
Unilateral Appointment of Sole Arbitrator: Kerala High Court Reaffirms Its Invalidity

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Introduction

In the case of *M.I. Mohammed v. HLL Life Care Ltd.* [2025:KER:38884], the Kerala High Court was once again called upon to decide the implications of the unilateral appointment of the sole arbitrator by one of the parties to an arbitration agreement. The High Court strictly followed the jurisprudence developed by the Supreme Court of India in relation to an invalid appointment under Section 12(5) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The High Court explained that an arbitral award arising from a unilateral appointment was *void ab initio*.

Brief Facts

The petitioner is a government contractor who entered into a contract dated 31 July 2013 with the first respondent, a Government of India enterprise. The agreement had an arbitration clause that allowed the Managing Director of the first respondent to appoint an arbitrator in the case of a dispute. Under this provision, the Managing Director had appointed a single arbitrator who subsequently proceeded to hold the proceedings and issue an award dated 18 August 2021 in the favour of the Petitioner.

The respondents, however, contested the award under Section 34 of the Arbitration Act in the Commercial Court. They argued that the arbitrator was not appointed mutually by both the parties, but only by their own Managing Director and was not therefore valid in the face of the law as enunciated by the Supreme Court, especially after the cases of *TRF Ltd. v. Energo Engineering Projects Ltd.* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* [(2020) 20 SCC 760].

Based on this argument, the Commercial Court dismissed the arbitral award, ruling that the appointment of the arbitrator was *void ab initio* and the arbitral proceedings were *non est*. The High Court upheld this order in O.P.(C) No. 316 of 2024. This led to the Petitioner requesting arbitration under Section 11(6) of the Arbitration Act to appoint a new arbitrator. It was also requested that the newly appointed arbitrator be directed to start proceedings at the point where the previous proceedings had ended as the evidence already adduced was voluminous.

Issues and Submissions

The principal issue before the Kerala High Court was whether the new arbitrator, appointed under Section 11(6) of the Arbitration Act, could be directed to rely on the evidence and materials recorded by the previous arbitrator, who was later disqualified. The Petitioner argued that a substantial amount of documentary and oral evidence had already been presented in the earlier proceedings, including the examination of three witnesses. Considering the time and expense involved, it was

suggested that the new arbitrator should be allowed to continue the proceedings from where they had left off.

The respondents argued that the previous proceedings were declared void ab initio by a competent court, preventing the use of earlier evidence in the new arbitration. They pointed to the Commercial Court's specific ruling that the award was *non est*, which rendered all prior proceedings legally invalid. Therefore, they claimed that the new arbitrator should restart the process without considering any previous record.

Both parties referred to Section 43(4) of the Arbitration Act in support of their respective positions. The section deals with the limitation period and the effect of termination of arbitral proceedings, but neither side could point to any precedent directly supporting the proposition of importing evidence from prior void proceedings into a fresh arbitration.

Findings of the Court

The Kerala High Court, after examining the arguments advanced by both sides, declined to issue any directive allowing the newly appointed arbitrator to adopt the evidence recorded during the previous arbitration. The High Court reiterated that the appointment of the erstwhile arbitrator was *void ab initio* and that the arbitral award was *non est*.

The High Court held that once such a finding had attained finality, the legal consequence was that all proceedings conducted by the improperly appointed arbitrator stood effaced in their entirety. The High Court was categorical that any direction seeking to resurrect the prior proceedings would run contrary to the binding orders of the Commercial Court and the High Court itself in earlier rounds of litigation.

While acknowledging the practical difficulties in repeating evidentiary processes, the High Court observed that procedural propriety must prevail. It emphasised that under the scheme of the Arbitration Act, it is not open to the High Court exercising jurisdiction under Section 11(6) to issue directions concerning the conduct of arbitral proceedings, particularly regarding evidentiary matters or admissibility of documents.

Instead, the High Court left the question of whether the previously recorded evidence could be considered or re-adduced to the discretion of the newly appointed arbitrator, to be decided in accordance with law.

Comment

The Kerala High Court's ruling in *M.I. Mohammed v. HLL Life Care Ltd.* affirms that arbitral appointments made in breach of Section 12(5) of the Arbitration Act are not merely irregular but are invariably void. Once an appointment is declared void from the outset, all subsequent proceedings, including evidence recording and the issuance of an award, become legally meaningless. The judgment aligns with the Supreme Court's jurisprudence after *Perkins* and *TRF Ltd.*, which clearly prohibit unilateral appointments by parties with a vested interest in the dispute's outcome.

The High Court's refusal to allow the new arbitrator to rely on previously recorded evidence, despite practical considerations such as volume and cost, highlights the importance of procedural fairness in arbitration. In doing so, the High Court confirms that expediency cannot override fundamental defects. A proceeding declared *non est* cannot be partially salvaged without compromising the binding nature of a judicial ruling.

At the same time, the High Court adopted a measured approach by avoiding the exclusion of the discretion of the newly appointed arbitrator. Looking ahead, this ruling acts as a cautionary reminder to parties, especially public sector entities, that procedural compliance in the appointment process is not merely a technicality but a jurisdictional requirement. It also emphasises the importance of establishing neutral appointment mechanisms, whether through independent designating bodies or arbitral institutions, to prevent challenges of this kind. For arbitrators, the decision highlights the need to thoroughly examine jurisdictional foundations before proceeding to hear and decide disputes.

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