



WA NO. 1600 OF 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE MR. A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

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AGAINST THE JUDGMENT DATED IN WP(C) NO.20192 OF 2022 OF HIGH COURT
OF KERALA

APPELLANT/S:

NATIONAL HIGHWAYS AUTHORITY OF INDIA,
PIU, PALAKKAD, NO.310-A, CHANDRA NAGAR
EXTENSION, P.O.CHANDRA NAGAR, PALAKKAD-678 007.
REPRESENTED BY THE PROJECT DIRECTOR.

BY ADV K.A.SALIL NARAYANAN

RESPONDENT/S:

- 1 P.V.GEORGE,
S/O.VARKEY, 78 YEARS, PADATH HOUSE, MATTATHOOR, POST
KODAKARA, THRISSUR-680684.
- 2 THE ARBITRATOR (NATIONAL HIGHWAYS ACT 1956) AND THE
DISTRICT COLELCTOR,
COLELCTORATE, THRISSUR-680 001.
- 3 THE SPECIAL TAHSILDAR,
)LA) NHDP UNIT, THRISSUR-680 020.
- 4 THE STATE OF KERALA, .
REPRESENTED BY ITS SECRETARY, REVENUE
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001.



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SRI.K.P.HARISH (SR.GP)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23.07.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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'CR'

JUDGMENT

Dated this the 23rd day of July 2024

A.Muhamed Mustaque, Acg.C.J.

There are two questions to be decided in this matter. One is in regard to the application of limitation for arbitration under the National Highway Act. The second question is whether the writ petition is maintainable, challenging a decision of the Arbitrator under the National Highway Act, 1956, in a petition filed under Article 226 of the Constitution of India.

2. The facts in this case clearly establish that as early as on 06.09.2012, the District Collector, who is the Arbitrator under the National Highway Authority, rejected the arbitration request on the ground of delay. Thereafter, the writ petitioner, filed another request for arbitration in the year 2022. The writ petitioner relying on the judgment of this Court in W.P.(C)21796/2019, approached this Court in the writ petition challenging a decision of the Arbitrator of the year 2012. This Court, noting that such a delay



can be condoned in the light of the judgment of this Court in W.P. (C)No.21796/2019, allowed the writ petition and ordered the District Collector to reconsider the request for arbitration.

3. It is now submitted at the Bar by the learned Counsel for the National Highway Authority, the appellant in this case that a Division Bench of this Court has set aside the judgment of this Court in W.P.(C)No.21796/2019 in writ appeal No.1364/2020.

4. On the ground of limitation, for clarity, we refer to the relevant statutory provision. Under Section 3G (5) of the National Highway Act, it is stipulated as follows:

"Section 3G(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government."

There is no prescription of limitation under the National Highway Act.

5. Under the Arbitration and Conciliation Act, 1996, limitation has been prescribed in Section 43 as follows:

"43. Limitations.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court."

In Section 43, it is stipulated that the Limitation Act, 1963 shall



apply to all arbitrations as it applies to proceedings in court. Therefore, in the light of the Arbitration and Conciliation Act, the limitation would apply to all arbitrations. However, Section 2(4) of Part -I of Arbitration and Conciliation Act, reads as follows:

"This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except insofar as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder."

6. It is clear from Section 2(4) of the Arbitration and Conciliation Act that Section 43 will not apply to every arbitration under any other enactment. This means that if no limitation is prescribed under any other enactment, provisions of the Limitation Act would not apply to such arbitration under such enactment. In the light of the above, we are of the view that Limitation Act will not apply for arbitration under the National Highway Act.

7. The question of interfering with the writ petition challenging the decision has been dealt with by the Division Bench of this Court in writ appeal No.1364/2024. This Court, in categorical terms, held that the remedy to challenge the decision



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of the Arbitrator, who is the District Collector, is by invoking the provisions under Section 34 of the Arbitration and Conciliation Act. Thus it is clear that the writ petition is not maintainable against the decision of the Arbitrator, who happens to be a District Collector. Thus, holding that the writ petition is not maintainable, we set aside the impugned judgment and allow this writ appeal.

sd/

A. MUHAMED MUSTAQUE
ACTING CHIEF JUSTICE

sd/

S. MANU
JUDGE

jm/