the rank of Superintending Engineer (S.E.), one Retired Chief Engineer of any Technical Department, and one serving officer not below the rank of S.E. of another Technical Department it is respectfully submitted that, in view of Section 12(5) of the Arbitration & Conciliation Act, 1996 and the recent judgment of the Hon'ble Supreme Court in Central Organisation for Railway Electrification v. M/s ECISPIC-SMO-MCML (JV), no officer of your organisation is eligible to be appointed as an arbitrator. Consequently, Our Client has suggested two names of retired Judges of the Hon'ble High Court of Chhattisgarh for

appointment as Arbitrator(s) to adjudicate the disputes.”

7. This was duly received by the respondents on 04/12/2025. Vide letter dated 04/12/2025 the executive engineer has conveyed to the applicant that the applicant has to get its dispute resolved through the Arbitration Tribunal established by the government only since respondent is an autonomous government institution. The aforesaid letter reflects the arbitrary act of the respondent since it forces the applicant to resolve its dispute through the pre-constituted tribunal. No action has been taken by the respondent till date for the Appointment of Arbitrators as per judgement of the Hon'ble Supreme Court and the mandate envisaged therein. The applicant has already exhausted the pre-Arbitration steps by approaching the Executive Engineer for resolution of the dispute and thereafter filed an appeal before the Vice Chancellor of the Vishwavidyalaya.
8. The applicant is urging the present application primarily relying on the judgement of the Hon'ble Apex Court in ***Central Organisation for Railway Electrification v. M/s ECISPIC-SMO-MCML (JV) {(2025) 4 SCC 641}*** where the Hon'ble Apex Court has held as follows:
 - a. The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;
 - b. The Arbitration Act does not prohibit PSUs from empaneling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs;
 - c. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;
 - d. In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in CORE (supra) is unequal and prejudiced in favour of the

Railways;

e. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

f. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties.

After the disputes have arisen, the parties can determine whether there is a necessity to waive the nemo judex rule. And

g. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals.

9. The aforesaid judgement of Apex Court was reiterated by the Hon'ble Punjab and Haryana High court in ***M/s NKB Infrastructure Private Limited Versus Haryana Shehri Vikas Pradhikaran (HSVP) and Another(2025:PHHC:017590)***. where the Hon'ble High Court appointed sole arbitrator stating the following:

"4. In view of judgment of Five Judges Bench of Supreme Court in Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co., 2024 SCC OnLine SC 3219, the respondent cannot make unilateral appointment. The appointment in such circumstances needs to be made by High Court or Supreme Court. Thus, the submission of the respondents is contrary to the aforesaid judgment.

5. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties."

10. The Hon'ble Delhi Court in ***Kalptaru Projects International v. Northern Railway [2026:DHC:192]***, at paragraph 15 has held:

"This Court followed the aforesaid judgment of the Supreme Court, in the case of Twenty-Four Secure Services Pvt. Ltd. Versus Competent Automobiles Company Limited, 2024 SCC OnLine Del 4358, and proceeded to appoint a Sole Arbitrator even when the Arbitration Clause stipulated reference to arbitration by three arbitrators, each party having the authority to appoint a nominee Arbitrator, when the parties were unable to agree on appointment of a Sole Arbitrator."

11. The Hon'ble High Court of Delhi in ***M/s Mago Constructions v. Union of India and Ors. [2025:DHC:2104]*** has held that:

"12. It is now authoritatively settled in terms of the judgment of the Supreme Court in Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) 2024 SCC OnLine 3219 that unilateral appointment of arbitrators (as provided for in the present arbitration agreement) is an anathema to the A&C Act 1996 and that it is incumbent on this Court to appoint an independent sole arbitrator."

12. Clause 32 of the Notice Inviting Tender is de hors the judgement of the Hon'ble Apex Court in **Central Organisation for Railway Electrification v. M/s ECISPIC-SMO-MCML (JV)**. The clause 32 of the Notice Inviting Tender does not provide any opportunity to the Applicant to suggest any Arbitrator. The use of the words '**No person other than the aforesaid Arbitration Board constituted by the Vishwavidyalaya**' *prima-facie* shows the control of the respondents over the Arbitration Board and hence the instances of biasness and arbitrariness cannot be ruled out.
13. Mr. Ali Sagar, Learned counsel appearing for the respondent relying on the return filed on behalf of respondent, opposes this arbitration request application and submits that the instant petition is filed by the applicant on the facts and ground stated in memo of writ petition. The applicant filed its rejoinder and has objected to the stand taken by respondent that the University is 'State' as per Article 12 of Constitution of India. Order dated 16-01-2017 passed in Arbitration Application no. 69 of 2016 has been relied for the said purposes which was passed in case of "M/s Jagatpal Singh v/s IGK V". He further submits that the respondent is a creature of Statute and anything which is creation of Statute will be 'State' as per Article 12. The respondent never contended either in reply or in any communication that it is not a Govt Entity. Vide letter dated

04-12-25 (A-9) it was made clear to the applicant that he has the remedy before Tribunal established by State Govt. but he choose to file the instant petition. The order filed by applicant in the case of IGKV does not bind answering respondent as the principal of 'Res-judicata' does not apply and moreover anything against the law is not permitted. The applicant submitted that the applicant does not come under the definition of 'State Govt. Firstly, to counter this it is submitted that all the petitions earlier filed by applicant against respondent, State govt. was impleaded through concerned Secretary. Had answering respondent not a State entity, the petitioner would not have impleaded State Govt. Secondly the answering respondent is creature of CG Kamdhenu Vishwavidyalaya Act 2011 enacted by CG Assembly which was approved by Governor being Chancellor. Based on the section 40 & 41, Statute 2013 was enacted by answering respondent. Rule 6,7 & 22 is quite clear how the answering respondent is governed by State. Subsequently further amendments were also made as and when required in the Statute. The EE working in the State Govt. has been deputed in the answering respondent for looking after the construction related work. The funds are being allocated by State Govt. which is evident from ANNEXURE R/1/4 (colly). Further the control of state is also evident from appointment of MLA, Secretary and other public bodies in Executive council is evident from ANNEXURE/1/5 (colly). The Agriculture Production Commissioner and Secretary Livestock Development

Department is regulating authority of answering respondent. All this shows the direct involvement of State Govt. in answering respondent University. It is therefore most respectfully prayed that this petition be dismissed.

14. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
15. Though the respondent have vehemently opposed the present arbitration request petition, but this Court, having regard to the existence of an arbitration agreement and the failure of the respondent to act in accordance with the agreed procedure, is of the considered opinion that the disputes deserve to be referred to arbitration. Accordingly, the dispute between the parties are referred to the sole arbitration of a retired Judge of this High Court, to be appointed in accordance with law.
16. Accordingly, this Court appoints Hon'ble **Mr. Justice Arvind Kumar Verma**, a retired Judge of this High Court, to act as the Sole Arbitrator for resolving the dispute between the parties before whom the respondent may raise all his objections, as has been raised herein.
17. The Registry is directed to communicate this order to Hon'ble Mr. Justice Arvind Kumar Verma in the proper address.
18. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.
19. The arbitration request petition, accordingly, stands **allowed**.

Sd/-
(Ramesh Sinha)
Chief Justice