

Notice Under Section 21: Procedural Trigger or Jurisdictional Threshold?: Re-Examining Section 21 Post-Bhagheeratha Engineering



TANISHKA KHATANA
Associate



PRAGYA NARAIN
Intern

INTRODUCTION

Recently, the Hon'ble Supreme Court in *M/s Bhagheeratha Engineering Ltd. v. State of Kerala, 2026 INSC 4* revisited the scope and function of Section 21 of the Arbitration and Conciliation Act, 1996 ("Act") in the context of jurisdictional objections founded on absence of Notice under Section 21 of the Act. The appeal arose from a judgment dated 07.01.2025 passed by the Division Bench of the Hon'ble High Court of Kerala ("Hon'ble High Court") in Arbitration Appeal No. 56 of 2012, affirming the order of the Ld. District Judge, Thiruvananthapuram dated 22.06.2010. The Ld. District Judge had set aside the arbitral award dated 29.06.2006 passed by the Ld. Arbitrator ("Award") on the ground that the Ld. Arbitrator had exceeded the scope of reference and acted contrary to the contractual terms, restoring instead the decision of the Adjudicator.

The High Court upheld this view primarily on the reasoning that the Ld. Arbitral Tribunal had been constituted at the instance of the party (State) only to adjudicate upon Dispute No. 1. Since no independent notice under Section 21 of the Act had been issued by the contractor in respect of Dispute Nos. 2 and 4, the Tribunal was held to lack jurisdiction to entertain those claims.

Reversing this finding, the Hon'ble Supreme Court clarified that a Notice under Section 21 of the Act serves a limited statutory purpose, i.e., it determines the date of commencement of arbitral proceedings, primarily for purposes of limitation. The Hon'ble Court held that the jurisdiction of an arbitral tribunal flows from the arbitration agreement and not from the Notice under Section 21 of the Act. Consequently, in circumstances where arbitration has already been validly invoked and the arbitration clause is widely worded, failure to issue a separate Section 21 notice for additional claims is not, by itself, fatal.

Importantly, the Court did not dispense with the requirement of invoking arbitration through notice. Rather, it held that Section 21 cannot be elevated into a jurisdictional barrier so as to restrict the tribunal to only those disputes expressly mentioned in the initial notice, especially when the disputes fall within the scope of the arbitration agreement.

CASE OVERVIEW

Facts

There were four packages of Road Maintenance Contracts awarded to the Appellant, as part of the Kerala State Transport Project. The dispute resolution clause of the Contract provided for the following:

1. Clause 24.1 stated that if the contractor believes that a decision taken by the Engineer was either *ultra vires* its authority or wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.
2. Clause 25.1 stated that the Adjudicator was to give his decision within 28 days of the receipt of the notification of a dispute and;

3. Clause 25.2 stated that either party may refer the Adjudicator's decision to an arbitrator within 28 days and if neither party refers the dispute to the arbitration within 28 days, the Adjudicator's decision will be final and binding.

Accordingly, the dispute was submitted for the decision of the Executive Engineer by the Appellant. As per the Appellant, the Executive Engineer failed to take any decision, and the Appellant then approached the Adjudicator for decision on the pending payment, i.e., Dispute Nos. 1 to 4. The Adjudicator ruled in Appellant's favour with respect to Dispute No. 1 and No. 3 and against the Appellant in Dispute No. 2 and No. 4.

However, this decision was not accepted by the Respondent, who refused to settle the bill and stated that the finding of the Adjudicator with respect to Dispute No. 1 was unacceptable and they intended to refer the matter to arbitration.

After several disagreements between the parties, the Ld. Arbitral Tribunal was constituted. The Ld. Arbitral Tribunal vide the Award held that the arbitration clause was comprehensive enough to include any matter arising out of or connected with the agreement.

Further, the Respondent's prayer to declare the Adjudicator's decision as null and void, indicated their intention to reopen all four disputes. Subsequently, the Ld. Arbitral Tribunal's award for all four issues was in the Appellant's favour.

Aggrieved by the Award, the Respondent (State) filed a petition under Section 34 of Act, before the Ld. District Judge, Thiruvananthapuram in O.P. (Arb.) No. 238 of 2006, seeking to set aside the Award. The Respondent also challenged the Arbitral Tribunal's order passed under Section 16 of the Act rejecting its jurisdictional objections. By order dated 22.06.2010, the Ld. District Judge allowed the petition, set aside the Award, and restored the decision of the Adjudicator.

Aggrieved by the judgment dated 22.06.2010 passed by the Ld. District Judge setting aside the Award and restoring the decision of the Adjudicator, the Appellant preferred an appeal under Section 37 of the Act, before the Hon'ble High Court. Vide the impugned judgment dated 07.01.2025, the Hon'ble High Court upheld the order of the Ld. District Judge. While doing so, the High Court held that the Arbitral Tribunal had been constituted at the instance of the Respondent only in respect of Dispute No. 1, and that the Appellant had not issued any separate notice under Section 21 of the Act in respect of the remaining disputes. On this basis, it concluded that the Tribunal lacked jurisdiction to adjudicate those claims. Accordingly, the arbitral award remained set aside and the decision of the Adjudicator stood restored.

Issue

While two issues were framed by the Hon'ble Supreme Court in the case, the only issue relevant for present purposes is whether the non-issuance of a notice under Section 21 of the Act by the Appellant is fatal for it to pursue its claim before the Arbitrator?

Analysis

The Hon'ble Apex Court set aside the impugned judgement of the Hon'ble High Court for the following reasons:

1. The Hon'ble Apex Court held that the only objective of Section 21 is to establish the date for commencement of arbitration proceedings for the purpose of reckoning limitation. There is no mandatory prerequisite for issuance of a notice under Section 21 prior to commencement of Arbitration, and failure to issue the notice will not be considered fatal, if the claims are otherwise arbitrable.
2. The Court relied on *ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd.*, [2025] 9 SCC 76, wherein it was highlighted that the language of Section 21 of the Act is neither prohibitive nor exhaustive for reference of any other dispute which is not specified in the notice under Section 21 of the Act but falls within the ambit of the arbitration agreement. The case further emphasized that by only considering the dispute mentioned in the notice, would tantamount to restricting the jurisdiction of the tribunal by the bounds of the notice instead of the arbitration agreement.
3. Furthermore, the Court compared Section 23(1) with Section 21 of the Act, and highlighted that, Section 23 employs the word "claim" as opposed to "particular dispute" employed in Section 21. The distinction in the terminology implies that the legislature intended to demarcate between the *procedural objective* of Section 21 from the *substantive function* of Section 23.

CONCLUSION

The ruling does not lay down a blanket proposition that the statutory requirement of issuing a notice under Section 21 of the Act for invocation of arbitration stands dispensed with; rather, it must be understood in the specific factual context in which it was rendered. At the same time, the judgment clarifies that the scope of Section 21 is confined to its procedural function, namely, determining the commencement of arbitral proceedings, consistent with the legislative intent underlying the provision. The Court's reasoning primarily underscores that the absence of a distinct or supplementary notice under Section 21 for every individual claim does not curtail the Arbitral Tribunal's jurisdiction, so long as the disputes fall within the ambit of the arbitration agreement.

Therefore, parties should continue issuing a notice under Section 21 of the Act to commence arbitration. However, they should not assume that the Tribunal's jurisdiction is confined strictly to the disputes enumerated in that notice.

The Hon'ble Apex court has clarified an important aspect regarding notice invoking arbitration, by holding it as a necessary pre-requisite for a valid arbitration process but cannot be a tool to limit the tribunal to only those disputes initially mentioned. The decision strengthens a purposive reading of the Act by ensuring that procedural requirements do not defeat substantive adjudication of arbitrable disputes.