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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 39 OF 2026
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 7338 OF 2025)

M/s Bhagheeratha Engineering Ltd. ...Appellant(s)

VERSUS

State of Kerala ...Respondent(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the judgment dated 07.01.2025 passed by the Division Bench of the High Court of Kerala at Ernakulam in Arbitration Appeal No. 56/2012. By the said judgment, the Division Bench of the High Court upheld the order of the District Judge, Thiruvananthapuram, dated 22.06.2010 in O.P. (Arb.) No.238 of 2006, *al beit,* on different grounds. The District Judge had

set aside the award of the Arbitrator as being beyond the scope of reference and against the terms and conditions of the contract and restored the decision of the Adjudicator. The Adjudicator had, by his order of 14.08.2004, decided four disputes and held in favour of the appellant insofar as dispute Nos. 1 and 3 were concerned and against the appellant in relation to dispute Nos. 2 and 4.

3. The principal reason assigned by the High Court was that the Arbitral Tribunal was appointed at the request of the respondent-State to adjudicate on dispute no. (1) alone and the appellant never intended to raise any dispute regarding dispute nos. (2) to (4) by issuing a separate notice under Section 21 of the Arbitration and Conciliation Act, 1996 [for short "the A&C Act"]. The reasoning of the High Court is set out hereinbelow:-

> 25. We must bear in our mind that the arbitral tribunal was appointed at the request of the State to adjudicate on dispute no. (1) alone. The appellant never intended to raise any dispute regarding point Nos. (2) to (4) by issuing a separate notice under Section 21 of the Act. The assumption that where one-party files an application and gets an arbitrator appointed, the other party can raise all

> such disputes under the contract before the arbitrator is baseless, especially when the law governing the arbitration specifically provides that the arbitrator can decide only such dispute referred before him and not otherwise. To hold otherwise will certainly do violence to the statute. Hence, we find that the arbitral tribunal had clearly exceeded the jurisdiction in deciding the entire disputes. Perhaps the appellant was under a mistaken impression with regard to its right to have the entire disputes opened for arbitration. We must also note that the State was never put on notice regarding the intention of the appellant to go for arbitration. Even assuming that the contention of the appellant that the State had unequivocally agreed to arbitrate on the entire disputes, the tribunal ought to have framed an issue or given its finding on the jurisdiction as envisaged under Section 16. In the absence of any finding in this regard by the tribunal, we are afraid that the award in question clearly crossed the contours of the law and thus rendering itself to be inexecutable and falling within the mischief of Section 34 of the Arbitration and Reconciliation [sic] Act, 1996."

4. It is the correctness of this decision, which the appellant has questioned before us in this appeal by way of special leave.

5. The facts lie in a very narrow compass:-

5.1 Four packages of Road Maintenance Contract were awarded to the appellant as part of the Kerala State Transport Project (KSTP) for development of roads in Kerala in collaboration with the World Bank. The work was awarded through competitive bidding.

5.2 The four projects awarded to the appellant were the following:-

> "1. RMC 01" Thiruvananthapuram – Kottarakkara Road (5.70 to 25 KM)
> 2. RMC 03: Thodupuzha – Kalur – Ounukal Road (0.00 to 20 KM)
> 3. RMC 08: Kozikode – Mavoor Road (0.00 to 10.50 KM)
> 4. RMC 12: Quilandy – Thamarassery Road (0.00 to 29.30 KM)"

5.3 Under the General Conditions of Contract [for short "GCC"], the following mechanism was provided for adjudication of disputes:-

> "24. **Disputes**
>
> 24.1 If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.
>
> 25. **Procedure for Disputes**
>
> 25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
>
> 25.2 The Adjudicator shall be paid daily at the rate specified in the Contract Data together with reimbursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party

may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

25.3 The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.''

Special Conditions of Contract

''4. ARBITRATION (GCC Clause 25.3)

The procedure for arbitration will be as follows:

25.3. (a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 Arbitrators one each to be appointed by the Employer and the contractor. The third Arbitrator shall be chosen by the two arbitrators so appointed by the Parties and shall act as presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding arbitrator shall be appointed by the Chairman of Executive Committee, Indian Roads Congress, New Delhi.''

5.4 Clause 24.1 states that if the contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the contract or that the decision was wrongly taken, the decision shall be referred to

the Adjudicator within 14 days of the notification of the Engineer's decision. Hence, it is clear that what is contemplated is that disputes may be referred to the Adjudicator, where the issue involves decisions beyond the authority of the Engineer, or where decision of the Engineer is erroneous.

5.5 Further, under Clause 25.1, the Adjudicator was to give a decision within 28 days of the receipt of the notification of a dispute and under Clause 25.2, either party may refer the decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision and if neither party refers the dispute to the arbitration within 28 days, the Adjudicator's decision will be final and binding.

5.6 In the present case, the appellant, by letters of 02.03.2004 and 24.03.2004 quantified the amounts due and submitted the same for decision by the Executive Engineer. According to the appellant, since the Executive Engineer/Superintending Engineer failed to take any decision, the appellant, by a letter dated 15.04.2004, approached the Adjudicator under Clause

25.1 of the GCC for decision on pending payments classifying the disputes as dispute Nos.1 to 4 under the following heads:-

> "The disputes before the Adjudicator were:
> 1. Value of work to be considered for calculating the price adjustment for bitumen and POL.
> 2. Decision for releasing the escalation during the extended periods.
> 3. Price of bitumen to be considered for calculation of price adjustment of the bitumen.
> 4. Release of interest payable at 12% per annum for the delay in releasing the eligible payments beyond 42 hours from the date of submission of the monthly statement of the value of work done during the period as per Clause 42.2 and 43.1 of General Conditions of Contract."

5.7 The Adjudicator, by his decision of 14.08.2004, ruled in favour of the appellant on dispute Nos.1 and 3 and ruled against the appellant on dispute Nos. 2 and 4.

5.8 Notwithstanding the decision of the Adjudicator and the submission of the final bill by the appellant, the respondent did not settle the bill on the ground that the finding of the Adjudicator *qua* dispute No.1 was unacceptable to the respondent.

5.9 On 01.10.2004, the respondent addressed the following letter to the appellant.

"Sub: RMC-Contractors—RMC-01,03,08,12—Adjudication-reg.

Ref: Award of Adjudicator dated 14.8.2004

Further to the letter cited under reference above, we write to inform you that the award of the Adjudication for Dispute No. 1 is not acceptable and we intent to refer the matter for an arbitration. We have appointed Mr. Subash Chandra Bose, as our arbitrator. Therefore, you may propose your arbitrator as per clause 25.3 of General Conditions of contract and intimate for further action."

5.10 It will be seen that the reference was under Clause 25.3 which is the arbitration clause. The letter was issued by the respondent and, according to the respondent, it was confined to dispute No.1, namely, "value of work to be considered for calculating the price adjustment for bitumen and POL.

5.11 In response to the letter dated 01.10.2004, the appellant sent a letter on 14.10.2004 to the respondent. The appellant stated that the adjudicator's decision was issued on 14.08.2004 and the time limit for reference to arbitration was till 11.09.2004, (on the expiry of 28 days) and as such the letter dated 01.10.2004 was beyond the stipulated time. The appellant stated that the decision of the adjudicator has

become final and binding upon both the parties. The stand of the appellant was that, in view of the same, the Arbitral Tribunal has no jurisdiction to enter into the reference. The appellnt also stated that they have not received any payment and that compound interest would be charged.

5.12 The respondent addressed a letter dated 30.10.2004 to the appellant in response to the appellant's letter dated 14.10.2004. The respondent stated that by their letter dated 01.10.2004, they had conveyed their intention to refer dispute No.1 to the arbitrator. They further added that they disagreed with the "recommendations of the adjudicator". It was further averred that under Clause 25.2 of the GCC the issue of delay in referring the matter to arbitration can also be referred and the appellant can take up the issue before the arbitrator. The crucial contents of the letter reads as follows:-

> "..... **Moreover as per clause 24.1 of the agreement within 14 days you have to refer to the adjudicator any decision not acceptable to you. Whereas all the disputes referred are after the stipulated time for referring the decision of Engineer to Adjudicator. Hence your argument [sic] with regard to dates will cut at the root of petition considered by the adjudicator**.

Hence you are here by called upon to forward the name of the Co-arbitrator to constitute the tribunal. You are contractually bound to forward the name of the Co-arbitrator and question regarding dates and whether decision is binding on KSTP can be referred to the arbitrator.

As stated earlier your claims before the adjudicator are delayed for several months and refused to nominate the name of co-arbitrator will be viewed were serious and we hope you can understand the implications of disobedience of request of the employer. Moreover the employer is entitled proceed further to set aside the recommendation of adjudicator in accordance with agreement. Hence you are required to forward the name of co-arbitrator to our office and to Mr. Subash Chandra Bose to proceed further. **It is true that if the decision of the Adjudicator is not acceptable to either party, may refer within 28 days to the Arbitrator. But there is no existing Arbitrator. This body has to be constituted and then only refer the matter to the Arbitrator. We have taken action to constitute the Arbitration Panel.**

Since this is a matter of dispute we are not in a position to release the payment. Which shall be subject to Arbitrations decision."

(Emphasis supplied)

5.13 The respondent also stated that any refusal to nominate the co-arbitrator would be viewed seriously and hoped that the appellant will understand the implications of disobedience of request of the employer. It was also stated that since it is a matter of dispute, they were not in a position

to release payment which shall be subject to the decision in arbitration.

5.14 In response to the letter dated 30.10.2004 of the respondent, the appellant wrote to the respondent on 29.11.2004. After disagreeing with the interpretation of the respondent on Clause 25.2, the appellant agreed to nominate the co-arbitrator. The letter further stated as follows:-

> "We reiterate that the decision of the Adjudicator's decision dated 14.08.2004 is final and binding on both the parties as per clause 25,2 of the GCC. Since your grievance against the decision of adjudicator and no notice to go for arbitration was given within the stipulated period of GGC 25.2, the said decision is final and binding upon KSTP. Therefore, please take notice that we reserve the dispute that exists as on date for an adjudication by the Arbitral Tribunal is confined to the following.
>
> Whether the parties have agreed under the contract to accept the decision of the adjudicator as final and binding on both the parties if notice to refer the decision to arbitration is not given within 28 days of the decision of the adjudicator?
>
> If it is so agreed, whether the decision given by the adjudicator on 14.08.2004 is final and binding on both the parties as per clause 25.2 of the GCC?
>
> Since the amount payable as per the decision of the adjudicator is delayed, whether the contractor is entitled for monthly compound interest quarterly on the principle sum so adjudicated as demanded by the contractor vide letter dated

14-10-04? If so, what is the reasonable rate of interest payable?

Without prejudice to the above, we would like record herein that if the Arbitral Tribunal ultimately decides that the adjudicator's decision is not final and binding and can be reopened in arbitration, **we would be raising the following issues for reference to the Arbitral Tribunal by way of counter claim.**

Whether the reason for delay in execution of work and the resultant extension of time of completion of the work is attributable to the contractor or to KSTP?

If so, whether the contractor is entitled to escalation during the approved extended period of contract?

Whether the liquidated damages imposed on the contractor during the extended period of contract is sustainable?

Whether the contractor is eligible for interest on all delayed payments beyond 42 days after submission of the bill to the Engineer?

We have already submitted the final bill for all the above projects and the payment is still pending for payment. Payment for RMC 8 & 12 are due for payment since 08-05-04 and 10.01.04 respectively. We would request you to kindly release the payment against the work done for which there is no dispute for the item rates at an early date so that accumulation of interest charges for the late payment can be avoided.''

(Emphasis supplied)

5.15 On 11.01.2005, the Arbitral Tribunal was constituted. Initially, the appellant did file the application to consider the Adjudicator's decision as final and binding which

the respondent opposed. However, the appellant did not press the application and agreed to file its claim before the Arbitrator. The respondent filed an application to treat the entire decision of the Adjudicator as null and void on the ground that it was contrary to Clause 24.1 of the GCC. The respondent also objected to the appellant being allowed to file the claim petition with regard to all the issues which, according to the respondent, led to enlargement of the jurisdiction.

5.16 Respondent in the statement filed on 09.03.2005 sought a declaration that the decision of the adjudicator be declared null and void and contended that the appellant's reference to the adjudicator itself was out of time and that the acceptance of the dispute by the adjudicator was not as per Clause 24.1. The relevant para in the statement is as follows:-

> "If the contractor had any protest or dispute in calculating the 'R' value and price of Bitumen. The contractor should have referred the matter to the Adjudicator within 14 days of notification. The notification is the date of payment as per clause 24.1.

The last date for referring the matter to the Adjudicator shall be as follows:

Contract		**Date of payment (Decision)**		**To be reported to the Adjudicator**		**Date of report by contractor**	**Total delays**
RMC-01	-	6.9.03	-	20.09.03	-	15.4.04	209 days
RMC-03	-	15.3.03	-	29.3.03	-	15.4.04	383 days
RMC-08	-	8.7.03	-	22.7.03	-	15.4.04	267 days
RMC-12	-	5.6.03	-	19.6.03	-	15.4.04	299 days

From the above it was noticed that the matter on dispute was referred to the Adjudicator was delayed. Hence the acceptance of dispute by the Adjudicator was not as per clause 24.1 and the Recommendation of the Adjudicator to be set aside.

As explained in the para 7.2. Our main contention is that the contractor is the defaulter, who refers the decision of the employer in calculation of 'R' value and the Bitumen price for price escalation as a dispute after a huge delay as tabulated in para 7.2. The adjudicator not considered the delay made by the contractor in referring the dispute to the Adjudication.

Since the contractors action for referring the disputes to the Adjudicator after expiring the time frame as per contract clause 24.1. The acceptance of dispute and award by the Adjudicators is considered to be null and void."

(Emphasis supplied)

5.17 By its ruling of 16.12.2005 under Section 16 of the A&C Act, the Arbitral Tribunal held that the claims of the appellant still remained unsettled. It further held that the

arbitration clause was comprehensive enough to include any matter arising out of or connected with the Agreement. It further held that the prayer of the respondent to declare the Adjudicator's decision as null and void indicated their intention to reopen the four disputes originally brought for consideration before the Adjudicator. The Tribunal, however, disallowed the claims of the appellant insofar as they were beyond the claims raised before the Adjudicator. Pursuant to the decision under Section 16, the appellant revised its claims and confined the claims to four issues permitted by the order of 16.12.2005. In view of this, we are not called upon to decide whether the Arbitral Tribunal was justified in confining the appellant to the four issues raised before the Adjudicator.

5.18 By its award of 29.06.2006, the Arbitral Tribunal answered all four issues in favour of the appellant. In all, the appellant was awarded a total sum of Rs.1,99,90,777/- along with post award interest @ 18% p.a. Inter alia, the award of the arbitrator recorded that:-

A) several claims were first raised by the Appellant and they still remained as unsettled claims;

B) Arbitration agreement is comprehensive enough to cover any dispute arising out of or in connection with the agreement;

C) The prayer of the respondent to declare the decision of the adjudicator null and void virtually indicated their intention to open the 4 disputes that are brought before the Arbitral Tribunal;

D) Both parties have rejected the decision of the Adjudicator which has now become infructuous.

5.19 The respondent challenged the Award under Section 34 before the District Judge, Thiruvananthapuram in O.P.(Arbitration) No. 238 of 2006. The respondent also challenged the decision under Section 16 dated 16.10.2005 in its Section 34 petition. By judgment dated 26.06.2010, the District Judge allowed respondent's Section 34 petition and set aside the award and restored the decision of the Adjudicator on the following two grounds:-

(i) there was no provision in the contract for extending the time for referring the issue beyond the period of 28 days; and

(ii) hence there cannot be any question of there being any consensus between the parties for referring all the disputes.

5.20 In spite of so holding, the District Judge, for reasons best known to him, restored the recommendations of the Adjudicator. Aggrieved, the appellant filed an appeal under Section 37 of the A&C Act. The Division Bench, by the order impugned, clearly found that imposition of 28 days time-limit in Clause 25.2 was contrary to Section 28(b) of the Contract Act. However, on the ground that the appellant never sought reference of the dispute by issuing any notice under Section 21 of the A&C Act and only the respondent had issued such a notice on one issue, it found the award to be invalid. However, the order restoring the decision of the Adjudicator was not disturbed.

6. We have heard Mr. Rajiv Shakdher, learned Senior Advocate, for the appellant and Mr. Naveen R. Nath, learned Senior Advocate for the respondent. We have gone through the records, including the written submissions filed by the respective parties.

SUBMISSIONS OF THE APPELLANT: -

7. The learned senior counsel for the appellant submits that the arbitration clause is exhaustive and covers any dispute or difference arising between the parties relating to any matter arising out of or connected with the agreement. According to the learned senior counsel, the agreement was not limited to the reference of disputes decided by the adjudicator. It is further contended by the learned senior counsel that the Division Bench has set aside the award on a ground not taken by the respondent before the Arbitral Tribunal or in Court. According to the learned senior counsel, such a course of action was beyond the scope of Section 37 appeal.

8. Learned senior counsel further contends that there is a clear waiver under Section 4 of the A&C Act. Learned senior counsel for the appellant contends that notice is not envisaged at the stage of invocation under Clause 25.3 of the GCC and Clause 4 of the Special Conditions of Contract. Learned senior counsel contends that Section 21 of the A&C Act opens with the phrase "Unless otherwise agreed by the parties", and contends that, in the present case, it was otherwise agreed in the contract that if a party wishes to settle the dispute, it may first notify claims to the other party and refer it for settlement with the engineer and, thereafter, refer it to the adjudicator. According to the learned senior counsel, the dispute has already been referred through two stages before referring it to arbitration.

9. Learned senior counsel further contends that the purpose of Section 21 was to primarily determine whether the claims are within limitation, and no award can be set aside for want of a Section 21 notice. In any event, learned senior counsel contends that the letter dated 29.11.2004 issued by the

appellant should be construed as the Section 21 notice. Assuming everything against the appellant, the learned senior counsel contends, that there is no requirement of issuance of notice under Section 21 by both parties. According to the learned senior counsel, if one party take steps to constitute an Arbitral Tribunal, the other party can raise all claims and counterclaims. Any other interpretation would result in multiple arbitration and conflicting awards. In conclusion, it was submitted that the Arbitral Tribunal is a final adjudicator regarding the arbitral procedure. So contending, it was prayed that the impugned order deserves to be set aside and the award of the arbitrator be upheld in entirety.

SUBMISSIONS OF THE RESPONDENT: -

10. Learned senior counsel for the respondent contends that the dispute resolution mechanism comprises escalatory measures which would mean that the dispute needs to be first resolved by the engineer and, in case the decision was not acceptable, it was to be referred to the adjudicator within 14

days. According to the learned senior counsel, the adjudicator's decision is required to be in writing within 28 days of the receipt of the notification of dispute. Further what is referred to the arbitrator is the adjudicator's decision and not the original dispute before the engineer.

11. Learned senior counsel submits that this is the agreed procedure for the appointment of the arbitrators as contemplated under Section 11(2); that these escalatory measures have statutory significance since they are intended to narrow the dispute referable to the Arbitral Tribunal. In view of that, it is submitted that for a party to invoke arbitration it must clearly and categorically be signified, by issuance of notice that it disputes the adjudicator's decisions either in entirety or on specified issues.

12. Learned senior counsel submits that the procedure for appointment of an arbitrator must be strictly complied and even under Section 28(3) of the A&C Act, the Arbitral Tribunal is required to take into account the terms of the contract. Learned senior counsel submits that issuance of notice under

Section 21 is a mandatory requirement and both the parties to an arbitration agreement have the right to be informed of the arbitral dispute before the constitution of the Arbitral Tribunal. According to the learned senior counsel, the appellant could never be the claimant and the expression claimant can only be attributed to that party who initiates the arbitration proceedings by issuance of notice under Section 21. Learned senior counsel disputes the fact that the letter dated 14.10.2004 or 29.11.2004 of the appellant could be treated as Section 21 notice. Learned senior counsel submits that the case of the respondent was covered by para 41(c) of the decision of this Court in ***State of Goa v. Praveen Enterprises***[1].

QUESTIONS FOR CONSIDERATION: -

13. In the above background, the questions that arises for consideration are (a) whether the High Court by the impugned order was justified in holding that the Arbitral

[1] (2012) 12 SCC 581

Tribunal was appointed at the request of the State to adjudicate dispute No. 1 only? (b) Was the non-issuance of a notice under Section 21 of the A&C Act by the appellant fatal for it to pursue its claim before the Arbitrator?

ANALYSIS AND REASONING: -

14. In our opinion, the High Court totally erred in setting aside the award on the basis that the appointment of the Tribunal was only to adjudicate dispute No.1. The High Court also erred in holding that the non-issuance of notice under Section 21 of the A&C Act by the appellant with regard to dispute no. 2 to 4 was fatal for it to pursue its claim before the arbitrator. The High Court erred in holding that the Arbitral Tribunal exceeded its jurisdiction in deciding the entire dispute. We say so for the following reasons.

CONDUCT OF THE RESPONDENT: -

15. Firstly, the sequence of events clearly demonstrates that the present was a case where conduct of the respondent clearly precluded it from relying on the mandate of clause 24,

24.1 and 25 to contend that the appellant was foreclosed from raising the entire dispute before the Arbitrator. This is because: -

a) Clause 24.1 stipulated a time limit of 14 days to refer the decision of the Engineer to the adjudicator. While the appellant contends that the Engineer never decided on any issue after the appellant quantified the amounts and submitted the same on 02.03.2024 and 24.03.2024, the respondent has a different story to tell. According to the respondent, the payment dates of 06.09.2023, 15.03.2003, 08.07.2003 and 05.06.2003 for the four different contracts respectively, itself were the dates of the decision of the Engineer and the appellant delayed the reference to the adjudicator by 209 days, 383 days, 267 days and 299 days respectively. Even the adjudicator proceeded on the basis that the date of payments was the date of decision of the Engineer. Before the adjudicator no objection was taken by the respondent about the reference to the adjudicator itself

being barred by time and beyond the scope of clause 24.1. The adjudicator went ahead and decided dispute Nos.1 and 3 in favour of the appellant and dispute Nos.2 and 4 in favour of the respondent. The Adjudicator gave his decision on 14 August 2004. Under Clause 25.1, the adjudicator was approached on 15.04.2004 and going by clause 25.1 the adjudicator ought to have given his decision within 28 days from 15.04.2004, that is on or before 13.05.2004. This is the second instance of parties including adjudicator not following the drill of clause 25.1, in its true letter and spirit.

b) Under Clause 25.2, either party can refer the decision of the adjudicator to the Arbitrator within 28 days of the adjudicator's written decision and if neither party refers the dispute to the adjudicator within 28 days, the adjudicator's decision will be final and binding. In this case, it was on 01.10.2004 i.e. after the expiry of 56 days that the respondent issued the letter which they claimed was the reference of the decision in dispute

No.1 of the adjudicator. The High Court in the impugned order has in any event found that the 28 days time limit offends Section 28(b) of the Contract Act. Further, when the appellant wrote back objecting to the breach of time limit of 28 days, the respondent wrote back saying that the issue of delay in referring can itself be referred to the Arbitrator and that they disagreed with the recommendation of the adjudicator. This itself indicates that notwithstanding clause 25.2 specifying that on the expiry of 28 days the decision of the adjudicator was final and binding, the respondent never treated the decision of the adjudicator as final and binding.

c) Further, the appellant had not received any payments under any of the heads and the respondent asserted that since the matter is in dispute, they were not in a position to release the payment which, according to them, is subject to the decision of the Arbitrator.

d) The appellant also wrote to the respondent stating that they disagreed with the interpretation of the respondent of clause 24.2 and that they will be raising all issues before the Arbitrator to which there was no response from the respondent.

e) To make the matters worse for the respondent before the Arbitral Tribunal they filed an application to treat the entire decision of the adjudicator as null and void on the ground that clause 24.1 had been violated.

f) The Arbitral Tribunal adjudicating on the Section 16 objection of the respondent under Section 16 of A&C rightly held that the claims of the appellant remained unsettled and further that the arbitration clause was comprehensive enough to include any matter arising out of or connected with the agreement. The Tribunal further held that the prayer of the respondent to declare the adjudicator's decision as null and void

indicated their intention to reopen the four disputes originally brought for consideration.

This Court in ***M.K. Shah Engineers & Contractors*** vs. ***State of M.P.***[2], a case similar to the present where the employer was trying to take advantage of its own wrong, rejected the contention of the employer and held as follows: -

> "14. In Halsbury's Laws of England (4th Edn.) Vol. 2, vide paras 652, 654, at pp. 363, 365, the law is so stated. The arbitration agreements may contain a clause which requires a certain act to be completed within a specified period and which provides that if that act is not done, either the claim or the ability to commence an arbitration will be barred. Such clauses are sometimes known as "Atlantic Shipping" clauses. The consequences of the expiry of a contractual limitation period before the completion of the specific act may however be avoided in three circumstances:
>
> (i) if the court exercises its discretion statutorily conferred on it, to extend the period to avoid undue hardship;
>
> (ii) if the arbitration clause confers a discretion on the arbitrator to extend the period and he exercises it;
>
> (iii) if the conduct of either party precludes his relying on the time-bar against the claimant.
>
> **17.** No one can be permitted to take advantage of one's own wrong. The respondent-State of M.P. cannot and could not have been heard to plead denial of the two appellants' right

[2] (1999) 2 SCC 594

to seek reference to arbitration for non-compliance with the earlier part of clause 3.3.29. In the case of M/s Chabaldas & Sons, the clause was complied with. Alternatively, even if it was not complied with in the case of M/s Chabaldas & Sons, but certainly in the case of M/s M.K. Shaw, the fault for non-compliance lies with the respondent-State of M.P. through its officials. The plea of bar, if any, created by the earlier part of clause 3.3.29 cannot be permitted to be set up by a party which itself has been responsible for frustrating the operation thereof. It will be a travesty of justice if the appellants for the fault of the respondents are denied the right to have recourse to the remedy of arbitration. **A closer scrutiny of clause 3.3.29 clearly suggests that the parties intended to enter into an arbitration agreement for deciding all the questions and disputes arising between them through arbitration and thereby excluding the jurisdiction of ordinary civil courts. Such reference to arbitration is required to be preceded by a decision of the Superintending Engineer and a challenge to such decision within 28 days by the party feeling aggrieved therewith. The steps preceding the coming into operation of the arbitration clause though essential are capable of being waived and if one party has by its own conduct or the conduct of its officials, disabled such preceding steps being taken, it will be deemed that the procedural prerequisites were waived. The party at fault cannot be permitted to set up the bar of non-performance of prerequisite obligation so as to exclude the applicability and operation of the arbitration clause.**"

(Emphasis supplied)

We draw considerable support from the ratio of ***M.K. Shah*** *(supra)* on the aspect of conduct of the respondent and the holding therein, that the party at fault cannot be permitted to

take advantage of the same. Further, like in ***M.K. Shah*** *(supra)* the Arbitration clause here also is of wide amplitude. In view of the above, we reject the contention of the respondent that the procedure for appointment of an arbitrator has not been complied with in this case and, as such, the award has to be set aside. We find absolutely no merit in the same.

OBJECT OF SECTION 21 OF A&C ACT: -

16. Secondly, the object of Section 21 of A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of Arbitration. Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in Arbitration if the claim is otherwise valid and the disputes arbitrable. In ***ASF Buildtech Private Limited*** vs.

Shapoorji Pallonji & Company Private Limited[3], one of us, J.B. Pardiwala J., felicitously put the principle thus: -

> 163. The marginal note appended to Section 21 of the 1996 Act makes it abundantly clear that the notice to be issued thereunder is for the purpose of "commencement of arbitration proceedings". The substantive provision further makes it clear that the date on which a request/notice of invocation for referring a dispute is received by the respondent, would the date on which the arbitral proceedings in respect of a particular dispute commences. The words "particular dispute" assume significance in the interpretation of this provision and its underlying object. **It indicates that the provision is concerned only with determining when arbitration is deemed to have commenced for the specific dispute mentioned in the notice. The language in which the said provision is couched is neither prohibitive or exhaustive insofar as reference of any other disputes which although not specified in the notice of invocation yet, nonetheless falls within the scope of the arbitration agreement. The term "particular dispute", does not mean all disputes, nor does it confine the jurisdiction of the Arbitral Tribunal which is said to be one emanating from the "arbitration agreement" to only those disputes mentioned in the notice of invocation, as it would tantamount to reading a restriction into the jurisdiction of the Arbitral Tribunal to the bounds of the notice of invocation instead of the arbitration agreement. Thus, there is no inhibition under Section 21 of the 1996 Act for raising any other dispute or claim which is covered under the arbitration agreement in the absence of any such notice. Section 21 is procedural rather than**

[3] (2025) 9 SCC 76

jurisdictional it does not serve to create or validate the arbitration agreement itself, nor is it a precondition for the existence of the Tribunal's jurisdiction, but merely operates as a statutory mechanism to ascertain the date of initiation for reckoning limitation.

165. Section 23 sub-section (1) places an obligation upon the claimant to state the facts supporting his "claim", the points at issue and the relief or remedy sought by way of its statement of claim, before the Arbitral Tribunal. Notably, the legislature, in the first part of the said sub-section, has deliberately and consciously used the term "claim" as opposed to "particular dispute" employed in Section 21 of the 1996 Act. Although, it could be said that the term "particular dispute" under Section 21 connotes a larger umbrella within which the term "claim" under Section 23 would be subsumed, thereby suggesting that there is no scope to deviate from what was sought to be referred by the notice of invocation, we do not think so. We say so because, the requirement for providing the points at issue and the relief or remedy sought that exists in sub-section (1) of Section 23 of the 1996 Act is patently absent in Section 21 of the 1996 Act, which clearly shows that the scope and object of these two provisions are at variance to each other. Further, this sub-section does not stipulate either explicitly or implicitly, that such "claim" must be the same or in tandem with the "particular dispute" in respect of which the notice of invocation was issued under Section 21 of the 1996 Act. This distinction in terminology is neither incidental nor redundant; rather, it reflects a conscious legislative design to demarcate the procedural objective of Section 21 from the substantive function sought or the framing of issues served by Section 23. Unlike Section 23, Section 21 does not require any articulation of the relief its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period.

169. Any restriction on the nature or content of claims, counterclaims, or set-offs in arbitration must be sourced solely from the express language of Section 23 and not from Section 21. Section(s) 21 and 23 of the 1996 Act although overlap in some aspects with each other in terms of the claims that would ordinarily be referred to the Tribunal more often than not tend to coincide, yet they are by no means tethered together in such a manner that neither of them can survive without one another. The latter serves only a procedural function and does not condition or limit the Tribunal's jurisdiction to adjudicate claims that may not have been specifically invoked at the threshold stage. To read such a limitation into the statutory scheme would run contrary to both the text and the object of the Act."

(Emphasis supplied)

More recently in ***Adavya Projects Private Limited*** v. ***Vishal Structurals Private Limited and others***[4], this Court reiterating the purpose and significance of a notice under Section 21 had the following to observe: -

"24. At this point, it is important to note this Court's decision in State of Goa v. Praveen Enterprises [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581] wherein it was held that the claims and disputes raised in the notice under Section 21 do not restrict and limit the claims that can be raised before the Arbitral Tribunal. The consequence of not raising a claim in the notice is only that the limitation period for such claim that is raised before the Arbitral Tribunal for the first time will be calculated differently vis-à-vis claims raised in

[4] (2025) 9 SCC 686

the notice. However, non-inclusion of certain disputes in the Section 21 notice does not preclude a claimant from raising them during the arbitration, as long as they are covered under the arbitration agreement. **Further, merely because a respondent did not issue a notice raising counterclaims, he is not precluded from raising the same before the Arbitral Tribunal, as long as such counterclaims fall within the scope of the arbitration agreement.**"

[Emphasis supplied]

17. At this stage, it is appropriate to refer to the following passage from the decision of this Court in ***Indian Oil Corporation Ltd. v. Amritsar Gas Service and Others***[5] which reinforces our holding:-

"15. The appellant's grievance regarding non-consideration of its counter-claim for the reason given in the award does appear to have some merit. In view of the fact that reference to arbitrator was made by this Court in an appeal arising out of refusal to stay the suit under Section 34 of the Arbitration Act and the reference was made of all disputes between the parties in the suit, the occasion to make a counter-claim in the written statement could arise only after the order of reference. The pleadings of the parties were filed before the arbitrator, and the reference covered all disputes between the parties in the suit. Accordingly, the counter-claim could not be made at any earlier stage. Refusal to consider the counter-claim for the only reason given in the award does, therefore, disclose an error of law apparent on the face of the award. However, in the present case, the counter-claim not being

[5] (1991) 1 SCC 533

pressed at this stage by learned counsel for the appellant, it is unnecessary to examine this matter any further."

ARBITRATION CLAUSE – WIDELY WORDED: -

18. Thirdly, Clause 25.3 is widely worded and any dispute or difference arising between the parties relating to any matter arising out of or concerned with the agreement are to be settled in accordance with the A&C Act by the Arbitral Tribunal. As held in ***State of Goa*** vs. ***Praveen Enterprises***[6] if an arbitration agreement provides that all disputes between the parties relating to the contract shall be referred to arbitration, the reference contemplated is the act of parties to the arbitration agreement. In ***Praveen Enterprises*** (*supra*) it has been further held as follows:-

> **"19. There can be claims by a claimant even without a notice seeking reference. Let us take an example where a notice is issued by a claimant raising disputes regarding Claims A and B and seeking reference thereof to arbitration. On appointment of the arbitrator, the claimant files a claim statement in regard to the said Claims A and B. Subsequently if the claimant amends the claim statement by adding Claim C [which is permitted under Section 23(3) of the Act] the additional Claim C would not be preceded by a notice**

[6] (2012) 12 SCC 581

seeking arbitration. The date of amendment by which Claim C was introduced, will become the relevant date for determining the limitation in regard to the said Claim C, whereas the date on which the notice seeking arbitration was served on the other party, will be the relevant date for deciding the limitation in regard to Claims A and B. Be that as it may.

26. Section 23 of the Act makes it clear that when the arbitrator is appointed, the claimant is required to file the statement and the respondent has to file his defence statement before the arbitrator. The claimant is not bound to restrict his statement of claim to the claims already raised by him by notice, "unless the parties have otherwise agreed as to the required elements" of such claim statement. It is also made clear that "unless otherwise agreed by the parties" the claimant can also subsequently amend or supplement the claims in the claim statement. That is, unless the arbitration agreement requires the arbitrator to decide only the specifically referred disputes, the claimant can while filing the statement of claim or thereafter, amend or add to the claims already made.

27. Similarly, Section 23 read with Section 2(9) makes it clear that a respondent is entitled to raise a counterclaim "unless the parties have otherwise agreed" and also add to or amend the counterclaim, "unless otherwise agreed". In short, unless the arbitration agreement requires the arbitrator to decide only the specifically referred disputes, the respondent can file counterclaims and amend or add to the same, except where the arbitration agreement restricts the arbitration to only those disputes which are specifically referred to arbitration, both the claimant and the respondent are entitled to make any claims or counterclaims and further entitled to add to or amend

such claims and counterclaims provided they are arbitrable and within limitation.

41. The position emerging from the above discussion may be summed up as follows:

(a) Section 11 of the Act requires the Chief Justice or his designate to either appoint the arbitrator(s) or take necessary measures in accordance with the appointment procedure contained in the arbitration agreement. The Chief Justice or the designate is not required to draw up the list of disputes and refer them to arbitration. The appointment of the Arbitral Tribunal is an implied reference in terms of the arbitration agreement.

(b) Where the arbitration agreement provides for referring all disputes between the parties (whether without any exceptions or subject to exceptions), the arbitrator will have jurisdiction to entertain any counterclaim, even though it was not raised at a stage earlier to the stage of pleadings before the arbitrator.

(c) Where however the arbitration agreement requires specific disputes to be referred to arbitration and provides that the arbitrator will have the jurisdiction to decide only the disputes so referred, the arbitrator's jurisdiction is controlled by the specific reference and he cannot travel beyond the reference, nor entertain any additional claims or counterclaims which are not part of the disputes specifically referred to arbitration."

It will be seen that when the Arbitral Tribunal is constituted, the claimant is required to file the statement and the

respondent to file his defence statement with counter claim, if any, before the arbitrator. The claimant is not bound to restrict his statement of claim to the claims raised by him in the notice issued, if any, before. The claimant can also amend or supplement the claims in the claim statement unless the arbitration agreement requires the arbitrator to decide only the specifically referred disputes. Equally, counter claims can also be filed and amended. In the present case, we have already held that the rigors of clause 24, 24.1 and 25 have not been followed by the parties and by their conduct the entire dispute have been thrown at large before the Arbitral Tribunal. Hence, the contention of the respondent that the case of the parties is governed by para 41(c) of ***Praveen Enterprises* (*supra*)** is rejected.

RELEVANT STATUTORY PROVISIONS: -

19. Section 2(9) of the A&C Act reads as under:-

> "2(9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counter-claim, and where it refers to a defence, it shall also apply to a defence to that counter-claim."

20. Section 23 of the A&C Act as is relevant is also setout hereinbelow:-

> "**23. Statement of claim and defence.—**(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.
> (2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
> (2A) The respondent, in support of his case, may also submit a counter-claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counter-claim or set-off falls within the scope of the arbitration agreement.
> (3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it."

It will be noticed that once the Arbitral Tribunal is constituted claims, defence and, counter claims are filed. Party which normally files the claim first is, for convenience, referred to as the 'claimant' and the party which responds is called the

'respondent'. The said respondent is also along with the defence statement entitled to file its counter claim. Hence, to contend that the appellant cannot be referred to as a claimant because no notice under Section 21 has been issued is completely untenable. To illustrate the point, the rules from the DIAC rules are set out: -

> "**DIAC Arbitration Proceedings Rules, 2018**
>
> 2.1(g) "Claimant", notwithstanding any nomenclature given to the parties in any Court in any proceeding between them, means the party which files the Statement of Claim first in point of time. The other party(ies) shall be referred to as "Respondent(s)". The party filing Counter-Claim(s) shall be referred as "Counter-Claimant".

21. The judgment cited by the respondent namely ***Iron & Steel Co. Ltd. v. Tiwari Road Lines***[7], and ***MSK Projects India (JV) Limited vs. State of Rajasthan and Another***[8], have no application to the facts of the case, as not only is there no breach of procedure in the appointment of Arbitral Tribunal, the Arbitral Tribunal has also not travelled beyond the scope of the reference. No other

[7] (2007) 5 SCC 703
[8] (2011) 10 SCC 573

argument touching upon the merits of the award have been canvassed before us.

22. For the reasons stated above, we set aside the judgment of the High Court of Kerala at Ernakulam dated 07.01.2025 in Arbitration Appeal No. 56/2012. The consequence will be that the award of the arbitrator dated 29.06.2006 is upheld in its entirety. The appeal is allowed. No order as to costs.

.....J.
[**J. B. PARDIWALA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
5th January, 2026