IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 198

OS 587/1996

Between

Antara Koh Pte Ltd

… Plaintiff

And

Government of Singapore

… Defendant

GROUNDS OF DECISION

Arbitration — Arbitral tribunal — Powers

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Antara Koh Pte Ltd v Government of Singapore

[1996] SGHC 198

OS 587/1996
Choo Han Teck JC
10 September 1996

1 This was an application by the plaintiffs for an order that the arbitrator in an arbitration between the plaintiffs and the defendant be empowered to continue the proceedings as a judge of the court might do in the event of any default by any party in the arbitration. The power sought included the power to enter default judgment for failure to comply with any direction of the arbitrator.

2 The application was made under s 32(1) of the Arbitration Act (Cap 10). That provision reads as follows:

> *If any party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified within a reasonable time to comply with an order made by the arbitrator or umpire in the course of the reference, then, on the application of the arbitrator or umpire or of any party to the reference, the court may make an order extending the powers of the arbitrator or umpire as mentioned in sub-s (2).*

3 Subsection (2) reads as follows:

> *If an order is made by the court under this section, the arbitrator or umpire shall have power, to the extent and subject to any conditions specified in that order, to continue with the reference in default of appearance or if any other act by one of the parties in like manner as a judge of the court might continue with*

> *proceedings in that court where a party fails to comply with an order of that court or a requirement of the Rules of Court.*

4 The arbitration in question concerned the plaintiffs as the contractor in the reconstruction of the Crawford Bridge. The contract was awarded to them by the Government of Singapore. The background and grounds of dispute in the arbitration are not material in this application save to note that the contract was awarded on 2 January 1988 and the certificate of completion issued on 25 May 1992 after a delay of almost three years.

5 The plaintiffs gave notice of arbitration on 8 May 1992 and an arbitrator was eventually appointed. The arbitration proceedings commenced and on 2 April 1996 the plaintiffs` solicitor wrote to the arbitrator for directions for further discovery. The arbitrator, after hearing parties on 6 May 1996, directed the defendant to file and serve a supplemental list of documents and an affidavit verifying the list within 14 days, that is, by 20 May 1996.

6 The defendant failed to comply with this direction and a series of correspondence followed. It began with the plaintiffs` solicitor`s letter to the arbitrator dated 10 June 1996, stating that the defendant had not complied with the arbitrator`s directions for further discovery and asking that the defence of the defendant (respondent in the arbitration) be struck out for the non-compliance and the plaintiffs be at liberty to enter judgment in default.

7 The arbitrator called for a meeting scheduled on 17 June 1996. The defendant wrote to the arbitrator on 10 June 1996. The relevant paragraph is as follows:

> *In relation to the arbitrator`s direction numbers 1, 2 and 3 of 6 May 1996, it turns out that a large quantity of documents have to be listed, something we had allowed to at the time the direction was made. Further, these documents are in the possession of the*

Version No 1: 29 Oct 2026 (23:45 hrs)

> *Land Transport Authority and Steen Consultants and stored in various places. It is for this reason that we have been unable to comply with that direction within the 14 days given. We had not noticed the unreasonably short period for preparation of the list in the draft direction. We hereby ask for an extension of time to list these documents. A further six weeks from the date of this letter is required.*

8 The plaintiffs` solicitor replied by letter to the arbitrator dated 12 June 1996 stating that they object to any extension of time because they had requested for those documents six months previously and, in any event, the defendant did not indicate at any time that the 14 days period was too short. Two shorter letters, one from each side, followed but do not add anything beyond reiterating the parties` respective positions.

9 The scheduled meeting before the arbitrator was postponed to 4 July 1996. In the interim, the plaintiffs filed the present application in the High Court. On 4 July 1996 the defendant served the supplementary list together with the affidavit verifying the list.

10 The defendant contended that the list served on them on 4 July was incomplete and, therefore, the arbitrator`s directions were not complied with. The specific documents which the plaintiffs say were not disclosed are set out in para 4 of Ho Kim Weng`s second affidavit dated 23 July 1996.

11 On 30 July 1996, there was a meeting before the arbitrator concerning the issue of changing the name of the respondent from that of the `Government of Singapore` to `The Land Transport Authority`. There were no arguments before the arbitrator as to whether the list of 4 July adequately complied with his orders.

Version No 1: 29 Oct 2026 (23:45 hrs)

12 In any event, the defendant disputed the plaintiffs` allegation that the list was incomplete. In the third affidavit of Tan Wah Nam dated 31 July 1996, filed on behalf of the defendant, it was stated that items (a) and (b) in para 4 of Ho`s third affidavit had been disclosed, and items (c) to (j) do not exist and, therefore, could not be listed.

13 In his oral submission before me Mr Lee Seiu Kin for the defendant submitted that while there may be indications that the documents listed under (c) to (j) might have existed the defendant could not find them and he could not say that they still exist.

14 On these facts the plaintiffs sought an order extending the powers of the arbitrator.

15 Section 32 of the Arbitration Act should not be invoked at the slightest breach or default of a party to an arbitration. Generally, the court will not grant an order under this provision as a matter of course upon a single act of default or breach, but that is not to say that a solitary breach will never be sufficient ground for such an order to be made. Hence, the judge has to weigh the nature of the breach, the nature of the arbitration, the conduct of the parties, and the circumstances of the case and after considering the amalgam of these factors, make the order at his discretion.

16 I accept that s 32 may be invoked even though the default had been rectified. This is to give the arbitrator the discretion in cases where there may be a strong likelihood of future breaches or defaults.

17 Counsel for the plaintiffs referred to ***Waverley v Carnaud*** [1994] 1 Lloyd`s 38. The plaintiffs in that case alleged that the defendant failed to comply

Version No 1: 29 Oct 2026 (23:45 hrs)

with the directions of the arbitrator in respect of discovery and expert evidence. The court made an order under the UK equivalent to our s 32. However, it was made only in respect of the discovery default and not that concerning the expert evidence. The relevant passage of the judgment at p 43 reads as follows:

> *For the reasons which I have given I have reached the conclusion that the High Court has jurisdiction to make an order under s 5 because the defendant has failed to comply with the arbitrator`s directions for discovery. If it was clear that the defendant has now completed discovery, I would, as a matter of discretion, not make an order; but on the evidence before me there would be room for concluding (a) that the failure is a continuing one and (b) that the failure has persisted in the face of clear directions by the arbitrator and strong pressure by the plaintiff.*

18 Counsel for the plaintiffs submitted that there was `room for concluding` that the breach was a continuing one. This was the thrust of his application. I accept that whether the breach was indeed a continuing one is a matter best left to the arbitrator. At this stage, the court need only look to see if there are reasonable grounds for the court to conclude that there might be a continuing breach, a matter of fact which the arbitrator himself must determine. However, I do not think that the learned judge in ***Waverley v Carnaud*** had held that as long as there has been a breach or as long as there is room to conclude that there is a continuing breach the discretion must necessarily be exercised in the applicant`s favour. In that case, he exercised his discretion as he did because he felt that there might possibly be a continuing breach. It does not follow that another judge must do the same under similar circumstances for circumstances may appear similar between two cases but the judge`s perception and impression of them may not be the same. That is what judicial discretion is about. The relevant factors must be considered but the court`s discretion may be exercised differently.

Version No 1: 29 Oct 2026 (23:45 hrs)

19 In the present case, the supplementary list was eventually served although it appeared that Mr Lee Seiu Kin also failed to appreciate fully, the direction to serve a list of documents `which are or have been in the possession, custody or power` of the defendant when he said that the documents in (c) to (j) might have existed but could not be found. I am prepared to accept that neither he nor those assisting him could be certain of the pre-existence of those documents. I do not think that there is room to conclude that there is a continuing breach in this case, but this is only one of the factors in the circumstances of the case, and, considering Mr Pillay`s objection I do not think that the circumstances warrant any extension of the arbitrator`s powers at this point.

20 The granting of an application under s 32 does not mean that the arbitrator would necessarily exercise his extended powers and strike out the defendant`s defence. It may, therefore, appear that it is not a matter of major importance or significance if the applications were granted because the arbitrator would, no doubt, exercise his powers discriminately and properly. But that itself is not a ground for the court to exercise its discretion in granting the order. Whilst the court should not influence how the arbitrator should determine the issues, the arbitrator should himself not be influenced by the fact that an application under s 32 was or was not allowed.

21 I also took into account that a refusal at this stage may mean having the parties come back to court if future events require it. Such is a prayer of convenience, and while it should be taken into account, it is by no means, in the present case, sufficiently persuasive.

22 In the circumstances of the present case I was not sufficiently moved by counsel for the defendant to grant him the order he prayed for and, I, therefore, made no order in respect of his application.

Version No 1: 29 Oct 2026 (23:45 hrs)

23 ***Application dismissed.***

Choo Han Teck JC

Mohan R Pillay and Ho Kim Weng (Wong Partnership) for the plaintiffs
Lee Seiu Kin and Tan Wah Nam (Attorney General's Chambers) for the defendant

Version No 1: 29 Oct 2026 (23:45 hrs)