

# State Of Kerala vs National Highway Authority Of India & ... on 26 May, 2023

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 7404/2023 and CM APPL. 2  
STATE OF KERALA

Through:

NATIONAL HIGHWAY AUTHORITY OF  
INDIA & ANR.

Through: Mr. Ankur  
Mr Yash Ka  
NHAI. (M:  
Mr. Kushag  
Daksh Aror  
(M: 852758

CORAM:  
JUSTICE PRATHIBA M. SINGH  
ORDER

% 26.05.2023

1. This hearing has been done through hybrid mode. CM APPL.28825/2023 (for exemption)
2. Allowed, subject to all just exceptions. Application is disposed of. W.P.(C) 7404/2023 & CM APPL.28824/2023
3. The Petitioner - State of Kerala has preferred the present petition challenging the impugned order dated 15th March, 2022 passed by the Arbitral Tribunal whereby the impleadment of the State of Kerala was allowed in a dispute pending between the National Highway Authority of India (hereinafter "NHAI") and Guruvayoor Infrastructure Pvt. Ltd This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/09/2023 at 09:14:09 (hereinafter "GIPL"). The Arbitral Tribunal was constituted pursuant to an agreement between the said Respondents, which was entered into on 27th March, 2006.

4. There is no doubt that the State Support Agreement was executed between the State of Kerala and the two Respondents on 14th December, 2007. However, initially the invocation of the arbitration clause, and thereafter, the constitution of the Tribunal was only in respect of the agreement dated 27th March, 2006 entered into between the Respondent Nos.1 and 2.

5. The Arbitral Tribunal was constituted way back on 3rd August, 2019 and the matter proceeded further. The pleadings were completed in the matter and the matter was listed for oral evidence. At that stage, an application under Order I Rule 10 CPC was moved seeking impleadment of State of Kerala.

6. The Arbitral Tribunal has allowed the impleadment on the ground of the State Support Agreement is intrinsically linked with the agreement between the Respondent Nos.1 & 2. Admittedly, until the application under Order I Rule 10 CPC was filed, no Tribunal was constituted in respect of the State Support Agreement.

7. The Petitioner challenged the order of the Arbitral Tribunal before the High Court of Kerala, which rejected the writ petition on the ground of territorial jurisdiction vide order dated 13th April, 2023, as the venue of the arbitration proceedings is Delhi. Hence, the present writ petition.

8. Ld. counsel for the Respondent challenges the maintainability of the present petition on the ground that the Article 227 of the Constitution of India cannot be invoked at this stage. Let the said objection be taken in the This is a digitally signed order.

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9. The issue of maintainability of a writ petition under Art.227 of the Constitution of India has been discussed in detail in the case of CM(M) 1272/2019 titled 'Surender Kumar Singal v. Arun Kumar Balotia'. The relevant portion of the said order is extracted below-

"24. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.

(i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;

(ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;

(iii) For interference under Article 226/227, there have to be 'exceptional circumstances';

- (iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;
- (v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;
- (vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;
- (vii) Excessive judicial interference in the arbitral process is not encouraged;
- (viii) It is prudent not to exercise jurisdiction under Article 226/227;
- (ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown;
- (x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

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10. Issue notice. Let the counter affidavit be filed within 6 weeks. Rejoinder thereto be filed within 4 weeks thereafter.

11. Parties to file their written submissions along with the judgments they wish to rely upon.

12. Insofar as the State of Kerala is concerned, the Tribunal shall not proceed further. However, the proceedings of the Tribunal in respect of the dispute between the Respondents may proceed further.

13. List before the Registrar on 31st August, 2023.

14. List before the Court on 8th November, 2023.

PRATHIBA M. SINGH, J.

MAY 26, 2023/dk/rp This is a digitally signed order.

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