



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 25TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE ASHOK S. KINAGI
CIVIL MISC PETITION NO. 100015 OF 2025 (-)

BETWEEN:

1. JWS STEEL LIMITED
(A COMPANY REGISTERED
UNDER THE PROVISIONAL OF THE
COMPANIES ACT, 1956)

HAVING ITS REGISTERED OFFICER AT
JSW CENTRE BNADRA KURLYA COMPLEX
BANDRA (EAST) MUMBAI, MAHARASHTRA,
INDIA-400051

ALSO AT VIJAYANAGAR WORKS
PO. VIDYANAGAR, BALLARI DISTRICT
KARNATAKA INDIA 583275

REPRESENTED BY ITS AUTHORISED
REP MR. ASHISHKUMAR S. NAIR

...PETITIONER

(BY SRI. DHYAN CHINNAPPA SENIOR COUNSEL FOR
SRI. MANOJ J RAIKAR, ADV)

AND:

1. SOUTH WESTERN RAILWAY
HAVING OFFICE AT
3RD FLOOR, EAST WING,
SOUTH WESTERN RAILWAY,
RAIL SOUDHA, HUBBALLI,
KARNATAKA 580020

...RESPONDENT

(BY SRI. MRUTYUNJAYA S. HALLIKERI, ADV)



THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER SECTION 11(6) OF THE ARBITRATION & CONCILIATION ACT, 1996 READ WITH CLAUSE 2 OF THE APPOINTMENT OF ARBITRATORS BY THE CHIEF JUSTICE OF KARNATAKA, HIGH COURT SCHEME, 1996, PRAYING TO IN LIGHT OF THE DECISION RENDERED BY THE HON'BLE SUPREME COURT IN THE CASE OF CENTRAL ORGANISATION FOR RAILWAY ELECTRIFICATION V. M/S. ECI-SPIC-SMO-MCL (JV) (2024 INSC 857), APPOINT A SOLE ARBITRATOR FOR THE PURPOSE OF ADJUDICATING THE DISPUTES BETWEEN THE PETITIONER AND THE RESPONDENT IN PURSUANCE TO THE CLAUSE (ARBITRATION) OF THE LONG TERM TARIFF CONTRACT DATED 21.08.2017 (ANNEXURE-C) READ WITH THE RIDER AGREEMENT DATED 20.06.2018 (ANNEXURE-D) AND SECOND RIDER AGREEMENT DATED 29.08.2022 (ANNEXURE-E) AND PASS ANY OTHER ORDER OR RELIEF IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. The petitioner has filed this Civil Miscellaneous Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator to resolve the dispute between the petitioner and the respondent in terms of Clause 13.5 of the Long-Term Tariff Contract (LTTC) dated 21.08.2017.

2. Brief facts, leading rise to the filing of the petition are as follows:

The petitioner and the respondent entered into a Long-Term Tariff Contract (LTTC) on 21.08.2017, which provided for predetermined price escalation at a fixed rate at the beginning of each contractual year for a period of three years.

3. Subsequently, a rider agreement dated 20.06.2018 was executed between the parties extending the contractual period of LTTC to 3-5 years. A second rider



agreement dated 29.08.2022 was entered into for revising/modifying the benchmark gross freight revenue, including price escalation in freight rates and levy of terminal charges for the fifth year of the LTTC period, i.e., from 01.09.2021 to 31.08.2022.

4. Upon completion of the contractual year, the petitioner addressed a communication dated 08.09.2022 to the Principal Chief Commercial Manager of the respondent, seeking grant of eligible freight rebate for the period from September 2021 to August 2022 in terms of the LTTC agreement dated 21.08.2017.

5. As the respondent failed to consider the said request, a dispute arose between the parties.

6. The petitioner invoked the arbitration clause contained in the LTTC agreement by issuing a notice dated 23.05.2025 under Section 21 of the Arbitration and Conciliation Act, 1996, proposing the name of the arbitrator.

7. The respondent, in its reply, dated 09.06.2025 did not deny the existence of the arbitration clause but



stated that as per Clause 13.5 of the agreement, the competent authority to appoint a sole arbitrator is the General Manager of the concerned Zonal Railway. The petitioner was requested to approach the General Manager of South Western Railway for appointment of the arbitrator. Without approaching the said authority, the petitioner filed the present petition.

8. The respondent filed its statement of objections contending that the petitioner is bound by the terms of the contract. As per Clause 13.5 of the agreement, the petitioner must approach the General Manager of South Western Railways for appointment of the arbitrator. The present petition is not maintainable as the petitioner has not exhausted the contractual mechanism. Accordingly, the respondent prayed for the dismissal of the petition.

9. Heard the arguments of learned counsel for the petitioner and learned counsel for respondent.

10. The learned Senior Counsel for the petitioner submitted that the dispute between the parties is arbitrable



and must be resolved in terms of Clause 13.5 of the agreement i.e., LTTC. The arbitration clause has already been invoked through a valid notice under Section 21 of the Act. The respondent has not denied the existence of the arbitration clause. A reliance was placed on the judgment of the Hon'ble Supreme Court in ***Central Organization for Railway Electrification Vs. ECI SPIC SMO MCML (A Join Venture)***,¹ wherein it was held that unilateral appointment of a sole arbitrator gives rise to justifiable doubts regarding independence and impartiality, and such clauses in public-private contracts is violate of Article 14 of the Constitution of India.

11. *Per contra*, the learned counsel for the respondent submits that the parties have entered into a contract i.e., LTTC and are bound by its terms and conditions. As per the said terms, the petitioner is required to approach the General Manager of the concerned Zonal Railway for the appointment of an arbitrator. Without

¹ (2025) 4 SCC 641



exhausting the remedy provided under Clause 13.5 of the agreement, the petitioner has filed the present petition. Hence, the instant petition is not maintainable. Accordingly, on these grounds, the respondent prays for dismissal of the petition.

12. Perused the records, and considered the submissions of the learned counsel for the parties.

13. The point that would arise for consideration is as follows:

"Whether the petitioner has made out grounds to refer the arbitral dispute to the Arbitration in terms of Clause 13.5 of the LTTC Agreement in accordance with the provisions of the Arbitration and Conciliation Act, 1996?"

14. It is an undisputed fact that the parties entered into an LTTC agreement dated 21.08.2017 and subsequently executed a rider agreement on 20.06.2018. A second rider agreement to the LTTC agreement was executed on 29.08.2022.



15. Upon completion of five contractual years, the petitioner addressed a letter dated 08.09.2022 to the Chief Commercial Manager seeking grant of rebate accrued in its favour in terms of the agreement dated 21.08.2017.

16. The respondent did not consider the request made by the petitioner. Consequently, an arbitral dispute arose between the petitioner and the respondent. The LTTC at Annexure-Agreement contains an arbitration clause, which reads as follows:

"Section 13.5 Arbitration:

In the event of any question, dispute or difference arising out of or under this Contract in connection therewith (except as to matters, the decision to which is specifically provided under this Contract) the same shall be resolved by amicable settlement failing which the matter will be referred to the Sole Arbitrator appointed by the Competent Authority i.e. General Manager of concerned Zonal Railways. The arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 as amended in 2015 and the Rules made there under. The decision of the Arbitrator shall be final and binding upon the parties."



17. From perusal of the aforementioned arbitration clause, it is clear that in case of any dispute arising out of the contract, the same shall be referred to the sole arbitrator appointed by the competent authority.

18. Admittedly, the petitioner has invoked the arbitration clause by issuing a notice (Annexure-V) dated 23.05.2025, proposing the names of arbitrators.

19. The respondent, in reply to dated 09.06.2025 the said notice issued under Section 21 of the Arbitration and Conciliation Act, 1996, stated that as per Clause 13.5 of the agreement, the petitioner is required to approach the General Manager of the concerned Zonal Railway for appointment of an arbitrator. However, the respondent has not denied the existence of the arbitration clause in the LTTC agreement.

20. The learned Senior Counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in **Central Organisation for Railway**



Electrification, referred sputa wherein in paragraphs 170.3 and 170.5 it is held which read as follows:

"170.3. 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;

170.4. 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 is unequal and prejudiced in favour of the Railways:

170.5. Unilateral appointment clauses in public-private contracts are Violative of Article 14 of the Constitution."

21. From a perusal of the judgment of the Hon'ble Supreme Court, it is evident that a clause permitting one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts regarding the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusionary in nature and hinders equal



participation of the other party in the appointment process. Such unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution.

22. On a perusal of Clause 13.5 of the agreement, it is evident that the petitioner is required to approach the General Manager of the concerned Zonal Railway for the appointment of an arbitrator, which amounts to a unilateral appointment mechanism and the same is violative of Article 14 of the Constitution.

23. In view of the proposition laid down by the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification***, referred supra the said clause cannot be enforced to the extent it provides for unilateral appointment of the arbitrator.

24. Admittedly, an arbitral dispute has arisen between the parties, which are required to be resolved through arbitration. The petitioner has invoked the arbitration clause by issuing a valid notice, under Section 21 of the Act 1996 and has made out sufficient grounds to refer



the dispute to arbitration in terms of Clause 13.5 of the LTTC agreement.

25. In view of the above discussion, I answer the point for consideration in the affirmative. Accordingly, I proceed to pass the following order:

ORDER

- i. The Civil Miscellaneous Petition is **allowed**.
- ii. Hon'ble Justice Sri.A. S. Bopanna Former Judge, Supreme Court of India is nominated as the sole arbitrator to resolve the dispute between the parties in terms of Clause 13.5 of the LTTC Agreement and in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the rules framed thereunder.
- iii. The Registry is directed to forward a copy of this order to the learned Arbitrator and the Arbitration and Conciliation Centre, Bengaluru.



- iv. The office is directed to return the original/certified copies of the documents, after retaining photocopies of the same.
- v. Pending applications, if any, shall stand disposed of.

Sd/-
(ASHOK S. KINAGI)
JUDGE

AC
CT: BSB
List No.: 1 Sl No.: 21