

The Scope of *Infra Petita* Challenges Clarified

Introduction

Recently, in **DKT v DKU** [2025] SGCA 23, the Singapore Court of Appeal dealt with the growing trend of parties seeking to set aside arbitral awards under **section 48(1)** of the **Singapore Arbitration Act 2001** on the ground of breach of natural justice, and clarified the legal framework for *infra petita* challenges, namely, where the essential complaint was that the tribunal had failed to consider material issues raised during arbitration.

Brief facts

Relying on an expert report, the respondent commenced arbitration against the appellant for breaches of contract. The tribunal accepted the expert report and found in favour of the respondent. Dissatisfied, the appellant sought to set aside the award pursuant to **section 48(1)**, alleging that the tribunal acted in breach of natural justice by:

- disregarding certain pleaded defences (“**1st Ground**”);
- failing to apply its mind to the appellant’s arguments concerning the expert’s admission that core samples were taken from incorrect locations (“**2nd Ground**”); and
- adopting a chain of reasoning that was not reasonably expected (“**3rd Ground**”).

The High Court dismissed the application.

The Singapore Court of Appeal’s Decision

On appeal, the Singapore Court of Appeal upheld the award, characterising the appeal as “*baseless*” and an attempt to challenge the merits under the guise of natural justice. Their key findings were as follows:

- The 1st and 2nd Grounds fell within the “*infra petita*” category, meaning that the tribunal failed to consider essential issues. To succeed, the appellant must satisfy the following four conditions:

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- **Point was raised:** The point must have been brought before the tribunal for its determination. A party cannot raise this argument if it elected not to participate in the arbitration or failed to raise the point in question. Nor can a party complain about the tribunal's failure to consider a case it did not actually run.
 - **Essential:** The point must be essential to the resolution of the dispute. A tribunal is not required to deal with every issue raised, and need only deal with the essential ones.
 - **Complete Omission:** The tribunal must have completely failed to consider the point. Courts will infer such failure only if it is clear and inescapable that the tribunal did not consider the point at all. Mere failure to understand an argument or lacking in engagement is insufficient.
 - **Prejudice:** The omission must have resulted in real or actual prejudice.
- Further, in accordance with the principle of minimal curial intervention, Singapore Courts adopt a generous, non-hypercritical reading of awards and apply a high threshold for such challenges.
 - Applying this framework, the Singapore Court of Appeal rejected the 1st and 2nd Grounds:
 - 1st Ground: The claim that the tribunal disregarded some defences lacked merit. While the tribunal stated that it did not need to deal with some of the pleaded defences, the tribunal distilled them into key factual issues and found no evidence to support them.
 - 2nd Ground: The claim that the tribunal failed to consider the expert's admission about incorrect sampling was rejected, as the tribunal expressly noted that the errors were not fatal and, on the whole, found the expert report reliable.
 - The 3rd Ground based on an allegedly unexpected chain of reasoning was also rejected. A "*manifestly incoherent decision*" does not, by itself, justify setting aside the award. The fundamental question is whether the "*manifest incoherence*":
 - introduced reasoning that parties had no reasonable notice of, or had an insufficient nexus to the parties' arguments, such that the parties had no fair opportunity to address it; or

- gives rise to a clear and virtually inescapable inference that the tribunal had completely failed to consider an essential point.
- Here, the 3rd Ground was not a natural justice point. The real contention was that the expert report was unreliable due to sampling errors. This argument was addressed by the tribunal, which found the report credible despite those errors.

Key takeaway

The Singapore Court of Appeal clarified that *infra petita* challenges require a high threshold. Mere dissatisfaction with the tribunal's reasoning or depth of engagement does not establish a breach of natural justice.

In this evolving area of law, the Singapore Court of Appeal's approach may influence future decisions of Malaysian Courts, especially as courts seek to balance natural justice protection with arbitral finality.

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