

**THE HIGH COURT OF KERALA**  
 **Dictation Test for Selection to the Post of**  
 **Confidential Assistant Gr. II (Temporary)**

**21.11.2021**

The question emerges for consideration is whether when the writ petitioner has resorted to the provisions of the Arbitration and Conciliation Act, 1996, was he entitled to challenge the order passed by the arbitrator, invoking powers conferred under the Act in a writ proceeding under Article 226 of the Constitution of India.

2. The provisions of the National Highways Act, and the Arbitration and Conciliation Act, extracted above would make it clear that it was on the basis of the powers conferred under Section 3 of the Act, that the Arbitrator was empowered to exercise the power to decide the dispute // raised by the writ petitioner. Admittedly, it was only on the basis of Sub-section 5, the application could be

filed by the writ petitioner before the Arbitrator seeking appointment of an Advocate Commissioner along with an expert to value the buildings situated in the property in question. It was by virtue of the specific powers conferred under the Sub-sections that the Arbitrator has invoked the provisions of the Arbitration and Conciliation Act. It is clear that the Arbitrator is vested with powers to pass any interim orders so as to protect the interest of // an aggrieved person. The Act, empowers the Arbitrator to appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal. It is clear from Section 27 that the Arbitrator is also vested with powers to seek assistance of the Court in taking evidence. Therefore, when an order was passed by the Arbitrator invoking the powers under the provisions of the Act, read along with the provisions of Act, it had to be treated and viewed as an order passed under the Act. // Therefore by virtue of

Section 37 of Act, 1996 if any person is aggrieved by the order passed by the Arbitrator, he has a right of appeal to the court authorized by law. It is clear from Section 37 of Act, 1996 that petitioner was entitled as of right to prefer an appeal since the relief sought for by the petitioner to appoint an Advocate Commissioner along with an expert acceptable to him was declined by the Arbitrator.

3. On an analysis of the document in the order, it is clear // that the Arbitrator has assigned reasons for appointing the Executive Engineer as the expert for reassessing the value of the building. It is also evident that even though the writ petitioner pressed for appointment of an Advocate Commissioner, it was declined. Analysing so, it is clear that the petitioner had the remedy to approach a competent court of law as envisaged under Section 37 of the Arbitration and Conciliation Act. Whatever that be, it is not a case where the arbitrator has exercised the power

without jurisdiction. Clearly, jurisdiction is conferred on the arbitrator by virtue // of Section 3 of the Act, read with the provision of the Arbitration and Conciliation Act, to consider any application for appointment of an expert and if at all there is an illegality in the order passed, it could only be a subject-matter of appeal under Section 37 of the Act. True, the Arbitral Tribunal is a statutory creation as per the provisions of the Act, however normally and ordinarily, an order passed by the Arbitral Tribunal invoking powers of the Act, could not be capable of being challenged // under Article 226 of the Constitution of India.

4. The petitioner had a clear remedy under Section 37 of the Act and moreover, if that Section was not available to the petitioner, then the remedy available to the petitioner was under Section 34 of the Act, while challenging the Award of the Arbitrator, if aggrieved.

5. Considering the legal and factual circumstances involved in the case, we are of the definite opinion that the writ petitioner was not at liberty to invoke Article 226 of the Constitution of India to ventilate his grievances against order passed by the // Arbitrator, since there were no extraordinary situations remaining in the impugned order. It is also clearly discernible from the order that the Arbitrator has taken a decision after providing an opportunity of hearing to the respective parties and considering the contentions put forth. It is a well settled proposition in law that a writ court is only expected to look into the manner in which the order was passed by the statutory authority ie., as to whether principles of natural justice were followed, whether there is any arbitrariness in exercising the powers by the statutory authority and any other legal // infirmities justifiable to be interfered with under the extraordinary jurisdiction.

6. On going through the order, we are of the considered opinion that there is no arbitrariness or violation of principles of natural justice by the Arbitrator, which ought to have persuaded the learned Single Judge to interfere with the impugned order exercising the power conferred under Article 226 of the Constitution of India. In fact, the Apex court had occasion to consider the issue with respect to the power exercised by the Arbitrator in relation to interference with the same by the writ court in **Army Welfare Housing Organisation** case // Paragraph 41 of the said judgment reads thus: An arbitral tribunal is not a court of law. Its orders are not judicial orders. Its functions are not judicial functions. The jurisdiction of the arbitrator being confined to the four corners of the agreement, he can only pass such an order which may be subject matter of reference.

It is true that the judgments referred to above deal

with the contractual arbitration agreements and not a statutory arbitral tribunal as in the instant case, we have no hesitation to say that the principles of law laid down would substantially // apply in the instant case, there being no situation made to interfere under article 226 of the Constitution of India. Taking into account the above legal and factual circumstances, we are of the undoubted opinion that interference is required to the judgment of learned Single Judge. Accordingly, we set aside the impugned judgment of the learned Single Judge, allow the appeal and accordingly dismiss the writ petition. However, we leave open the liberty of the writ petitioner to seek necessary reliefs in accordance with the provisions of the Arbitration and Conciliation Act, if advised so.