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Arb. Appeal No.14 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2025

CORAM

THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Arb Appeal No.14 of 2025
and CMP No.6208 of 2025

- 1.The Chairman,
Puducherry Housing Board,
Anna Nagar, Nellithoppe,
Puducherry – 605 005.
- 2.The Secretary,
Puducherry Housing Board,
Anna Nagar, Nellithoppe,
Puducherry – 605 005.
- 3.The Executive Engineer,
Puducherry Housing Board,
Anna Nagar, Nellithoppe,
Puducherry – 605 005.

Appellant(s)

Vs.

- 1.Mr.Justice K.P.Sivasubramaniam
No.47, Pulla Avenue,
Shenoy Nagar,
Chennai – 600 030.



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2.Sri Pathy Associates Private Limited,
Rep. by its Chairman/Authorised Signatory,
Sekar, Civil Engineering Contractors,
No.62, Thanga Perumal Koil Street,
Erode - 638 001.

Respondent(s)

For Appellant(s):

Mr.T.M.Naveen

ORDER

(Order of the Court was made
by the Hon'ble Chief Justice)

Notice be issued to respondent No.2, returnable on 21.04.2025.

2. We find respondent No.1 is a former Judge of this Court. We see no reason why an arbitrator should be made party to any arbitral proceedings, unless allegations as instantiated in Rule 5(iv) of the Madras High Court (Arbitration) Rules, 2020 [the Rules] are made out and/or personal allegations of *mala fide* are made against the arbitrator that he has to defend.



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3. The Madras High Court, in exercise of the powers conferred under

Section 82 of the Arbitration and Conciliation Act, 1996 [the Act], framed the Madras High Court (Arbitration) Rules, 2020.

4. Rule 5 of the said Rules postulates the filing procedure and Clauses

(iii) and (iv) thereof, which are relevant, are reproduced hereunder:

“5. Filing procedure:

*(i) ****

*(ii) ****

(iii) Subject to sub-rule (iv), the sole arbitrator or arbitrators constituting the Arbitral Tribunal shall not be added as respondent or respondents. However, the petitioner shall give the names and the addresses for services of the sole arbitrator or all the arbitrators constituting the arbitral tribunal.

(iv) Where allegations (including but not limited to proceedings under Section 14 and clause (i) of explanation 1 of sub-section 2 (b) of Section 34) are made against one or more arbitrators, all the arbitrators shall be made respondents.”

[emphasis supplied]

5. A bare perusal of the said provision makes it quite vivid that the sole arbitrator or arbitrators constituting the Arbitral Tribunal shall not be added as respondent or respondents, except as contemplated under Rule 5(iv) of the Rules, which mandates that where allegations, including but not limited to proceedings under Section 14 of the Act and Clause (i) of Explanation 1 of Section 34(2b) of the Act, are made against one or more



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arbitrators, all the arbitrators shall be made respondents.

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6. Section 14 of the Act deals with failure or impossibility to act and governs situations where the mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator; where a party applies to the court to decide on the termination of the mandate; and where the arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator.

7. The other exception delineated in Clause (i) of Explanation 1 of Section 34(2b) of the Act reads as under:

“34. Application for setting aside arbitral award.—

*(1) ****

(2) An arbitral award may be set aside by the Court only if-

*(a) ****

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.”

[emphasis supplied]



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8. When such is the mandate of the Act and the Rules framed thereunder, it is not known why in almost all arbitration matters the arbitrator is arrayed as a party respondent in a routine manner without an averment to the effect that Rule 5(iv) of the Rules is attracted or any personal allegation of *mala fide* is made against the arbitrator that he has to defend.

9. At this juncture, it is apposite to refer to a judgment of a Division Bench of this Court in ***Kothari Industrial Corporation Limited v. Southern Petrochemicals Industries Corporation Limited***¹, wherein it has been held as under:

“2. For a start, the name of the second respondent is deleted from the array of parties. It is a pernicious practice in this court to implead arbitrators or arbitral tribunals when there is no need to do so. Often, arbitrators are embarrassed upon receipt of notice. It is only in a rare case when a personal allegation is made against an arbitrator may such arbitrator be impleaded. Just as in case of a revision or an appeal the lower forum or the Judge manning the lower forum is not impleaded as a party, in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, the arbitrator or the members of the arbitral tribunal are utterly unnecessary parties unless specific personal allegations are levelled against them that would require such persons to answer the allegations.”

[emphasis supplied]

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WEB COPY 10. In our view, no arbitrator should be arrayed as a formal party to any arbitral proceedings.

11. The Registry shall ensure that no arbitrator is made as a party to arbitral proceedings, except in cases enumerated under Rule 5(iv) of the Rules or where personal allegations of *mala fides* are alleged against the arbitrator. A copy of this order shall also be circulated to all the District Courts so that they shall also follow this dictum.

Stand over to 21.04.2025.

(K.R.SHRIRAM, C.J.)

(MOHAMMED SHAFFIQ, J.)

17.03.2025

Note to Registry:

Mark a copy of this order to:

(1) The Registrar General,
High Court, Madras.

(2) The Registrar (Judicial),
High Court, Madras.

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