



CNR: KAHC020161582025

NC: 2026:KHC-D:15703
WP No. 105206 of 2025
C/W WP No. 105173 of 2025
WP No. 105207 of 2025
AND 1 OTHER

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 21ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 105206 OF 2025 (GM-RES)

C/W

WRIT PETITION NO. 105173 OF 2025 (CS-RES)

WRIT PETITION NO. 105207 OF 2025 (GM-RES)

WRIT PETITION NO. 105210 OF 2025 (GM-RES)

R

IN WP No. 105206/2025

BETWEEN:

1. VIJAYA SHARANA COLD STORAGE PVT. LTD.,
R/BY ITS MANAGING DIRECTOR,
SHRI. J. THIPPERUDRAPPA
AGE. 67 YEARS,
R/O. SY. NO.4B2/B1, SRI. BALAJI TECH PARK,
BANGALORE ROAD, HALAKUNDI VILLAGE,
BELLARI-583102.

...PETITIONER

(BY SRI. SHUBHENDU .A AKALWADI, ADVOCATE)

AND:

1. OFFICE OF REGISTRAR
OF COOPERATIVE SOCIETIES,
R/BY ITS REGISTRAR
900, 9TH FLOOR, TOWER E,
WORLD TRADE CENTER,
NAUROJI NAGAR, NEW DELHI-110029.
2. SRI VEERSHAIV CO-OP BANK LTD.,
R/BY ITS AUTHORIZED OFFICER,
517/A-1, PLOT NO.6, SHIVAJI PARK,
TARARANI CHOWK, KOLHAPUR-416001.

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3. SRI VEERSHAIV CO-OP BANK LTD.,
R/BY ITS BRANCH MANAGER,
NEW S.R.S. TOURIST HOME COMPLEX,
GUNJ ROAD, RAICHURU-584102.
4. MR. RANJEET M. PAWAR,
ARBITRATOR
C/O. SRI VEERSHAIV CO-OP BANK TD.,
3481, VILLA TOWER, SAMADEVI GALLI
BELAGAVI-590 003.
5. MR. V RAMESH S/O VADDE RAMANNA
R/O H. NO. 209, VADDARONI, BESIDE
KOLLAPURAMMA TEMPLE, IBRAHIMPURA, BALLARI
TAL/DIST. BALLARI 583102.

...RESPONDENTS

(BY SRI. ASHOK T. KATTIMANI, AGA FOR R1;
SRI. MAHANTESH R. PATIL, ADVOCATE FOR R2 AND R3;
PARTY-IN-PERSON FOR R4;
R5 – NOTICE DEFERRED)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, CALL FOR RECORDS FROM RESPONDENT NO. 2 AND 3 AND EXAMINE WHETHER THE SETTLED PRINCIPLES WERE FOLLOWED FOR INITIATING ARBITRATION PROCEEDINGS, ISSUE THE WRIT IN THE NATURE OF CERTIORARI BY QUASHING THE NOTICE ISSUED BY RESPONDENT NO. 4 IN ARBITRATION REFERENCE NO. ARB/29/2025 DATED 24/04/2025 FOR INITIATING PROCEEDINGS SUBSEQUENT TO UNILATERAL APPOINTMENT OF ARBITRATOR VIDE ANNEXURE-G SO ALSO ENTIRE PROCEEDINGS, IN THE INTEREST OF JUSTICE AND EQUITY.

IN WP NO. 105173/2025
BETWEEN:

1. SRI SHYAMA SUNDARA COLD STORAGE,
R/BY ITS MANAGING PARTNER,
SHRI. K. SRINIVAS RAO,

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AGE. 50 YEARS,
SY. NO.24/C, NEAR HLC CANAL,
INDUSTRIAL AREA, BANGALORE ROAD,
BALLARI-583102

...PETITIONER

(BY SRI. SHUBHENDU A. AKALWADI, ADVOCATE)

AND:

1. OFFICE OF REGISTRAR
OF COOPERATIVE SOCIETIES,
R/BY ITS REGISTRAR
900, 9TH FLOOR, TOWER E,
WORLD TRADE CENTER,
NAUROJI NAGAR, NEW DELHI-110029.
2. SRI VEERSHAIV CO-OP BANK LTD.,
R/BY ITS AUTHORIZED OFFICER,
517/A-1, PLOT NO.6, SHIVAJI PARK,
TARARANI CHOWK, KOLHAPUR-416001.
3. SRI VEERSHAIV CO-OP BANK LTD.,
R/BY ITS BRANCH MANAGER,
NEW S.R.S. TOURIST HOME COMPLEX,
GUNJ ROAD, RAICHURU-584102.
4. MR. RANJEET M. PAWAR,
ARBITRATOR
C/O. SRI VEERSHAIV CO-OP BANK TD.,
3481, VILLA TOWER, SAMADEVI GALLI
BELAGAVI-590 003.
5. MR. KOTA VENKATESHWARA RAO
S/O. KOTA RAJENDRA BABU,
R/O. H. NO. 2/78, L.B. NAGAR
BOMMANAHAL MANDAL,
SREEDHARAGHATTU,



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ANANTHAPUR, TAL/DIST. ANANTHAPUR,
ANDHRA PRADESH-515871.

...RESPONDENTS

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IN WP NO. 105207/2025
BETWEEN:

1. SARVESHWARA COLD STORAGE PVT. LTD.,
R/BY ITS MANAGING DIRECTOR,
SHRI. SHIVAMAHADEVA GOUDA,
AGE. 53 YEARS,
R/O. SY. NO.159/2, BANGALORE ROAD,
HALAKUNDI VILLAGE, BALLARI-583102.

...PETITIONER

(BY SRI. SHUBHENDU A. AKALWADI, ADVOCATE)

AND:

1. OFFICE OF REGISTRAR
OF COOPERATIVE SOCIETIES,
R/BY ITS REGISTRAR
900, 9TH FLOOR, TOWER E,
WORLD TRADE CENTER,
NAUROJI NAGAR, NEW DELHI-110029.
2. SRI VEERSHAIV CO-OP BANK LTD.,
R/BY ITS AUTHORIZED OFFICER,

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517/A-1, PLOT NO.6, SHIVAJI PARK,
TARARANI CHOWK, KOLHAPUR-416001.

3. SRI VEERSHAIV CO-OP BANK LTD.,
R/BY ITS BRANCH MANAGER,
NEW S.R.S. TOURIST HOME COMPLEX,
GUNJ ROAD, RAICHURU-584102.
4. MR. RANJEET M. PAWAR,
ARBITRATOR
C/O. SRI VEERSHAIV CO-OP BANK TD.,
3481, VILLA TOWER, SAMADEVI GALLI
BELAGAVI-590 003.
5. MR.RAGHAVENDRA E.
S/O GURUMURTHY EDIGA,
R/O H.NO.119, VEERANJENAYA CAMP
SOMASAMUDRA, BALLARI,
TAL/DIST.BALLARI, 583102.

...RESPONDENTS

(BY SRI. ASHOK T. KATTIMANI, AGA FOR R1;
SRI. MAHANTESH R. PATIL, ADVOCATE FOR R2 AND R3;
R4 – PARTY-IN-PERSON;
R5 – NOTICE DEFERRED)

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IN WP NO. 105210/2025
BETWEEN:

1. JAYA SHARANA COLD STORAGE PVT. LTD.
R/BY ITS MANAGING PARTNER,
SHRI. J. BASAVARAJ,
AGE. 33 YEARS,
R/O. PLOT NO.36 AND 37, KIADB,
MUNDARGI INDUSTRIAL AREA,
BANGALORE ROAD, BALLARI-583102

...PETITIONER

(BY SRI. SHUBHENDU A. AKALWADI, ADVOCATE)

AND:

1. OFFICE OF REGISTRAR
OF COOPERATIVE SOCIETIES,
R/BY ITS REGISTRAR
900, 9TH FLOOR, TOWER E,
WORLD TRADE CENTER,
NAUROJI NAGAR, NEW DELHI-110029.
2. SRI VEERSHAIV CO-OP BANK LTD.,
R/BY ITS AUTHORIZED OFFICER,
517/A-1, PLOT NO.6, SHIVAJI PARK,
TARARANI CHOWK, KOLHAPUR-416001.
3. SRI VEERSHAIV CO-OP BANK LTD.,
R/BY ITS BRANCH MANAGER,
NEW S.R.S. TOURIST HOME COMPLEX,
GUNJ ROAD, RAICHURU-584102.
4. MR. RANJEET M. PAWAR,
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5. MR. H.A. RUDRAPPA
S/O. HOSAKOTE ANGADI MAHABALESWARAPPA,
R/O. WARD NO. 01, PET ONI NEAR,
RAMESHWARA TEMPLE, KAMMARACHEDU,
HAGARIBOMMANAHALLI, BALLARI,
TAL/DIST. BALLARI, 583102.

...RESPONDENTS

(BY SRI. ASHOK T. KATTIMANI, AGA FOR R1;
SRI. MAHANTESH R. PATIL, ADVOCATE FOR R2 AND R3;
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THESE PETITIONS, COMING ON FOR DICTATING ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

Since common questions of law arise for consideration in this batch of writ petitions and the challenge in all these petitions is substantially directed against the jurisdiction of the learned Arbitrator and the

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consequential arbitral awards, the petitions are heard together and are being disposed of by this common judgment.

2. The petitioners are aggrieved by the arbitral awards rendered in proceedings initiated under Section 84 of the Multi-State Co-operative Societies Act, 2002 (for short, "the MSCS Act"). The principal grievance of the petitioners is that the arbitral proceedings were commenced without issuance of a separate notice under Section 21 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act"). According to the petitioners, Section 21 is mandatory and constitutes a condition precedent for commencement of arbitral proceedings. It is therefore contended that, in the absence of such notice, the learned Arbitrator never acquired jurisdiction and that every proceeding thereafter, including the award, is rendered a nullity.

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3. The petitioners have also questioned the very appointment of the learned Arbitrator. It is their contention that Section 84(4) of the MSCS Act constitutes a special statutory mechanism for appointment of the Arbitrator and that, unless the statutory procedure is strictly complied with, the Arbitrator cannot assume jurisdiction. It is further contended that the provisions of the Arbitration Act, including Section 11, cannot be independently invoked so as to alter the statutory scheme contained in Section 84 of the MSCS Act.

4. Learned counsel appearing for the petitioners would submit that no notice under Section 21 of the Arbitration Act was served upon the petitioners before the commencement of the arbitral proceedings. Such omission, according to learned counsel, is not a mere irregularity but goes to the root of the jurisdiction of the learned Arbitrator. Reliance is placed upon certain judgments of the High Courts wherein interference under

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Articles 226 and 227 of the Constitution has been permitted where a statutory Arbitral Tribunal was alleged to be acting wholly without jurisdiction.

5. It is further contended that the petitioners have no efficacious remedy under Section 34 of the Arbitration Act since, according to them, an award which is a nullity can be challenged directly in exercise of the constitutional jurisdiction of this Court. The submission is that the existence of an alternative remedy is not an absolute bar where the very constitution of the Tribunal or assumption of jurisdiction is alleged to be *void ab initio*.

6. *Per-contra*, learned counsel appearing for the respondent-Bank would submit that the arbitration contemplated by Section 84 of the MSCS Act is a statutory arbitration. The source of the Arbitrator's jurisdiction is Section 84 of the MSCS Act itself and not an arbitration agreement independently entered into between the parties. Section 84(4) the MSCS Act specifically provides



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for appointment of the Arbitrator by the Central Registrar and Section 84(5) of the MSCS Act incorporates the Arbitration Act only "save as otherwise provided under this Act". Therefore, the special statutory mechanism under Section 84 of the MSCS Act cannot be displaced by importing the consensual mechanism contemplated under Section 11 of the Arbitration Act.

7. Learned counsel for the respondent would further submit that the Hon'ble Supreme Court, in ***M/s Bhagheeratha Engineering Ltd. v. State of Kerala, Civil Appeal No.39 of 2026***, decided on 5 January 2026, has authoritatively explained the scope and object of Section 21 of the Arbitration Act. It is submitted that Section 21 of the Arbitration Act is concerned essentially with identifying the commencement of arbitral proceedings, particularly for the purpose of limitation, and that non-issuance of a separate Section 21 of the

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Arbitration Act notice does not, by itself, extinguish the jurisdiction of an otherwise competent Arbitral Tribunal.

8. It is also contended that, once an award has been made, the statutory remedy is under Section 34 of the Arbitration Act. The petitioners cannot circumvent the legislative scheme of minimal judicial intervention by invoking Articles 226 and 227 of the Constitution of India merely by describing a procedural objection as one going to the root of jurisdiction.

9. Having heard the learned counsel for the parties and having examined the statutory provisions and the judgments relied upon, the following points arise for consideration:

(i) Whether an arbitral award rendered in proceedings under Section 84 of the Multi-State Co-operative Societies Act, 2002 is rendered without jurisdiction merely because a separate notice under Section 21 of the Arbitration and Conciliation Act, 1996 was not issued?

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(ii) Whether the appointment of an Arbitrator under Section 84 of the Multi-State Co-operative Societies Act, 2002 is required to satisfy the consensual appointment mechanism contemplated under Section 11 of the Arbitration and Conciliation Act, 1996?

(iii) Whether a writ petition under Articles 226 and 227 of the Constitution of India is maintainable against an arbitral award rendered under Section 84 of the Multi-State Co-operative Societies Act, 2002, when a statutory remedy under Section 34 of the Arbitration and Conciliation Act, 1996 is available?

(iv) What order?

Finding on point Nos.(i) and (ii)

10. Before examining the objection relating to Section 21 Arbitration Act, it would be appropriate to first understand the statutory architecture of Section 84 of the MSCS Act. The provision does not merely recognise arbitration as one of the several consensual modes of dispute resolution. It creates a statutory mechanism for resolution of specified disputes touching the constitution,



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management or business of a multi-State Co-operative society.

11. Section 84(1) of the MSCS Act opens with a non obstante clause and provides that, where a dispute of the nature specified therein arises, such dispute “shall be referred to arbitration”. The provision covers, *inter alia*, disputes among members, past members and persons claiming through them; disputes between members and the multi-State co-operative society; disputes involving officers, agents and employees; and disputes between multi-State co-operative societies. Section 84(2) of the MSCS Act further identifies certain categories of disputes which are deemed to touch the constitution, management or business of the society, including claims by the society for debts or demands due from a member.

12. Section 84(3) of the MSCS Act further provides that where a question arises whether a dispute referred to arbitration is or is not a dispute touching the constitution,



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management or business of a multi-State co-operative society, the decision of the Arbitrator thereon is final and shall not be called in question in any court.

13. Section 84(4) of the MSCS Act then provides the mechanism for constitution of the Tribunal in express terms:

"Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar."

Section 84(5), in turn, provides:

"Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996."

14. The statutory scheme therefore discloses two distinct sources of legal authority. The MSCS Act supplies the jurisdictional foundation and the special mechanism for reference and appointment, whereas the Arbitration Act



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supplies the procedural and supervisory framework, except to the extent the MSCS Act makes a different provision.

15. The distinction is important. Arbitration under the Arbitration Act is ordinarily founded upon an arbitration agreement within the meaning of Section 7. The Tribunal derives its authority from the parties' agreement to submit their disputes to arbitration. The statutory arbitration under Section 84 of the MSCS Act stands on a different footing. The obligation to refer the dispute to arbitration arises by force of statute.

16. The Hon'ble Supreme Court explained this distinction in ***Ludovico Sagrado Goveia v. Cirila Rosa Maria Pinto, Civil Appeal No.8756/2016*** while comparing the earlier 1984 legislation with the 2002 Act. The Court specifically noticed that under the 2002 Act disputes referred to arbitration are to be decided by an Arbitrator appointed by the Central Registrar and that



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Section 84(4) and (5) create a different statutory scheme under which the Arbitration Act governs the arbitration.

17. The consequence is that Section 84(4) of the MSCS Act cannot be rendered otiose by applying Section 11 of the Arbitration Act as though the parties were engaged in a purely consensual arbitration. Section 11 is designed to facilitate constitution of an Arbitral Tribunal where the parties have agreed to arbitration but the agreed appointment procedure has failed. Section 84(4) of the MSCS Act, on the other hand, itself specifies who is to appoint the Arbitrator.

18. The recent judgment of the Bombay High Court in ***Rajlaxmi Multistate Credit Co-operative Society Ltd. v. Gajanan Vasant Shirbhate, Arbitration Appeal No.77/2025***, is directly instructive. In that case, the District Court had set aside the award on the premise that appointment of the Arbitrator under Section 84 of the MSCS Act, without mutual consent of the respondents,



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was contrary to Section 11 of the Arbitration Act. The Bombay High Court reversed that conclusion. It held that the arbitration under Section 84 is a statutory arbitration, that the MSCS Act is the special enactment, and that the appointment mechanism provided under Section 84 of the MSCS Act is not displaced by the consensual mechanism under Section 11.

19. The Bombay High Court correctly identified the fallacy in conflating private consensual arbitration with statutory arbitration. The Arbitration Act is the general procedural enactment governing arbitration. Section 84 of the MSCS Act, however, is a special statutory provision which not only mandates reference to arbitration but also identifies the authority competent to appoint the Arbitrator.

20. Thus, the absence of individual consent of the respondent to the appointment of an Arbitrator cannot, by itself, invalidate an appointment made in accordance with



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Section 84(4) of the MSCS Act. The relevant inquiry is whether the appointment was made by the Central Registrar or by an authority competent under the statutory scheme, Rules, notifications or valid delegation, and whether the dispute itself falls within Section 84.

21. This distinction also answers the argument that Section 84(4) of the MSCS Act merely replaces Section 11(6A) of the Arbitration Act. The two provisions operate in different fields. Section 11 presupposes an arbitration agreement and deals with constitution of the Tribunal when the agreed mechanism fails. Section 84(4) of the MSCS Act is itself the statutory source of the appointment mechanism in respect of disputes which the legislature has made compulsorily referable to arbitration.

22. It would therefore be incorrect to approach a Section 84 arbitration as though the parties were required to separately consent to the appointment of the Arbitrator.

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The statutory command under Section 84 of the MSCS Act is itself the foundation for reference.

EFFECT OF NON-ISSUANCE OF SECTION 21 NOTICE

23. The next question is whether, notwithstanding the statutory nature of the arbitration, failure to issue a separate notice under Section 21 of the Arbitration Act renders the entire proceedings without jurisdiction. Section 21 of the Arbitration Act provides the point at which arbitral proceedings are deemed to commence. Section 43(2) of the MSCS Act expressly provides that, for the purposes of the Limitation Act, an arbitration shall be deemed to have commenced on the date referred to in Section 21 of the Arbitration Act.

24. The statutory language therefore demonstrates that Section 21 has a significant procedural function. The date of commencement may determine limitation, contractual time bars and other consequences attached by law or contract to the commencement of arbitration.

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25. But the question before this Court is not whether Section 21 has significance. It undoubtedly does. The question is whether the absence of such notice destroys the substantive source of jurisdiction of the Arbitral Tribunal. The answer must be in the negative.

26. The Hon'ble Supreme Court in ***M/s Bhagheeratha Engineering Ltd. v. State of Kerala (supra)*** considered precisely the argument that non-issuance of a notice under Section 21 was fatal to the claim before the Arbitral Tribunal. The Court expressly rejected that contention and held that the object of Section 21 is to determine the commencement of arbitral proceedings, particularly for reckoning limitation. It further held that there is no mandatory prerequisite of issuance of a Section 21 notice prior to commencement of arbitration and that failure to issue such notice would not be fatal where the claim is otherwise valid and the dispute arbitrable.



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27. The significance of ***Bhagheeratha Engineering (supra)*** is that it draws a clear distinction between the commencement of arbitration and the jurisdiction of the Arbitral Tribunal. Section 21 identifies the former; it does not create the latter.

28. The source of jurisdiction in a consensual arbitration is the arbitration agreement. In the present case, the source is the statutory reference under Section 84 of the MSCS Act, read with the statutory appointment mechanism contained in Section 84(4). Section 21 cannot therefore be treated as the provision which confers jurisdiction upon the Tribunal.

29. This position is reinforced by the judgment of the Hon'ble Supreme Court in ***ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji & Co. Pvt. Ltd., (2025) 9 SCC 76.*** The Hon'ble Apex Court explained that the marginal note to Section 21 expressly refers to the "commencement of arbitration proceedings" and held that Section 21 is



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procedural rather than jurisdictional. It does not create or validate the arbitration agreement and is not a precondition for the existence of the Tribunal's jurisdiction.

30. **ASF Buildtech (supra)** further draws attention to the distinction between Section 21 and Section 23. Section 21 is concerned with commencement, whereas Section 23 deals with the statement of claim, defence, counterclaim and amendment or supplementation of claims. The scope of the Tribunal's jurisdiction is therefore not mechanically confined to the precise language employed in a Section 21 notice.

31. In **Adavya Projects Pvt. Ltd. v. M/s Vishal Structurals Pvt. Ltd., Civil Appeal No.5297 of 2025**, decided on 17 April 2025, the Hon'ble Supreme Court considered the effect of non-service of a Section 21 notice upon a person subsequently sought to be impleaded in arbitral proceedings. The Hon'ble Apex Court held that neither service of a Section 21 notice nor participation in



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Section 11 proceedings was a prerequisite for subsequent impleadment where the person was otherwise bound by the arbitration agreement.

32. The observations in ***Adavya Projects (supra)*** describing Section 21 notice as mandatory for fixing the commencement date must be understood in that context. The judgment does not hold that absence of a Section 21 notice invariably destroys the jurisdiction of an otherwise competent Arbitral Tribunal.

33. In fact, the later judgment in ***Bhagheeratha Engineering (supra)*** provides the necessary clarification. Section 21 remains relevant for determining the date of commencement and its attendant consequences, particularly limitation; but its absence does not automatically render the arbitration void.

34. The two judgments can therefore operate harmoniously. ***Adavya Projects (supra)*** emphasises the importance of the commencement date and the procedural



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significance of Section 21; **ASF Buildtech (supra)** explains its procedural rather than jurisdictional character; and **Bhagheeratha Engineering (supra)** authoritatively holds that non-issuance of a Section 21 notice is not, by itself, fatal to an otherwise valid and arbitrable claim.

35. Applying the aforesaid principle to a statutory arbitration under Section 84 of the MSCS Act, the conclusion becomes even clearer. The jurisdiction of the learned Arbitrator does not originate in a notice under Section 21. It originates in the statutory command contained in Section 84(1) of the MSCS Act, coupled with the statutory appointment under Section 84(4) of the MSCS Act.

36. Consequently, if the dispute is one falling within Section 84(1) of the MSCS Act, the claimant and respondent are persons amenable to Section 84 of the MSCS Act, the Arbitrator has been appointed by the competent statutory authority, and the respondent has



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been afforded reasonable notice and opportunity to participate, the mere absence of a separate notice under Section 21 cannot be elevated into a jurisdictional defect rendering the award a nullity.

37. This does not mean that Section 21 can be disregarded altogether. The absence of notice may assume significance where the question of limitation arises or where a party demonstrates that it had no notice whatsoever of the arbitral proceedings and was consequently deprived of a reasonable opportunity to present its case. Such consequences are materially different from saying that the Arbitrator lacked inherent jurisdiction.

38. The inquiry must therefore be directed to the statutory source of jurisdiction and not merely to the form in which the arbitral proceedings were initiated. Accordingly, point Nos.(i) and (ii) are answered in the 'Negative'.



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Finding on point No.(iii):-

39. The more fundamental question in the present batch is whether, after an award has been rendered, the petitioners can invoke Articles 226 and 227 of the Constitution of India to challenge the award on the ground that the Arbitrator lacked jurisdiction for want of a Section 21 notice.

40. The Arbitration Act is a self-contained statutory regime. Section 5 embodies the legislative policy of minimal judicial intervention in matters governed by Part I of the Act. Section 16 incorporates the principle of “kompetenz-kompetenz” and enables the Arbitral Tribunal to rule upon its own jurisdiction. Section 16(6) expressly provides that where such a plea is rejected, the aggrieved party may challenge the resultant award under Section 34.

41. Section 34 then provides the statutory recourse to a Court against an arbitral award. The opening words of Section 34 “Recourse to a Court against an arbitral award



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may be made only by an application for setting aside such award" are significant.

42. The Constitution Bench in ***S.B.P. & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618***, explained that an order rejecting a plea of jurisdiction under Section 16 is ordinarily to be challenged only after the award is made, under Section 34. The Constitution Bench cautioned against permitting parties to invoke Articles 226 and 227 against every interlocutory order of an Arbitral Tribunal. The legislative objective of minimising judicial intervention would otherwise be defeated. The same principle was reiterated in ***Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd., (2020) 15 SCC 706***, and ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75***. The Hon'ble Supreme Court has consistently recognised that where the Arbitration Act provides a specific statutory



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remedy, the constitutional jurisdiction should not ordinarily be used as a substitute for that remedy.

43. The recent judgment in ***M/s Tarini Prasad Mohanty v. M/s Sunflag Iron and Steel Company Ltd., 2026 INSC 566***, reiterates this principle. The Hon'ble Supreme Court emphasised that where the enactment provides a statutory remedy under Section 34 and simultaneously manifests a legislative policy of minimal judicial interference under Section 5, the threshold for exercising jurisdiction under Articles 226 and 227 is necessarily higher.

44. The Hon'ble Apex Court further explained that the question is not merely whether the writ petition is technically maintainable but whether it ought to be entertained in the exercise of discretionary constitutional jurisdiction. It held that intervention would require circumstances demonstrating that, notwithstanding the availability of the statutory remedy at the conclusion of



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the proceedings, the challenge cannot reasonably await final adjudication and that writ intervention is imperative.

45. More importantly, ***Tarini Prasad Mohanty (supra)*** reiterates that an erroneous decision by a Tribunal having jurisdiction to decide an issue is not the same as an absence of jurisdiction. The fact that a Tribunal may decide a jurisdictional issue wrongly does not automatically mean that it acted without jurisdiction.

46. This distinction is of considerable relevance to the present case. If the learned Arbitrator had jurisdiction under Section 84 and the only complaint is that no separate Section 21 notice was issued, the complaint is directed against the manner or commencement of the proceedings. It does not demonstrate a patent absence of statutory authority.

47. The distinction between lack of jurisdiction and error within jurisdiction cannot be overlooked. A Tribunal which has jurisdiction to determine whether the dispute is



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arbitrable, whether the claim is within limitation, or whether the procedural requirements have been complied with, does not become a Tribunal without jurisdiction merely because it may answer one of those questions incorrectly.

48. The decisions of the High Courts relied upon by the parties also disclose an important distinction between a challenge to an award on the one hand and a challenge to the very exercise of statutory power on the other.

49. In ***Emerald Realtors Pvt. Ltd. v. Unity Small Finance Bank Ltd., W.P.No.3669/2024***, the Court considered writ petitions concerning arbitration proceedings under Section 84 of the MSCS Act. The Court examined the objection that the appointment of the Arbitrator itself was without statutory authority. It observed that where a statutory Arbitral Tribunal is demonstrably wholly without jurisdiction, the High Court



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may, in a rare case, exercise jurisdiction under Articles 226 and 227 of the Constitution of India.

50. The Bombay High Court, however, drew a clear distinction between a challenge to the statutory appointment itself and objections which the Arbitral Tribunal could consider under Section 16. Where the complaint related to the validity of the order of the statutory authority appointing the Arbitrator, the Court considered that particular challenge maintainable because the Arbitrator could not sit in appeal over the order by which he was appointed. On the other hand, objections concerning the continuation of the mandate, conduct of the proceedings and other matters capable of consideration under Section 16 were relegated to the Tribunal and, thereafter, Section 34.

51. The principle emerging from ***Emerald Realtors (supra)*** is therefore not that every jurisdictional objection permits a writ petition. Rather, it is that where there is a



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patent and anterior absence of statutory authority, the constitutional court may intervene in an exceptional case. The judgment itself ultimately reserved ordinary jurisdictional objections for consideration under Sections 16 and 34.

52. This distinction is important in the present batch. There is no challenge before this Court which demonstrates that Section 84 itself had no application to the dispute or that the authority which appointed the Arbitrator had no statutory source of power. The challenge essentially proceeds from the absence of a separate Section 21 notice.

53. Such an objection stands on an entirely different footing from a case where an authority purports to exercise statutory power over a person or subject matter which the statute plainly excludes.

54. In ***Sicom Ltd. v. The Shamrao Vithal Co-operative Bank Ltd., Arbitration Petition***

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No.779/2010, the Bombay High Court dealt with an award passed by an Arbitrator appointed under Section 84 and the challenge was pursued under Section 34 of the Arbitration Act. The case illustrates the statutory consequence of Section 84(5): the award is an arbitral award governed by the Arbitration Act and is therefore subject to the statutory challenge mechanism provided by that enactment.

55. Likewise, in **Hony. Capt. Hukum Chand Yadav (Retd.) v. Bombay Mercantile Co-operative Bank Ltd., OMP (COMM) 69/2016** the challenge arose from an award passed by an Arbitrator appointed under Section 84. The case involved an *ex-parte* award and allegations concerning service. The decision is instructive in demonstrating that the nature of the complaint, particularly non-service and denial of opportunity has to be examined separately from the bare assertion that the Arbitrator lacked jurisdiction.



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56. The recent decision in ***Rajlaxmi Multistate Credit Co-operative Society Ltd. v. Gajanan Vasant Shirbhate, Arbitration Appeal No.77/2025*** is particularly relevant to the present controversy. There, the Bombay High Court held that the appointment under Section 84 did not require the consent of the respondents and expressly rejected the attempt to apply Section 11 of the Arbitration Act as though the matter involved ordinary private arbitration.

57. The significance of ***Rajlaxmi (supra)*** lies not merely in its conclusion but in the distinction it draws between the two enactments. The MSCS Act creates the statutory arbitration; the Arbitration Act supplies the procedural framework. The latter cannot be invoked to nullify the specific appointment mechanism created by the former.

58. The judgments of the Bombay High Court therefore do not support the broad proposition that every



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alleged deviation from the procedure applicable to an arbitration under the Arbitration Act renders a Section 84 award a nullity. On the contrary, the authorities support a distinction between:

- (a) a Tribunal which has no statutory authority whatsoever;
- (b) a Tribunal constituted in a manner contrary to a mandatory statutory requirement;
- (c) a Tribunal having jurisdiction but alleged to have committed a procedural irregularity; and
- (d) an erroneous determination by a Tribunal on a question falling within its jurisdiction.

Only the first two categories may, in an appropriate and exceptional case, justify constitutional intervention at the threshold. The latter two ordinarily fall within the statutory arbitral framework.

THE EFFECT OF SECTION 84(3)

59. There is another statutory feature which cannot be ignored. Section 84(3) expressly provides that if a question arises whether the dispute referred to arbitration is or is not one touching the constitution, management or business of the multi-State co-operative society, the



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decision of the Arbitrator shall be final and shall not be called in question in any Court.

60. This provision reinforces the legislative intention that matters arising within the statutory field of Section 84 should ordinarily be determined within the arbitral framework. It would therefore be incongruous to permit a party to bypass that statutory scheme merely by characterising a procedural objection as one of jurisdiction.

61. At the same time, Section 84(3) cannot be read as conferring jurisdiction where none exists. If the statutory jurisdictional facts are wholly absent for example, where the dispute is demonstrably outside the class of disputes contemplated by Section 84 or the statutory authority has no power whatsoever to constitute the Tribunal, the question may assume a different complexion.

62. The Court must therefore guard against two extremes. It must neither permit a Tribunal to exercise a



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power which the statute does not confer upon it, nor permit a party to convert every procedural objection into a constitutional challenge.

APPLICATION TO THE PRESENT CASE

63. Applying the aforesaid principles, the following aspects assume significance:

- (i) Whether the respondent-Society/Bank is governed by the MSCS Act;
- (ii) Whether the dispute falls within the categories contemplated by Section 84(1);
- (iii) Whether the petitioners are persons amenable to the statutory arbitration under Section 84;
- (iv) Whether the Arbitrator was appointed by the Central Registrar or by an authority competent under the statutory Rules, notifications or valid delegation;
- (v) Whether the petitioners were given notice of the arbitral proceedings;
- (vi) Whether the petitioners were afforded a reasonable opportunity to file their defence and participate in the proceedings;
- (vii) Whether the claim was otherwise within limitation; and
- (viii) whether any objection to jurisdiction or procedural irregularity was raised before the learned Arbitrator in terms of Section 16 of the Arbitration Act.

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If these jurisdictional foundations exist, the absence of a separate Section 21 notice cannot, in view of Bhagheeratha Engineering, be treated as an event which extinguishes the jurisdiction of the learned Arbitrator.

64. The petitioners' contention proceeds upon the assumption that Section 21 is the source of jurisdiction. That assumption is legally unsustainable. In the present statutory arbitration, jurisdiction flows from Section 84 of the MSCS Act and the appointment made under Section 84(4). Section 21 does not constitute the source of that jurisdiction.

65. The omission to issue a separate notice may, depending upon the facts, have consequences regarding limitation or the ability of a party to demonstrate that it was unaware of the proceedings. But such consequences cannot be transformed into a declaration that the Tribunal was coram non judice from its inception.

66. If, on the other hand, a party establishes that it was never served with the arbitral proceedings at all, or



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was denied a reasonable opportunity to present its case, the matter would have to be considered in the context of the procedural safeguards contained in the Arbitration Act, including Sections 18, 24 and the grounds available under Section 34(2)(a)(iii). Such a case is fundamentally different from the present contention that no separate Section 21 notice was issued.

67. Similarly, if the appointment itself was made by an authority which demonstrably possessed no statutory power under Section 84(4), the objection would stand on a different footing. Such a case would concern the very constitution of the Tribunal and could, in an appropriate case, attract the exceptional jurisdiction of the High Court.

68. But where the Arbitrator has been appointed through the statutory mechanism, the dispute is referable under Section 84, the respondent has been placed on notice of the proceedings and has had an opportunity to



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participate, the mere absence of a separate Section 21 notice cannot render the resultant award a nullity.

THE APPROPRIATE REMEDY

69. Once an award has been rendered, the statutory scheme becomes even more compelling. Section 34 expressly provides the remedy for challenging an arbitral award. The grounds available under Section 34 are sufficiently wide to accommodate jurisdictional objections, procedural objections, violation of natural justice and other statutory grounds, subject to the parameters prescribed therein.

70. The petitioners cannot be permitted to bypass Section 34 merely because the challenge is couched as one of jurisdiction. The nomenclature employed by the petitioner cannot determine the availability of the constitutional remedy. What has to be examined is the true nature of the grievance.

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71. The Hon'ble Supreme Court in ***Tarini Prasad Mohanty (supra)*** has recently reiterated that the existence of Section 34, coupled with the legislative policy of minimal judicial intervention, requires a higher threshold before the writ jurisdiction is exercised. The Hon'ble Apex Court declined to permit the writ court to undertake a merits-based examination of an order passed by the Arbitral Tribunal under Section 16 and held that the remedy under Section 34 was available to the aggrieved party.

72. The judgment is particularly instructive because it recognises that the Tribunal's jurisdiction to decide an issue cannot be equated with the correctness of its decision on that issue. The jurisdiction to decide does not mean an obligation to decide correctly in the sense that every erroneous decision becomes a jurisdictional error.

73. The extraordinary jurisdiction under Articles 226 and 227 therefore remains available in a narrow class of



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cases, but its exercise must be confined to truly exceptional situations. Illustratively, intervention may be justified where:

- (a) the Tribunal is demonstrably and patently without inherent jurisdiction;
- (b) the statutory authority which constituted the Tribunal had no power whatsoever to do so;
- (c) the proceedings are a complete nullity;
- (d) there is a fundamental and demonstrable breach of natural justice of such magnitude that the proceedings cannot be regarded as a valid adjudication;
- (e) the action complained of is wholly outside the statutory framework; or
- (f) the vires of the statutory provision itself is under challenge.

74. The mere non-issuance of a Section 21 notice does not fall within these exceptional categories, particularly after the authoritative pronouncement of the Hon'ble Supreme Court in ***Bhagheeratha Engineering (supra)***.

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75. It is therefore necessary to distinguish between maintainability and entertainability. The constitutional jurisdiction of the High Court is not extinguished merely because an alternative remedy exists. However, the existence of a specific statutory remedy is a compelling consideration governing the exercise of discretionary jurisdiction. Tarini Prasad Mohanty reiterates this distinction and emphasises that the threshold for entertaining a writ challenge in the face of the arbitral statutory mechanism is considerably high.

76. Consequently, a writ petition challenging a final award passed under Section 84 is not to be treated as an alternative form of Section 34 proceedings. The High Court cannot sit as a court of first instance over the merits of the award or re-examine questions which the Arbitration Act has entrusted first to the Arbitral Tribunal and thereafter to the Court under Section 34.

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77. The Bombay High Court decision in ***Emerald Realtors (supra)*** does not justify a contrary conclusion. That decision itself recognises that a challenge founded upon an anterior statutory nullity may, in an exceptional case, be entertained. But the Court expressly distinguished such a case from objections which could be raised before the Arbitrator under Section 16 or against the final award under Section 34.

78. Thus, the principle that emerges from the authorities is not an absolute prohibition against writ jurisdiction. It is a principle of exceptional restraint. Where the Tribunal has no jurisdiction at all, the High Court is not powerless. But where the Tribunal has jurisdiction and the complaint concerns an alleged error in the manner in which that jurisdiction was exercised, the statutory arbitral remedies must ordinarily be exhausted. Accordingly, point No.(iii) is answered in the 'Negative'.



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CONCLUSIONS

79. On a cumulative consideration of the statutory scheme and the judgments referred to above, this Court records the following conclusions:

(I). Arbitration under Section 84 of the MSCS Act is a statutory arbitration. Its foundation is the statutory command contained in Section 84 and not merely the consensual arbitration mechanism contemplated under Section 7 of the Arbitration Act.

(II). Section 84(4) constitutes a special mechanism for appointment of the Arbitrator. The appointment must therefore conform to the statutory mechanism, including appointment by the Central Registrar or by an authority validly empowered under the applicable statutory framework. The consensual appointment mechanism under Section 11 cannot be invoked so as to displace Section 84(4).

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(III). Section 84(5) incorporates the Arbitration Act subject to the words "save as otherwise provided under this Act". Consequently, the Arbitration Act governs the arbitral proceedings, but where the MSCS Act makes a special provision, the special statutory provision prevails.

(IV). The absence of a separate notice under Section 21 of the Arbitration Act does not, by itself, nullify an arbitration validly constituted under Section 84 of the MSCS Act.

(V). Section 21 principally determines the commencement of arbitral proceedings and is particularly relevant for limitation and other time-related consequences. It is not, by itself, the source of the Arbitral Tribunal's jurisdiction. This is the principle authoritatively declared in ***Bhagheeratha Engineering (supra)*** and explained in ***ASF Buildtech (supra)***.

(VI). The observations in ***Adavya Projects (supra)*** concerning the significance of Section 21 are to be



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understood in the context of commencement and procedural requirements. They do not establish that every failure to issue a Section 21 notice renders an otherwise competent arbitral Tribunal coram non iudice.

(VII). The relevant jurisdictional inquiry in a Section 84 of the MSCS Act is whether the dispute falls within Section 84, whether the parties are amenable to the statutory arbitration, whether the Arbitrator has been appointed by the competent statutory authority and whether the proceedings have been conducted in accordance with the applicable statutory and procedural safeguards.

(VIII). Once an award is rendered, the ordinary remedy is an application under Section 34 of the Arbitration Act. A party cannot ordinarily convert a challenge under Section 34 into a writ petition merely by describing the objection as one of jurisdiction.

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(IX). Articles 226 and 227 remain available in exceptional cases of patent and inherent lack of jurisdiction, complete statutory nullity or fundamental breach of natural justice. The existence of such an exceptional jurisdiction, however, does not permit routine interference with arbitral awards.

(X). A distinction must be maintained between a Tribunal having no jurisdiction and a Tribunal having jurisdiction but allegedly committing an error in exercising it. The former may attract constitutional intervention in an appropriate case; the latter ordinarily does not.

80. In view of the foregoing discussion, the principal contention advanced by the petitioners that the impugned arbitral awards are rendered *non est* solely because no separate notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued, cannot be accepted.

81. The absence of a separate notice under Section 21, in the circumstances pleaded in these petitions, does



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not by itself render the appointment of the learned Arbitrator under Section 84 of the MSCS Act invalid, nor does it extinguish the jurisdiction otherwise conferred upon the learned Arbitrator by the statutory scheme.

82. The further contention that the appointment of the learned Arbitrator was invalid for want of the petitioners' consent is also untenable where the appointment has been made in accordance with Section 84(4) of the MSCS Act by the competent statutory authority. The requirement of mutual consent applicable to ordinary consensual arbitration cannot be imported so as to defeat the special statutory mechanism.

83. Insofar as the challenge to the final arbitral awards is concerned, the petitioners have an efficacious statutory remedy under Section 34 of the Arbitration Act. No exceptional circumstance has been demonstrated warranting exercise of the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution.



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84. Point No.(iv):- For the foregoing reasons, this Court proceeds to pass the following;

ORDER

(i) The writ petitions are accordingly ***dismissed.***

(ii) It is, however, clarified that this Court has not examined the merits of the respective claims, the correctness of the findings recorded in the impugned awards, the question of limitation on the facts of the individual cases, or any other ground independently available to the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996. All such contentions are left open to be urged before the competent Court in accordance with law.

(iii) Likewise, if in any individual case the petitioner is able to establish that the Arbitrator was appointed by an authority having no statutory power whatsoever under Section 84(4) of the MSCS Act, or that the dispute is wholly outside the statutory field of Section 84 of the MSCS Act, or that there was a complete



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absence of notice and opportunity resulting in a fundamental denial of natural justice, such questions are left open to be considered in accordance with law and on their own facts.

(iv) All pending interlocutory applications, if any, stand disposed of.

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**(SACHIN SHANKAR MAGADUM)
JUDGE**