

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.01.2020

Delivered on : 26.02.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.627 of 2018
and
A.Nos.5360 and 5361 of 2018

E. Sugumaran
Secretary,
Chennai Football Association
No.58/1, 1st Street, Narayanasami Garden,
Raja Annamalaipuram, Chennai - 600 028.

...Petitioner

Vs

1. M. Malarman,
S/o. Murugesan,
Secretary,
Madonna Matrix Football Club, Chennai
And Member - Chennai Football Association,
No.6, Manoharan Lane, Chetpet,
Chennai 600 031.

2. Tamil Nadu Football Association,
Represented by its President,
No.73, Jawaharlal Nehru Stadium,
Chennai- 600 003.

...Respondents

PRAYER: Original Petition is filed under Section 34 of the Arbitration and Conciliation Act 1996 to set aside the Award dated 18.11.2017 passed in Arbitration Case No.1 of 2016 by the Arbitral Tribunal, as null and void.

For Petitioner : Mr. Sivanandaraj for
Mr. J. Saravana Kumar
Mr. Adeesh Anto
For Respondent : Mr. A. Rajesh Kanna for R1
M/s. Arun C. Mohan for R2

ORDER

The respondent before the Arbitral Tribunal has challenged the Award dated 18.11.2017 passed by the three member Tribunal. This Court has been called upon to interpret the provisions of Section 29 A (3) and decide as to whether parties can by consent extend the period provided under Section 29 A (1) of the Arbitration and Conciliation Act, 1996 (hereinafter called the 1996 Act) after the expiry of the period of 12 months in the light of the language of Section 29 A (4) which states that the mandate of the Arbitral Tribunal stands terminated on the

expiry of the period specified in Section 29 A(1) and 29 A (3) of the 1996 Act.

2. Claimant/respondent's Case

2.1. The brief facts preceeding the award and which are germane to the issue on hand is herein below narrated:

The first respondent herein had initiated the arbitration proceedings seeking a declaration to declare the selection of the petitioner herein as Secretary of the Chennai Foot Ball Association (CFA for the sake of brevity) as null and void alleging that the accounts for the year 2008-2009 was not submitted by the petitioner as per the Article 30.3.7 of the Constitution of the CFA and for an injunction restraining him from functioning as Secretary of the CFA.

2.2. The first respondent had invoked the Arbitral Clause for the relief narrated supra on the following facts:

(i) That the provisions of Article 30.3.7 by the petitioner has been violated. The said Article would read as follows:

"30.3.7. He shall handover all the

records and properties of the Association to his successor within a period of 15 days from the date of the election of his successor or from the date of supersession and appointment of an Adhoc Committee of DFA failing which he shall be liable for disciplinary and legal action”.

(ii) Though the election for the office bearers of the CFA was for a period of two years, the petitioner herein, according to the respondent, was attempting to continue as the Secretary of the CFA.

(iii) There were several complaints against the petitioner and Court orders were passed against the petitioner as a result of which TFA had removed the petitioner from the Secretary's post and appointed Adhoc Committee which had taken charge of the Association and the said arrangement continued till 01.03.2014.

(iv) On 02.03.2014, the election was conducted for CFA in which the first respondent and others were elected as office bearers of the

CFA, however within a period of three months the petitioner colluding with others had dismantled the elected body and therefore the elected body could function only for three months and election was once again scheduled on 31.08.2014.

2.3. Despite the first respondent giving the representation to the second respondent to take action against the petitioner for non submission of the accounts for the year 2008-2009, the second respondent had not taken any action. The first respondent would submit that in the suit OS.No.4836 of 2009 filed by them against the petitioner and the second respondent for declaration and permanent injunction, the City Civil Court was pleased to decree the suit as follows:

(i) Declaring the AGM conducted on 31.05.2009 which included the circulation of the 29th Annual Report 2008-2009 and approval and adoption of all the transactions made was illegal and void.

(ii) The petitioner herein was restrained by way of an injunction from implementing or giving effect to or acting upon the resolution passed or transactions approved or adopted in the AGM on

31.05.2009.

(iii) Injunction from recognizing or adopting, approving or according sanction or giving effect to the AGM held on 31.05.2009 or to the resolutions passed therein.

2.4. In another suit O.S.No.4831 of 2020, the XIII Assistant City Civil Judge Chennai was pleased to declare the Special General Body meeting slated for 28.05.2010 without placing the requisite documents before the Executive Committee and approving the accounts as null and void besides granting a decree for permanent and mandatory injunction.

2.5. The allegations of the irregularities committed by the members and office bearers of the CFA was pointed out by one P.Subramani. Though these persons were defeated in the election on 31.08.2014, they are still continuing with their post which is in violation of the Rules of the CFA.

The main grievance put forth by the petitioner was non submission of the accounts for the period 2008-2009.

3. Counter of the petitioner herein

3.1. The petitioner had filed his counter questioning the constitution of the Arbitral Tribunal as a preliminary objection as it was against the Constitution i.e., bye-laws of TFA.

3.2. The standard statutes approved by the TFA for the District Football Associations (DFAs) details the procedure for resolving the disputes amongst its Members. Article 46.1 of the standard statutes as approved by the TFA is herein below extracted:

" 46.1. The TFA shall create an option for recourse to arbitration by nominating a panel of independent arbitrators to resolve any dispute that may arise between TFA, its members, clubs, players, officials and all those involved in the game of Association Foot ball".

3.3. Further this Article has to be read along with Article 66.1 of the TFA which reads as follows:

" 66.1. TFA shall create an option for recourse to Arbitration, by nominating a panel of independent arbitrators who may be advocate or magistrate to resolve any dispute between TFA, its member, clubs, players, officials and all those involved in the game of Association Football. The Arbitration Tribunal will only deal with the internal disputes that do not fall in the jurisdiction of the other two judicial bodies of the TFA."

3.4. The respondent had earlier suo motu appointed the Arbitrator without obtaining the consent of the petitioner herein. This was questioned by the petitioner by filing OP.No.1005 of 2016 under Section 11 of the Arbitration and Conciliation Act (hereinafter referred to as Arbitration Act) seeking appointment. This Court had terminated

the mandate of the earlier Arbitrator as it was an arbitratory appointment and directed the second respondent to act within the terms of the Articles to constitute a panel of Arbitrators.

3.5. Without following the earlier order, the first respondent had nominated a fresh Arbitral Tribunal ignoring the provisions of the Constitution of the TFA as well as standard statutes stipulated by the DFA in its Executive Board meeting on 12.08.2014 and confirmed in the AGM convened on 28.09.2016. The main ground on which the appointment was questioned was the fact that the arbitration proceedings could not be proceeded with till such time the second respondent approves the special resolution for the conduct of the arbitration procedure. Article 46.4 of the standard statute of the DFA approved by the TFA would read as follows:

*" 46.4. The Arbitration procedure shall
be according to the Special Regulations made
for this purpose."*

3.6. This Article has to read along with Article 66.3 of the

Constitution of the TFA. The said Article is similar to Article 46.4 of the standard statute approved by the TFA for the DFA. Since these Regulations have not been framed, the parties cannot be referred to Arbitration. The petitioner had denied the allegations contained in the claim statement.

3.7. The petitioner would contend that the AGM was held on 31.08.2014 and an Election committee was nominated. The Election was conducted by the Election Committee. The first respondent had contested for election to the post of Vice President and lost. He would further submit that the statement of accounts had to be submitted within a period of 15 days to the next General Body or newly elected bodies was a misconception. The Article in question namely Article 30.3.7 would only state that the Secretary should handover all the records and properties of the association to his successor and not to the newly elected body or to the next general body as claimed by the first respondent herein. The petitioner would further contend that the submission of accounts is done by the treasurer under article 27.4 of the constitution. The accounts for the year 2008-2009 was properly

audited and submitted before the AGM of the CFA convened on 31.05.2009. The accounts were approved and passed unanimously by all the Members of the CFA present. The meeting was also attended by the erstwhile office bearers of the second respondent club. In the year there were some misunderstanding amongst the Members of the CFA and therefore the second respondent had tried to sort out the issue by convening a general body to elect the new office bearers and executive Committee for year 2009-2010. In furtherance to this decision on 30.08.2009, the TFA convened the general Body meeting of the CFA and conducted the election by engaging the members of the Tamil Nadu Olympic Association. The petitioner was once again elected as the Honorary Secretary of the first respondent.

3.8. The petitioner would submit that once again on 27.05.2010 the TFA attempted to intervene in the affairs of the CFA by issuing the notice superseding the office bearers of the CFA and appointing the Adhoc Committee to administer the affairs of the CFA and replacing a the new set of members for the year 2011. The records relating to the administration of the CFA was handed over to the new office bearers.

Thereafter on 04.11.2013, the second respondent appointed an interim committee to manage the affairs of the TFA. The fact that in the Annual General Body meeting held on 2.03.2014, the members had discussed the accounts for the year 2008-2009 of the CFA would clearly show that the contention of the respondent that accounts were not submitted was totally false. The Annual General Meeting of CFA was held on 31.08.2014 and the elections took place on the same date. The first respondent had contested for the post of Vice President and the petitioner was elected as honorary Secretary, therefore the contentions of the first respondent that the petitioner had colluded with others and abolished the elected body is contrary to the truth. The first respondent intervened in the day to day activities of the CFA and tried to scuttle its affairs and it is he who instigated the filing of the claim statement. The petitioner had also taken the plea of non joinder since the treasurer who is the person responsible for the accounts of the association had also not been made a party to the proceedings.

3.9. Ultimately the Arbitral Tribunal by their Award dated

18.11.2017 had passed the following Award:

" Therefore, we hereby hold that the declaration of election and assumption of office by the present President Mr.Ghulam Hussain is not in consonance with Article 22.3 of the Statute for DFAs and other office bearers who are all subject matter of this claim petition were not declared elected as Article 22.4 of the Statutes for DFAs consequently, their election and assumption of office including the president and other office bearers which is subject matter of this claim petition, are liable to be declared as null and void, but due to the non compliance of rudimentary principle of natural justice that the present president and other office bearers are not made as a party to the claim petition to give them fair opportunity; we are constrained from giving any relief to the claim in Arbitration Case No.2 of 2016, namely, for the non-joinder

of necessary parties which hit the claim petition at its root. If the claim petition is allowed, that definitely will have a direct bearing and consequences on the existing president and other office bearers who are not parties to this proceedings. For that sole reason this claim petition in Arbitration Case No.2 of 2016 is liable to be dismissed."

3.10. A similar proceedings was initiated by one P. Subramani in Arbitration case No.2 of 2016. The Arbitral Tribunal had dismissed the Arbitral proceedings initiated by P.Subramani. This Award has not been challenged.

4. Submissions:

4.1. Mr. Sivanandaraj, learned counsel appearing on behalf of the learned counsel for the petitioner would at the outset raise a preliminary objection that the Award in question has been passed by

an Arbitral Tribunal which was *functus officio* on the date of passing of the Award since the Award has been passed beyond the period of one year without any extension being granted by the Court as contemplated under section 29 A (3) and (4) of the 1996 Act.

4.2. He would further contend that the appointment of the Arbitrator itself is contrary to the agreement and the law laid down by the Hon'ble Supreme Court in ***Perkins Eastmen Architects DPC Vs. HSCC (India) Ltd. Reported in (2019) 8 MLJ page 623***, since the person who had constituted the Arbitral Tribunal is the person interested in the dispute and hence the appointment was violative of Section 12 (1) read with schedule 5 of the 1996 Act.

4.3. He would further submit that the Tribunal has also been constituted contrary to the terms of the Constitution of the CFA. He would also contend that the Award has been passed in total violation of the principles of natural justice, since the petitioner was unable to present his case. That apart he would further question the relief claimed as contrary to the terms of the constitution and malicious. He

would also submit that the proceedings was barred by limitation since the relief claimed is to declare the petitioner's election as Secretary as null and void on the ground that the accounts for the year 2008-2009 had not been submitted. The proceedings has been initiated only in the year 2016 which was nearly seven years after the alleged incident.

4.4. The petitioner would further contend that the Award was in contravention to the provisions of Section 29 A of the 1996 Act. The claimant would rely upon the following Judgments:

- 1. Union of India Vs. Advanced Polymer Technology and Others reported in 2019(1) KLJ page 894**
- 2. Nilesh Ramanbhai Patel and Others Vs. Bhanubhai Patel and Others reported in (2019)2GLR1537**
- 3. State of Punjab Vs. Hardyal reported in (1985) 2 SCC 629**

4.5. He would rely on the Judgment in "**Bharat Oman Refineries Ltd. Vs. Mantech Consultants [reported in 2012 SCC Online Bom 669]**" to support his contention that the consent which is contemplated under Section 29 A must be conscious, express, clear

and unambiguous. In support of this argument he would also rely on the Judgment of "**M/s. Bokaro and Ramgur Ltd. Vs. Dr. Prasun Kumar Banerjee [reported in AIR 1968 pat 150].**"

4.6. Per contra Mr. Arun C. Mohan, learned counsel appearing on behalf of the second respondent would submit that the Constitution of the Arbitral Tribunal was very much in keeping with the constitution of the DFA. He would further submit that the Arbitral Tribunal was constituted as per the orders of this Court in OP.No.1005 and 1006 of 2016. He would further submit that the panel of Arbitrators had been placed before the congress and confirmed by them. The Arbitral Tribunal had extended beyond the period of six months after taking the consent of both parties and therefore its mandate was very much in force.

4.7. He would further argue that it is well open to the Arbitrator to extend the period when the parties were agreeable to the same. He would place his reliance upon the judgment "**[reported in 2018 SCC OnLine Bom 4371] in the case of FCA India Automobiles Pvt.**

Ltd. Vs. Torque Motor Cars Pvt. Ltd." in support of his contention that there was no limit to seeking extension under Section 29 A. He would further contend that by continuing to participate in the proceedings, the petitioner herein had ratified the extension.

4.8. The learned counsel would ultimately contend that the interpretation of section 29 A (3) would suggest that parties are at liberty to extend the mandatory one year period by further period of six months. It is only if the parties fail to consent for extension of further six months beyond the mandatory period then the extension can be obtained only through the Court.

5.Discussion:

5.1. The award has been challenged on two main grounds:-

a) that the constitution/composition of the Arbitral Tribunal was contrary to the procedure contemplated under the Constitution/Bye Laws of the TFA and the standard statutes as approved by the TFA for DFAs and therefore liable to be set aside under Section 34 (2) (v) of

the 1996 Act.

b) that the Arbitral Tribunal has passed the Award after its mandate has terminated and not extended as per the provisions of Section 29 A (3) and 29 A (4) of the 1996 Act.

5.2. Let us first analyse the 1st ground of challenge: The petitioner has come forward with a contention that the constitution of the Arbitral Tribunal was contrary to the agreement that has been laid down in the Constitution of the second respondent. Article 66 of the statute/constitution of the TFA which is the governing body of all the DFAs relates to constitution of Arbitral Tribunal. Article 67 deals with the jurisdiction of the Arbitrators. The two articles would read as follows:

Article 66 ARBITRATION TRIBUNAL

66.1. TFA shall create an option for recourse to Arbitration, by nominating a panel of independent arbitrators who may be advocate or Magistrate to resolve any disputes

between TFA, its members, clubs, players, officials and all those involved in the Game of Association Football. The Arbitration Tribunal will only deal with the Internal disputes that do not fall in the jurisdiction of the other two judicial bodies of TFA.

66.2. With regard to substance, the arbitrators shall be guided and apply the various regulations of TFA and AIFF and the Indian Law.

66.3. The Arbitration procedure shall be according to the special regulations made for this prupose.

ARTICLE 67 JURISDICTION OF ARBITRATORS

67.1. Only the Arbitrators shall deal with Appeals against decisions and disciplinary sanctions of the last instance, after all previous stages of appeal available at TFA, member, club level have been exhausted. The reference

to Arbitrators shall be sought by an application made to the TFA Secretariat within 10 days of notification of the decision.

67.2. The Arbitrators shall not however hear appeals on:

- a) Violation of the laws of the Game*
- b) Suspension of up to one year.*
- c) decisions passed by an independent and duly constituted Arbitration Tribunal of a Member.*
- d) Decisions of Disciplinary and Appeal Committee.*

67.3. The Arbitrators are also empowered to deal with all disputes between a third party and entities or person mentioned in para-1 if an arbitration agreement exists.”

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5.3. The same procedure is incorporated in Article 46 of the standard statutes approved by TFA for DFAs. The Constitution of the

Arbitral panel is by the TFA. The judicial bodies of the TFA has been detailed in Article 63, they are the Disciplinary Committee, the Appeal Committee and the Arbitration Tribunal. The provisions of Article 63.3 would clearly emphasise the fact that the members of the judicial bodies shall not belong to the executive board or any of the sub committees. Article 31 of the Constitution deals with the ordinary congress and 31.2 deals with the mandatory items to be included in the congress schedule. Clause (O) therein talks about the appointment of the Chairman, Deputy Chairman and Members of the Judicial Body. Therefore the members of the Arbitral Tribunal has to be chosen by all Members of the congress. The General Secretary is required to draw up the agenda based on proposals from the Executive Board or Members. Article 34.1 enjoins the General Secretary to record the minutes of the congress and the minutes is required to be circulated within 60 days of the congress to all members of the TFA (Article 34.3)

5.4. Apart from the ordinary congress the constitution also contemplates an extraordinary congress convened by the Executive Board as per the provisions contained in Article 35 of the Constitution.

The Executive Board consists of the members prescribed in Article 6.1 and their meetings are provided in Article 37. Therefore the members of the Arbitral Tribunal is required to be appointed at an ordinary congress as per the Article 31.2 of the Constitution. In the instant case, the President had selected arbitrators and submitted the panel and the same was later placed for ratification before the Executive Board instead of the same going through the ordinary congress and passed by 3/4th majority in the AGM. That apart the Tribunal has been constituted by the person who is personally interested in the dispute and in total violation of the provisions contained in the Constitution.

5.5. From the perusal of the papers there is no evidence produced on the side of the respondent to show that the Arbitral Tribunal has been constituted in keeping with the provisions of the Constitution of the TFA. The respondent has not produced the proceedings relating to the special meeting of the Executive Board in which the panel of arbitrators nominated by the second respondent had been ratified/approved. Therefore it is seen that the arbitral

tribunal does not appear to have been constituted as per the procedure contemplated under the Constitution.

5.6. In fact in the letter of the TFA dated 06.08.2016 with reference to the agenda regarding the confirmation of appointment of sole arbitrator, the names and other details of the persons were not circulated. The CFA by their letter dated 11.08.2016 had objected to the appointment as one being in total violation of the constitution. The arbitrator has not submitted the disclosure as contemplated under section 12 of the 1996 Act. Therefore the constitution of the Arbitral Tribunal is against the Bye Laws.

5.7. The petitioner has put forward another contention that on the day of the passing of the Award, the Arbitral Tribunal was *functus Officio* as the term for passing the Award had not been extended as contemplated under Section 29 A (1), (3) and (4) of the 1996 Act. In order to morefully appreciate the contention, it is necessary to extract the provisions 29 A (1), (3), (4) and (5) of the 1996 Act.

"[29A.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.

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.

(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."***

5.8. Before proceedings to analyse the object and effect of Section 29 A it is necessary to extract a portion of the minutes of the proceedings dated 16.10.2017 which was the basis upon which the time for making the award was extended.

" The aribtral proceedings in both the Arbitration Cases commenced at 4:30 p.m. Mr. Malarmaran, claimant in Arbitration Case.No.1/2016 appeared along with his counsel and Mr.Subramani, claimant in Arbitration Case No.2/2016 was not present but was represented by his counsel Mr.Surya Prakash. The contesting respondent Mr.E.Sugumaran is present. The counsel for Mr.E.Sugumaran is not present. The counsel

for TFA is present.

The 1st hearing of the above mentioned Arbitration Case commenced on 15.10.2016. The Arbitral Award could not be passed within one year from the date of commencement as per Section 29 A(1) of the Arbitration and Conciliation Act, 1996. The one year period lapsed on 14.10.2017 and no order of extension extending the period of arbitration for a further period of six months was made on 14.10.2017 as there was no sitting on 14.10.2017.

As the hearing of the Arbitration Cases falls today immediately after 14.10.2017 and the Arbitration proceedings in both cases are in its last lap of hearing the arguments in both cases and the contesting respondent has also agreed to let in oral evidence today by bringing his witness today by hand without issue of

summons and no witness has been brought today by the contesting respondent Mr.E.Sugumaran. When the contesting respondent is asked to provide the particulars of the witness to be examined, he stated that he is unable to provide particulars and simply said that the particulars are known only to his counsel.

Though the final chance was given to the contesting respondent to examine his witness today, due to the illness of his counsel, the prayer for adjournment of the contesting respondent could not be denied.

As the final orders in both the Arbitration Proceedings have not been passed within one year as stated above, the period of the Arbitral Proceedings is extended for a further period of six months from 14.10.2017."

5.9. The genesis for the introduction of Section 29 A in the Statute Book is on account of the fact that the 1996 Act as it stood prior to its amendment in 2015 by the Amending Act 3 of 2016 did not provide a time line for making an arbitral award. Such an omission created an adverse consequence as Arbitrators/parties took a long time to conclude the Arbitral proceedings. Such a delay resulted in the object of the introduction of the 1996 Act viz; speedy disposal, being derailed.

5.10. The Law Commission was called upon to review the functioning of the Arbitration and conciliation Act, 1996 in view of the various short comings observed in its provisions and on account of the representation received by the Government. The Law Commission submitted its 176th Report on the "Arbitration and Conciliation (Amendment) Bill, 2001 on 29.01.2005. The Law Commission had made several recommendation for bringing about an amendment to the 1996 Act and one of the recommendation was that by reason of the removal of the time limit for passing of the Award as found in

Section 28 of the Arbitration Act, 1940 (herein after called the 1940 act) from the 1996 Act an adverse situation had been created. Therefore the law Commission recommended the introduction of a time line for the passing of the award. Though the recommendation was suggested as early as in the year 2005 the same was not introduced back into the 1996 Act till the Amending Act 3 of 2016 as Section 29 A with new stipulations. In fact the 246th Law Commission Report has not delved into this short coming in the 1996 Act or suggest amendments.

5.11. Before proceeding to discuss the provisions of 29 A and its impact on the time line for passing an award it is necessary to briefly look into Section 28 of the 1940 Act which read as follows:-

"28. Power to Court only to enlarge time for making award.

(1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not enlarge from time to time the time for making

the award.

(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."

Therefore a reading of Section 28 would indicate that the discretion to enlarge the time for making an award was totally in the realm of the Court and such extensions could be made time and again.

5.12. Now let us consider the provision of newly introduced Section 29 A. A reading of the provision of this Section would clearly indicate that the law makers have consciously put a cap on the time line within which an arbitral award has to be passed. A reading of Section 29 A(1) as amended by the Amending Act 3 of 2016 would indicate that the Arbitral Tribunal has to pass the award within a period of one year from the date of the Tribunal entering upon the reference. Section 29 A (3) contemplates an extension on consent of the parties, however only for a period of 6 months. A reading of Section 29 A (1),

(3) and (4) therefore contemplates that extension can be in the following situations;

i) one at the end of the one year period contemplated under Section 29 A (1) by parties on mutual consent, such extension would only be for a period of six months and

ii) At the end of the 18th month it can be done by the Court. However the provisions of Section 29 A (4) would provide that if the parties have omitted to extend by consent, the period of the panel on the expiry of one year the Court can extend the period on an application. Section 29 A (4) in very clear terms states that if the period is not extended beyond one year, or after the extended period of 6 months as contemplated under Section 29 A (3), the mandate of the Arbitral shall stand terminated.

5.13. The issue involved in the instant case is whether the extension that has been granted vide the minutes as extracted in the minutes of the Arbitral Tribunal dated 16.10.2017 would constitute an extension as contemplated under Section 29 A (3) of the 1996 Act as amended by Act 3 of 2016.

5.14. A reading of the above proceedings would indicate that the extension has been made suo motu by the Arbitral Tribunal which is evident from the language of the penultimate paragraph of the proceedings which states *"As the final orders in both the Arbitration Proceedings have not been passed within one year as stated above, the period of the Arbitral Proceeding is extended for a further period of six months from 14.10.2017"*

5.15. A reading of Section 29 A (3) of the 1996 Act would indicate that on consent of parties at the end of 12 months, the period of the arbitral tribunal for making an Award can be extended for a further period not extending six months. The provisions of this clause makes it clear the period can be extended only by the consent of the parties and that too not exceeding six months. Such a contingency arises where the Award has not been made within a period of 12 months as contemplated in 29 A(1) of the 1996 Act.

5.16. The question that is placed for the consideration of this

Court is whether parties can consent and extend the period after the expiry of the period of one year. In order to appreciate the above, it is necessary to examine the provisions of Section 29 A (4) of the Act, which provides that if an Award is not made within the specified time, that is; one year or within the extended period specified under Sub section 3 (6 months), the mandate of the Tribunal would **automatically terminate**. Since the language of Section 29 A (4) clearly states that at the end of the 12 months, the mandate of the Arbitral Tribunal terminates parties cannot by consent extend the period after such termination. The same can be extended only on the orders of the Court, such an order can be passed either prior to the expiry of the period or after the expiry of the said period. **The words "either prior to or after the expiry of the period"** does not find a place in section 29 A (3) of the Act. Therefore it is clearly evident that it was not the legislative intent to give the power of ratification to the parties to the proceedings to extend the specified period. Such a power has been consciously given only to the Court as is evident from the reading of Section 29 A (4) and (5). Does it mean that the proceedings till then would be set at naught, the answer is in the

negative. The proceedings are put on hold and if an application as contemplated under Section 29 A (5) is moved the Court can, on sufficient cause being shown, extend the period and upon such extension the mandate of the Tribunal stands revived.

5.17. A reading of the provisions of 29 A (3) and (4) would therefore indicate that on the expiry of the one year period or the extended period of six months, the mandate of the Arbitral Tribunal would automatically come to a close. The same can be revived only by the Court as contemplated under Sections 29 A (4) and 29 A (5). As already stated Section 29 A is framed on the lines of Section 28 of the 1940 Act albeit with an emphasis on a defined time frame even to the Court. Under the 1940 Act, the power was given to the Court to extend/enlarge from time to time the time for making the Award which indicates that the Court can be moved several times to extend the time for making the Arbitral Award. However under the new regime the Courts are permitted to enlarge the time only:

- a) When the one year period had expired and parties had not extended time.

b) When the extended period of six months has already expired and the Award was still to be delivered.

5.18. Even under the 1940 Act it was made clear that the power to extend the time vested only with the Courts. In the Judgment reported in **"State of Punjab Vs. Hardyal reported in (1985) 2 SCC 629"**, the Hon'ble Supreme Court which was considering a dispute arising under the 1940 Act, was called upon to consider the fact whether the Award passed by the Arbitrator after the expiry of the prescribed period despite the participation of the respondent in the proceedings can amount to a misconduct by the Arbitrator and whether the Award was made after an inordinate delay.

5.19. The learned Judge had observed that Section 28 (1) was very wide and conferred full discretion to the Court to enlarge for making an Award at any time. Sub Section (2) makes it evident that the Court had the power to extend the time and such power was not vested with the Arbitrator, however the Arbitrator could enlarge the time if all the parties consented for the same. The learned Judge had

observed that the Arbitrator has no jurisdiction to make an Award after the time fixed and if the Award is made beyond the time the same is invalid and the parties were not estopped from challenging the same on the ground it was made beyond time, eventhough they have participated in the proceedings before the Arbitrator, after the expiry of the period. Ultimately, the Supreme Court held against the respondent in that case, since the respondent had willingly participating in the proceedings after the expiry of the said period. In a judgment of the Gujarat High Court in ***Nilesh Ramanbhai Patel and Others Vs. Bhanubhai Patel and Others reported in (2019)2GLR1537***, the issue involved was to extend the time beyond the period of 18 months. While considering the issue, the learned Judge had considered the entire gamut of the amending provisions of Section 29 A. He has observed as follows in paragraph 15

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**" 15. This provision thus make
a few things clear. Firstly, the power to
extend the mandate of an arbitrator under
sub-sec. (4) of Sec.29 A beyond the period**

of twelve months or such further period if may have been extended in terms of sub-sec. (3) of Sec. 29A rests with the Court. Neither the arbitrator nor parties even by joint consent can extend such period. The Court on the other hand has vast powers for extension of the period even after such period is over."

5.20. Further the provisions of Section 29 A (3) would stipulate that for an extension after the period of 12 months, the extension should be done by the consent of all the parties. The provisions clearly envisages free consent of the parties. The reading of the minutes dated 16.10.2017 does not indicate such consent and on the other hand it only indicates that the arbitrators have suo motu enlarged the time. How a consent has to be given by the parties was considered by the Division Bench of the Bombay High Court in the Judgment ***"reported in 2012 SCC OnLine Bombay 669 in the case of Bharat Oman Refineries Ltd. Mantech Consultants"*** where the

learned judges have observed that

" Unless both the sides agree by a fresh agreement in writing giving authority to the arbitrator to declare the Award even after the stipulated time in furtherance of the original arbitration agreement The Arbitrator cannot proceed to publish the Award. Otherwise a case prior to the amendment came into force as per amendment Act 3 of 2016. The Bench had also observed that an implied consent will not confer jurisdiction once the agreed period had lapsed".

6. Conclusion:

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6.1. This Court is therefore of the opinion that impugned Award has been passed after the Arbitral Tribunal had become *functus officio*. The above view is taken in view of the following

circumstances:

a) The reading of the minutes dated 16.10.2017 would clearly indicate that the 12 month period contemplated under Section 29 A(1) had expired on 14.10.2017 itself, that is; two days prior to the date of hearing.

b) That on and from 15.10.2007 the mandate of the arbitral tribunal had come to an end as stipulated under the provisions of Section 29 A (4) of the 1996 Act and parties had no right to extend the period after the mandate of the Tribunal had terminated.

c) That the proceedings does indicate the consent of the parties for extending the period, on the contrary the proceedings would indicate that the arbitral tribunal has suo motu extended the period which power is not available to the Tribunal.

d) The provisions of Section 29 A (4) contemplates extension after the expiry of the period as contemplated under Section 29 A (1)

and 29 A (3) only by the Court and by none else.

6.2. Further the constitution of the Arbitral Tribunal is also contrary to the terms of the Constitution of the TFA and statutes of the DFAs and on this ground also the Award requires to be set aside.

In the result the Award dated 18.11.2017 is set aside and O.P. is allowed. Consequently, connected MPs. are closed.

26.02.2020

mrn

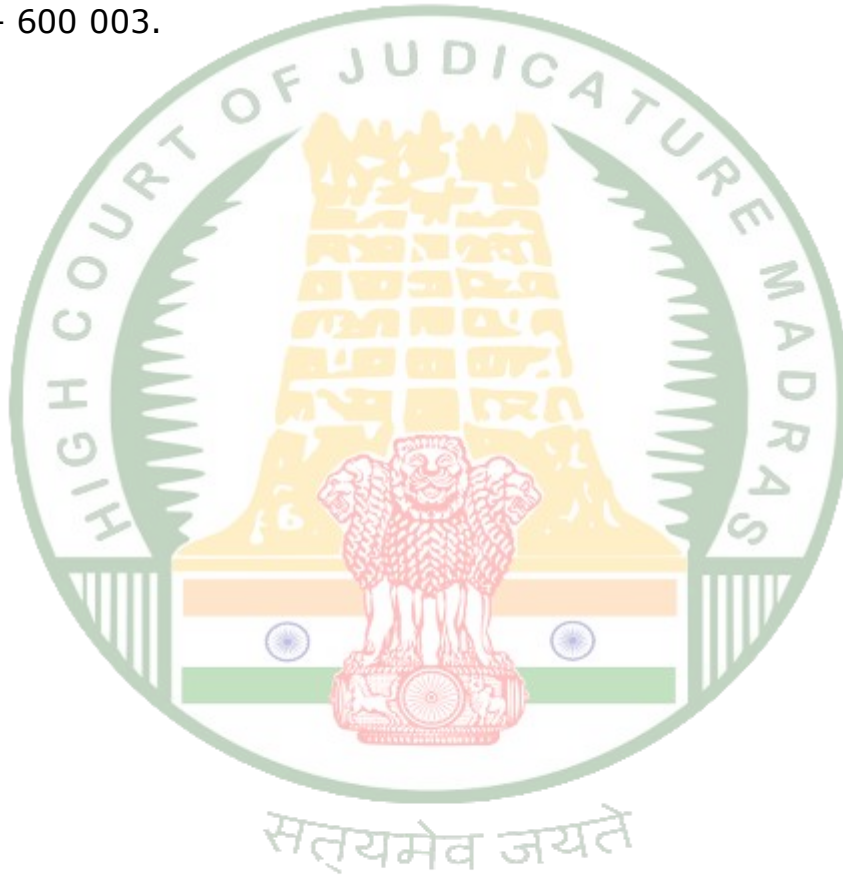
Index : Yes/No

Speaking order/non-speaking order

सत्यमेव जयते
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To,
The Tamil Nadu Football Association,
Represented by its President,
No.73, Jawaharlal Nehru Stadium,

Chennai- 600 003.

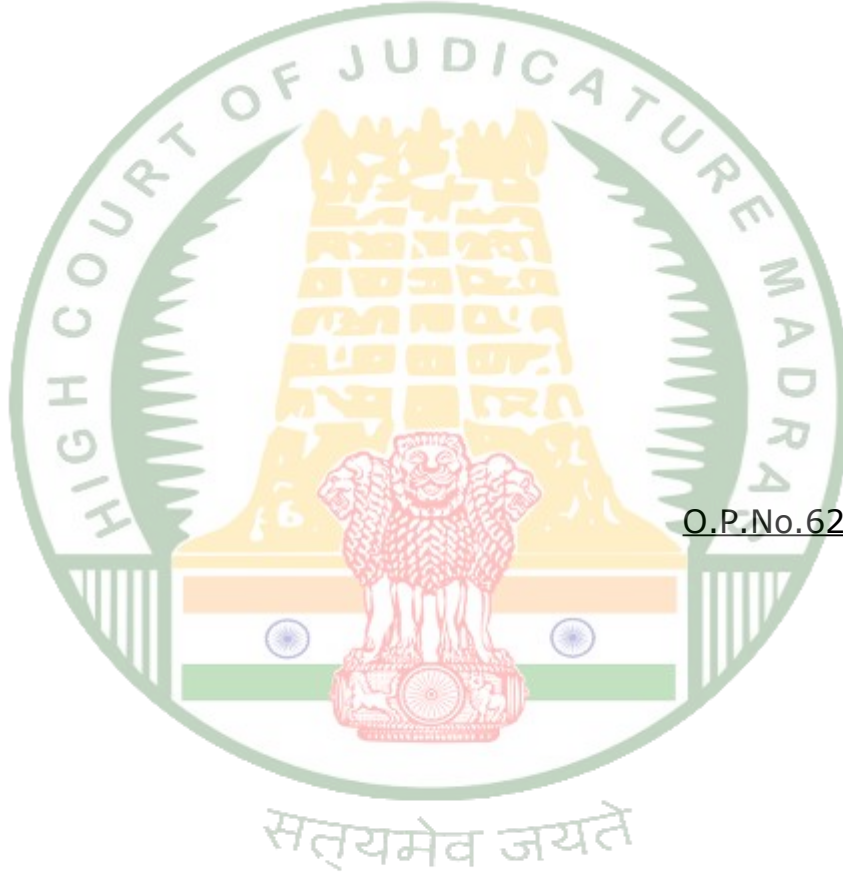


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O.P.No.627 of 2018

P.T.ASHA, J.,

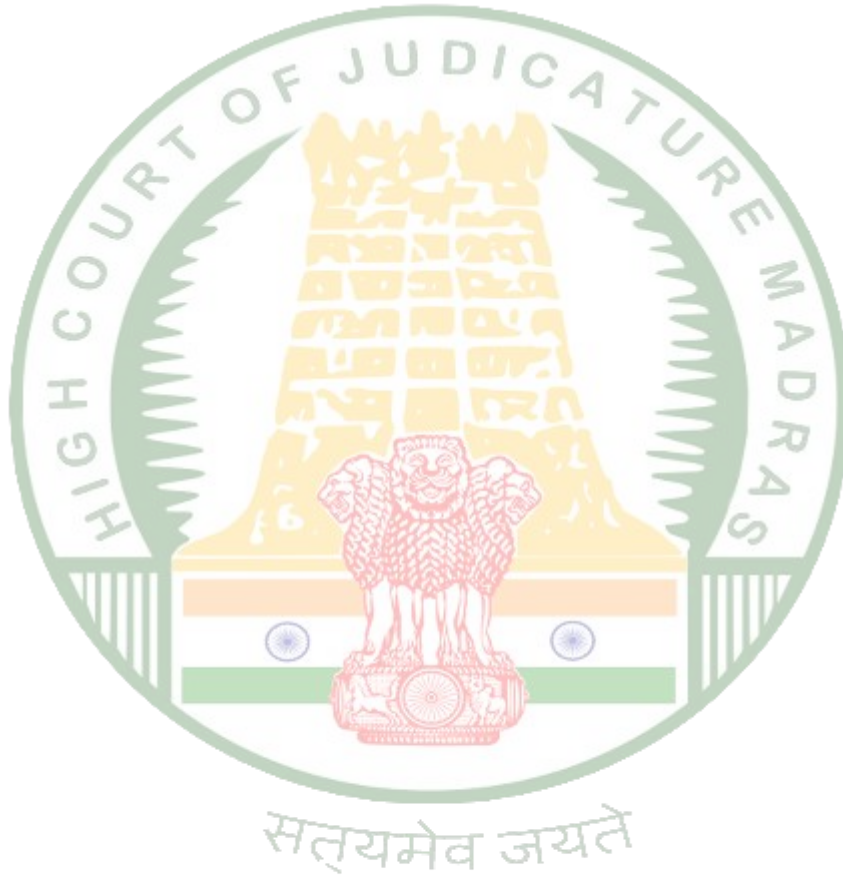
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