

## Termination of Arbitral Tribunal - When and How?

Supreme Court of India in a recent judgment, decided on 16.09.2014, has observed that Arbitral Tribunal, once appointed, can be terminated by Court if it is proved that Arbitral Tribunal has not acted and failed to perform the functions for which it is established. The parties to Arbitration can move Court, to terminate the Mandate of the Arbitral Tribunal on failure of performance of the functions as laid down under Arbitration Act and seek appointment of substitute Arbitrator.

In **Union Of India & Others Vs. Uttar Pradesh State Bridge Corporation Ltd (2015) 2 SCC 521** the appellant had entered into an agreement for construction of guide bunds, foundation and substructure of rail bridge across River Ganges near Digha Ghat, Patna with the respondent .The said agreement contained various terms and conditions like Clause 64(1)(ii) of the **General Condition of Contract, 2001 (for short “GCC”)**, wherein an arbitration clause was contained which provided for deciding the dispute between the parties through arbitration by an Arbitral Tribunal to be constituted in terms of the said agreement.”

**Facts:** Disputes arose between the parties with regard to the contract. Pursuant to the disputes, Respondent made a request for constituting Arbitral Tribunal in Year 2007 to resolve the disputes between the parties. The Arbitral Tribunal, after the passing of four years, from the time it was constituted, did not successfully conclude the Arbitration proceedings. The Respondent, being aggrieved by the long delay and non-completion of Arbitration Proceedings, filed Request Case No 10 of 2010 before High Court. At the time of filing Request Case, there was a vacancy in the Arbitral Tribunal. When the matter was taken up on 9-3-2011 the appellant had filled up the said vacancy. The High

court taking note of the appointment made by the Authority disposed of the Petition with instructions to the Arbitral Tribunal, as a last chance to appellant, to complete the arbitral proceeding within a period of three months and also directed appellant to hold regular sittings.

The arbitration did not conclude by the end of, three months extension period. The Respondent again moved High Court to seek relief. The High Court terminated the mandate of the Arbitral Tribunal and appointed a Sole Arbitrator by itself to arbitrate in the matter.

Appellant aggrieved by High Court moved Supreme Court contesting that the Hon'ble High court is not empowered to appoint a sole arbitrator to arbitrate and terminate the mandate of the Arbitral Tribunal against the Arbitration Agreement of the parties.

**Reliance:** The Hon'ble Court Relied on North Eastern Railway<sup>[1]</sup> case, wherein the notion that the High Court is bound to appoint an arbitrator as per the contract entered between the parties has underwent a significant change. Para 6, 7, 8 and 9 of this judgment are of relevance as the judgments wherein departure has been made are enumerated. The Court also relied on Singh Builders Syndicate<sup>[2]</sup> wherein the court appointed a retired Judge to adjudicate the matter, whereas the Contract between parties required appointment of specified officers. The appointment of Judge was held valid as the Arbitration Proceedings were not concluded even after passing of 10 years.

That Arbitration Act in Section 1 lays down three principle viz **i)** Speedy, inexpensive and fair Trial by an impartial tribunal: **ii)** Party Autonomy and **iii)** Minimum court intervention. The Court's as a normal practice insist the parties to adhere to the procedure which they have agreed upon. These principles also applies while appointing Substitute Arbitrator<sup>[3]</sup>. Howsoever, the principle of "**Party Autonomy**" in choosing the procedure has been deviated in those cases where one of the parties have committed

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<sup>1</sup> North Eastern Railway VS Tripple Engg. Works (2014) 9 SCC 288

<sup>2</sup> Union of India V singh Builder Syndicate (2009)4 SCC 523

<sup>3</sup> Yashwith Construction (P) Ltd VS. Simplex Concrete Piles India Ltd. (2006) 6 SCC 204

<sup>3</sup> Union of India VS Singh Builders Syndicate (2009) 4 SCC 523

default by not acting in accordance with the procedure prescribed and instances already enumerated in Para 6 and 7 of Tripple Engg. Works<sup>2</sup>. The Default procedure has been applied in cases like Singh Builders Syndicate judgment<sup>3</sup> where there's delay of 10 years and such delay is mockery of court process.

**Judgment:** Thus court indicated that the Arbitral Tribunal, in the present case, did not perform the task assigned to them to conduct the arbitration proceeding diligently. The purpose of the Arbitration and Conciliation Act of conducting the arbitration proceeding in speedy manner is thwarted as the officers made Arbitrator by Appellant did not perform their duty to arbitrate properly due to their busy schedule as officers of the organisation they are working. Thus court observed that *"...where the government assumes the authority and power to itself, in one sided arbitration clause, to appoint the arbitrators who are in a position to conduct the arbitral proceeding in an efficient manner, without compromising with their other duties. Time has come when the appointing authorities have to take a call on such aspect and failing which, courts are not powerless to remedy such situation by springing into action and exercising their power as contained in Section 11 of the Act to constitute an Arbitral Tribunal, so that interest of the other side is equally protected."*

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