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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

CENTRAL ORGANISATION FOR RAILWAY ELECTRIFICATION V. ECI-SPIC-SMO-MCML (JV) (2020) 14 SCC 712.

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INTRODUCTION:-

Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) (2020) is an important Supreme Court decision that clarified the enforceability of arbitration clauses in government contracts and strengthened party autonomy in arbitration law. This case is significant because it affirmed that even PSU-prepared panels are valid if they provide a fair and broad choice, thereby preventing unnecessary judicial intervention. Its relevance is seen in modern arbitration practice, where it guides contractors, public authorities, and courts to strictly follow agreed dispute-resolution mechanisms, making it important for arbitration in India.

BACKGROUND OF THE CASE:-

On 29th March 2019, the Allahabad High Court issued an order, designating a single arbitrator outside the purview of the arbitration agreement, aggrieved by the order The Central Organisation For Railway Electrification (COFRE) filed a Special Leave Petition (SLP) with the Supreme Court. The question that came up before the court concerned the application filed under section 11 of the Arbitration and Conciliation Act 1996 regarding the appointment of an arbitrator. Specifically, the question was whether the court could appoint an arbitrator outside of the arbitration agreement's specified procedure or if it had to follow the arbitration agreement's procedure. The dispute originated as the Central Organisation for Railway Electrification (CORE) and M/s ECI-SPIC-SMO-MCML (JV) entered into a railway electrification contract that included an arbitration clause under Clause 64(3)(b) of the Indian Railways General Conditions of Contract, which gave rise to the dispute.

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FACTS OF THE CASE:-

The Central Organisation for Railway Electrification (CORE) and M/s ECI-SPIC-SMO- MCML (JV) entered into a railway electrification contract that included an arbitration clause under Clause 64(3)(b) of the Indian Railways General Conditions of Contract. It had a contractual disagreement between a Joint Venture Company and the Central Organisation for Railway Electrification over an arbitration clause in their agreement. The Railways maintained control over the arbitrators' selection by suggesting a small panel of retired railway officers. This section stipulated that a panel of retired railway officers, selected and approved by the General Manager of the Railways, would resolve any disagreement. The contractor was permitted to propose two arbitrators from a list supplied by CORE, but the General Manager was still in charge of selecting all arbitrators, including the presiding arbitrator. This section was contested by the contractor, who claimed it denied them access to an unbiased tribunal. The Joint Venture was compelled under CORE's protocol to select arbitrators solely from the panel that was supplied, which raised questions regarding the arbitration process's independence and impartiality. Central Organisation for Railway Electrification (COFRE) filed a Special Leave Petition (SLP) with the Supreme Court after the Allahabad High Court issued an order designating a single arbitrator outside the parameters of selecting an arbitrator in accordance with the arbitration agreement.

PROCEDURAL HISTORY OF THE CASE:-

Central Organisation for Railway Electrification (COFRE) and ECI-SPIC-SMO-MCML (JV) A Joint Venture Company (ECI) had disagreements over the latter's failure to finish its work within the time frame specified in the contract and COFRE's subsequent termination of the parties' agreement. Feeling wronged by the contract's termination, ECI challenged the termination in a petition submitted to the High Court. The High Court rejected the case after directing ECI to use the arbitration provision as an alternative remedy. As a result, ECI asked COFRE to appoint a tribunal and triggered the arbitration clause found in the General Conditions of Contract (GCC). Regarding the Railway's GCC, COFRE supplied ECI a list of four current railway electrification officers (of JA grade) and requested that ECI choose two of them to serve as arbitrators. A second list made up of a panel of four retired railway officers was subsequently submitted by COFRE (together referred to as Lists). After failing to respond to the correspondence, ECI submitted a

request for the appointment of an arbitrator to the High Court under section 11 of the Act. In the High Court case, ECI argued that it had no other option than to file a petition under Section 11(6) of the Act because the GCC does not intend to select an impartial arbitrator. As a result, ECI suggested a retired railway board member be named as the only arbiter. In an order dated January 3, 2019, the High Court dismissed COFRE's contention that the arbitrator should only be chosen from the panel of arbitrators under the GCC and instead appointed a retired high court judge as the sole arbitrator, subject to the proposed arbitrator's approval (Sole Arbitrator). In an order dated March 29, 2019, the High Court instructed the parties to proceed with the arbitration and recorded the arbitrator's consent. Aggrieved with the Orders, COFRE challenged the High Court's selection of the Sole Arbitrator in a special leave appeal to the Supreme Court.

LEGAL ISSUES:-

1. Whether an appointment process which allows a party who has an interest in the dispute to unilaterally appoint a sole arbitrator, or curate a panel of arbitrators and mandate that the other party select their arbitrator from the panel is valid in law?
2. Whether the principle of equal treatment of parties applies at the stage of the appointment of arbitrators?
3. Whether an appointment process in a public-private contract which allows a government entity to unilaterally appoint a sole arbitrator or majority of the arbitrators of the arbitral tribunal is violative of Article 14 of the Constitution?

JUDGEMENT:-

The Supreme Court has held that arbitration clauses that allow one party, especially a public sector organisation, to unilaterally control arbitrator nominations are unconstitutional if they violate the Arbitration Act's requirements for impartiality and equality. In this instance, the Court invalidated the pertinent contractual provision that permitted CORE to choose arbitrators from a panel made up solely of former railway officers because it failed to create a fair and impartial tribunal. The Court found that the clause violated both Section 18 of the Arbitration Act, which guarantees equal treatment of parties, and Section 12(5) of the Arbitration Act, which requires impartiality by forbidding appointments having strong links with one of the parties. The Court further found that

an arbitration clause cannot require the other party to choose its arbitrator from the PSU-curated panel, even though the Arbitration Act does not forbid PSUs from appointing possible arbitrators. The Court reinforced the precedent established in TRF Limited, confirming that the tribunal's impartiality would be jeopardised if a party disqualified by Section 12(5) of the Arbitration Act appointed arbitrators unilaterally. Additionally, the Court explained how it differed from previous rulings like in Voestalpine, which allowed for a broad-based, unbiased panel.

Additionally, the Court noted that the current decision will be prospective in character, meaning it will apply to arbitrator appointments made after the date of this judgement.

ANALYSIS:-

It has been implied that India's arbitration system is strengthened by the Supreme Court's ruling in Central Organisation for Railway Electrification, which brings it into compliance with international norms of impartiality and justice. The Court made it clear that party autonomy cannot take precedence over basic principles guaranteeing impartiality and equitable treatment, even as it affirmed party autonomy as a cornerstone of arbitration. This ruling reaffirms that arbitration agreements must respect these fundamental principles, particularly in public-private partnerships where objectivity and public policy considerations are crucial.

LEGAL PRINCIPLES:-

The principles guiding party autonomy, equality, and independence in the appointment of arbitrators were at the centre of the Supreme Court's examination in this ruling. The Court evaluated how foreign jurisdictions handle comparable issues by looking at both domestic and international viewpoints on these principles.

1. **Party Autonomy and Its Limits-**

   The foundation of arbitration is party autonomy, which gives parties the power to choose the format and method of conflict resolution. The Supreme Court did point out that required standards for impartiality and equity limit this power. The crucial demand for impartiality is reflected in Section 12(5) of the Arbitration Act, which expressly restricts a party's power

to nominate arbitrators with possible biases or ties to the appointing side. The Court has decided that although parties are allowed to design arbitration agreements, they cannot do so in a way that gives one party undue control over the selection of arbitrators because this could result in an unfair tribunal.

2. **Equality In Arbitrator Appointments-**

The Court has recently underlined that a fundamental principle of arbitration is the equality of the parties, particularly when it comes to the selection of arbitrators. The Court found that this concept also applies to the appointment stage, citing Section 18 of the Arbitration Act, which requires equal treatment throughout the arbitral process. The Court reasoned that one party shouldn't be the only one with the power to choose or curate arbitrators in a way that would hurt the other side. By ensuring that both sides participate equally, the demand for balance in appointments lowers the possibility of prejudice.

3. **Independence And Impartiality As Non-Negotiable-**

The maintaining of confidence in arbitration depends on the impartiality and independence of arbitrators, particularly when public sector organisations have the authority to oversee the appointment procedure. The Court underlined that retired government officials may not always appear to be unbiased, particularly in cases involving public sector projects. As a result, the Supreme Court has established a boundary by reiterating that any provision permitting one party to choose arbitrators from among their former acquaintances or workers runs the danger of violating the independence requirement.

4. **Comparative Jurisprudence and the International Perspective-**

The IBA Guidelines on Conflicts of Interest in International Arbitration and international arbitration norms were used by the Supreme Court in its analysis of foreign jurisprudence and principles. The idea that arbitration proceedings must ensure impartiality at every level has been maintained by numerous foreign governments. The Court observed that these requirements, which call for openness and diverse arbitrator panels, align with the UNCITRAL Model Law on International Commercial Arbitration, encouraging consistency in arbitration legislation. The Court outlined how Indian law ought to conform

to these procedures, particularly in public-private arbitrations where integrity depends on openness.

5. **Public Policy Considerations In Public-Private Arbitrations-**

   Public policy concepts, particularly Article 14 of the Constitution, which guarantees equality before the law, are used to examine arbitration agreements in situations involving government agencies. The Court ruled that public sector undertakings' unilateral appointment rights in arbitrations involving private parties are unconstitutional because they may violate the private party's entitlement to an impartial and fair tribunal. It came to the conclusion that parties have an unavoidable obligation under public policy to guarantee impartial arbitrator nominations, especially in the public sector where disagreements may have broader implications.

6. **Nemo Judex Rule and Doctrine of Bias-**

   The Supreme Court upheld the nemo judex rule, which states that no one should serve as a judge in their own case. It claimed that any tribunal nomination procedure that gives one party a significant influence over selection could lead to perceived bias. The Court's stance that impartiality must be apparent from the start, necessitating neutral appointment procedures, is supported by this concept.

PRECEDENTS:-

The Arbitration and Conciliation (Amendment) Act of 2015 introduced Section 12(5) which disqualifies people from serving as arbitrators if their relationship with any party falls into one of the categories listed in the Act's Seventh Schedule. Many applications were then filed under Section 11(6) to challenge appointment processes that allowed one party to have a disproportionate amount of influence over the choice of arbitrators.

1. **Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd., (2017) 4 SCC 665**

   -The Court examined whether Section 12(5) was breached by a panel of arbitrators appointed by the Delhi Metro Rail Corporation that was composed solely of government

workers or retired personnel. The Court did not forbid retired government personnel from acting as arbitrators, but it did emphasise he significance of arbitrator independence. It decided that nominations from a varied panel of arbitrators should be open to both parties.

2. **TRF Ltd.v. Energo Engineering Projects Ltd., (2017) 8 SCC 377**- In this case, the arbitration clause stipulated that the Buyer's Managing Director or his designee would be the only person to arbitrate issues. The question on the three judges' bench was whether Section 12(5) of the Arbitration Act permitted the Managing Director to designate a single arbitrator. The court held that an individual who is ineligible to be nominated as an arbitrator cannot propose another individual as an arbitrator based on the adage "qui facit per alium facit per se" (what one does through another is done by oneself).

3. **Perkins Eastman Architects DPC v. HSCC (India) Ltd., AIR 2020 SC 59 -** The Court looked at an arbitration clause that gave the CMD of HSCC the authority to designate a single arbitrator. It was decided that the impartiality of the arbitration process would be jeopardised if someone with an interest in the dispute participated in the appointment process.

PERSONAL OPINION:-

The Supreme Court's ruling demonstrates a careful approach to striking a balance between the practicalities of arbitration and the values of impartiality and justice. In the commercial sector, where long-term contracts and government-private partnerships frequently depend on well-established arbitration frameworks, arbitration as a conflict resolution tool thrives on stability and predictability.

CONCLUSION:-

It concludes that party autonomy is an essential component of arbitration and that each party has to have influence over different phases of the procedure. This autonomy starts with choosing the arbitral tribunal's panel, continues with establishing the arbitration's procedural procedures, and culminates with deciding how an arbitral ruling may be contested in court. Both party autonomy

and judicial interference are limited by the Act. The Hon'ble Court highlighted that when parties opt for arbitration in place of regular civil proceedings, they also assume the duty to ensure that the arbitral tribunal is independent and unbiased. The judgment underscores the need to uphold fundamental principles within arbitration agreements—especially in public-private contracts—where neutrality and compliance with public policy are critically important.