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 ISSN: 2582-6433

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Avinash Kumar

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PERKINS EASTMAN ARCHITECTS DPC & ANR. VS HSCC (INDIA) LTD.

AUTHORED BY - OINDRILA MITRA & PARTH SRIVASTAVA,
KIIT School of Law, Bhubaneshwar, KIIT Deemed University.

ABSTRACT

The case *Perkins Eastman Architects DPC & Another v. HSCC (India) Ltd.* (2019) addresses significant issues related to the appointment of arbitrators under Indian arbitration law, particularly under the *Arbitration and Conciliation Act, 1996* (as amended in 2015). The dispute arose between Perkins Eastman Architects, a U.S.-based firm, and HSCC (India) Ltd., an Indian public sector company, over a contractual disagreement. HSCC, as per the terms of the contract, sought to appoint a sole arbitrator, who was an employee of the company, to resolve the dispute.

This ruling has far-reaching implications for the arbitration landscape in India, strengthening the principles of fairness and impartiality in the arbitral process and reinforcing the need for an independent arbitrator free from conflicts of interest. The decision is seen as a step forward in promoting confidence in India's arbitration regime, aligning it with international standards.

INTRODUCTION

Perkins Eastman Architects DPC & Another v. HSCC (India) Ltd., is a landmark judgement of the Supreme Court of India of the year 2019. It is a significant development in Indian arbitration law which goes to the roots of the problem which has been one of the subjects of controversy in arbitration practice - **unilateral appointment of arbitrators by an interested party**. The case affects the fundamental principles of **neutrality, impartiality, and equality** in the selection of arbitrators as well as strengthens the rights of parties to an arbitration in expecting a fair adjudicatory process free from bias or conflicts of interest. The controversy arose out of a contract dispute between Perkins Eastman Architects DPC, a United States-based architecture firm, and HSCC (India) Ltd., a public sector undertaking engaged in healthcare consultancy.

It was specified that the parties would arbitrate disputes, and HSCC was given unilateral power

 ISSN: 2582-6433

to appoint one single arbitrator. Perkins Eastman objected to the arrangement arguing that the fact that HSCC was a party to the dispute compromised the notion of fairness and neutrality of the arbitral process. Whether appointment by a party interested of sole arbitrator is valid under the **Arbitration and Conciliation Act, 1996** on the provisions especially in view of the 2015 amendment by incorporation of **Section 12(5)** was the question of law which had been hovering at the door steps of the Apex Court. This rule, which promotes impartiality, prohibits direct parties with an interest in the dispute from appointing arbitrators unilaterally, unless the party directly affected provides particular consent.

BACKGROUND

The **Perkins Eastman Architects DPC** is a design and architecture firm incorporated in the United States. The company has extensive experience in designing health and education facilities. **HSCC** is a public sector undertaking of the Government of India. HSCC is involved in consultancy services, mainly through the health sector. HSCC undertakes architectural designing, engineering, and project management for diverse healthcare projects pan-India. The two parties entered into an agreement where Perkins Eastman was to be appointed by HSCC for architectural consultancy work for a project on healthcare. Like most commercial contracts, the arbitration clause that provided all disputes arising to be dealt with through arbitration had been included in the contract.

The clause at issue was of a form whereby HSCC (India) Ltd. was handed a **unilateral discretion** to select the sole arbitrator in case any dispute arose between the parties. That kind of a clause which hands over exclusive arbitration selection rights to one party is fairly common in contracts involving a public sector entity or a large corporate. This is the type of clause that is usually considered to favor arbitration because it reduces the requirement of prolonged negotiations in the selection of an arbitrator. However, it does give rise to related questions of impartiality because the party able to select that arbitrator would have alleged unfair leverage within the framework of the arbitration process.

A dispute arose between the respondent Perkins Eastman and HSCC in the execution of the contract. The particulars of the dispute themselves formed no central issue of adjudication of the Supreme Court; instead, the matter in controversy was the matter of appointment of the arbitrator. Again, on the basis of the arbitration clause, HSCC attempted to single-handedly appoint a sole arbitrator for deciding its dispute with the respondent.

But Perkins Eastman objected to the appointment on the ground that it was unjust and against the **principle of neutrality and impartiality** of arbitration. They contended that HSCC being an interested party in the dispute, would not appoint an independent and impartial person as an arbitrator. So it was despatched to the Supreme Court of India for determination.

The 1996 Act was enacted initially without giving commensurate protection to the impartiality of arbitrators. Consequently, parties at a higher bargaining power either resorted to clauses in contracts that permitted unilateral appointments of the arbitral tribunal or simply proceeded to appoint the arbitrators themselves. Such practices have been criticized for long as running against the principles of fair arbitration since the appointing power exercised a great influence over the arbitral process.

Section 12(5) most clearly states:
The Fifth Schedule to the Act clearly puts persons with whom any relationship or any connection with the parties or the subject of dispute shall automatically debar them from nomination as arbitrators. It comprises anybody having some direct or indirect interest in the outcome of the dispute or having some prior relationship with one of the parties which may raise an apprehension of bias in his mind. Section 12(5) is the proviso which allows the disqualification only if dispensed with by explicit agreement in writing between the parties after the disputes have arisen. The arbitration became more normative by placing Section 12(5) in which the pre-condition of biasness of an arbitrator was removed and the independence of an arbitrator was ensured. Similarly, the Supreme Court has to face the same question of law in the case of **TRF Ltd. v. Energo Engineering Projects Ltd. (2017)** before arriving at the present judgment in the Perkins Eastman case. The arbitration clause in the TRF case stated that one party itself had also got a right to appoint an arbitrator and it being ineligible to act as the arbitrator himself could also appoint another.

Held, under Section 12(5) of the Act, that the right to appoint an arbitrator stood forfeited contemporaneously with the ineligibility of the party concerned to become an arbitrator. Further, it was held that allowing an ineligible person to make an appointment would defeat the very purpose of ensuring impartiality. Therefore, the above principle developed in case of TRF Ltd. was rightly applied in Perkins Eastman and thus it laid down that a party with an interest could not participate in the direct or indirect selection of an arbitrator.

JUDGEMENT

In its ruling, the Supreme Court ruled **in favor of Perkins Eastman**. It concluded that **HSCC (India) Ltd. was ineligible to unilaterally appoint an arbitrator because it held an interest in the resolution of the dispute**. HSCC's interest in the monetized resolution of the dispute was determinative of its ineligibility. The reasoning here is centered on a standard of neutrality and impartiality required for a fair arbitration process.

The Fifth Schedule sets out circumstances where an arbitrator has a relationship with either a party, their associates, or is interested in the resolution of the case through financial or personal interests. The Court determined that HSCC had an interest in the result of the resolution of the dispute. Because HSCC had an interest in the result of the dispute, it was ineligible to unilaterally appoint an arbitrator.

The Court explained that it is not right to allow one party, particularly a party with a direct, manifested interest in the dispute, to unilaterally appoint an arbitrator. It explained that if a party with substantial interests were to appoint an arbitrator, it would cause conflicts regarding that arbitrator's impartiality and independence. Surely an arbitrator, because of its appointment by the interested party, would be biased in favor of that party.

The judgment relies on **natural justice principles**, which rest on the notion that the adjudicator cannot have bias. An arbitrator appointed unilaterally by the interested party violates the tenets of natural justice and procedural fairness. As the Court states, the arbitration process is supposed to resolve disputes as an alternative process. Hence, these two parties in dispute must be neutral, for, without it, the entire arbitration process is encumbered. Last but least, the Court ensures neutrality is maintained so the integrity of arbitration is kept.

In Perkins Eastman, the Supreme Court expanded on the logic of TRF when it held that HSCC, as a disqualified party under Section 12(5), could not elect an arbitrator unilaterally. The Court further clarified that a party to a dispute, with a vested interest in the case, could not elect an arbitrator for either itself or on behalf of another.

The Supreme Court also tackled the issue of consent and waiver under Section 12(5). Section 12(5) provides the ability for arbitrators to be disqualified pursuant to section 12(5) to be waived by both parties providing express written consent "after the dispute has arisen." In this

 ISSN: 2582-6433

case, neither party provided such written consent that waived the requirements of Section 12(5). Thus, the appointment of the arbitrator by HSCC without Perkins Eastman's consent was viod ab intio.

ANALYSIS

The fundamental idea that guided the Supreme Court's decision was that arbitration, regarded as an alternative method of dispute resolution, must be **neutral and independent**, just as judges must not be impartial. Arbitrators are essentially judges who should not display bias or have a conflict of interest affecting their impartiality. The decision illustrates that permitting an interested party to appoint the arbitrator unilaterally both contravenes this principle and jeopardizes the basis of the arbitration process as being fair, reasonable and impartial.

The Perkins Eastman case applied this exact same reasoning to conclude that HSCC, which was disqualified under Section 12(5) due to its interest in the dispute, is not allowed to make their own appointment based precisely on their disqualification. When an individual cannot be an arbitrator due to a conflict of interest, the apparent neutrality of an appointment of another person by that individual is still suspect, and the arbitrator's impartiality expected under the 2015 amendments would be violated.

This decision is particularly significant for arbitration in India in general, but is most relevant in the context of contracts with public sector undertakings (PSUs) or the government, as those contracts often contain clauses that allow either party to unilaterally make an appointment of an arbitrator. As many such contracts are skewed towards the government or PSUs, it is evident that there could be a violation of the fairness of the arbitral process based on such clauses. The Perkins Eastman judgment confirms that, even in the case of an arbitration clause that gives unilateral appointment rights, appointments must still comply with the notions of fairness and impartiality that were added improvements to the process in the **2015 amendments**.

The judgement serves as a cautionary note, for while arbitration and enforcement of arbitration being a private process for resolution of disputes, it is not removed from the natural justice paradigms and terms of public policy. The Court noted the fairness, and, as is uncontestably required, that the arbitral process must be free and apparent, or the process would therefore have 'the potential to compromise part of the integrity and credibility of arbitration as an alternative to litigation.'

ISSN: 2582-6433

The Perkins Eastman judgment is potentially important regarding the 'drafting of arbitration clauses in contracts' - notably contracts with a public sector entity, or even in larger corporations who have, traditionally - even historically, reserved the right to make a unilateral appointment of an arbitrator. The judgment suggests the need for careful and deliberate consideration - particularly of arbitration clauses in contracts that contain unilateral appointment provisions. If unilateral appointment provisions exist - those may be suspect, at least, under Perkins Eastman as a decision precedent, walling out the validity of provisions unless both parties consent in writing to arbitrator appointments after the dispute arises.

This decision represents an important development in the context of commercial arbitration and public sector undertakings, indicating a movement toward more equal systems of arbitration that will limit the influence that one party has over the makeup of the arbitral tribunal. Going forward, the parties to the contract will need to draft arbitration clauses in configurations that comply with the directions implied by the Supreme Court to reflect impartiality and neutrality, or risk having their clauses invalidated.

CONCLUSION

The judgment in **Perkins Eastman Architects DPC & Another v. HSCC (India) Ltd.** will not be underestimated as it is a groundbreaking judgment of arbitration law in India, which reaffirms the paramount principles of impartiality, fairness, and independence in the arbitral process. The Supreme Court has taken a strong stance when it held that a party who has a direct stake in the outcome of a dispute cannot unilaterally appoint an arbitrator, thereby bolstering the integrity of arbitral proceedings. The judgment builds on the precedent set by **TRF Ltd. v. Energo Engineering Projects Ltd.** and extends its reasoning to prohibit unilateral appointments by interested parties that dilute the integrity of arbitration by positing that, regardless of the parties' prior agreement, the appointment of the arbitrator by the interested party was "against public policy."

The significance of this ruling, especially concerning obligations to arbitrate disputes on the part of public sector and government agencies, where institutions often state unilateral arbitration clauses, cannot be understated. The ruling implies precise standards about how such unilateral arbitration clauses react with the principles dictated by **Section 12(5)**, of the **Arbitration and Conciliation Act, 1996**, as amended by the **2015 amendments**, where it can be definitively stated that there cannot be even a perceptible conflict of interest, and that all arbitrators appointed are, must be, and must be perceived to be independent.

The Perkins Eastman judgment builds confidence in arbitration as a legitimate alternative to litigation by making the process clear and impartial; and most importantly, it necessarily acts as a protection against the coercive control that could be exercised by the party seeking the appointment of the arbitrator. The judgment enhances the parties' confidence in arbitration as a proper and desirable method of resolving disputes, rather than as an unpredictable and controlling disadvantage exercised by one party.

The Supreme Court's judgment undoubtedly contributes to what is a progressive and major step in arbitration law in India, developing an even greater fair and balanced context for commercial dispute resolution, particularly in those cases where public sector entities are involved.

REFERENCES

1. https://jgu.edu.in/mappingADR/perkins-eastman-architects-dpc-another-v-hscc-india-ltd/
2. https://www.barandbench.com/columns/unilateral-appointment-of-a-sole-arbitrator-exceptions-to-the-judgment-in-perkins-eastman-architects-dpc
3. https://www.mondaq.com/india/arbitration-dispute-resolution/878038/perkins-eastman-v-hscc-is-it-the-end-of-party-appointed-sole-arbitrators
4. https://www.legalserviceindia.com/legal/article-7609-case-analysis-perkins-eastman-architects-dpc-vs-hscc-india-limited-2019.html
5. https://journals.christuniversity.in/index.php/culj/article/view/2524
6. Perkins Eastman Architects D.P.C. v. H.S.C.C. (India) Ltd., 2019 S.C.C. Online SC 1517 (India).
7. The Arbitration and Conciliation Act, No.26, Acts of Parliament, 1996 (India)