
CASE ANALYSIS: TRF LTD. VS. ENERGO ENGINEERING PROJECTS LTD.

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CASE TITLE: TRF Ltd. Vs. Energo Engineering Projects Ltd.

CASE CITATION: (2017) 8 SCC 377 (SUPREME COURT OF INDIA)

BENCH: Dipak Misra, A.M. Khanwilkar and Mohan M. Shantanagoudar, JJ.

1. FACTS IN BRIEF

- TRF Ltd. (Appellant) and Energo Engineering Projects Ltd. (Respondent) executed and entered into a purchase order which comprised of an arbitration clause, which provided that any disputes which arise would be referred for sole arbitration of the Managing Director of the buyer or his nominee.
- Subsequently, a dispute arose regarding encashment of bank guarantees. TRF Ltd. in this regard invoked the arbitration clause and requested the Managing Director of Energo Engineering to appoint a sole arbitrator.
- The Managing Director, however, was statutorily incompetent to act as an arbitrator by virtue of the Arbitration and Conciliation (Amendment) Act, 2015, specifically Section 11 and 12(5) which is read with the fifth and seventh schedules. Nevertheless, he nominated a sole arbitrator.
- TRF Ltd. challenged this appointment, on the basis of the fact that when the Managing Director himself was ineligible to act as an arbitrator, he should not have been in the position to nominate one either.
- The High Court of Delhi upheld this appointment, holding that a statutory modification does not cease the right of a person for contractual appointment.
- Aggrieved by this decision of the Delhi High court, TRF Ltd. appealed to the Supreme Court.

2. KEY ISSUES

- The key legal issues before the Hon'ble court in this regard were:-
 - a) Whether an individual who is by a legislative amendment disqualified from acting as an arbitrator under Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015, is still eligible for validly appointing another individual as an arbitrator.
 - b) Whether matters related to the statutory disqualification of an arbitrator can be laid before the Court in a motion under Section 11(6) of the Act or must exclusively be addressed before the arbitral tribunal.
 - c) The effect/impact of the amended provisions of the Act, particularly post the addition of the Fifth, Sixth, and Seventh Schedules, which outline the reasons for ineligibility and the disclosure obligations for arbitrators.

3. LEGAL PRINCIPLES APPLIED

I. SECTION 12(5) OF ARBITRATION & CONCILIATION ACT, 1996

Section 12(5) of the Arbitration and Conciliation Act of India, 1996, states that individuals with particular relationships (detailed in the Seventh Schedule) to parties or the dispute are not eligible to act as arbitrators, rendering any prior agreements to the contrary null, although parties can waive this condition in writing after disputes occur. It ensures the neutrality of arbitrators by eliminating individuals who have any connection or association such as ongoing representation, close familial relationships, or any economic interests with parties, in order to avoid partial tribunals. It mandates that if an arbitrator hold some kind of affiliation with the parties, counsel, or any matter which pertains to the categories enlisted under Seventh Schedule, they will be deemed to be disqualified. The Seventh Schedule maps out by outlining the basis for any rational doubts that might arise, encompassing any direct/indirect nexus, connections with law firms or their partners, managerial positions, or close familial relationships.

It overrides any conflicting provisions which are enlisted in the original agreement by the parties. Once a dispute arises, parties may reduce such an ineligibility into writing to waive

this disqualification; however, this must be a clear, informed choice, not merely silence or involvement as its primary elements. It seeks to maintain equity and impartiality in arbitration proceedings by avoiding potential conflict, safeguarding the fact that arbitrators remain truly independent and free from any prejudice or bias at the outset.

II. SECTION 11(6) OF ARBITRATION AND CONCILIATION ACT, 1996

A settled position of law in the said case addresses the jurisdiction of the court as per Section 11(6) of the Arbitration and Conciliation Act, 1996. Section 11(6) empowers the Supreme Court or the High Court to appoint an arbitrator where there is a failure of the agreed appointment mechanism — such as when the procedure for appointment in the arbitration clause cannot be complied with due to statutory disqualification or refusal to appoint within the stipulated period as prescribed in the agreement.

The Supreme Court iterated upon a request made under Section 11(6) where TRF Ltd. wanted to know if the court could intervene when the person who was originally supposed to choose an arbitrator was no longer allowed to do so as per the provision of Section 12(5). This meant they could not pick an arbitrator in a way as it would have been in usual circumstances. The Court asserted that if someone is of the opinion that the chosen arbitrator is not allowed to be an arbitrator under the law they can get it approved in a request under Section 11(6). The court should get involved and intervene to make sure that a fair and unbiased arbitrator is chosen when the way of choosing one is not applicable due to unforeseen circumstances. Thus, Section 11(6) serves as a blanket formula by preserving the efficacy of the arbitration agreement where the agreed appointment procedure is inoperative, reinforcing the statutory objective of securing an independent and impartial arbitrator.

III. DOCTRINE OF DERIVATIVE INELIGIBILITY

The "Doctrine of Derivative Ineligibility" in Indian arbitration law, fundamentally based on Section 12(5) in consonance with the Seventh Schedule of the Arbitration and Conciliation Act, 1996 (amended in 2015), which states that if an arbitrator is disqualified due to a conflict of interest, they are prohibited from appointing another individual as an arbitrator. This rule indicates that the disqualification emanates from the designating authority to the appointee, making the appointment void de jure. An individual might be disqualified from

acting as an arbitrator due to their affiliation with the parties, their counsels, or the subject matter of the case as structured in Section 12(5) and the Seventh Schedule. Section 12(5) takes authority over contracts that allow a party to appoint some other individual to untangle the dispute. The authority of an arbitrator ceases automatically by law if they do not meet the criteria mandated under Section 12(5). The ineligibility may be ignored if by a specific written consent from the parties once a dispute arises, according to the exception provided under Section 12(5). This waiver must be a clear, written agreement acknowledging the ineligibility and cannot be deduced from taking part in arbitration.

IV. PRINCIPLE OF NEUTRALITY AND PUBLIC POLICY

The Supreme Court emphasized that neutrality and impartiality are essential components to the arbitration process and are elements of the statutory public policy that supports Sections 11 and 12 of the Arbitration and Conciliation Act, 1996. The Court settled that if an individual is deemed ineligible to serve as an arbitrator according to Section 12(5) in relation with the Seventh Schedule, that individual is prohibited from lawfully nominating another arbitrator since this would allow a party with an interest to influence the arbitration process, thus jeopardizing the impartiality enforceable by law and principles of natural justice. Thus, the legal disqualification of an arbitrator applies to his involvement in the appointment system itself, safeguarding and ensuring the fairness and impartiality of the arbitration process.

4. DECISION OF THE COURT

The Supreme Court after deliberation and facts surrounding the process, allowed the appeals and nullified the appointment of the arbitrator which was nominated by the Managing Director. The Court in this regard held that:

- If an individual becomes ineligible to act as an arbitrator or is incompetent to undertake that responsibility as per Section 12(5), that individual in that scenario is then ineligible to nominate another arbitrator on his behalf because nomination is a derivative function of the authority which is vested in an arbitrator himself.
- If such an appointment is made, then it is void ab initio.
- The arbitration clause would still remain intact and would not just cease to exist; it

is just the appointment process that would fail to be taken ahead. Therefore, judicial support as per validity under Section 11 may be sought to designate an impartial arbitrator.

- The Court highlighted the principle of —*Qui facit per alium facit per se* (what is done through another is done by oneself), asserting that indirect authority which is exercised by a disqualified/incompetent individual will not be permissible.

5. RELEVANCE TO ARBITRATION

The case has significantly enriched the idea of the essence of independence and impartiality as principle requirements which are solidified in Section 12 of the Act. Post-2015 amendment the legislature aligned the Indian arbitration rules and practices with best of international processes and practices in order to reinforce the intention by increasing the subjectivity of statutory disqualification to derivative functions. It also shed light on the paramount consideration of impartiality and independence, securing them as statutory values which should not be compromised through any sort of contractual tweaking — even if the parties have agreed on appointment through unilateral procedure. By reviewing and deciding upon it the honorable Supreme Court guided lower courts and arbitrators to scrutinize and keep checks and balances on the appointment mechanisms without the chance of any loopholes and directed practitioners to draft arbitration clauses that align with the 2015 statutory regime/amendment

In abeyance to this, the case has also established a crucial precedent for future conducts, such as *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*¹ and *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*², which have further restrained and restricted the authority for unilateral appointments and asked for the courts under Section 11 intervene when established procedures are not in compliance with the neutrality requirements as per the statute. The case is serving as a pillar of current Indian arbitration jurisprudence and process because it essentially strengthens the legislative goal of promoting justice, openness, and credibility in the arbitral process.

¹ AIR 2020 SC 59

² 2019 (5) SCC 755

6. CRITICAL ANALYSIS

• IDENTIFICATION OF REAL ARBITRATION PROBLEM

The major jurisprudential and substantive issue in this particular case of TRF Ltd. v. Energo Engineering Projects Ltd. was primarily based on the interplay and connection of party autonomy, neutrality provisions, and judicial intervention provisions as per the Arbitration and Conciliation Act, 1996, especially in consideration of the aftermath that was created by the Arbitration and Conciliation (Amendment) Act, 2015. The arbitration agreement as per the contract agreed between the two parties included that disputes would be referred to the sole arbitration of the Managing Director of the buyer (Energo) or his nominee. However, when the dispute arose, the Managing Director of the Respondent party, who by virtue of his association with them was statutorily disqualified from acting as an arbitrator under Section 12(5) read with the Seventh Schedule, nominated another arbitrator on his behalf. The appellant objected to this appointment on the grounds that the Managing Director's statutory disqualification not only rendered him ineligible to act as an arbitrator, but also to nominate any another arbitrator, especially as per the clause that granted him nomination rights unilaterally.

• COMPREHENSIVE LEGAL PRINCIPLES AND STATUTORY FRAMEWORK

The adjudication of the Supreme Court over this issue involved several legal principles and provisions:

(a) Neutrality Regime (Section 12(5) and Seventh Schedule):

After the amendment in 2015, Section 12(5) emerged with a non-obstante provision which requires that the individuals who find themselves in the ambit of the categories of relationship specified as per the Schedule Seven with any party involved, their respective counsel, or the subject matter in question will not be eligible for appointment as arbitrators. The Seventh Schedule lists such relationships, including an arbitrator being a director, employee, advisor, or having a financial or business relationship with a party. In the TRF Ltd. case, the managing director of Energo was in the ambit

of several categories, and he was, hence, not eligible for appointment as an arbitrator due to his interest in the dispute.

The intent of this provision is to ensure that the arbitrator is independent and unbiased from the beginning, and not just to create a challenge to the appointment of an arbitrator.

(b) Difference Between Ineligibility and Justifiable Doubts (Fifth and Sixth Schedules):

The Act makes a clear distinction between an arbitrator who may raise legitimate and just doubts regarding the independence or impartiality (Fifth Schedule) and one who is legally barred from becoming an arbitrator due to a connection or other (Seventh Schedule). The Fifth Schedule helps in determining disclosure requirements to detect any possible lack of impartiality, but it does not lead to abrupt disqualification, whereas the Seventh Schedule leads to ineligibility ab initio. The arbitral tribunal and courts must approach both these situations in a different light, thereby emphasizing that ineligibility is a stipulation of the appointment process itself and not merely an arguable issue retrospectively.

(c) Doctrine of Derivative Ineligibility and Maxim (Qui Facit Per Alium Facit Per Se):

The Supreme Court relied upon the maxim —Qui facit per alium facit per se— what one does through another is done by oneself— to conclude that if a person is not in a position to act as an arbitrator, they would in that effect then not be eligible to indirectly do so by nominating another person as an arbitrator on their influence and behalf. The Court declared that if the ineligible authority is allowed to nominate another arbitrator, the disqualified person would still be able to exercise effective control over the appointment process, which would result in the same structural imbalance that Section 12(5) aims to avoid. Thus, once the MD became statutorily ineligible, the entire structure of the agreed appointment as per the agreement process fell apart, including the nomination power of the arbitrator to adjudicate upon the dispute.

(d) Doctrine of Purposive construction and statutory objective

This judgment reflects an objective oriented approach to judicial decision-making. The

Supreme Court gave effect to the legislative intention underscoring the 2015 Amendment, in order to bring Indian arbitration in line with globally accepted and smooth practices, which emphasize upon the appointment of neutral and unbiased arbitrators to resolve the dispute, rather than going with the literal interpretation of the agreement in question. In this regard, by adopting a holistic approach to the interpretation of the statute, the Court ensured that the spirit of the statute prevails over the letter of a provision that may cause an effect of introducing bias into the essence of arbitration procedure.

(e) Section 11(6) as a Safety Valve

The case also emphasizes the importance of Section 11(6) as a measure of judicial intervention in the event of the agreed appointment mechanism becoming ineffective or void. The structure of the Act is that if the parties cannot agree on the appointment an arbitrator, including the situation where the agreed mechanism becomes futile to implement, the Court shall/must intervene to appoint an impartial arbitrator. In this particular situation, the appointing authority lacked its own statutory status, due to which the appointment mechanism became almost impractical to implement, and the jurisdiction of the Court under Section 11(6) was invoked in order to bridge the gap.

• CRITICAL EVALUATION OF COURT'S REASONING

The Supreme Court's ruling is appropriately balanced, standardized and practically adjudicated, but there has been debate about whether it is appropriately applied or possible to be applied. The judgment presents a shift in Indian jurisprudence pertaining to arbitration, where statutory neutrality is given importance which is higher than contractual autonomy. Before this ruling, there were a majority of contracts which recognized unilateral appointment rights, especially in the contractor arrangements which included governments as a party, majorly because of the 2015 amendment. The Court's idea and applicability strongly indicates towards contractual autonomy which cannot and should not be used to nullify any statutory protections and that arbitration, as a substitute to the dispute resolution process, but it must also retain the respect of the arrangement and agreement and not compromise with the principles of natural justice.

The maxim —Qui facit per alium is applied in consonance for its robust and resilient

approach to the structural appointment of this case. It explained that the restraint to exercise a function cannot be simply avoided or ignored by way of delegation or appointment. This line of reasoning and thought has somewhat put an end to a gap that could have been potentially used for systematic exploitation and other unprofessional reasons, particularly by people who are involved with a vested or prior interest if such a thing was to take a negative route. The Indian arbitration law has therefore progressed from precaution over remedy as important.

TRF Ltd. v. Energo Engineering Projects Ltd. acts as an important judicial precedent that resets the scale of party autonomy and statutory protection in the context of arbitration law in India. It also indicates that a person who is statutorily precluded or incompetent to be an arbitrator cannot appoint an arbitrator either, the Supreme Court has announced time and again that neutrality is not merely an objective or far-fetched dream, but a cornerstone that is ingrained in majority of schemes and structures of India's legislative acts. The judgment has therefore given an effect to a purposive and integrity-focused approach into Indian arbitration laws. It reaffirmed that contractual autonomy is not discretionary but is required to be fenced and protected by statutory safeguards that are tailored to ensure absence of bias at the very initial and subsequent stages to follow and the enforceability of the award in a manner must be consistent with both domestic public policy and globally recognized practices in arbitration. However, the judgment also tends to shield the essence of the arbitration agreement by underscoring the need for judicial intervention as per Section 11(6) of the Act as a requirement to appoint an impartial arbitrator where the agreed process tends to fail or does not reach a practical solution based outcome.

7. CONCLUSION

TRF Ltd. is a major case study for statutory interpretations, doctrinal consistencies, and the integration of contractual intention with the idea of structured legislative purpose. It is not just a mere disagreement on the structure of appointment; but it also aims to represent a jurisprudential shift which helps to ensure the ideas of impartiality, integrity, and international acceptability of arbitration as a way to resolve disputes through various ADR mechanisms. TRF Ltd. is a landmark judgment in order to evaluate the transition of arbitration law in India from mere procedural structure to a

principle and doctrinal based and policy-driven regime that emphasizes fairness over literal interpretations.