INDIALAW



ARBITRATION AND CONCILIATION

Arbitral Award Is Null And Void If Passed Past The Prescribed Period: Telangana HCa

AUTHOR Supriya Bhosale, Asav Rajan Arora

PUBLISHED 21 April 2022

The Telangana High Court comprising Justice P. Naveen Rao and Dr. Justice G. Radha Rani, in a recent Judgment[1] held that the provisions of Section 29A of the Arbitration and Conciliation Act, 1996 (the "**Act**"), describe the period, in which an award can be passed by an arbitrator. An arbitrator cannot make an award after the expiry of the prescribed period and makes the awards passed by an arbitrator after the expiry of the prescribed period, null and void.

Contentions

Petitioner pleaded before the High Court that the arbitral award was not passed within one year from the date of filing of the claim by the respondent, therefore, the arbitral award was null, and could not be enforced. Section 29A(1) of the Act, as it stood when the award was passed, an award should be made **within a period of twelve months from the date the Arbitral Tribunal enters upon reference.**

The petitioner also referred to Section 29A (3) of the Act which states that the parties may, by consent, extend the period specified in sub-section (1) for making an award for a further period not exceeding six months. Petitioner argued that it gives power to the parties to extend this time period for a further period not exceeding six months, however, if the award is not passed within the period specified under Section 29A (1) and 29A (3), then the mandate of the arbitrator would terminate. The petitioner argued that, as the arbitrator was not competent to pass the award, enforcement of the award shall not be in question.

The respondent argued that the petitioner deliberately dragged filing of statement of defence; hence, the period of twelve months should be reckoned from the date the petitioner had filed its Statement of Defence. Section 29A(1) of the Act, as amended by 2019 Amendment Act, provide that an award with respect to matters other than international commercial arbitration shall be made by the arbitral tribunal **within a period twelve months from the date of completion of pleadings before the arbitral tribunal**. The respondent further contended that Section 29A of the Act only lays down a procedure and therefore, non-compliance of it does not vitiate the arbitral award.

Judgment

The Court ruled that the arbitrator becomes *functus-officio* after the expiry of the prescribed period and seizes to be an arbitrator. It noted *"The provision as it stood was in mandatory terms and leaves no scope to infer otherwise. The intention of the Parliament is made abundantly clear from the reading of Sub-sections (3) and (4). Subsection (3) enables parties by consent to extend the time by a further period of six months.*

But it also makes it clear that it should not be extended beyond six months. According to sub-section (4), after the initial period of one year and extended period of six months, if extended by consent, the mandate of the arbitrator terminates.

Thus, he becomes functus-officio after that period and, therefore, seizes to be an arbitrator. An arbitrator is a creature of the statute and has to work within the four corners of the Act."

The Court rejected the contentions of the respondent that the effect of substitution of Section 29A of the Act, by 2019 Amendment Act 2019, operated retrospectively. The Court ruled that the amended provision did not relate back to the date of the original provision that was amended, merely because the word substitution was used.

The Court noted that the disputes were made in the light of the unamended Section 29A. It added that the award was passed by the arbitrators after 12 months; since the arbitrators had become *functus officio* one year after entering the appearance, they passed the award even though they were incompetent to deal with the dispute. The Court held that "*Awards passed by the arbitrators are nullity and void ab initio. In law, there do not exist awards and therefore the question of enforcement of the awards does not arise."*

The Court thus allowed the Civil Revision Petition filed by the petitioner.

1 Roop Singh Bhatty and others versus M/s. Shriram City Union Finance Limited

Related Practice Areas

Arbitration