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Arbitration vis a vis Natural Justice

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Abstract

When any dispute arises between the parties, they are free to choose any mode for the resolution. They are free to file a civil suit in the court or they have the option to choose a simple mechanism for the speedy remedy at low cost. Arbitration is one of those modes. Arbitration is a mechanism which ensures fair and speedy trial. Though parties are free to litigate the matter in the court, but for saving their time and money, parties choose the option of arbitration. However, any party who is not satisfied with the award passed by the arbitrator has a right to challenge the decision in court. The arbitration proceedings are based upon the principle of Natural Justice which ensures that justice not only be done but be seen to be done. Therefore it is the duty of arbitrator to fulfill all the requirements of the principle. The arbitration proceedings must be fair, reasonable, speedy and justifiable.

Key Words: Natural Justice, arbitration proceedings, fair, reasonable, speedy trial.

1. Introduction

Arbitration is an alternative dispute resolution mechanism in which the dispute is submitted to the arbitrator by the parties by agreement. The parties may agree to submit their dispute which has already arisen between them or they may agree to submit their future disputes which may likely to arise in future. Arbitration proceedings help the parties in resolving their dispute outside the courts. The arbitration proceedings may also be called as jurisdictional means of resolving the dispute because the decision given by the arbitrators are called arbitral award and therefore binding upon the parties. However, parties are free to make an appeal against the award if any party is dissatisfied with the award. The concept of arbitration in India is not new. The first law enacted in this regard is Arbitration Act, 1899 however the application of the act was limited. After this act,

another important law devoted to arbitration was the Code of Civil Procedure, 1908 second schedule of which dedicated to arbitration clause only. After the said laws, under the British regime, another specific act on arbitration was enacted in the year 1940 followed by the Act of 1996 with amendment act of 2005 and 2015.

2. Evolution and development of Arbitration

The concept of arbitration in India is not new. This concept was introduced in India in pre independence period by British. The first Indian Arbitration Act was enacted in 1899 by the first legislative council formed by British government however the act was limited to presidency towns in its application. The act was based upon British Arbitration Act which was enacted in England 10 years before the enactment of the act in India. This act was applicable to the contracts only. The basic requirement of the applicability of the act was that the names of arbitrators were to be mentioned in the contracts or agreement who can be a sitting judge. The award passed by the arbitrators was binding upon the parties. In the case of Gajender Singh vs. Durga Kunwar[3] it was observed that the arbitration award is the nothing but the compromise between the parties. The act of 1899 had many lacunas and need reforms, therefore a specific arbitration act was enacted in the year 1940. The act was applicable to whole of Indian Territory. But the act also had many lacunas and criticized a lot particularly when the arbitrators acted arbitrarily and partied has to suffered loss. Another drawback of the act was that if the arbitrator dies during the pendency of arbitration proceedings then there was no provision for appointment of new arbitrator[4].

Act of 1996

The pre independence act 1940 had many lacunas and criticized a lot in various cases. Therefore the said act was needed to be replaced which was done after a long time of getting independence i.e. in the year 1996. The fundamental feature of the act was that the area covered by the act was wide then the earlier acts. Moreover the act was given retrospective application to the cases. The cases which were filed before arbitrators before the implementation of this act and pending were also decided as according to the new act. It was also provided by the act of 1996[5] that the award passed by the tribunal shall have the same effect as that of decree of the civil court. The arbitration act 1996 had many changes as in the act of 1940, if one party choose to move an application for arbitration under section 20, he could also move an application for interim relief in the civil court under section 41 (b) but no such freedom was given to party applying for arbitration in the new act. Further, if the parties have arrived at any conclusion and award has been passed, the arbitrator has to give statement as to reason of such award as provided in the new act of 1996, but it was neither obligatory nor mandatory in the old act. The act of 1996 also faced criticism and was amended in 2005 and thereafter in 2015

[3] (1925) ILR 47 AII637
[4] AIR, 1963 Cal, 149
[5] Arbitration and conciliation act, 1996

after a landmark judgment of Hon'ble S.C. in the case of Bharat Aluminium Co. vs. Kaiser Aluminium Co. [6] in which it was observed that the act is applicable to arbitrations which take place in India only. After 2015, the act was gain amended in 2019.

3. Natural Justice

The doctrine of Natural Justice is an important concept in Indian judicial system. The doctrine provides two main principles i.e. Rule against bias and equal right of hearing. Following are the main principles enshrined in the doctrine of Natural Justice.

1. Nemo in propria causa judex, esse debet
2. Audi Alteram Partem

3.1 Nemo in propria causa judex, esse debet

The first principle enshrined in the doctrine of natural justice is "nemo in propria causa judex, esse debet" which means no person shall be a judge in his own case. This rule is also called the Rule against bias. It is presumed that the person against whom proceedings are pending in the court if appointed as a judge in his own case shall be biased and therefore this rule has been established for fair trial and complete ends of justice. The rule against bias provides following types of bias.

(i) Personal Bias

When any person has who is an authority in the case has any personal relation with any of the party to the proceedings may be said that he may be personally biased in the case. Hon'ble Supreme Court In the case of ***Mineral Development Corporation vs. State of Bihar***[7] quashed the order of cancellation of lease of mines on the ground of personal bias. In this case the appellant argued before the Apex court that he had been given lease of mines lawfully for 99 years in the year 1947 but the lease was cancelled by the government in 1955 without any reason. The appellant stated that his lease was cancelled because of personal bias as he opposed the government in the election. The apex court found the allegations made by the appellant to be true and the order of cancellation of lease was set aside.

(ii) Pecuniary Bias

Pecuniary bias means the authority has any interest in some kind of money in the matter of the case. Hon'ble Supreme Court has specifically decided that any pecuniary interest may be small or large is sufficient to vitiate the proceedings. In ***Jeejeebhoy vs. Asst. Collector, Thana***[8] an appeal was filed before the apex court. In the

[6] AIR, 2012, SC
[7] AIR, 1960, SC, (2) 909
[8] AIR, 1965 SC (1) 636

present case, the land of the appellant was acquired in 1949 and the compensation for the same was awarded as according to the price settled by the collector in 1948, the day of notification. Proceedings were initiated for enhancing the compensation but dismissed by the collector and the High Court also. Via appeal the appellant came before the apex court where the court quashed the order of High Court and awarded compensation according to the market value at the time of acquisition of the land.

(iii) Subject Matter Bias

The subject matter bias arises when the authority has direct or indirect interest in the property or subject matter of the proceeding. Hon'ble Supreme Court has however of the view that it is not necessary that the interest in the subject matter shall vitiate the proceedings. It has to be seen in the case whether the authority is biased or not. In ***R. vs. Deal Justices ex p. Curling***[9] the complaint was filed against cruelty with the animal. The magistrate who was trying the complaint was the member of the society which was formed for protection of animals from cruelty. It was alleged that the proceedings are bad in eyes of law as the magistrate has interest in the subject matter but the superior court did not exclude the magistrate fro hearing the proceedings and observed that this fact will not vitiate the proceedings. The court observed that it is not necessary that the authority will be biased against the accused. It has to be proved clearly in the case that the proceedings are vitiated due to any relation of the authority with the subject matter of the case.

(iv) Departmental bias

Departmental bias is the deep routed problem of administration. Almost all the government offices whether administrative, judicial or otherwise are affected with this problem. An important case on this matter is M***/S Krishna Bus Service vs. State of Haryana***[10]**.** In this case the powers of D.S.P. regarding inspecting the vehicles were conferred upon the General Manager of Haryana Roadways. The petitioner challenged this order on the ground of departmental bias as he alleged that the person who has been given power of inspecting the vehicles was involved in the business rival to the petitioner. It can't be presumed that he shall not be biased at the time inspecting the private vehicles. The apex court accepted the argument and quashed the order of appointment.

3.2 Audi Alteram Partem

It is the second principle enshrined in the doctrine of natural justice. It means hear the other party. The principle of Audi alteram partem provides that no one should be condemned without a fair hearing/being heard. It is the basic rule of law that both the parties should be given equal opportunity to present his case and therefore reasonable opportunity of hearing should be given to both the parties. The principle of Audi Alteram Partem contains following rights.

[9] 1881), 45 LT, 439
[10] AIR 1985, SC (2) 330

(i) Right to reasonable notice

(ii) Right to know evidence

(iii) Right to produce his evidence

4. Arbitration and Doctrine of Natural Justice

Following the doctrine of natural justice in the arbitral proceedings is as necessary as in civil proceedings because the arbitral award is nothing but the compromise between the parties and has the same effect as that of decree of a civil court. If the arbitration proceedings are not fair and the award passed by the arbitrator is arbitrary then the party aggrieved by the award can challenge the award. The arbitral award can b challenged on the ground of doctrine of natural justice. Specific provision for the same has been provided under section 34 of Arbitration and Conciliation Act, 1996.

The section[11] provides that an arbitral award may be set aside by the court if the party aggrieved with the award furnishes clear proof that the party was under some incapacity or the party making the application for setting aside the award was not given proper notice of appointment of arbitrator and the hearing of arbitration proceedings. Equal treatment and equal opportunity of hearing and present the case is not only the principle of natural justice but also the provision made under arbitration act, 1996.[12] In **Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya**[13] the apex court observed that if the suit contains such a subject matter which is beyond the scope of arbitration agreement can't be referred to arbitration.

Judicial opinion

There are various cases in which the apex court has preserved the importance of arbitration proceedings and in many other cases quashed the award of arbitration on the ground of biasness or being arbitrary.

Brahmanu River Pellets Limited vs. Kamachi Industries Limited[14] is an important case in which the apex court has preserved the right of party to choose the place of arbitration. The court observed that when the contract specifically provides that a particular court shall have jurisdiction no other court shall have power to pass the award. In the instant case, the parties agreed for the Place of Bhubaneshwar for initiating arbitration proceedings. The apex court held that in the cases where parties agreed with their free consent for any place for arbitration, such court only shall have the jurisdiction.

[11] Section 34 (2), Arbitration and Conciliation Act, 1996
[12] Section 18, Arbitration and Conciliation Act, 1996.
[13] AIR, 2003, SC
[14] AIR, 2019, SC

In **Vinod Bhaiyalal Jian vs. Wadhwani Parmeshwari Cold Storage Pvt. Ltd.**[15] Hon'ble Supreme Court set aside the award passed by arbitration authority on the ground of bias. In this case the arbitration proceedings were challenged on the ground that the arbitrator had acted as counsel for another party to dispute and award was passed in his favour. The aggrieved party raised an objection on the fairness and independence of arbitrator. The Supreme Court while deciding the matter observed that the aggrieved party has reasonable apprehension of biasness set aside the arbitral award stating that there should be no space for even perception of bias in the arbitration proceedings.

M/S Icomm Tele Ltc. Vs. Punjab State Water Supply & Sewage Board[16] is an another important case in which the apex court struck down an arbitrary clause in the contract requiring deposition of 10% amount of the claim before submitting the case to arbitrators. In the case it was contended that the condition was included in the contract to make the process of arbitration a little hard so that the party may not hasty for submitting the dispute for arbitration. The apex court observed that such requirement or condition has relation with filling of false claim and any party aggrieved has right to file suit or arbitration proceedings which can't be curtailed by imposition of such unnecessary conditions.

In **Perkins Eastman Architect DPC and Ors vs. HSCC**[17] is the landmark judgment in this regard. In the instant case the Apex court held that the party interested in the award or outcome of the arbitration proceedings has no right to appoint the arbitrator of his choice. It is the respondent who would have the right to appoint the arbitrator so that the principle of fair hearing can be insured.

Conclusion and suggestion

The justice system is based upon the belief that the party aggrieved shall get justice by filling the suit in t he court. Some disputes however are such that can be resolved by the simple negotiation of the parties and for that purpose some alternatives have been introduces in the Indian judicial system. Arbitration is one of such alternative dispute resolution. Provisions for arbitration have not only incorporated in the civil procedure code but a specific act has also passed in this regard. As arbitration proceeding are not proceedings like court and arbitration award in nothing but the compromise between the parties, therefore arbitration act was based on the doctrine of natural justice so that fair trial and complete ends of justice can be insured. But a list of various cases decided by the Hon'ble Supreme Court revealed that the doctrine of natural justice was not followed in the arbitration proceedings. Many times the aggrieved party challenged the arbitral award on the ground of biasness or incapacity of the arbitrator. The biasness vitiates the arbitration proceedings. It is the basic rule of principle of natural justice that justice not only be done but be seen to be done. The proceedings which look to be arbitrary and biased on its faced can't be called fair and liable to be set aside. The apex court played its role

[15] AIR, 2019, SC
[16] AIR, 2019, SC
[17] MANU/SC/2019

very competently in protecting the rights of parties by setting aside various arbitral awards on the ground of biasness or otherwise but it is the prior duty of the arbitrator to act fairly so that the party can get justice and not be burdened with the cost of making appeal to apex court. It is therefore suggested that the arbitration proceedings should be conducted keeping in mind the principle of fairness enshrined in the doctrine of natural justice.