

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

Friday, the 5th day of June 2026 / 15th Jyaishta, 1948
WP(C) NO. 17334 OF 2026(N)

PETITIONER:

HASHIM C.K, AGED 55 YEARS S/O. KUNJAN MARAKKAR, CHENNAMBILLY,
CHERANELLOOR P.O., ERNAKULAM, PIN - 682034.

RESPONDENTS:

1. UNION OF INDIA REPRESENTED BY SECRETARY, MINISTRY OF ROAD TRANSPORT & HIGHWAYS, GOVERNMENT OF INDIA, CENTRAL DELHI P.O., NEW DELHI, PIN - 110001.
2. DIRECTOR GENERAL (ROAD DEVELOPMENT) & SPECIAL SECRETARY ROOM NO.213, MINISTRY OF ROAD TRANSPORT & HIGHWAYS, TRANSPORT BHAVAN, 1, PARLIAMENT STREET, CENTRAL DELHI P.O., NEW DELHI, PIN - 110001.
3. PROJECT DIRECTOR, NATIONAL HIGHWAYS AUTHORITY OF INDIA (HEAD OFFICE), DWARAKA SECTOR 10, SOUTH WEST DELHI P.O., NEW DELHI, PIN - 110075.
4. CHAIRMAN, NHA, G-5 & 6, SECTOR-10, DWARAKA, SOUTH WEST DELHI P.O., NEW DELHI, PIN - 110075.
5. THE PROJECT DIRECTOR, NATIONAL HIGHWAYS AUTHORITY OF INDIA, PROJECT IMPLEMENTATION UNIT- KOCHI, VII/511, NEYTHELI-MAVELIPURAM ROAD, KAKKANAD P.O., ERNAKULAM, PIN - 682030.
6. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, PUBLIC WORKS DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM P.O, PIN - 695001.
7. SPECIAL DEPUTY COLLECTOR AND COMPETENT AUTHORITY, LAND ACQUISITION, NORTH PARAVOOR, COLLECTORATE P.O, PIN - 688001.
8. DISTRICT COLLECTOR, ERNAKULAM, FIRST FLOOR OF CIVIL STATION, ECHAMUKU, KUNNUPURAM, KAKKANAD, PIN - 682030.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings and adjudication by 8th respondent in the claim petition submitted by the petitioner as per Exhibit P2, pending disposal of the writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 02-06-2026 and upon hearing the arguments of M/S.P.SATHISAN, SHIBU B.S, RAZAK M., BIJU P.PAUL, ALVIN JEWEL S.S, VIDHYA T.U, ABHIRAMI.S, LEENA VARGHESE, DANIEL A.J & SREEKARTHIK S. MENON, Advocates for the petitioner and of SRI.RENJISH S MENON, CENTRAL GOVERNMENT COUNSEL for R1 to R5, GOVERNMENT PLEADER for R6 to R8 ,the court passed the following:

FRIDAY, THE 5TH DAY OF JUNE 2026

WP(C) No. 17334 of 2026

HASHIM C.K

VS

UNION OF INDIA & OTHERS

ADVS FOR PETITIONER/S:

SHRI.P.SATHISAN, SHRI.SHIBU B.S, SHRI.RAZAK M., SHRI.BIJU
P.PAUL, SHRI.ALVIN JEWEL S.S., SMT.VIDHYA T.U.,
SMT.ABHIRAMI.S, SMT.LEENA VARGHESE, SHRI.DANIEL A.J.,
SHRI.SREEKARTHIK S. MENON

ADVS FOR RESPONDENT/S:

SHRI.RENJISH S. MENON, CGC



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C.JAYACHANDRAN, J.

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Dated, this the 5th day of June, 2026

O R D E R

In this Writ Petition, the petitioner challenges Ext.P4 Order issued by the Arbitrator/District Collector. Learned counsel for the petitioner pressed for hearing the interim relief. Accordingly, the matter is heard and interim Order issued herewith.

2. Sri.P.Sathisan, learned counsel for the petitioner invited the attention of this Court to the three premises dealt with in Ext.P4 Order, of which, the third premise is not pressed by the learned counsel for the time being, for the purpose of interim relief. The third premise deals with Section 29A of the Arbitration and Conciliation Act, 1996 (for short, 'the Arbitration Act'), which speaks about a statutory term of 12 months, from the date of completion of pleadings and the embargo to proceed further on the expiry of that term. Inasmuch as that ground is not pressed before me,

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the same is not dealt with in this Order.

3. Learned counsel for the petitioner seriously attacked the findings on the first two premises dealt with in Ext.P4 Order. The former is based on the disqualification of the District Collector to act as the Arbitrator, in view of Section 12(5), read with Schedule VII of the Arbitration Act. The solitary reason, which has been stated in Ext.P4 Order as against that challenge is that the embargo in respect of Section 12(5), read with Schedule VII of the Act, is applicable only to Arbitrators appointed by the agreement of the parties, as per Section 11 of the Act. In the instant case, Arbitrator is appointed in terms of Section 3G(5) of the National Highways Act and hence Section 12(5), read with Schedule VII, will not apply, is the reason stated in Ext.P4 to repel that ground of challenge. As regards the second premise dealt with in Ext.P4, learned counsel would point out that the State Government has 25% stake in the roads developed by National Highway and it is the State Government, which owns 25% of the total expenditure. Therefore, the District Collector being an employee of the State Government

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is hit by the disqualification contemplated in Section 12(5), read with Schedule-VII of the Arbitration Act. Learned counsel would conclude that a piquant situation would follow, if the Arbitrator proceeds with the reference and ultimately this Court finds that the District Collector is disqualified to act as the Arbitrator. This is all the more so, in view of the strong *prima facie* case in favour of the petitioner.

4. Learned Central Government Counsel for respondents 1 to 5 would submit that the interim prayer sought for is not liable to be allowed, in view of an Order passed by the Hon'ble Supreme Court dated 11.06.2025 in S.L.P No.16433/2025, staying the operation and effect of Ext.P6 interim Order passed by a Division Bench of this Court.

5. This Court finds little merit in the contention raised by the learned Central Government Counsel for respondents 1 to 5. The interim Order, which has been stayed by the Hon'ble Supreme Court proceeded on the premise that the District Collector cannot do justice to arbitration references totalling to 20,213, in the midst of other functions to be

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discharged. The Division Bench also considered the limited scope for challenge to the Arbitrator's Award only in terms of Section 34 of the Arbitration Act. The specific embargo with respect to Section 12(5), read with Schedule VII, of the Arbitration Act is not seen dealt with in Ext.P6 interim Order. This Court also notice that in the facts of Ext.P6 Order, there was no impugned Order like Ext.P4, which has been subjected to a specific challenge, as is done in the instant case. The solitary similarity between Ext.P6 and the given situation is a direction to the Arbitrator not to proceed with the arbitration reference. However, when the grounds for the same are different, petitioner cannot say that in view of Ext.P6 having been stayed by the Hon'ble Supreme Court, no interim Orders are liable to be passed in the instant facts. The said contention will therefore stand repelled.

6. Learned Central Government Counsel then raised another contention based on a bench decision of this Court in **George Dominic v. Kanjirappally Service Co-operative Bank Ltd.** [2025 KHC 1356] to point out that the petitioner is hit by the

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principles of constructive *res judicata* and also of *subjudice*. According to the learned Central Government Counsel, the petitioner could have raised the point under Section 12(5), read with Schedule VII, before the Hon'ble Supreme Court; and having failed to do so, he is hit by the principles of constructive *res judicata*. Secondly, since the Hon'ble Supreme Court is seized of the matter, the petitioner is hit by the principles of *res subjudice*, as well. This Court is not impressed by either of the contentions. The question as to whether the petitioner is, for any reason, hit by the principles of constructive *res judicata* is a matter to be looked into at the time of final disposal of the Writ Petition and the same cannot preclude the issuance of an interim Order, provided such an Order is warranted on the facts and merits of the case. On *subjudice*, as already found, the issue urged in Ext.P6 and consequently before the Supreme Court is different and distinct from the issues raised in this Writ Petition challenging Ext.P4 Order. The second contention of the respondents will therefore stand repelled.

7. Coming to the *prima facie* merits of the challenge posed

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against Ext.P4, this Court can only endorse the submissions made by the learned counsel for the petitioner. Primarily, it requires to be noticed that the provisions of the Arbitration Act has been made applicable to every arbitration under Section 3G(5) of the National Highways Act. The provision is contained in Section 3G(6), which is extracted here below:

“3G. Determination of amount payable as compensation.—

(1) xxx

(2) xxx

(3) xxx

(4) xxx

(5) xxx

(6) *Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.”*

8. No provision has been pointed out by the learned Central Government Counsel for respondents 1 to 5 in the National Highways Act, which would impair the effect of Sub Section (6) of Section 3G of the National Highways Act. If the provisions of the Arbitration Act apply to every arbitration under the National Highways Act, this Court could not *prima facie* find any reason as to why Section 12(5), read with

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Schedule VII, could not apply to an arbitrator appointed in terms of Section 3G(5) of the National Highways Act. That apart, as rightly pointed out by the learned counsel for the petitioner, Section 2(4) of the Arbitration Act specifies that Part-I of the Arbitration Act shall apply to every arbitration under any other enactment, as if the arbitration were pursuant to an arbitration agreement. *Prima facie*, the argument based on Section 2(4) is also convincing to the effect that Section 12(5) of the Arbitration Act, read with Schedule VII, applies to the instant arbitration under Section 3G(5) of the National Highways Act. This Court is therefore *prima facie* of the opinion that the first conclusion arrived at by the Arbitrator in the impugned Ext.P4 Order can hardly be sustained.

9. The second premise dealt with in Ext.P4 pertains to the disqualification of the District Collector to act as the Arbitrator, in view of the bar under clause (1) of Section 12(5), read with Schedule VII of the Arbitration Act. In the impugned Order, the District Collector held that he is not in any way related to the land acquisition activities

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carried out by the provisions of the National Highways Act, controlled by the Central Government. Assuming that premise to be true, the District Collector lost sight of the embargo contained in clause (1) of 12(5), read with Schedule VII of the Arbitration Act. Section 12(5) prohibits the appointment of any person, whose relationship with the parties or the counsel or the subject matter of the dispute falls under any of the categories specified in Schedule-VII. The first clause in Schedule-VII, among other things, deals with the Arbitrator's relationship in his capacity as an employee with a party. It is not disputed before this Court that the State Government has 25% stake in respect to the roads being developed by the National Highway, in the sense that the State Government owns 25% of the total expenditure for the formation of the road by the National Highway. At least to that extent, State Government is an interested party and District Collector, being an employee, appears to be *prima facie* hit by the disqualification contained in Section 12(5), read with Schedule VII, of the Arbitration Act. This Court is therefore constrained to *prima facie* find that the second

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premise on which the District Collector trekked is also erroneous.

10. Inasmuch as the petitioner has got a strong *prima facie* case, coupled with the principles of balance of convenience, this Court is of the opinion that Ext.P4 Order is liable to be stayed. As otherwise, the District Collector will proceed with the arbitration proceedings, which will lead to a precarious situation, if this Court ultimately allows this Writ Petition, finding merits on the grounds canvassed by the petitioner. In the circumstances, Ext.P4 Order will stand stayed, with a further direction to the 8th respondent to keep the arbitration reference in abeyance, until further Orders from this Court.

Post on 06.07.2026.

Sd/-

C. JAYACHANDRAN, JUDGE

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APPENDIX OF WP(C) 17334/2026

Exhibit P4

**TRUE COPY OF THE INTERIM ORDER
NO.C7-538923/2022/TDCEKM/(253) IN LAC
236/2021/LA2/CHNR, DATED 27.04.2026 ISSUED BY 8TH
RESPONDENT**

Exhibit P6

**TRUE COPY OF THE SAID INTERIM ORDER IN W.A.NO.1784 OF
2023 DATED 08.04.2025**

