



2026:CGHC:18222

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 7 of 2026

M/s CG Engineering Co. Proprietor - Sandeep Kumar Pandey, S/o Shyam Sunder Pandey, Aged About 55 Years, R/o D-2, Vidya Nagar, District - Bilaspur, C.G.

... Applicant

versus

1. Union of India Through The General Manager, South East Central Railway, Zone Bilaspur, District - Bilaspur, C.G.
2. Sr. Divisional Electrical Engineer (RS and G) South East Central Railway, Bilaspur, Division- Bilaspur, C.G.

... Respondent(s)

For Applicant	: Mr. Harpreet Singh Ahluwalia, Advocate.
For Respondents/UOI	: Mr. Ramakant Mishra, Deputy Solicitor General.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Order on Board

21.04.2026

1. This is an application under Section 11(6) read with Section 14 of the Arbitration and Conciliation Act, 1996 for termination of mandate and substitution of Arbitrator.
2. The facts, in brief is that M/s CG Engineering Company, is a Sole Proprietorship firm owned by the applicant. A Letter of Acceptance (for short, the LoA) No. Electrical/OTP-22-23-26/01119610078592 dated 06.06.2023 was issued in favour of the applicant for the work of "Annual Overhauling & Servicing Contract for Diesel Generator of capacities 5 KVA to 500 KVA of

different makes installed over various stations of Bilaspur Division inclusive of replacement of minor spares & repairing of AMF panel for a period of two years". EMD: Rs. 71,600/- deposited vide IREPS Ref. ID PE403518320649. Balance SD @6% up to 5% of the contract value. Performance Guarantee Rs.1,77,196.98/- deposited: 1,77,198/- FDR No. EM/TDR/Q/035774 dated 07.07.2023 for a period of 2 tears i.e. 07.07.2025. On 20/09/2023 Agreement No. SECR/BSP/Elect/2023/0026 was entered between the parties for Awarded quantities & Rates i) Monthly servicing & overhauling of Diesel Generator sets of capacities 5 KVA to 500 KVA of different makes installed over various stations of Bilaspur Division inclusive of replacement of minor spares. 1056 Nos @930.04 total value 9,82,118.02. ii) Six Monthly servicing & overhauling of Diesel Generator sets of capacities 100 KVA to 500 KVA of different makes installed over various stations of Bilaspur Division inclusive of replacement of spares. 64 Nos @9297.48 total value 5,95,038.95. iii) Six Monthly servicing & overhauling of Diesel Generator sets of capacities 30 KVA to 93 KVA of different makes installed over various stations of Bilaspur Division inclusive of replacement of spares. 56 Nos @6793.35 total value 3,90,507.73. iv) Six Monthly servicing & overhauling of Diesel Generator sets of capacities up to 20 KVA of different makes installed over various stations of Bilaspur Division inclusive of replacement of spares. 56 Nos @4649.22 total value 2,60,356.39. v) Painting of DG sets with primer, thinner and metallic paints for DG. 32 Nos @1269.45 total value 40,622.44. The dispute involved between the parties is arbitral in nature as per agreement and as per clause 64 of GCC 2022 provides provision for demand of arbitration and further appointment of an independent arbitrator is inevitable in terms of contract. The intention of the applicant is to refer his dispute to the arbitrator. The respondent issued 7 days notice on 27/09/2024 followed by 48 hours notice issued on 05/10/2024, thereafter termination

order dated 08/10/2024 issued against the applicant. A detail representation was, submitted by the applicant to GM/SECR (i) regarding illegal termination of contract, (ii) Non-payment of bill for the work completed (iii) Non-payment for the work done under NS item. (iv) Non-Payment of spares replaced. In light of above representation the competent authority ie Dy. General Manager(G) vide order DGM/SECR/ARB/PCEE/CGE/854/27 dated 31/01/2025 appointed sole arbitrator Shri Shashank Koshta, Senior Divisional Electrical, Engineer (TRS), SEC, Railway, Bilaspur to adjudicate the claims and disputes arising out the Agreement SECR/BSP/Elect/2023/0026. The applicant appeared before the learned sole arbitrator and submitted Statement of Claim, thereafter respondent has submitted statement of defence to which the applicant had submitted rejoinder to it.

3. According to Mr. Ahluwalia, learned counsel for the applicant, the present petition is filed seeking termination of mandate and substitution of in-house sole arbitrator on the ground of biasness which goes against the independence and impartiality of arbitral proceedings which are matters of public policy. The dispute involved in present case is relating to the Electrical Department of Railway and the appointed sole arbitrator is the working employee of respondents/Railway posted as Senior Divisional Electrical, Engineer (TRS) in electrical department. On 8th meeting of the proceeding dated 11/01/2025, the counsel for the applicant had made request before learned sole arbitrator to summon witnesses who have executed certain documents on behalf of the respondent Department to which they appeared on 9th meeting of the proceeding. On 9th meeting dated 15/11/2025 the learned sole arbitrator allowed the applicant's counsel to cross examine the respondent witnesses relating to documents executed by them. Though the witnesses were cross examined by the counsel but on paper it has been

mentioned as examination in chief and thereafter respondent was allowed to cross examine their own witnesses which is contrary to the provisions of Evidence Act. Further after cross examination of the witnesses, the learned sole arbitrator himself had asked questions to the witnesses to override the earlier testimony of the witnesses which shows impartiality of the arbitrator in the matter of dispute involved in the case. The applicant had filed affidavit under Order 18 Rule 4 of CPC to which on 29/11/2025 the respondent had cross examined the applicant and cross examination has been closed the learned sole arbitrator had suo moto further cross examined the applicant to fill the lacuna in witness's testimony during cross examination which shows the impartiality in the arbitral proceeding. Further, on 11th meeting held on 24/01/2026 the claimant/applicant requested the learned sole arbitrator to postpone the hearing due to absent of the counsel, the request was rejected and the proceeding was initiated on the said day. At the stage of completion of examination of the witnesses, on advise of the learned sole arbitrator the respondent had submitted copies of all the bills passed under the mentioned contract agreement along with the supporting documents and the detailed records of work carried out in DG set installed at Coaching depot. The learned sole arbitrator had taken those documents on record without there being any pleading in statement of defence and without endorsing a copy of same to the applicant. More over on said date of hearing in the absent of the applicant's counsel, the learned sole arbitrator had directed to the respondent to re-examine two witnesses namely Shri Sanjay Kushwaha and Smt Kusum Verma just to override the earlier testimony of the witnesses made earlier in cross examination The above conduct of the learned sole arbitrator who happens to be officer of same Department (Electrical) in which disputes has been arisen, reveals the biasness towards the arbitral proceeding therefore in those circumstances it is the fit case to terminate the

mandate of the sole arbitrator named as Shri Shashank Koshta, Senior Divisional Electrical, Engineer (TRS), SEC, Railway appointed by the Railway authority and to substitute with an independent sole arbitrator for the adjudication of all the disputes and differences arising under the agreement No- Agreement No. SECR/BSP/Elect/2023/0026 dated 20/09/2023 as executed between the parties. The Arbitration Act mandates the arbitration proceedings to be conducted following two main principles: (i) equality of parties; and (ii) independence and impartiality of arbitral proceedings. Independence and impartiality of the arbitrator are the most important requirement of arbitration proceedings. The Fairness in the adjudication and rule against bias form part of the basic notions of justice and morality. Natural justice demands the adjudication of a dispute in an impartial way and the same squarely applies to arbitration proceedings also. Therefore, the importance of an independent and impartial arbitral tribunal cannot be gainsaid.

4. On the other hand, Mr. Ramakant Mishra, learned counsel appearing for the respondents relying on the reply on behalf of respondents, opposes this arbitration request application, and submits that the present matter is under adjudication before the Sole Arbitrator appointed by the Railway, and the final decision in the arbitration proceedings is still awaited. Further, the applicant has already submitted a "No Objection Certificate" (NOC) waiving the applicability of Section 12(5) of the Arbitration and Conciliation (Amendment) Act, evidenced by Annexure A-1. Having voluntarily waived the said provision, the applicant cannot now raise objections regarding the appointment. Secondly, the applicant has also attended eleven (11) arbitration hearings conducted since 22.02.2025. The proceedings have been ongoing with the participation of the applicant without any formal objection during the course of hearings. Further, after actively participating in

multiple hearings, the allegation of bias at this stage is unjustified, unfounded, and appears to be an afterthought. Hence, the claim of the applicant that the arbitration proceeding is against the independence and impartiality of the public policy is wholly misconceived and untenable in law, the contents narrated in this paragraph are categorically denied. The respondent was permitted to examine their own witnesses for the limited and necessary purpose of clarifying and correcting factual aspects emerging during the proceedings. Such clarification was essential to ensure that the record accurately reflected the true facts of the case. The procedure adopted during the hearing was within the powers of the learned Sole Arbitrator, who is empowered to conduct proceedings in a manner deemed appropriate for ensuring fairness and proper adjudication. Further, at the conclusion of the examination, the learned Sole Arbitrator put certain questions to the witnesses solely for the purpose of clarification and to obtain a clear understanding of the issues involved in the dispute. Seeking clarification from witnesses is well within the jurisdiction of the Arbitrator and does not, in any manner, indicate bias or partiality. In view of the above, the allegations regarding procedural impropriety and bias being unfounded and misconceived. The respondents submit that the applicant was personally present in the arbitration meeting held on 24.01.2026. No prior intimation or formal request for adjournment on account of the alleged absence of the counsel was received before commencement of the proceedings. In the absence of any prior communication, the Learned Sole Arbitrator rightly proceeded with the hearing. The respondents submitted copies of all bills passed under the concerned contract agreement along with supporting documents and detailed records of the work carried out at the Coaching Depot in respect of the DG Set. Further, on the said date, the direction to re-examine two witnesses, namely Shri Sanjay Kushwaha and Smt. Kusum

Verma, was issued by the learned Sole Arbitrator in exercise of his procedural powers for proper clarification of facts. The said witnesses appeared pursuant to the directions of the Arbitrator and not at the request of the applicant. The re-examination was conducted only to clarify issues that arose during the proceedings and to ensure complete and effective adjudication of the dispute. It does not, in any manner, indicate bias or partiality. The allegation of bias merely on the ground that the learned Sole Arbitrator is an officer of the Electrical Department is wholly misconceived and untenable. The appointment has been made strictly in accordance with the terms and conditions of the Agreement No. SECR/BSP/Elect/2023/0026 dated 20/09/2023, which was duly accepted by both parties. The applicant had earlier given consent and had also waived the applicability of Section 12(5) of the Arbitration and Conciliation (Amendment) Act, as already placed on record. Having participated in the proceedings without objection for several hearings, the applicant is now estopped from raising such allegations at a belated stage. The conduct of the proceedings reflects that the learned Sole Arbitrator has acted fairly, independently, and within the scope of powers conferred under the Arbitration and Conciliation Act. All procedural directions were issued to ensure proper adjudication of the disputes and not to favor either party. Mere apprehension or dissatisfaction with procedural orders cannot be construed as proof of bias. No material evidence has been produced by the applicant to substantiate the allegation of partiality. Therefore, the request for termination of the mandate of Shri Shashank Koshta, Senior Divisional Electrical Engineer (TRS), SEC Railway, is baseless, devoid of merit, and liable to be rejected. Further, the principles of equality, independence, and impartiality under the Arbitration and Conciliation Act have been duly followed in the present proceedings. Both parties were given full and equal opportunity to present their case.

5. Mr. Mishra further submits that no material evidence has been produced to establish any actual bias on the part of the learned Sole Arbitrator. Mere dissatisfaction with procedural orders cannot be construed as lack of impartiality. Therefore, the allegations are baseless and liable to be rejected. However, he submits that the respondent will have no objection if any Arbitrator is appointed by this Hon'ble Court for resolving the dispute that has arisen between the parties.
6. In response, placing reliance on the rejoinder filed, Mr. Ahluwalia submits that in the present case the Railway authority had appointed sole arbitrator to adjudicate the disputes and the arbitral proceeding is going on. The relief sought in present case is to terminate the mandate of the sole arbitrator appointed by the Railway authority and to substitute with an independent sole arbitrator for the adjudication of all the disputes and differences. Mere issuance of no objection certificate by waiving the applicability of the section 12(5) of the Act does not restrict the applicant to raise the bias conduct of the arbitrator during arbitration proceeding. Proviso of Section 12(5) of the Act clearly provides that there should be express agreement in writing to waive the applicability of the provision of Section 12(5) of the Act. In similar manner there should also be expresses agreement in writing by the applicant to waive the allegation of bias against an arbitrator and same is not in present case, therefore the ground taken by the respondent cannot sustain and liable to be rejected. In support of his contentions, he places reliance on the decision of the Constitution Bench of the Apex Court in ***Central Organisation for Railway Electrification - Appellant Versus M/s ECI SPIC SMO MCML (JV) A Joint Venture Company*** {2025 4 SCC 641}, ***Ram Sarup Gupta v. Bishun Narain Inter College***, {(1987) 2 SCC 555}.
7. Mr. Ahluwalia further submits that from 1st hearing to 8th hearing of the arbitration proceeding it were the formal hearings for exchanging the

pleadings between the parties, direction issued to the respondents to conduct joint measurement and summons were issued for presence of the respondent's witnesses. No effective hearing was conducted on those hearings dates. From 9th hearing onwards the conduct of the learned sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the proceedings. All adverse averment alleged by the respondents hereby denied. It is evident from order sheet of 8th hearing held on 11/10/2025 that, the applicant had requested to issue summons to the respondent's witnesses for their examination and on direction of the learned sole arbitrator, on next date of hearing i.e. on 9th hearing held on 15/11/2025 all seven respondent's witnesses were present and same were cross examined by the counsel for the applicant.

Section 137 of the Evidence Act provides for-

Examination-in-chief - The examination of witness by the party who calls him shall be called his examination-in-chief. Cross-examination -The examination of a witness by the adverse party shall be called his cross-examination. Re-examination - The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Section 138 of the Evidence Act provides for-

Order of examinations. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

8. Mr. Ahluwalia also submits that Order 18 Rule 4 of CPC provides that examination in chief of a witness shall be on affidavit but respondents failed to file affidavits of those witnesses and the sole arbitrator allowed to cross examine those witnesses, but on order sheet it has been mentioned that the examination- in-chief of witnesses was done by the counsel for the claimant. Further thereafter the learned sole arbitrator allowed the respondents to

cross examine their own witnesses, which is not permissible as per provision of evidence act as mentioned above. Neither there was any oral or written request from respondents to re-examine their witnesses to clear the particular ambiguity in the cross examination of those witnesses. Further it is evident from order dated 15/11/2025 of 9th hearing that, the applicant had filed his examination in chief under Order 18 Rule 4 of CPC and even then the same was not taken on record in the order-sheet as examination in chief of the applicant rather the cross examination conducted by the respondents was mentioned as examination-in-chief of the applicant in the order sheet, which is detrimental and prejudice to the applicant. Thereafter, the learned sole arbitrator put several questions upon the applicant which does not seem to seek any clarification on any particular ambiguity or confusion in the cross examination of the applicant. It is here to submit that the manner the learned sole arbitrator had conducted the proceeding on 15/11/2025 which, clearly show the biasness and partiality of the learned sole arbitrator against the applicant. Undisputedly the 11th arbitration proceeding dated 24/01/2026 was conducted in absence of the counsel for the applicant. It is here to submit that in whole arbitral proceeding this was the first time the applicant prays for adjournment due to absent of his counsel. It is further to submit that the documents filed by the respondents on direction of the learned sole arbitrator was never supplied to the claimant though it has been mentioned in the order sheet being duly served to the claimant. Neither the respondents have filed any document to show the endorsement of the claimant/applicant regarding receiving copy of the documents filed on the said date. Further the statement of re-examination of witnesses was never supplied to the claimant/applicant on the said day. More over without any prior notice and without any application filed by the respondents the learned sole arbitrator suo moto had directed for reexamination of the witnesses

which amounts to recalling of the witnesses and same is being prejudice to the applicant and such conduct of the learned sole arbitrator shows the biasness against the applicant in said arbitral proceeding.

9. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
10. Admittedly, there exists a dispute between the parties with regard to termination of the contract. There is also no dispute that the applicant had submitted an NOC for waiving the applicability of Section 12(5) of the Act, however, the applicant has filed the present petition seeking termination of the mandate and substitution of in-house sole arbitrator on the ground of biasness as according to the applicant, the sole arbitrator has, after closure of the cross examination of the applicant, has suo moto further cross examined the applicant to fill the lacuna in witness's testimony during cross examination which makes the entire proceedings impartial. Further in absence of the applicant, the learned sole arbitrator directed the respondent to re-examine two witnesses to override the earlier testimony made in earlier cross-examination.
11. Having regard to the peculiar facts and circumstances of this case, this Court made a query to the learned counsel appearing for the parties as to whether they are agreeable for a common name who can be appointed as Arbitrator to avoid any biasness or favouritism, learned counsel for the parties submitted that they would have no objection if any retired Judge of this High Court is appointed as the Sole Arbitrator. They further submit that Hon'ble Mr. Justice Arvind Kumar Verma, who is a retired Judge of this High Court may be appointed as the Sole Arbitrator. However, it is submitted by Mr. Mishra, learned counsel for the respondents that this case may not be treated as a precedent for future.

12. In view of the above consensus between the learned counsel for the parties, **Hon'ble Mr. Justice Arvind Kumar Verma** a retired Judge of this High Court is appointed to act as the Sole Arbitrator to resolve the dispute involved in this arbitration request between the parties.
13. The Registry is directed to communicate this order to Hon'ble Mr. Justice Arvind Kumar Verma in the proper address.
14. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.
15. The arbitration request petition, accordingly, stands **allowed**. However, it is further clarified that this case shall not be treated as a precedent as the order has been passed in its own peculiar facts and circumstances.

Sd/-
(Ramesh Sinha)
Chief Justice

Preeti