

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 08 OF 2026

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GKC Projects Limited

... Petitioner

Vs.

Kolhapur Municipal Corporation

... Respondents

.....
Mr. Amit Khairwar a/w Prasad Dhande, Rohit Mangsule, Nikkhil C. Warange i/b Link Legal for the Petitioner.

Mr. Abhijit M. Adagule a/w Ketaki Patil, Manjiri Kulkarni, Ketan Patil, Vaishnavi Inamdar for the Respondent – Kolhapur Municipal Corporation.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 14th JULY, 2026.

PRONOUNCED ON : 06th AUGUST, 2026.

JUDGMENT :-

. The petitioner-contractor seeks appointment of sole arbitrator by invoking Section 11 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the Act').

2. The petitioner was awarded a contract by the respondent-Corporation for augmentation of water supply system for Kolhapur city from Kallamwadi Dam as source, vide agreement executed on 22.08.2014. The project was to be completed within 27 months, but the extension was given from time to time. The respondent is alleged to have deducted the amount and wrongly recovered the payments. The

petitioner claimed amount of Rs. 260 Crores from the respondent, which was denied. The petitioner issued a notice on 26.09.2025 invoking clause of arbitration and calling upon the respondent to respond for appointment of sole arbitrator. No response was given by the respondent. Hence, petitioner has approached this Court.

3. The respondent has filed affidavit-in-reply to oppose the claim in the petition. The lapses are attributed to the petitioner for incurring penalty. The petitioner is alleged to have committed breach of contract. The Municipal Commissioner is stated to be the sole arbitrator as per the contract and his impartiality cannot be doubted. It is stated that only remedy available to the petitioner is under Section 13 or 14 and the present petition is premature. The plea of estoppel and waiver has also been pressed into service.

4. Learned counsel appearing for both the sides advanced the submission in tune with their pleadings. The learned counsel for the petitioner has relied on the judgment of the Hon'ble Apex Court in **Bhadra International (India) Pvt. Ltd. & Ors. vs. Airport Authority of India** (2026) SCC Online SC 7. Learned counsel for the respondent has relied upon the judgment of **Central Organisation for Railway Electrification Vs. M/s. ECI Spic Smo MCML (JV) a Joint Venture**

Company (Civil Appeal Nos. 9486-9487 of 2019). My attention is adverted to various provisions of the Act.

5. Undisputedly, the arbitration agreement exists between the parties.

The relevant clause reads as under :-

“**5.4.** In case any dispute or difference shall arise between the employer or the engineer on his behalf and the Contractor touching or concerning this contract or the construction, meaning, operation or effect thereof or any clause herein contained or as to the rights, duties or liabilities of the parties hereto respectively or of the Engineer under or by virtue of these presents or otherwise or touching the subject matter of these presents or arising out of or in relation thereto (except as to matters left to the sole discretion of the engineer) the same shall be referred to the arbitration of a single arbitrator. The only sole arbitrator shall be the Municipal Commissioner, Kolhapur Municipal Corporation, Kolhapur.”

6. The Municipal Commissioner of the Kolhapur Municipal Corporation has become *de jure ineligible* as he falls under the following categories of 7th Schedule, which reads as under :-

“1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.

5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.

12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

16. The arbitrator has previous involvement in the case.”

7. Admittedly the sole arbitrator is an employee of respondent – Corporation. He is concerned with administration of the Corporation. He is signatory to the tender document and agreement. He is instrumental in floating the tender process for selection of the petitioner. His involvement in the tender process, contract and supervision over work cannot be discarded. The likelihood of bias cannot be ruled out.

8. The plea raised by the respondent regarding estoppel and waiver is misplaced due to following provision of the Act :-

“12(5). Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

PROVIDED that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.”

9. The petitioner has objection for the sole arbitrator which is agitated at the threshold. There is no point in asking the parties to go on with the arbitration and thereafter to permit them to raise the challenge under Section 13 or 14 of the Act. In given circumstances, it would be sheer waste of time, money and energy to relegate the petitioner to challenge arbitrator at any subsequent stages of the proceedings or after

the pronouncement of Award before the Court.

10. As the judgment of Constitution Bench comprising of five learned Judges of the Apex Court in **CORE** (supra) is prior in time, I propose to consider it before the judgment cited by the respondent in case of **Bhadra International** (supra).

11. In **CORE** (supra), the issues mentioned in paragraph no.14 were referred for consideration. It was not a case of appointment of sole arbitrator. The larger Bench upheld the decisions of Apex Court in **TRF Ltd. vs. Energo Engineering Projects Ltd.** (2017) 7 SCR 409 and **Perkins Eastman Architects DPC vs. HSCC (India) Ltd.** (2019) 17 SCR 275. It is relevant to reproduce the following extract :-

“**6.** In **TRF Ltd v. Energo Engineering Projects Ltd.** (2017) 7 SCR 409, the purchase order issued by the respondent to the appellant contained an arbitration clause that stated that any dispute or difference between the parties in connection with the agreement shall be referred "to sole arbitration of the Managing Director of Buyer or **his nominee.**" After a dispute arose between the parties about the encashment of the bank guarantee, the Managing Director of the respondent appointed a former judge of this Court as the sole arbitrator in terms of the arbitration clause. The issue before the Bench of three Judges was whether the Managing Director was eligible to nominate a sole arbitrator because of Section 12(5) of the Arbitration Act. The Court distinguished the situation where both the parties appoint their arbitrators from a situation where a person ineligible to be appointed as an arbitrator nominates a sole arbitrator:

"53. [...] when there are two parties, one may nominate an arbitrator and the other may appoint another. That is

altogether a different situation. If there is a clause requiring the parties to nominate their respective arbitrator, their authority to nominate cannot be questioned. What really in that circumstance can be called in question is the procedural compliance and the eligibility of their arbitrator depending upon the norms provided under the Act and the Schedules appended thereto. But, here is a case where the Managing Director is the "named sole arbitrator" and he has also been conferred with the power to nominate one who can be the arbitrator in his place. Thus, there is subtle distinction."

7. The Court relied on the maxim *qui facit per alium facit per se* (what one does through another is done by oneself) [As applied by this Court in *Pratapchand Nopaji v. Kotrike Venkata Setty*, (1975) 2 SCC 208 (9)] to hold that a person who becomes ineligible to be appointed as an arbitrator cannot nominate another person as an arbitrator:

"57. [...] once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. ...once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated..."

(emphasis supplied)

8. In *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* (2019) 17 SCR 275 the arbitration clause stipulated that disputes or differences between the parties to the contract "shall be referred for adjudication through arbitration by a **sole arbitrator appointed by the CMD HSCC** within 30 days from the receipt of request from the Design Consultant." The Bench of two Judges held that the test to determine the possibility of bias is directly relatable to the interest the person appointing

an arbitrator has in the outcome of the dispute. The Court held that a person having an interest in the dispute "cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator."

12. My attention is adverted to paragraph nos. 74 and 75 to buttress that the remedy for the petitioner is to approach arbitral Tribunal challenging Arbitrator or to take recourse to Section 34. Following are the paragraph nos. 74 and 75 which read thus :-

"74. Under Sections 12(1) and 12(5), the Arbitration Act recognises certain mandatory standards of independent and impartial tribunals. The parties have to challenge the independence or impartiality of the arbitrator or arbitrators in terms of Section 12(3) before the same arbitral tribunal under Section 13.140 If the tribunal rejects the challenge, it has to continue with the arbitral proceedings and make an award. Such an award can always be challenged under Section 34. However, considerable time and expenses are incurred by the parties by the time the award is set aside by the courts. Equal participation of parties at the stage of the appointment of arbitrators can thus obviate later challenges to arbitrators.

75. Independence and impartiality of arbitral proceedings and equality of parties are concomitant principles. The independence and impartiality of arbitral proceedings can be effectively enforced only if the parties can participate equally at all stages of an arbitral process. Therefore, the principle of equal treatment of parties applies at all stages of arbitral proceedings, including the stage of the appointment of arbitrators."

13. The Hon'ble the Chief Justice of India and two learned Judges gave a common opinion. It is relevant to refer paragraph 168, which reads as

under:-

“168. In the present reference, we have upheld the decisions of this Court in TRF (supra) and Perkins (supra) which dealt with situations dealing with sole arbitrators. Thus, TRF (supra) and Perkins (supra) have held the field for years now. However, we have disagreed with Voestalpine (supra) and CORE (supra) which dealt with the appointment of a three-member arbitral tribunal. We are aware of the fact that giving retrospective effect to the law laid down in the present case may possibly lead to the nullification of innumerable completed and ongoing arbitration proceedings involving three-member tribunals. This will disturb the commercial bargains entered into by both the government and private entities. Therefore, we hold that 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 only applies to three-member tribunals.”

14. A separate but concurring opinion is rendered by His Lordship Hon’ble Shri Hrishikesh Roy, J. Reliance is placed on the following paragraph.

“32. What follows from the above is that if the Arbitrator has any relationship with any of the parties that raises a reasonable apprehension of bias, such an arbitrator can anyway be *de jure* barred under Sections 12 and 14, read with the Fifth and the Seventh Schedules of the Arbitration Act. Post-appointment also, a challenge can be made under Section 13(2) of the Arbitration Act against appointment. It is also possible to finally set aside an award for procedural violations, under Section 34(2)(iii) or 34(2)(v) of the Arbitration Act.”

15. Further concurring opinion was rendered by Lordship Hon’ble Shri. Pamidighantam Sri Narsimha, J. Reliance is placed on the following paragraphs :-

“22.1 The second category is under Section 12(5) which declares certain persons to be 'ineligible' to be appointed as arbitrators. These ineligibilities are enlisted in the Seventh Schedule. The provision itself stipulates that such ineligibility is notwithstanding any prior agreement to the contrary. In these situations, the ineligibility of the person to act as an arbitrator is a matter of law and goes to the root of their appointment⁵². As they are *de jure* unable to perform their function, their mandate automatically terminates under Section 14(1)(a) and the appointment need not be challenged before the arbitral tribunal under Section 13. The parties can apply to the court under Section 14(2) for a decision on the termination of the arbitrator's mandate and appointment of a substituted arbitrator. The only way for parties to by-pass such ineligibility, as provided in the proviso, is to enter into an express agreement in writing, subsequent to the disputes having arisen, to waive the applicability of Section 12(5).

23. The difference between these categories is important to bear in mind. In the former situation, there is no bar to the appointment itself, but the appointment may later be challenged before the arbitral tribunal. On the other hand, in the latter situation, the Act places an express bar on the appointment of certain 'ineligible' persons as arbitrators, notwithstanding any prior agreement to the contrary. Their appointment is invalid from the very beginning, and in the application before the court under Section 14, the only question is whether the arbitrator falls under one of the categories of the Seventh Schedule and whether there is an agreement waiving the applicability of Section 12(5) in accordance with the proviso.”

16. The directions given by the Apex Court in above judgment would apply to three member Tribunal. I find that facts of the case at hand are distinguishable and no benefit of the judgment can be given to the respondent. It cannot be countenanced that petition is premature and

remedy is to take recourse to Section 12 r/w 13(2) or Section 34(2)(iii) or 32(2)(v) of the Act.

17. The petitioner has relied on the latest judgment in case of **Bhadra International** (supra) rendered by two Hon'ble Judges. In that case, the arbitrator was to be appointed by the Chairman of Airport Authority of India – respondent therein. At the outset, it is relevant to consider paragraph no.108 which is as follows:-

“108. The Constitution Bench in CORE II (supra) affirmed the aforementioned decisions and reiterated that the ineligibility of a person to act as an arbitrator is a matter of law and goes to the root of the appointment. Thus, when an arbitrator is *de jure* unable to perform his function, his mandate would be automatically terminated under Section 14(1)(a), and the parties would be within their rights to apply to the court under Section 14(2) for termination of the arbitrator's mandate and appointment of substituted arbitrator.”

18. The principles expounded are recorded in the following paragraphs:-

“**61.** In the aforesaid context, it would be apposite to briefly explain what constitutes as *de jure* ineligibility under Section 12(5). The expression *de jure* denotes a condition rooted in strict compliance with the requirements of law. *De jure* inability refers to a situation in which an arbitrator is legally incapable of performing his functions and is, by operation of law, barred from continuing in office. Such inability strikes at the very root of the arbitrator's authority to act, thereby affecting his inherent capacity to discharge his functions as an arbitrator. It is this legal incapacity, arising from statutory disqualifications, that results in the termination of the "mandate of an arbitrator"

under Section 14(1) (a) of the Act, 1996.

62. *De jure* inability referred to under Section 14(1)(a) may arise from the provisions of the Act, 1996, or from any other existing law that renders an arbitrator legally incapable of performing his functions. As regards *de jure* ineligibility, it flows from sub-section (5) of Section 12 read with the Seventh Schedule, which disqualifies certain persons from being appointed or continuing as arbitrators.

63. In other words, the ineligibility under Section 12(5) precedes *de Jure* inability under Section 14(1)(a). In other words, *de jure* ineligibility is the specie and *de jure* inability is the genus. To put this in context, *de jure* inability is determined when an aggrieved party is able to indicate that the circumstances under the Seventh Schedule have been met.

64. It would be worthwhile to refer to the observations made by this Court in *HRD Corpn v. GAIL (India) Ltd.*, (2018) 12 SCC 471. It was observed thus:-

"12. After the 2016 Amendment Act, a dichotomy is made by the Act between persons who become "ineligible" to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1) (a), he then becomes *de jure* unable to perform his functions inasmuch as, in law, he is regarded as "ineligible". [...]"

65. The Madras High Court in *Clarke Energy India Pvt. Ltd. v. SAS EPC Solution Pvt. Ltd.*, 2021 SCC OnLine Mad 6121, observed thus:-

"22. *Turning to de jure inability to perform functions, it should be noted at the threshold that the expression is not defined in the Arbitration Act. The word 'de jure' in*

Latin means "as a matter of law". It has been defined in Black's Law Dictionary, 11 Edition (2019), as "existing by right or according to law". Thus, it appears that the expression de jure applies undoubtedly to legal disability. One illustration of legal disability would be if the arbitrator is ineligible in terms of the Seventh Schedule. This was expressly dealt with by the Hon'ble Supreme Court in HRD Corporation as well as Bharat Broadband. [...] However, ineligibility is only one illustration of de jure inability to function. It is conceivable that an arbitrator may be afflicted by some form of cognitive impairment. If such cognitive impairment is serious enough to lead to an inference that such arbitrator is not of sound mind, whether on account of schizophrenia, Alzheimer's disease or the like, as understood in the Indian Contract Act, 1872, it would result in de jure inability to function even if the arbitrator concerned declines to withdraw. Less serious forms of cognitive impairment, such as bipolar disorder and the like, may, on the other hand, may pose greater challenges. Besides, an arbitrator may be adjudged insolvent after entering upon reference. By relying upon the applicable insolvency statute, it could be contended with a fair measure of justification that he is de jure unable to function."

(Emphasis supplied)

19. The following conclusion is recorded by the Court.

"123. A conspectus of the aforesaid detailed discussion on the position of law as regards Section 12 of the Act, 1996, is as follows:-

- i. The principle of equal treatment of parties provided in Section 18 of the Act, 1996, applies not only to the arbitral proceedings but also to the procedure for appointment of arbitrators. Equal treatment of the parties entails that the parties must have an equal say in the constitution of the arbitral tribunal.

ii Sub-section (5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be *ex facie* invalid.

iii. The words "*an express agreement in writing*" in the proviso to Section 12(5) means that the right to object to the appointment of an ineligible arbitrator cannot be taken away by mere implication. The agreement referred to in the proviso must be a clear, unequivocal written agreement.

iv. When an arbitrator is found to be ineligible by virtue of Section 12(5) read with the Seventh Schedule, his mandate is automatically terminated. In such circumstance, an aggrieved party may approach the court under Section 14 read with Section 15 for appointment of a substitute arbitrator. Whereas, when an award has been passed by such an arbitrator, an aggrieved party may approach the court under Section 34 for setting aside the award.

v. In arbitration, the parties vest jurisdiction in the tribunal by exercising their consent in furtherance of a valid arbitration agreement. An arbitrator who lacks jurisdiction cannot make an award on the merits. Hence, an objection to the inherent lack of jurisdiction can be taken at any stage of the proceedings."

20. I propose to follow the aforementioned principles and especially clauses (iv) and (v) referred above. The mandate of the sole arbitrator in the present case stands terminated automatically by implication of Section 12(5) of the Act. The petition is bound to succeed. The

appointment of the sole arbitrator - Municipal Commissioner is *ex facie* invalid.

21. In view of the above, it is expedient to pass following order :-

ORDER

- (i) The Arbitration Petition is allowed.
- (ii) Hon'ble Shri. Justice Tanaji Vishwas Nalawade (Retd.) is appointed as the sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above. The contact details of the Arbitrator are as under:-

Address	: Flat No.109, A Wing, Meera Bhakti Apartment, Behind D Mart Mall, Rankala, Kolhapur.
Mobile No.	: 8830970527
Email ID :	: tanaji.v.nalawade@gmail.com

- (iii) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of one (01) week from the date of uploading of this order. The petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this order.
- (iv) Seat of the arbitration would be governed by the provisions of the agreement executed between the parties.

(v) Learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Respondent.

(vi) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by him, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers, if any, of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration.

(vii) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

22. All contentions are expressly kept open to be agitated before the Arbitral Tribunal appointed as above.

23. With the above directions, Arbitration Petition stands disposed of accordingly.

(SHAILESH P. BRAHME, J.)