



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 2ND DAY OF DECEMBER 2024 / 11TH AGRAHAYANA, 1946

RP NO. 1088 OF 2024

AGAINST THE JUDGMENT DATED 23.07.2024 IN WA NO.1600 OF
2022 OF HIGH COURT OF KERALA

REVIEW PETITIONER/1ST RESPONDENT :

P.V.GEORGE
AGED 78 YEARS
S/O.VARKEY,
PADATH HOUSE,
MATTATHOOT,
POST KODAKARA,
THRISSUR, PIN - 680684

BY ADV T.RAJASEKHARAN NAIR

RESPONDENTS/APPELLANTS AND RESPONDENTS 2 TO 4:

- 1 NATIONAL HIGHWAYS AUTHORITY OF INDIA
PIU, PALAKKAD, NO. 310-A,
CHANDRA NAGAR EXTENSION,
P.O. CHANDRA NAGAR,
PALAKKAD, PIN - 678007
- 2 THE ARBITRATOR
(NATIONAL HIGHWAYS ACT 1956) AND
THE DISTRICT COLLECTOR,
COLLECTORATE, THRISSUR,
PIN - 680001



3 THE SPECIAL TAHSILDAR(LA)
NHDP UNIT, THRISSUR, PIN - 680020

4 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

SMT.NISHA BOSE, SR.GOVERNMENT PLEADER

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
02.12.2024, ALONG WITH RP.1117/2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 2ND DAY OF DECEMBER 2024 / 11TH AGRAHAYANA, 1946

RP NO. 1117 OF 2024

AGAINST THE JUDGMENT DATED 23.07.2024 IN WA NO.1600 OF

2022 OF HIGH COURT OF KERALA

REVIEW PETITIONER/APPELLANT :

NATIONAL HIGHWAYS AUTHORITY OF INDIA
PIU, PALAKKAD, NO. 310-A,
CHANDRA NAGAR EXTENSION,
P.O. CHANDRA NAGAR, PALAKKAD
REPRESENTED BY THE PROJECT DIRECTOR,
PIN - 678007

BY ADV K.A.SALIL NARAYANAN
SRI.B.G.BIDAN CHANDRAN, STANDING COUNSEL

RESPONDENTS/RESPONDENTS:

- 1 P.V. GEORGE,
AGED 78 YEARS
S/O. VARKEY, PADATH HOUSE,
MATTATHOOR,
POST KODAKARA, THRISSUR,
PIN - 680684
- 2 THE ARBITRATOR (NATIONAL HIGHWAYS ACT 1956)
AND THE DISTRICT COLLECTOR,
COLLECTORATE, THRISSUR, PIN - 680001



3 THE SPECIAL TAHSILDAR
(LA) NHDP UNIT, THRISSUR, PIN - 680020

4 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

SMT.NISHA BOSE, SR.GOVERNMENT PLEADER

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
02.12.2024, ALONG WITH RP.1088/2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



"C.R"

ORDER

A.Muhamed Mustaque, J.

The National Highway Authority, the appellant in the Writ Appeal and the writ petitioner, who was the respondent in the writ appeal, have come up with these review petitions. We considered two questions in the writ appeal filed by the National Highway which are as follows;

- 1) Whether the Limitation Act would apply for arbitration under the National Highways Act, 1956.
- 2) Whether the writ petition is maintainable challenging a decision of the Arbitrator under the National Highway Act.

2. In the writ appeal, we answered the first question in favour of the respondent/writ petitioner, who was the claimant and we answered the second question in favour of the National Highway Authority of India (NHAI) holding that the writ petition is not maintainable challenging an award of the Arbitrator. The NHAI have come up with the review placing reliance on the



Division Bench judgment of this Court in W.A.No.226 of 2015,

K.Leela Vs. The District Collector [2015(2) KHC 813]

wherein this Court considered the question relating to the limitation in regard to the arbitration and held as follows:

“19. While considering the question of limitation, what will be the period for making a claim for higher compensation under the NH Act is also germane for consideration. As there is no specific period provided for making such a claim necessarily the residuary clause under Article 113 has to be applied, which is three years from the date when the right to sue accrues. In this case, right to sue accrued when the amount is determined by the competent authority under Section 3G(1) of the NH Act, i.e. on 16/04/2010. If the parties desire to proceed for arbitration, they have to file an application for referring the dispute for arbitration in terms of sub-section (5) which is akin to filing a suit within three years from the date when the amount is determined by the competent authority and informed to the land owner. If no such steps are taken within the said period, the Arbitrator is entitled to reject the claim as barred by limitation.

20. Though Arbitration under the NH Act is statutory, in so far as the 1996 Act is made applicable to such Arbitration, the Limitation Act equally applies and if under normal circumstances, a request to refer the dispute to Arbitration is filed beyond time, that is after a period of three years from the date on which the right to



sue accrued, the Arbitration has to be held to be beyond the period of limitation. The Apex Court has held that even in a petition filed under Section 11 of the 1996 Act, it shall be open for the Chief Justice or the designated Judge to verify whether the claim is hopelessly barred by limitation. Under such circumstances, it cannot be contended by the appellant that Limitation Act has no application at all."

3. This is the view contrary to our view in the writ appeal judgment. We note that the Division Bench in **Leela's** case (supra) had not adverted to Section 2(4) of the Arbitration and Conciliation Act, 1996 which specifically excluded applicability of limitation to arbitration under any other enactment. That means the Parliament consciously laid the law to exclude the applicability of limitation to arbitration under any other enactment. Since **Leela's** case(supra), this Court had no occasion to consider Section 2(4) of Part I of the Arbitration and Conciliation Act, 1996, we are of the view that the judgment in **Leela's case**(supra) to the extent holding that specific clause of Limitation Act would apply to the arbitration is per incuriam as it was laid ignoring the statutory provision.

4. In regard to the second question of the maintainability of the writ petition, we treated impugned order in the writ petition



as an award. We were under the impression while disposing of the appeal that what was questioned before this Court was an award of the District Collector, who is the Arbitrator constituted under the National Highway Act.

5. We have gone through Ext.P3 communication issued to the claimant wherein it is stated as follows;

“The application submitted by you has been preferred after a period of one year from the date of receipt of the compensation determined. In the above circumstances it is not possible to consider your application on merits as it is beyond the time limit, hence the same is being rejected.”

6. What is an award? There is no comprehensive definition under the Arbitration and Conciliation Act that gives answer to the definition of award. It is stated in Section 2(1)(c) of the Arbitration and Conciliation Act, 1996 that arbitral award includes an interim award. Therefore, the meaning of the award will have to be found out as understood under general principles of law in adjudication of civil disputes.

7. Section 2(2) of Civil Procedure Code states decree as follows;



“(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.”

8. This Court in **Janaki and Others v. V.R.S.Krishnan and Others 2024 (3) KHC 287** referred to the essential characters of decree; some of the relevant characters are cited hereunder;

ii. The decision must have been on the right of the parties with regard to any matter in controversy in the suit.

iv. the decision of the Court formally expressed on such controversy in the suit.

v. On determination, nothing left for the parties for future except by recourse to challenge by way



of appeal or otherwise.

9. It is important to note that, under Section 21 of the Arbitration and Conciliation Act, there must be commencement of arbitral proceedings. Section 32 also refers to termination of arbitral proceedings. Therefore, it is clear that there must be commencement of proceedings and termination of proceedings. As seen from Section 21, commencement of arbitration proceedings would begin from the date on which a request for such dispute to be referred in the arbitration is received by the opposite party/the respondent.

10. Any decision made prior to the commencement of arbitral proceedings cannot be considered as an award. The definition of a decree under the Code of Civil Procedure provides guidance on the type of decisions that can qualify as an award in arbitration. This interpretation must be understood in conjunction with Sections 21 and 32 of the Arbitration and Conciliation Act. The following are the essential requirements for an award under arbitration:

I. There must be commencement of arbitration



proceedings.

II. The award should be issued by the Arbitrator in accordance with the procedure required to be followed in such arbitration.

III. The award must determine all or some of the issues in the arbitration.

IV. The award must decide the matter in controversy finally or as an interim award during the arbitral proceedings as referred under Section 31(6) of the Arbitration and Conciliation Act.

11. Ext.P3 communication is a decision of the District Collector, who is an Arbitrator refusing to entertain the dispute referred for arbitration. No notice was issued to the National Highway or any other competent authority. Any decision of the District Collector before commencement of arbitral proceedings cannot be termed as an award, as such decision was rendered before legal procedure prescribed for commencement of arbitration.

12. The arbitrator is notified under Section 3G(5) of the National Highways Act. This provision is related to the application to



be submitted by either of the parties, who are not accepting the determination of compensation of competent authority, to be determined by the Arbitrator appointed by the Central Government. Section 3G(6) states that provisions of the Arbitration and Conciliation Act shall apply to the arbitration under the National Highways Act. The Central Government notified the District Collector as an Arbitrator. If the District Collector refused to entertain an application under Section 3G(5), such a refusal can be questioned invoking Article 226 of the Constitution of India. Section 3G(5) casts statutory duty on Arbitrator to receive such application and consider for an adjudication in accordance with the procedure under the Arbitration and Conciliation Act. Once application is entertained, an Arbitrator decides any issues or disputes in accordance with the Arbitration and Conciliation Act, then all proceedings under the Arbitration and Conciliation Act need to be followed including a challenge to an award. In other words, if the Arbitrator refuses to entertain an application under Section 3G(5), this Court can very well entertain a writ petition to the limited extent of directing the Arbitrator to initiate arbitration under the statutory provision. Thus, we hold that the writ petition is



maintainable in this case as the District Collector, who is a notified Arbitrator refused to entertain the application citing delay. In the light of law enunciated by us, no delay is prescribed for entertaining an application under Section 3G(5). However, the District Collector can consider whether the claimant is entitled to any interest for the delayed period, as the interest is often awarded as compensatory. If the delay is attributable to the claimant, the District Collector, acting as the Arbitrator, can deny the claim for interest. This is a matter to be considered while adjudicating claims for interest.

Thus, we allow the review petition filed by the respondent in the writ appeal as R.P.No.1088 of 2024 and dismiss R.P.No.1117 of 2024 filed by the NHA.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

Sd/-
S.MANU
JUDGE

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