

NR 516 GR 1000(4P)

No. U5-164863/2016/PHQ,
Police Headquarters,
Thiruvananthapuram,
Dated, 27 -11-2017.

Circular No. 32/2017

Sub:-Police interference in civil disputes – Order of Sole Arbitrator or Arbitrators or Arbitration Tribunal not to be acted upon or assistance given for implementation unless enforcement of such order is directed by the civil court - instructions – reg.

- Ref:-1. Circular No.04/2012 dated 10-03-2012.
2. Letter No.C5-198361/2015/PHQ dated 11-01-2016 and 17-03-2016 from the State Police Chief.
3. Judgment of the Hon'ble High Court of Kerala dated 31-05-2016 in WP(C) No.17740/2016.
4. Circular No.14/2016 dated 10-08-2016.
5. Judgment of the Hon'ble High Court of Kerala dated 16-03-2016 in WP(C) No.7435/2016 & Connected cases.

01. Guidelines have already been issued vide reference 4th cited fixing the parameters within which the Police is to function in dealing with civil disputes. The said instructions were issued consequent to the division bench judgment of the Hon'ble High Court vide reference 3rd cited. It was clearly instructed therein *inter alia* that neither the Code of Criminal Procedure nor the Police Act or any of the statutes governing the acts or duties of Police enjoins them to render police assistance or police protection for determining the disputed civil rights and that where a decree for possession had been executed and the decree holder had taken possession, then police protection could be given if the other party (Judgment Debtor) again attempted to trespass upon the property in defiance of the orders passed in the execution proceedings.

02. It has come to the notice of the undersigned that despite the issuance of guidelines as noted above, police assistance is being rendered for enforcing interim orders of arbitral tribunals directly, that is, upon the request of

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All concerned
for information
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the Arbitration Tribunal or Arbitrator. As per section 17(2) of the Arbitration and Conciliation Act, 1996 (Central Act of 1996) as amended by the Amendment Act 3 of 2016, subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under section 17(2) shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court. The term "court" as defined u/s 2(e) of the Arbitration and Conciliation Act, 1996 means,-

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

03. Hon'ble High Court vide reference 5th cited had held that in terms of section 17(2), "enforcement" means causing implementation of the order. Such implementation of the order of the Tribunal is to be done in a like manner as the court exercises its power under section 27(5) of the Act. This means that the Arbitrator or the Arbitration Tribunal will have to apply to the principal Civil Court of the district (District Court) for enforcing its interim orders. It is for the court to ensure that such request is implemented by passing appropriate orders. Recourse can then be had to the procedure under section 94 of the Code of Civil Procedure, 1908 for enforcing the interim order of the arbitrator or the Tribunal by the District Court. The civil court while enforcing interim order of the Arbitral Tribunal has to treat the order as if it were issued under the Code of Civil Procedure. The Hon'ble High Court held vide judgment 5th cited lay down that the Legislature never had intended the Arbitral Tribunal's order to be enforced by the

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Tribunal itself. The intention behind is only to ensure that the order is enforced in a manner provided under the Code of Civil Procedure, enforcing an order of such court. The Tribunal, by its constitution or creation, inherently lacks power to deal with any sovereign function or public law in the sense that their authority is founded in a contract and power is regulated by the statute.

04. The judgment under reference 5th cited was pronounced by the Hon'ble High Court as the Arbitral Tribunals in all the cases passed interim orders in the nature of appointment of an Advocate Commissioner/Receiver to repossess the vehicle either directly or with the assistance of police. It was held by the Hon'ble court that Advocate Commissioner or Receiver, as the case may be, can be appointed for any other purpose, but not to enforce an order of repossession passed by the Tribunal. Any order of repossession can only be enforced through a civil court. The repossession of the vehicles by enforcing the order of the Arbitral Tribunal without the intervention of the civil court, was, therefore, held by the Hon'ble High Court as violation of Art.21 of the Constitution of India. The encroachment into a public law field in a private law remedy was held to be a sheer abuse of law.

05. Even though the interim order of a sole arbitrator or arbitrators or the Arbitral Tribunal shall be deemed to be an order of the Civil Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Civil Court, the sole arbitrator or arbitrators or the Arbitral Tribunal are not civil courts in the strict sense of the term. Hence their orders and awards can be enforced only through the civil court/High Court, as the case may be. Therefore, all officers are hereby instructed not to provide assistance to enforce the order passed by the Arbitral Tribunal without the direction of the civil court.

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All officers are instructed to strictly comply with the directions of the Hon'ble High Court as noted above. In case of any doubt in deciding whether police protection is to be rendered in any case, the direction of superior officers shall be immediately sought for.

hw 27/11/2017
Loknath Behera, IPS,
Director General of Police &
State Police Chief.

To

1. The Advocate General, Kerala.
- ✓ 2. All Officers in List D- for information and urgent necessary action.

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