

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

TUESDAY, THE 28TH DAY OF JUNE 2022 / 7TH ASHADHA, 1944

ARB.P. NO. 1 OF 2021

AGAINST THE JUDGMENT DATED 16.03.2016 IN AR 41/2015 OF HIGH COURT OF
KERALA

PETITIONER:

FLEMINGO DUTY FREE SHOP PRIVATE LTD
D-73/1, TTC INDUSTRIAL AREA,
MIDC-TURBHE, NAVI MUMBAI-400075,
REPRESENTED BY ITS AUTHORIZED SIGNATORY MR.NIXON VARGHESE.

BY ADVS.
G.HARIKUMAR (GOPINATHAN NAIR)
AKHIL SURESH
JAYAPRAKASH P. SEN (SR.)

RESPONDENT:

AIRPORTS AUTHORITY OF INDIA
CORPORATE HEADQUARTERS, RAJIV GANDHI BHAWAN, SAFDARJUNG
AIRPORT, NEW DELHI-110001,
REPRESENTED BY ITS AIRPORT DIRECTOR, CALICUT INTERNATIONAL
AIRPORT (P.O), KARIPUR,
MALAPPURAM-673647.

BY ADVS.
S.SUJIN
V.SANTHARAM

THIS ARBITRATION PETITION HAVING COME UP FOR ADMISSION ON
28.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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Arbitration Petition No.1 of 2021

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Dated this the 28th day of June, 2022

O R D E R

The Arbitration Petition is filed seeking an order for extension of period of arbitration on substitution of Arbitrator.

2. The reliefs claimed in the Arbitration Petition reads thus:-

“a) Declare that the mandate of the Arbitral Tribunal presided by the Learned Sole Arbitrator A.K. Singhal stands terminated in the arbitration matter of Flemingo Duty free Shop Private Limited vs. Airports Authority of India.

b) Appoint a Sole Arbitrator in place of Learned Sole Arbitrator A.K. Singhal for continuation of the arbitration matter of Flemingo Duty free Shop Private Limited v. Airports Authority of India.

c) Extend the time for completion of the arbitration proceedings in the arbitration matter of Flemingo Duty free Shop Private Limited vs. Airports Authority of India by a period of six months from the date of appointment of the new Sole Arbitrator.

*d) Grant the cost of the Application to the petitioner;
and
e) grant such other reliefs as may be deemed fit, just,
proper and necessary in the facts and circumstances of the
case.”*

3. The petitioner is engaged in the business of operation of duty free shops at various airports in Kerala. There arose disputes between the parties, which lead to conduct of arbitration proceedings as provided for in the agreement between them. The sole Arbitrator was appointed on 25.01.2016. The pleadings were complete on 14.09.2017. The period for completion of arbitration as provided under Section 29A (1) and (3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) expired. Even after the expiry of the term, the proceedings continued but, is not completed. Now the petitioner alleges bias on the part

of the Arbitrator. The petitioner has approached this Court seeking substitution of the Arbitrator and for extension of the period in terms of Section 29A (6) and (4) respectively, of the Act. The respondent opposes the prayer. The allegation of bias are denied. The jurisdiction of this Court to entertain an application under Section 29A is also challenged.

4. Heard the learned Senior Counsel Sri.J.P.Sen on behalf of the petitioner and learned Senior Counsel Sri.N.N.Sugunapalan, on behalf of the respondent.

5. The respondent raised a preliminary objection regarding the jurisdiction of the High Court to entertain a petition under Section 29 A of the Act. Under Section 29 A, power is conferred on the “Court”, and Section 2(e) defines “Court” as, principal Civil Court of original jurisdiction. Therefore, only the

District Court has the jurisdiction, is the contention. Such contention has already been negatived by a Division Bench of this Court in *Lots Shipping Company Limited v. Cochin Port Trust* [2020 (2) KLT 907]. The Division Bench held thus:-

“11. Taking note of the principle enunciated herein above and on the basis of the detailed analysis, we are inclined to hold that the term “court” used in Section 29(4) has to be given an contextual and purposive interpretation, which is to be in variance with the meaning conferred to the said term under Section 2(1)(e) (i) of the Act. The term “court” contained in Section 29(4) has to be interpreted as the 'Supreme Court' in the case of international commercial arbitrations and as the 'High Court' in the case of domestic arbitrations. Hence it is held that, either of the party will be at liberty to file an arbitration petition before the High Court under Section 29A(5) of the Act, seeking extension of time for continuance of the arbitration proceedings in exercise of the power conferred under Section 29A(4) of the Act, in the case of any domestic arbitration. The reference is answered accordingly.”

Therefore, the challenge against jurisdiction is liable to be rejected and I do so.

6. Whether allegation of bias could be a ground for substitution of Arbitrator under Section 29A(6), is the issue for determination.

7. For challenging an Arbitrator on the ground of bias, there is a specific provision in the Act viz. Section 12. Sections 13, 14 and 15 of the Act provide for various situations enabling substitution of Arbitrator:- (i) Under Section 13 when the Arbitrator withdraws when a challenge is raised on the ground of bias or lack of required qualifications, being the grounds stipulated under Section 12(3); (ii) On the grounds of failure or impossibility to act as mentioned in Section 14 (1)(a) and the Arbitrator withdraws from office or parties agree for termination of his mandate; (iii) Under Section 15 where under, for any reason other

than that provided under Sections 13 and 14, the Arbitrator withdraws from office, or the parties agree for determination of the Arbitrator.

8. Section 29A fixes a time limit for completion of arbitration proceedings and for passing the award. Except in the case of international commercial arbitration, the award is to be passed within 12 months from the date of completion of pleadings. The said period could be extended for a further period of six months on agreement between the parties. In terms of sub-section (4) of Section 29A, on failure to pass award within the period stipulated as above, the mandate of the arbitrator shall terminate, unless extended by the Court. The extension could either be prior to or after the expiry of the period stipulated. Extension can be granted by the Court on the application of any of parties, for sufficient cause. Sub-section 6 of Section 29A provides that, while extending the period, Court can

order substitution of the Arbitrator.

9. Section 29A has nine sub-sections. A reading of all the sub-sections of Section 29A indicate that, the Section deals with the time mandate for arbitral proceedings. In a request for extension of time, the Court looks into as to at whose instance the delay has occurred. Costs could be imposed on the party who was responsible for the delay. If delay was on the part of the Arbitrator, his fee could be reduced. Therefore, it is in the said context that the power of substitution of Arbitrator is vested in the Court.

10. As noticed supra, the other grounds of challenge against the Arbitrator, especially on the ground of bias, and consequential substitution of Arbitrator are dealt with under specific provisions of the Act. When specific provisions are incorporated in the Act for challenge against an Arbitrator and for substitution, allegation of bias cannot be raised as a

cause to seek substitution of Arbitrator under Section 29-A.

11. There is yet another circumstance to endorse such view. Sub-section (6) of Section 29A provides that, when there is a substitution of Arbitrator under the Section, the Arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and materials already on record. It is further provided that the substituted Arbitrator shall be deemed to have received the said evidence and materials on record. However, when Arbitrator is substituted under the other situations noticed supra, in terms of Section 15(3), the previous hearings held by the Arbitrator may be repeated at the discretion of the substituted Arbitrator, unless otherwise agreed to by the parties. There is a stark difference between the two. This fortifies the view that the request for substitution of an Arbitrator alleging bias will not come within the

scope of substitution under Section 29A(6) of the Act.

12. A similar view has been taken by the Delhi High Court in *NCC Ltd. v. Union of India* [2018 SCC online Delhi 12699] wherein it was held thus:-

“Section 29A of the Act is intended to sensitize the parties as also the Arbitral Tribunal to aim for culmination of the arbitration proceedings expeditiously. It is with this legislative intent, Section 29A was introduced in the Act by way of the Arbitration and Conciliation (Amendment) Act, 2015. This provision is not intended for a party to seek substitution of an Arbitrator only because the party has apprehension about the conduct of the arbitration proceedings by the said Arbitrator. The only ground for removal of the Arbitrator under Section 29A of the Act can be the failure of the Arbitrator to proceed expeditiously in the adjudication process.”

13. Therefore, the request of the petitioner for extension of period on substitution of the Arbitrator, is not liable to be considered.

14. During the course of the arguments, a query was put to the learned Senior Counsel for the petitioner as to whether, if the Court is not inclined to accept the prayer for substitution, whether the petitioner is pursuing the prayer for extension of time. After obtaining instructions, the learned Senior Counsel submitted before the Court that, the petitioner is not seeking for extension of time without grant of the prayer for substitution of Arbitrator.

15. Having found that the petitioner is not entitled to seek for substitution alleging bias against the Arbitrator in this proceedings, and in the light of the stand adopted by the petitioner as noticed above, the question of consideration of extension of time for completion of the arbitral proceedings under Section 29A does not arise.

16. As noticed first above, the pleadings were completed on 14.09.2017. The one year period and the

extendable period of six months are over as early as on 14.03.2019. There is no dispute between the parties that, if time is not extended in terms of Section 29A(4), the mandate of the Arbitrator has terminated. It is declared accordingly.

The Arbitration Petition is ordered as above.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge

APPENDIX OF ARB.P. 1/2021

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF JUDGMENT DATED 16.03.2016 IN AR NO.41 OF 2015 PASSED BY THIS HON'BLE COURT
Exhibit P2	A TRUE COPY OF LETTER DATED 25.01.2016 ISSUED BY THE RESPONDENT ALONG WITH ITS ANNEXURE
Exhibit P3	A TRUE COPY OF TRANSCRIPTION OF THE CROSS-EXAMINATION DATED 10TH JUNE 2021
Exhibit P4	A TRUE COPY OF TRANSCRIPTION OF THE CROSS-EXAMINATION DATED 11TH JUNE, 2021
Exhibit P5	A TRUE COPY OF THE EMAILS CORRESPONDENCE DATED 24TH FEBRUARY,2021 EXCHANGED BETWEEN THE ARBITRAL TRIBUNAL AND THE RESPONDENT TO THE EXCLUSION OF THE PETITIONER ALONG WITH TRAIL MAIL
Exhibit P6	A TRUE COPY OF LETTER DATED 6TH AUGUST,2020 SENT BY THE RESPONDENT TO THE ARBITRAL TRIBUNAL TO THE EXCLUSION OF THE PETITIONER
Exhibit P7	TRUE COPY OF ARBITRATION AND CONCILIATION AMENDMENT ACT,2015
Exhibit P8	TRUE COPY OF ARBITRATION AND CONCILIATION AMENDMENT AT 2019
Exhibit P9	A TRUE COPY OF ORDER DATED 6TH JANUARY 2017 OF THE ARBITRAL TRIBUNAL
Exhibit P10	A TRUE COPY OF ORDER DATED 2NE NOVEMBER 2017 OF THE ARBITRAL TRIBUNAL
Exhibit P11	A TRUE COPY OF ORDER DATED 18TH DECEMBER 2019. OF THE ARBITRAL TRIBUNAL
Exhibit P12	A TRUE COPY OF ORDER DATED 12TH FEBRUARY 2020. OF THE ARBITRAL TRIBUNAL

Exhibit P13 A TRUE COPY OF ORDER DATED 4TH MARCH 2021 OF THE
ARBITRAL TRIBUNAL

Exhibit P14 A TRUE COPY OF ORDER DATED 4TH MARCH 2021.OF THE
ABRITRAL TRIBUNAL
