



ARBITRATION AND CONCILIATION

Karnataka High Court Reins in Arbitrator Overreach: A Check on Unilateral Appointments and Procedural Misuse

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Introduction

The Karnataka High Court in the case of *Smt. Manjula v. Shriram Transport Finance Co. Ltd*^[1] has reaffirmed the primacy of procedural fairness and the rule of law in arbitration. The Court emphasized that an arbitrator named in a Section 21 notice under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) cannot assume jurisdiction, initiate reference, or pass orders without the other party’s consent or a formal appointment under Section 11. The arbitration proceedings were quashed due to unilateral appointment, premature exercise of jurisdiction, and abuse of process.

Factual Background

The petitioners, Smt. Manjula and her son approached the Karnataka High Court under Article 226 of the Constitution, challenging the initiation of arbitration proceedings by *Shriram Transport Finance Co. Ltd* (hereinafter referred to as “Shriram”) against them. They were the legal heirs of late Manjunath, the borrower under two vehicle loan agreements. Despite Manjunath’s death, Shriram proceeded to invoke arbitration by issuing a Section 21 notice dated 27 July 2019. However, the appointed arbitrator had already passed an order under Section 17 of the Arbitration and Conciliation Act, 1996 on 12 July 2019, before any valid invocation or appointment, directing the seizure of the vehicles, thus acting before the arbitration was formally initiated. The order was passed before the notice was issued, indicating a procedural flaw.

The petitioners argued that the arbitrator was not validly appointed and had no jurisdiction to pass orders affecting their rights, especially since they were not signatories to the arbitration agreement.

Legal Issues Before the Court

1. Whether the unilateral appointment of an arbitrator by *Shriram*, without consent or court intervention, was valid.
2. Whether the arbitrator could exercise powers under Section 17 before being formally appointed.
3. Whether police enforcement of the arbitrator’s order constituted misuse of state machinery, especially given that the arbitrator had not been formally appointed.
4. Whether a writ petition under Article 226 is maintainable against a private finance company in such a case.

Rival Contentions

Petitioners’ Submissions: The petitioners argued that the arbitrator’s order dated 12 July 2019 was invalid as it was passed before the issuance of any Section 21 notice or formal appointment. As legal heirs, not party to the arbitration agreement, they could not be subjected to arbitral proceedings or deprived of their property through interim orders. They further alleged that the use of police to enforce an invalid arbitral order was a gross misuse of public power.

Respondents’ Submissions: *Shriram* contended that the arbitration clause in the loan agreements permitted such an appointment. They defended the Section 17 order as a valid exercise of interim power and maintained that the arbitration process was lawfully initiated. On the maintainability of the writ, they argued that, being a private entity, *Shriram* was not subject to the writ jurisdiction of the High Court.

Court’s Analysis and Findings

• Invalid and Unilateral Appointment of Arbitrator:

The Court found that *Shriram* failed to prove a valid arbitration agreement that permitted unilateral appointment. Citing *Perkins Eastman Architects DPC v. HSCC (India) Ltd*.^[2], it reiterated that such appointments by a party with dominant bargaining power are impermissible. There was no mutual consent nor an institutional or judicial appointment under Section 11.

“The appointment of the 2nd Respondent as an Arbitrator by *Shriram* is unilateral in nature, which is not permissible.”

• Arbitrator Acted Without Jurisdiction:

The arbitrator passed a Section 17 order before any valid reference existed, thereby exceeding his statutory powers. The Court

emphasized that merely being named in a Section 21 notice does not grant an arbitrator jurisdiction unless the other party consents or the appointment is made through proper legal channels.

“A person who is the named Arbitrator in a notice issued under Section 21... cannot enter reference and pass orders without the other person consenting thereto, or without an order of appointment... under Section 11.”

- **Misuse of State Machinery for Coercive Enforcement:**

The Court criticized the enforcement of the invalid order using police machinery, holding that this amounted to procedural abuse. It described the arbitrator’s conduct as biased and unfit, directing the Director General of Police to conduct an inquiry into the involvement of law enforcement.

“An Arbitrator is not a stooge for any party, nor is he a rubber stamp... In the present case... the 2nd Respondent has acted as a stooge and rubber stamp of Shriram and has been more loyal than the king.”

- **Maintainability of Writ Petition:**

Although *Shriram* is a private company, the Court held that a writ petition was maintainable in view of the involvement of public authorities in enforcing a private dispute. It emphasized that constitutional remedies cannot be ousted where public power is misused.

“If a Constitutional Court does not come to the rescue of the Petitioners, that would amount to a denial of justice.”

Key Judicial Findings

1. **No Arbitral Authority Without Valid Appointment** – Arbitrators cannot assume jurisdiction or pass orders unless formally appointed through mutual consent or by a court/institution under Section 11. The Court specifically noted that the arbitrator’s actions were premature and unauthorized.
2. **Unilateral Appointments Are Void** – Particularly in unequal bargaining relationships, unilateral appointments are impermissible and unenforceable.
3. **Legal Heirs Not Automatically Bound** – Non-signatory legal heirs are not bound by arbitration clauses unless validly substituted and with their consent.
4. **Abuse of Arbitration as a Tool of Coercion** – The Court condemned the misuse of arbitration clauses to enforce recovery through coercive mechanisms and bypass legal procedures.
5. **Judicial Superintendence Remains Intact** – Articles 226 and 227 empower constitutional courts to intervene in private arbitrations that involve procedural or jurisdictional abuse, especially where state authority is involved.

Legal Significance

This decision reinforces critical safeguards in the Indian arbitration regime. It reaffirms that:

- Arbitrators cannot act without a formal and consensual appointment.
- Legal heirs or third parties not party to the arbitration agreement are not automatically bound.
- Judicial writ powers remain a vital check against coercive and extra-legal enforcement tactics.

Particularly in the context of consumer finance and lending, this judgment signals a shift toward greater accountability and procedural rigor in arbitration practices. It is also a warning against creating “private arbitration cartels” that operate without judicial oversight. It is also a warning against creating “private arbitration cartels” that operate without judicial oversight.

Conclusion

The Karnataka High Court’s ruling in *Smt. Manjula v. Shriram Transport Finance Co. Ltd.* marks a pivotal intervention in India’s arbitration jurisprudence. It emphasizes that arbitration, while a private mechanism, cannot function outside the bounds of law and due process. The decision promotes fairness, checks misuse of power, and preserves the sanctity of the arbitral process by reasserting the judiciary’s supervisory role.

As India aspires to be an arbitration-friendly jurisdiction, this ruling is a timely reminder that the credibility of arbitration lies in efficiency and in the integrity of the process itself. For further details, write to us at: contact@indialaw.in

[1] *Smt. Manjula v. Shriram Transport. Finance. Co. Ltd.*, W.P. No. 10493 of 2020 (KAR HC)

[2] *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760

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