

Kluwer Arbitration Blog

Is the Time Mandated to Pass an Arbitral Award Not Mandatory Anymore?

Ayush Mathur · Friday, December 27th, 2024

In the recent Indian Supreme Court (“SC”) case of *Rohan Builders v. Berger Paints India*, the default rule requiring termination of the arbitral mandate under section 29A(4) of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) was held not to be strictly interpreted. Section 29A(4) of the Arbitration Act provides that if the award is not issued within the specified period of 12 months or a further extended period of six months, then the mandate of the arbitrator(s) would be terminated subject to further extension by the Civil Court or the relevant High Court (“HC”). The SC held that an application under section 29A(5) of the Arbitration Act to extend the time for the issuance of an award can be accepted even after expiry of the period for making an award under section 29A(4).

The SC’s analysis highlighted the inconsistency in judgments from various HCs regarding applications under section 29A(5) after the expiry of the mandated period. However, the SC missed a chance to address a related question: whether an extension application under section 29A(5) can be admitted after an award has already been issued by the arbitral tribunal. On this matter, the Kerala HC and the Delhi HC have taken opposing legal positions. This post seeks to examine the opposing HC judgments and argues that the SC decision in *Rohan Builders*, by interpreting termination under section 29A as not absolute, implicitly supports the view that an application to extend the tribunal’s tenure can be filed even after an award is issued. This, if applicable, risks rendering section 29A ineffective and undermining the legislative intent behind the [2015 Amendment](#).

Conflicting Rationale Between High Courts

The Kerala HC in *RKEC Projects Limited v. The Cochin Port Trust* held that if the award is passed after the expiry of the mandated period under section 29A, the award can be upheld if there are exceptional and justifiable grounds.

However, in *RKEC Projects*, the Kerala HC, found that if there is a good reason, an application under section 29A of the Arbitration Act is still tenable even after the award is issued. The respondents in this case contended that the termination of the arbitrator’s authority is not absolute under section 32 of the Arbitration Act and may be subject to the powers of extension granted by sections 29A(3) and 29A(4).

The HC ruled that even if the arbitrator's mandate has expired, the court may still consider requests for an extension of time under sections 29A(3) and 29A(4), which allow such requests to be made before or after the deadline. The HC pointed out that although, in general, an arbitral tribunal's mandate ends with the delivery of the award, courts have occasionally interpreted this to be flexible. Specifically, if an application for an extension under section 29A(5) is still pending, the tribunal's mandate may continue beyond the award date. This suggests that while the mandate typically ends with the award, the court has discretion to extend it when appropriate.

The Delhi HC in *Powergrid Corporation of India v. SPML Infra Ltd* held that the time period under section 29A is strict and no award can be executed if made after the mandated period as the functions of the arbitral tribunal stand terminated. Consequently, an application under section 29A of the Arbitration Act to extend the arbitrator's mandate would not be valid. The HC explained that section 29A does not explicitly allow courts to extend the arbitrator's mandate after an award has been rendered. The Delhi HC clarified that allowing applications after the time limit in section 29A for issuing an award would cause inconsistencies with other parts of that section.

The Delhi HC further explained that under section 29A(4), if an arbitration award is not issued within the set time, the arbitrator's mandate will end unless the court extends the time, either before or after the deadline. This means that for an extension to be granted, the arbitration process must still be ongoing, and the award must not yet have been issued.

Further, section 28 of the Arbitration Act 1940 ("1940 Act") allowed for an application to be entertained even after the award had been issued and empowered the court to enlarge time for making award, "whether the time for making the making the award has expired or not or whether the award has been made or not [...]". However, in the Arbitration Act, the corresponding provision did not grant such power to the adjudicating courts. The language contained in the 1940 Act would not have been omitted if the legislature had intended the principle of section 28 of the 1940 Act to apply to section 29A of the Arbitration Act. Therefore, an interpretation that would allow the adjudicating courts to uphold the award passed post the mandated period under section 29A would go against the legislative intent.

Flaws in the Kerela HC Judgment

The reading proposed by the Kerela HC in *RKEC Projects* renders section 29A completely toothless as it allows the arbitral tribunal to extend its functions even after the expiry of the allotted time. The 2015 Amendment specifically added section 29A in order to make the arbitration process more efficient and ensure that it does not become as cumbersome as litigation.

The Kerala HC missed considering the impact of its interpretation and introduced a new requirement of proving "sufficient cause" without a clear basis. This approach goes against what the legislature intended when they framed section 29A. While the Kerela HC judgment addresses the court's power under section 29A to extend the arbitrator's mandate even after the award is issued, it does not clearly distinguish between the court's procedural powers and its substantive judicial authority. Procedurally, the Kerala HC has allowed for delays to be excused by the courts, effectively saying that courts can forgive delays even if the mandate has already expired. However, substantially, the judgment falls short of providing specific guidance on how courts should balance the rights of parties who might want to challenge awards issued after the arbitrator's mandate has

expired.

This distinction is critical because cases where awards have already been issued need to be handled differently than cases where parties are simply asking for an extension of the tribunal's mandate. Section 29A(1) of the Arbitration Act states clearly that an award must be passed within a period of 12 months, with an extension of up to six months, if required. Allowing courts to extend mandates beyond this period based solely on judicial discretion undermines this clear timeframe set by the legislature and contradicts the intention behind section 29A(1).

By depending entirely on court discretion and introducing a new requirement of "sufficient cause", the judgment not only diverges from the legislative intent but also conflicts with the clear wording of section 29A(1), which mandates a strict timeframe for issuing awards.

Flexible Deadlines: SC on Arbitral Tribunal Extension and Award Validity

Rohan Builders arose from an appeal before the Supreme Court after the Calcutta HC ruled that an application to extend the term of an arbitral tribunal must be made before the arbitral tribunal's term ends.

The SC overturned the Calcutta HC decision and adopted similar reasoning as the Kerala HC in *RKEC Projects*, which held that an application for extension could still be made and considered even after the arbitral tribunal's term has ended and an award has been issued.

The SC dismissed the idea of strictly interpreting the term "terminate" in section 29A(4), stating that courts can extend the time limit both before and after it expires. The Court stated that the term "terminate" in section 29A(4) means that the arbitral tribunal's role ends, but not completely. The Court further stated that the meaning of "terminate" should be understood based on the wording of the section, where "Terminate" is followed by the word 'unless,' linking it to the next part of the section. This part reads, "unless the court has, either before or after the specified period ends, extended the period". The phrase "before or after the specified period ends" refers to the court's power to give more time.

Although the SC did not explicitly discuss how the passing of an award impacts eligibility for an extension, in its ruling, the SC seemed to align with the Kerala HC's decision in *RKEC Projects*, supporting the idea that courts hold the power to extend the time for an arbitral tribunal to deliver its award even after the deadline set by section 29A of the Arbitration Act has passed.

These judgments, when read together, support the idea that section 29A should be applied with flexibility, ensuring that procedural or reasonable delays do not automatically void the arbitral tribunal's authority. This inference from both judgments strengthens the approach where courts have the power to extend deadlines even after the delivery of the award in order to preserve the validity of the arbitration process.

In essence, *Rohan Builders* suggests that termination under section 29A is not absolute. The Kerala HC's findings in *RKEC Projects* can now be interpreted to mean that if termination did not occur even after the deadline had passed, the arbitral tribunal has the authority to pass the award, making it valid. This also indicates that the timelines in section 29A(1) and (3) are not strict deadlines, supported by the exception of "sufficient cause", making termination conditional, rather than

absolute.

Conclusion

When read together, *Rohan Builders* and *RKEC Projects* suggest that courts may have the authority to extend an arbitral tribunal's mandate even after an award has been issued. This raises two key issues. First, it weakens the requirement for arbitral tribunals to adhere to section 29A timelines. Second, it reflects judicial overreach by contradicting the intent of the 2015 Amendment, which sought to enforce strict timelines for arbitration, particularly under section 29A.

These issues impact commercial parties involved in disputes and potentially compromise the integrity of arbitration. Extending arbitration mandates beyond the deadline can erode trust in arbitration, cause delays and increase costs. The flexibility disrupts parties' expectations of swift resolution, as they can no longer rely on the tribunal's mandate being strictly time-bound.

Moreover, extending mandates after an award threatens arbitration's core principle of finality, creating ambiguity around enforcement and opening awards to challenges based on timing. Such judicial actions may run counter to the 2015 Amendment's goal of streamlining arbitration, raising concerns about judicial overreach.

Since the SC did not clarify whether an award issued post-deadline under section 29A remains enforceable, this leaves room for a future SC bench to address which HC interpretation is correct.

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