



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

WRIT PETITION NO. 52489 OF 2019 (GM-RES)

BETWEEN:

1. SMT. SHILPA DATAR
WIFE OF LATE SRI M H DATAR
AGED 48 YEARS,
RESIDING AT NO.19/1, SAI KRUPA
BELLARY ROAD, SADASHIVANAGAR
BANGALORE - 560 080
2. SRI KESHAV M DATAR
SON OF LATE SRI. M.H. DATAR
AGED 25 YEARS,
RESIDING AT NO.19/1,
SAI KRUPA, BELLARY ROAD,
SADASHIVANAGAR
BANGALORE-560 080
3. MS. DHARITRI DATAR
DAUGHTER OF LATE SRI M H DATAR
AGED 23 YEARS,
RESIDING AT NO.19/1, SAI KRUPA
BELLARY ROAD, SADASHIVANAGAR
BANGALORE - 560 080
REPRESENTED BY HER GPA HOLDER
SMT. SHILPA DATAR

...PETITIONERS

(BY SRI. VENKATESH S. ARBATTI, ADVOCATE)





HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

AND:

1. M/S LEGANCY GLOBAL PROJECTS PRIVATE LTD.,
A COMPANY REGISTERED UNDER
COMANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT NO.333
1ST FLOOR, THIMMAIAH ROAD,
BENGALURU - 560 052
REPRESENTED BY ITS JOINT MANAGING DIRECTOR
MR. SANJAY SHENOY
2. HON'BLE SOLE ARBITRATOR
ARBITRATION CENTRE
KHANIJA BHAVAN
BANGALORE - 560 001

...RESPONDENTS

(BY SRI. SHARATH S. GOGI, ADVOCATE FOR

SMT. RUPA B. DEVARAJU, ADVOCATE FOR R1

VIDE ORDER DATED 19.12.2019, NOTICE TO R2 IS D/W)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER
DATED 16.12.2019 ANNEXURE-G PASSED BY THE
RESPONDENT NO.2 IN A.C.NO.126/2017 ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING
IN B GROUP, THIS DAY, ORDER WAS MADE THEREIN AS
UNDER:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

ORAL ORDER

This petition raises a question with regard to the applicability, or otherwise, of Section 29A of the Arbitration and Conciliation Act, 1996 ('Act 1996' for short) to the facts of the case, though admittedly, the arbitration proceedings in the instant case were initiated prior to the Arbitration and Conciliation (Amendment) Act, 2015 ('Act 2015' for short) coming into force.

2. Brief facts of the case are;

(a) that the petitioners and the respondent No.1 herein had entered into a Joint Development Agreement dated 30.08.2011. Dispute arose between the petitioners and respondent No.1 herein. Since the said Joint Development Agreement contains a clause for resolution of dispute through arbitration and conciliation, respondent No. 1 issued notice dated 04.05.2013 as contemplated under Section 21 of the Act, 1996 invoking the said arbitration clause. The petitioners herein issued a reply on 15.05.2013. A petition under Section 11 of the Act, 1996 was filed in Civil Miscellaneous Petition No. 45/2014



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

seeking appointment of an arbitrator, which was disposed of by order dated 26.07.2017 appointing a sole arbitrator to resolve the dispute between the parties at Bangalore Arbitration Centre as per the Arbitration Centre, Karnataka (Domestic and International) Rules, 2012 (Rules 2012).

(b) Claim statement is stated to have been filed by the respondent No.1 herein on 12.10.2017. Petitioners herein, who are the respondents in the arbitration proceedings, had filed their statement of objections on 06.02.2018 along with a counter-claim. Objection to the counter-claim came to be filed by the respondent No. 1 herein on 01.03.2018.

(c) In the meantime, in view of the amendment to the the Act, 1996 by Act 2015 restricting the duration of arbitration proceedings, the parties filed a joint memo dated 01.08.2018 mutually agreeing to an extension of time for adjudication of the dispute for a period of six months. This was accepted, and the time was accordingly extended. Thereafter, the time has been further extended



HC-KAR

**NC: 2026:KHC:26569
WP No. 52489 of 2019**

on two occasions by the Board of Governors of Bangalore Arbitration Centre as per Rules 2012.

(d) Things stood thus, a memo dated 16.12.2019 came to be filed by the petitioners herein, stating that in terms of Section 29A of the Act, 1996, the mandate of the arbitrator had stood terminated. On the said memo, the arbitrator passed the impugned order holding that the provisions of Section 29A of the Act, 1996 as amended by the Act, 2015 were not applicable to the case at hand. Therefore, the extension of time granted by the Board of Governors in accordance with the Rules 2012 was adopted and directed the parties to proceed with the matter and to conclude the same before 21.12.2019, the date which would otherwise have expired in view of the extension granted by the Board of Governors. It is this order which is put in question.

3. Learned counsel for the petitioners, taking this Court extensively through the records submitted;



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

(a) that though the arbitration proceedings were initiated under the Act, 1996 prior to the Act, 2015 and by virtue of filing a joint memo dated 01.08.2018, the parties have consciously agreed and submitted themselves to be governed under the amended provisions, namely Section 29A of the Act, 2015;

(b) He refers to Section 26 of the Act, 2015, providing for an option for the parties to agree otherwise.

(c) He also pointed out that by the subsequent Amendment Act 33 of 2019, though the said provision was deleted, by virtue of the pronouncement of law by the Apex Court in the case of ***Hindustan Construction Company Limited and another V/s Union of India and others***, reported in **(2020) 17 SCC 324**, the said provisions stood restored effective from the original incorporation.

(d) Thus, reading these provisions and the joint memo, learned counsel for the petitioners submits that since the parties had consciously opted to be governed under the



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

amended provisions of Act, 2015, it was not open for them to waive the time-bound period provided in the statute.

(e) It is under these circumstances, he submits, that the arbitrator has lost the mandate on the expiry of the period as contemplated under Section 29A of the Act, 1996, unless the same was extended by a Court as contemplated thereunder at the instance of the parties. Any proceedings, he insists, without compliance to the said provision would render the same void.

(f) Referring to paragraphs 19 to 24 of the judgment of the Apex Court in the case of **Jayesh H. Pandya and Another V/s Subhtex India Ltd. and others** reported in **2019 SCC Online SC 1101** he submits that the parties have no option to waive the fixed duration of the arbitration, vesting the mandate with the arbitrator contrary to the statute.

(g) He also relies upon the judgment of the Apex Court in the case of **Kerala State Electricity Board and**



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

another V/s Kurien E. Kalathil and another reported in **(2018) 4 SCC 793** referring to paragraph No. 37 of the said judgment, submits that by virtue of filing a memo dated 01.08.2018, the parties had indeed consciously agreed to submit themselves to the amended provisions of the Act, 1996 which they followed subsequently as well. Therefore, he submits that once the parties have consciously agreed to be bound by the amended provisions of the Arbitration Act, they have no other option but to follow the rigor of law, which is seeking extension in the manner provided under Section 29A of the Act, 1996.

4. In response, learned counsel appearing for the respondent No. 1 submits;

(a) Though Section 26 of the Act, 2015 provides an option for the parties to agree to be bound by the amended Act, 2015, there should be an agreement even to adopt the provision of said Section 26 of Act, 2015 which is absent in the instant case.



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

(b) Taking this Court through the order sheet maintained by the arbitrator, specifically pointing out the orders dated 01.08.2018, 04.12.2019 and 10.12.2019 he contended that although a joint memo dated 01.08.2018 seeking extension of time was initially filed, purportedly agreeing to be bound by Section 29A, by subsequent conduct and the repeated orders by the Board of Governors of the Arbitration Centre, as well as by the arbitrator and by their own submissions, the parties had consciously opted to be governed under the unamended Act.

(c) Referring to the daily order sheet dated 01.08.2018 he contends that the arbitrator, while referring the matter to the Board of Governors for an extension of period, had explicitly referred to the applicability of the unamended Act, 1996, and that the said order has remained unchallenged. Thus, he submits that the petitioners, having opted to be governed under the unamended Act, 1996, now cannot contend to the contrary.



(d) Referring to paragraphs 24 and 25 of the Judgment of the Apex Court in the case of ***Sree Vishnu Constructions V/s Engineering in Chief, Military Engineering Service and others reported in (2023) 8 SCC 329***, he vehemently submitted that cases where notice invoking arbitration clause was issued prior to the Act, 2015, and an application under Section 11 was filed subsequent thereto, the provisions of the Act, 2015, would not be applicable. Therefore he submits, even if a memo was filed seeking extension of time, the same cannot be construed as an agreement to be governed under Act, 2015. Hence seeks for rejection of the petition.

(e) Learned counsel also relies upon the following judgments in support of his contention;

- (i) Union of India vs. Pradeep Vinod Construction Co., (2020) 2 SCC 464.
- (ii) Union of India vs. Parmar Construction Co., (2019) 15 SCC 682.
- (iii) S.P.Singla Constructions (P) Ltd., vs. State of Himachala Pradesh and another (2019) 2 SCC 488
- (iv) State of Goa vs. Praveen Enterprises (2012) 12 SCC 581.



- (v) Hindustan Construction Company Limited and another vs. Union of India and others
(2020) 17 SCC 324.

5. Heard. Perused the records.

6. Points that arise for consideration are;

"(i) Whether, in the facts and circumstances of the case, the arbitrator is justified in holding that the provisions of Section 29A of the Arbitration and Conciliation Act, 1996 are not applicable?

(ii) Whether the filing of a memo dated 01.08.2018 and subsequently seeking extension of time on 21.02.2019 and 09.10.2019 would amount to an agreement by the parties as contemplated under Section 26 of the Amendment Act, 2015?"

7. There is no dispute of fact that the arbitration proceedings in the instant case commenced prior to coming into force of the Act, 2015, thus, the date of commencement of the arbitration proceedings shall be as per Section 21 of the Act, 1996.

8. Section 26 of the Act, 2015 provides for its applicability and the same reads as follows;

"26. Act not to apply to pending arbitral proceedings.-Nothing contained in this Act shall apply to arbitral proceedings commenced in accordance with the



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

provisions of Section 21 of the Principal Act, before the commencement of this Act, unless the parties otherwise agreed. But the Arbitration and Conciliation (Amendment) Act, 2015, shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act."

9. Thus, in terms of Section 26 of the Act, 2015 the parties to the arbitration proceedings were given the option to agree to be governed under the Amended Act, 2015 even in respect of the proceedings which were commenced before the commencement of the Amendment Act, 2015.

10. Apex Court, in the case of ***Union of India v. Parmar Construction Co.***, reported in ***(2019) 15 SCC 682*** dealing with the effect of the Amendment Act, 2015 at paragraphs 25, 26 has held as under;

"25. As on 1-1-2016, the 2015 Amendment Act was gazetted and, according to Section 1(2) of the 2015 Amendment Act, it was deemed to have come into force on 23-10-2015. Section 21 of the 1996 Act clearly envisages that unless otherwise agreed by the parties, the arbitral proceedings in respect of a dispute shall commence from the date on which a request for that dispute to be referred to arbitration is received by the respondent and the plain reading of Section 26 of the 2015 Amendment Act is self-explicit, leaves no room for interpretation. Sections 21 and 26 of the 1996 Act/the 2015 Amendment Act relevant for the purpose are extracted hereunder:

"21. **Commencement of arbitral proceedings.**— Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.



26. Act not to apply to pending arbitral proceedings.—Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.”

26. The conjoint reading of Section 21 read with Section 26 leaves no manner of doubt that the provisions of the 2015 Amendment Act shall not apply to such of the arbitral proceedings which have commenced in terms of the provisions of Section 21 of the principal Act unless the parties otherwise agree.....”

11. Following the aforesaid judgment, in the case of **SHREE VISHNU CONSTRUCTIONS VS ENGINEER IN CHIEF MILITARY ENGINEERING SERVICE AND OTHERS** reported in **(2023) 8 SCC 329**, at paragraphs 24 and 25, the Apex Court has held as under;

24. In *Parmar Construction Co. 4*, it is specifically observed and held that in a case where notice invoking arbitration is issued prior to the 2015 Amendment Act and the application under Section 11(6) is filed post amendment, as per Section 21 of the principal Act, the date of issuance of the notice invoking arbitration shall be considered as commencement of the arbitration proceedings and therefore as per Section 26 of the 2015 Amendment Act, the Amended Act, 2015 shall not be applicable and the parties shall be governed by the pre-Amendment Act, 2015.

25. The submission on behalf of the appellant, as above, cannot be accepted for the simple reason that this Court in *BCCP* was considering the Court proceedings under Sections 34 and 36. To that, this Court interpreted Section 26 in paras 37 to 39, reproduced hereinabove, and held that the



Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced as understood by Section 21 of the principal Act, on or after the 2015 Amendment Act and to Court proceedings which have commenced on or after the 2015 Amendment Act came into force. Therefore, any observations made by this Court in paras 37 to 39 in BCCP shall be understood and construed with respect to Court proceedings which have commenced on or after the Amendment Act coming into force, namely, the proceedings under Sections 34 and 36. Therefore, the decisions of this Court in Parmar Construction Co. and Pradeep Vinod Construction Co.⁵ cannot be said to be per incuriam and/or in conflict with the decision of this Court in BCCP."

12. Clearly, the effect and operation of Section 26 of the Act, 2015 would be only in respect of proceedings which have commenced on or after the date of commencement of the Act, 2015. However, an exception to the said provision is provided under Section 26 itself, with the expression "unless the parties otherwise agree".

13. Thus, it needs to be seen if the parties in the instant case had agreed to be governed by the amended provisions of the Act, 1996. Admittedly, parties sought extension of period of time by filing the memo dated 01.08.2018, which according to the learned counsel for the petitioners, would have to be read as an agreement as



HC-KAR

**NC: 2026:KHC:26569
WP No. 52489 of 2019**

contemplated under Section 26 to be governed under the Act, 2015.

14. Counsel for the respondent No.1 on the other hand insisted that even to be governed under the Act, 2015, the parties have to expressly mentioned that they are agreeing to be governed even under Section 26 of Act, 2015.

15. Memo dated 01.08.2018 reads as under;

Joint Memo

"The undersigned parties and counsels to the above Arbitration claim do hereby consent for extension of time for a period of six months for adjudication of the claim. The same may be granted in the interest of justice and equity."

16. Clearly, the parties along with their respective counsel, filed the aforesaid memo consenting to an extension of time for adjudication of the claim by 6 months. This memo has been filed after coming into force of Act, 2015.

17. In the daily order sheet maintained by the sole arbitrator, while taking on record the said joint memo following is noted;

"Sri. Sanjay Shenoy, Joint Managing Director of the claimant..... on IAs. Both parties from their advocates file a memo for extension of time by 6 months from



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

today for disposal of the case. The file may be placed before the Hon'ble Board of Governors for extension of time accordingly. (The old Act before amendment of the Arbitration & Conciliation Act, 1996 is applicable to this case).

The case is adjourned for cross-examination of PW1 on 13.08.2018 at 11.00 a.m."

18. Referring to the contents of the above daily order sheet as noted above by the sole arbitrator, it is contented by the counsel for the respondent No.1 that the issue whether the old Act, 1996 was applicable or the Act, 2015 was clarified by the arbitrator himself, and the said order/note, not having been questioned by the petitioners, has put the controversy at rest.

19. In response, learned counsel for the petitioners brings to the notice of this Court the office notings and the order sheet maintained by the Arbitration Centre dated 04.06.2018 and 21.02.2019 at page Nos. 65 and 90 respectively, and also order sheet dated 04.12.2019 and submits that the parties were clearly aware and conscious about the applicability of the provisions of Rule 23(1) of the Arbitration Centre Rules, as well as Section 29A of the Act, 1996 regarding expiry of the mandate of the arbitrator requiring extension in the manner known to law. The said daily



order sheet and the office notings of both the Arbitration Center as well as the sole arbitrator are extracted hereunder;

04.06.2018

The advocate for the claimant has not deposited cost of Rs.3,000/- and not filed amended claim statement (Sitting fee) till date..

The one year period which is contemplated as per Rule 23(1) of Centre Rules (Section 29A of the Arbitration & Conciliation Act) to conclude the proceedings is from the date of consent. The Hon'ble Arbitrator has given consent on 10.08.2017. The one year time expired on 10.08.2018.

Hence, submitted for kind orders as to extension of time for a period not exceeding 6(six) months from the above date i.e., 10.08.2018 by the consent of both parties.

posted for amendment of the statement of claim and for filing of additional statement of objections to the amended part by the respondents.

04.06.2018

Sri Santhosh Gogi and Sri Shivakumar Gogi advocates for Claimant and Sri V.S. Arbatti - advocate for the Respondents are present.

Sri Santhosh Gogi files amended claim petition and carried out amendment in the original claim petition. A copy of the amended claim petition is furnished to Sri V.S.Arbatti for the Respondents.

Sri Santhosh Gogi under takes to deposit the cost as per order dated 25.05.2018 today itself.

Office is directed to calculate the additional arbitrator's fee payable by the parties on the amended part of the claim and issue fee schedule to both the parties.

The Respondents shall file additional statement of objection after the additional fee is paid.

Call on 18.06.2018 at 12.00 noon for payment of the additional fees by the parties and for filing of additional statement of objections by the Respondents.

A copy of today's proceeding be supplied to both the parties."



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

21.02.2019

The one year period which is contemplated as per Rule 23(1) of Centre Rules (Section 29A of the Arbitration & Conciliation Act) to conclude the proceedings is from the date of consent. The Hon'ble Arbitrator has given consent on 10.08.2017. The one year time expires on 10.08.2018.

Further, extension of time consent of the both parties Hon'ble Arbitrator has extended for six months from 10.08.2018 to 10.02.2019. Hence time expired on 10.02.2019.

Posted for reporting settlement."

21.02.2019

Sri Sharath Gogi, Advocate for the claimant is present.

Smt.Sumashree, legal officer of the claimant company is present.

PW1 is not present. The respondents are also not present.

Sri Arif Khan, Advocate for Respondents 1 to 3 is present.

Sri. Arif Khan, advocate for respondents submits that there is a positive possibility of settlement of the dispute and however, they are ready to cross-examine the PW1.

The time extended for disposal of this, case has already expired and therefore it is necessary to extend further, in view of the fact that much time has been consumed on account of the proposal for amicable settlement of the dispute between the parties. Advocates for both parties submit that they consent for extension of time by 4 months, since the evidence on behalf of the claimant is yet to be completed and simultaneously the attempt for settlement between the parties is going-on. Therefore place the file before the Hon'ble Board of Governors for extension of time for disposal. In the meanwhile, the case is posted for cross examination of PW1 on 01.03.2019 at 03:00 p.m.

20. Learned counsel for the respondent No.1 on the other hand pointing out the daily order sheet dated 04.12.2019 at page 99, submits that the time was extended for the third



time without even reference to the unamended Act, 1996. Therefore, the same cannot be read as the parties consenting to be governed pursuant to Act, 2015. The said daily order sheet read as under;

04.12.2019 @11.30am

Hon'ble Board of Governors has extended to dispose the above case 6 months, as per request made by the claimant and respondent the time expires on 20.12.2019.

Posted for cross examination of RW1 finally.

04.12.2019

"Sri. Shivakumar Gogi and Sri. Santosh Gogi, advocate for the claimant are present.

The respondents and their advocate are not present. There is no representation on their behalf.

RW1 is not present and therefore is not tendered for cross-examination.

It is recorded that their evidence on the part of the respondents is closed.

The case is posted for arguments on merits of the case on 10.12.2019 at 11.30 a.m."

21. It is the aforesaid stages of the proceedings and the conduct of the parties which requires to be looked at in the light of the amended provisions to answer the points raised above.

22. Section 29A of the Arbitration and Conciliation (Amendment) Act, 2015 reads as under;

"29-A. Time-limit for arbitral award.-(1) The award shall be made within a period of twelve months from the date the Arbitral Tribunal enters upon the reference.



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

Explanation: For the purpose of this sub-section, an Arbitral Tribunal shall be deemed to have entered upon the reference on the date on which the Arbitrator or all the Arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the Arbitral Tribunal enters upon the reference, the Arbitral Tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the Arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the Arbitral Tribunal, then, it may order reduction of fees of Arbitrator(s) by not exceeding five per cent for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the Arbitrators and if one or all of the Arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the Arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of Arbitrator(s) being appointed under this section, the Arbitral Tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed Arbitral Tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.



HC-KAR

**NC: 2026:KHC:26569
WP No. 52489 of 2019**

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

23. Perusal of the aforesaid provision clearly indicate the duration of the arbitral tribunal and the consequences of expiry of the same. Prior to the Act 2015, the duration of arbitral tribunal at Bangalore Arbitration Centre was being governed in terms of Rules 2012, framed by the High Court of Karnataka. Rule 23, thereof reads as under;

PART - V

TIME SCHEDULE FOR THE ARBITRATION

23. Duration of arbitral proceedings -

(1) Normally, all arbitration proceedings through the medium of the Centre shall be concluded within a period of 90 (Ninety) days from the date of drawing up of the Terms of Reference and communication of the time table to the parties as per Rule 18(2) herein above. Except that in cases involving complicated and contentious issues, the period may stand extended by the Arbitral Tribunal for a period not exceeding 30 (thirty) days, by mutual consent of the parties.

(2) In exceptional circumstances, the Board of Governors, on the request of the parties and the Arbitral Tribunal, shall have the powers to extend the time, if any such occasion arises."

24. Thus, though Act, 1996 did not contemplate any duration of arbitration proceedings, the arbitration proceedings at Bangalore Arbitration Centre was being governed under



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

Rules, 2012. The Act, 2015 amending the Act 1996 by bringing in provisions of Section 29A as noted above has set in the time limit/duration for arbitration proceedings. In other words, on and after the amendment, the arbitration duration would be governed under the statute and not otherwise.

25. Though Section 26 of the Act, 2015 expressly provide for Amendment Act to be applicable only in respect to the proceedings commenced on and after coming into force of Amendment Act, 2015 and not to the proceeding initiated prior to the Amendment Act, 2015, the said provision also provides an option for the parties to agree otherwise.

26. The memo dated 01.08.2018 and the subsequent requisitions as noted above made by the parties for extension of time, as contended by counsel for the petitioners will have to be read as an agreement between the parties as contemplated under Section 26 of Act, 2015.

27. Settled position of law that agreement between the parties to the arbitral agreement can even be by a joint memo. Relevant to refer para 37 of the judgment of the Apex Court in



the case of *Kerala State Electricity Board* (supra), which reads as under;

37. Emphasising that under Section 89 CPC, referring the parties to arbitration could be made only when the parties agree for settlement of the dispute through arbitration by a joint application or a joint affidavit before the Court, in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* [*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24 : (2010) 3 SCC (Civ) 235] , this Court held as under: (SCC p. 41, para 33)

"33. Even if there was no pre-existing arbitration agreement, the parties to the suit can agree for arbitration when the choice of ADR processes is offered to them by the court under Section 89 of the Code. *Such agreement can be by means of a joint memo or joint application or a joint affidavit before the court, or by record of the agreement by the court in the order-sheet signed by the parties. Once there is such an agreement in writing signed by parties, the matter can be referred to arbitration under Section 89 of the Code; and on such reference, the provisions of the AC Act will apply to the arbitration, and as noticed in Salem Bar* [*Salem Advocate Bar Assn. v. Union of India*, (2003) 1 SCC 49] , the case will go outside the stream of the court permanently and will not come back to the court."

(emphasis supplied)

28. In the instant case the office notes indicate that there has been repeated reference to the statutory requirement



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

of seeking extension of time, in the light of coming into force of Section 29A of Act, 1996. It is not that the parties and their respective counsel were not aware of the same. Despite the said office notings, parties have consciously filed the joint memo dated 01.08.2018 and have sought for extension of time thereafter. Merely because the arbitrator had noted in the daily order sheet that the old Act before amendment of Act 1996 was applicable to the case, it cannot be said that the parties had not agreed to be governed under the amendment Act, 2015. Therefore, this Court in the circumstances find considerable force in submissions made by the learned counsel for the petitioners that there was conscious agreement between the parties as provided under Section 26 of the Act, 2015 and is not persuaded to accept the contention of the learned counsel for the respondent No.1 to the contrary. If it was not, there was no need for parties to have filed such memos seeking extension of time.

29. Another aspect of the matter is even if such extension was required to be sought in terms of Rules, 2012 even the said Rules have undergone change in the light of the



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

amendment brought to the Act, 1996. The amended Rule 23 of Rules 2012 read as under;

PART - V TIME SCHEDULE FOR THE ARBITRATION

"23. Duration of Arbitral proceedings.-[(1) The award shall be made within a period of twelve months from the date on which the Arbitrator or all the Arbitrators, as the case may be, have received notice, in writing, of their appointment by fixing time line procedure as prescribed in Rule 18.

(2) The procedure as to incentives to the Arbitral Tribunal and extension of time shall be in accordance with sub-sections (3) to (9) of Section 29-A of the 'Act':

Provided, that the parties to an Arbitration Agreement may choose to adopt fast track procedure contemplated under Section 29-B of the Act.]"

30. The aforesaid amendment to Sub-Rules (1) and (2) of Rule 23 was substituted by notification dated 05.04.2016 with effect from 05.07.2016 bringing into force the provisions of Section 29A of the Act, 1996. Therefore, even if the submissions of the learned counsel for the respondents to be accepted, that the memos were required to be filed in the light of Rules, 2012, as noted above, the amended Rules, 2012 trace back to the provisions of Section 29A of the Act, 1996.



HC-KAR

NC: 2026:KHC:26569
WP No. 52489 of 2019

31. In the circumstances, this Court is of the considered view that the memos filed by the parties repeatedly seeking extension of time was and in furtherance to the amendment to the Act, 2015 and cannot be otherwise.

32. Merely because the extensions were sought more than what was contemplated under Section 29A of the Act, 1996, it cannot be said that the parties had waived of the statutory requirement and had reverted to the earlier regime of Act, 1996 as sought to be contended by the learned counsel for the respondent No.1.

33. Similarly, submission that the parties have waived off the requirement of compliance to Section 29A of Act, 1996 also cannot be accepted, as there cannot be any waiver against the statute.

34. The purpose for incorporation of Section 29A has been adverted to by the Apex Court in several of its decisions, and its object has been explained. The settled position of law, equally being, if a statute warrants a particular thing to be done in a particular manner, it has to be done in that manner and no other. Merely because the parties filed memos would



not obviate the requirement of seeking extension of time as contemplated in the statute.

35. Accordingly, the above points are answered accordingly.

36. For the aforesaid reasons and analysis, following;

ORDER

(i) Petition is ***allowed***.

(ii) The impugned order dated 16.12.2019 in A.C.No.126/2017 produced at Annexure-G passed by the respondent No.2-Arbitrator is set aside.

(iii) The parties are at liberty to move the jurisdictional Court as contemplated under section 29A of Act, 1996 seeking extension of time.

(iv) It is made clear if such an application is made, the time consumed in prosecuting this writ petition shall be exempted for the purpose of limitation as the parties had raised a pertinent question to be answered by this Court, which has been adverted to as above.



HC-KAR

**NC: 2026:KHC:26569
WP No. 52489 of 2019**

(v) Needless to state, in the event of extension being granted, the arbitral proceedings shall commenced from the stage where it was stopped, with liberty to the parties to seek such remedy as may be required for effective and complete disposal of the dispute.

(vi) It is also clarified if in the event of the competent court granting the extension of time, the proceedings which have taken thus far shall stand validated.

**Sd/-
(M.G.S. KAMAL)
JUDGE**

RCK, RU
List No.: 1 SI No.: 27