



LEADING MOST REPORTER ON
ARBITRATION AND WORKS CONTRACT

Arbitration Tribunal Law Reporter

QUARTERLY JOURNAL

EDITOR IN CHIEF : ABHAY GOHIL
(ADVOCATE)



JULY TO SEP. 1995 PART 3 VOL. IV

POWERS AND DUTIES OF AN ARBITRATOR

* By Sh. A.K. Bansal, Advocate

Generally an expert in his field is appointed as an Arbitrator but it is not always necessary that he should be one well trained in law and procedures of arbitration. Even small mistakes of an Arbitrator can lead to setting aside of his award at a later stage and frustrate the entire efforts. The award can be set aside on any of the grounds specified in Section 30 of the Indian Arbitration Act, 1940; hereinafter referred as 'the Act'. One of the grounds on which award can be set aside is that an Arbitrator has misconducted himself or the proceedings, but misconduct has not been defined anywhere. As such this ground has been widely used to set aside awards by Courts. Section 1 of the Evidence Act, provides that the said Act does not apply to proceedings before an arbitrator. Even Civil Procedure Code is not applicable to arbitration proceedings. The basic object is speedy disposal of arbitration proceedings within, after entering on reference by the arbitrator, four months (or extended time if any). The Arbitrator should follow the principles of natural justice.

Some powers of an Arbitrator have been expressly or impliedly given in Section 5, 13, 14, 27, 38, 43, and Schedule 1 Rule 6, 8 etc. of the Act.

Similarly some duties of the Arbitrator have been given expressly or impliedly in Section 9, 12, 15, 16, 20, 29, 30, 31, 34, 37, 41, 42 and Schedule 1 Rule 2, 3, 4, 5 etc. of the Act.

The Courts have interpreted the various provisions of the Act from time to time. Some general principles and guidelines, based on provisions of the Act, and interpretations by Courts and experience gained during practice of arbitration law, are discussed below :

PREPARATORY CONFERENCE :

The arbitrator, after his appointment, should hold a preliminary meeting with the parties to settle the preliminary and administrative matters. The Arbitrator should satisfy himself about his proper appointment as per agreement of Parties and law. He should enter on and proceed with the reference speedily within a period of one month after having been called upon to act in writing from any Party. He should frame a time schedule, keeping safe margin of the period required for making the award.

2. The Arbitrator should direct the Parties to present their claims, counter claims, replies, rejoinder etc. supplemented by documentary evidence on or before the dates determined by him for this purpose. He should allow only reasonable periods.

* Mr. A.K. BANSAL, Advocate is an international commercial arbitration expert in India, and had participated, as a special invitee of Government of India, in the deliberations of Law Ministers Working group to draft new arbitration law in its meetings at Bombay and Calcutta. He is Governing Body Member of - (i) International Centre For Alternative Dispute Resolution; (ii) Indian Society of Arbitrators, and (iii) Indian Council of Arbitration. He is head of M/s A.K. Bansal & Associates, Solicitors and Advocates, New Delhi, India.

3. The Arbitrator should serve notice required by the Act, in the manner provided in the arbitration agreement, or if there is no such provision by :-

- (a) delivering it to the person on whom it is to be served, or
- (b) sending it by registered post to that person at his usual or last known place of abode or business in India.

4. The Arbitrator should disclose his interest in the subject matter of the dispute and his relationship with any Party to the dispute at the commencement of the proceedings.

PROCEEDINGS :

The Arbitrator should give reasonable opportunity to the Parties to be heard and to produce documentary and oral evidence and allow the examination and cross-examination of the witnesses if requested by the Parties. It is advisable to get statement of the Parties recorded that they have closed the evidence.

The arguments are for the assistance of the Arbitrator and he may ask the Parties to submit written arguments to save time. The case should not be prolonged or allowed to be prolonged unnecessarily for oral arguments.

All the provisions of Limitation Act, 1963 apply to arbitrations as they apply to proceedings in Court. The Arbitrator should himself decide the question of limitation, if there is any. Merely referring the matter to arbitration by the Court does not mean that the question of limitation has been decided. The Arbitrator is not competent to condone the delay under limitation Act. Only Court can condone delay under section 37 of the Act.

Where an Arbitrator is removed under section 11 of the Act, he shall not be entitled to receive any remuneration in respect of his services.

The Arbitrator should not use his personal knowledge relating to the disputes for their settlement.

MAKING OF THE AWARD :

The Arbitrator should make the award, sign it and give written notice to the Parties of the making and signing thereof and of the amount of fees and charges payable in respect of the Arbitration and award.

The Court can compel the Arbitrator, only upon payment of his fee and charges, to file the award in the Court.

JURISDICTION OF THE ARBITRATOR :

The Arbitrator should understand and determine clearly whether the reference to him is under chapter II, or III or IV of the Act. In case the Reference is under Chapter III or IV of the Act, he should decide only those matters/claims which were filed before the Court; and which the

Court has referred to him. He should not entertain any fresh claims or counter claims from the Parties.

The Arbitrator should understand properly the meaning of legal misconduct under the Act.

The Arbitrator should comply with the stay order of the Court and should proceed only on vacation of the same.

The Arbitrator should not leave undetermined any of the matters referred to arbitration, and should not determine any matter not referred to arbitration. If there is some doubt regarding jurisdiction of the Arbitrator regarding part of the disputes or claims, it is advisable to make the award in such a form that it can be easily separated from the other part of the award.

FORM OF AWARD :

The award should be in perfect form and care should be taken that it does not contain a clerical mistake or an error arising from an accidental slip or omission. The award should be definite and capable of execution.

RECONSIDERATION :

The Arbitrator should reconsider and submit again the award remitted under section 16 of the Act within the stipulated period otherwise the award shall deemed to be void.

FILING OF AWARD :

The Arbitrator has power to file the award and proceedings etc. suo motu at any time in the Court and he should do so under intimation to the parties suo motu in the competent Court for further Action by the Court. This would close the chapter from his side and save his time as also of that of the Parties and the Court. The remedies of Section 14 of the Act are available only if the Arbitrator does not file the award suo motu in the Court. However the award may not be filed until the fees and charges of the Arbitrator are paid.

POWER OF THE ARBITRATOR :

The Arbitrator has power :-

1. to administer oath to the Parties and witnesses appearing and to examine them in relation to the matters in dispute.
2. to order production of all books, deeds, accounts, writings and documents within possession or power of any Party.
3. to state a special case for the opinion of the Court of any question of law involved, or state the award wholly or in part, in the form of a special case of such questions for the opinion of the Court.
4. to make the award conditional or in the alternative.

5. to correct in award any clerical mistake or error arising from any accidental slip or omission.

6. to administer to any Party to the arbitration such interrogatories as may, in the opinion of the Arbitrator, be necessary.

7. to make an interim award but in the existing law the making of interim award is not very useful.

8. to enlarge the time for making the award, with the consent of the Parties to the agreement. The Arbitrator can proceed even after expiry of the time if the Parties appear and participate in the proceedings without objection; the Supreme Court of India recently in Nagar Palika case has held that time in such cases should be taken as extended. The Court can extend time for making award, even after making of the award, under section 28 of the Act.

9. to grant interest from the date of cause of Action or date of notice demanding interest till the date of reference. He can also grant interest for the pendente lite period commencing from the date of reference till the date of decree. But the Arbitrator can not grant interest after the date of the decree. Only the Court is competent to grant interest after the date of the decree under section 29 of the Act.

10. to fix the costs of the reference and award and may direct to and by whom, and in what manner such costs shall be paid.

11. to fix his remuneration if it is not fixed by agreement or in the order of the appointment.

12. to withhold the filing of the award till payment of fee and charges due in respect of the arbitration and award and of the charges of filing the award in the Court. The Arbitrator shall be entitled to appear and be heard on any application under section 38 of the Act regarding determination of reasonable fee of the arbitrator by the Court.

13. to examine any Party or witness and request the Court to issue process as the Court may issue in suits tried before it under section 43 of the Act.

14. to proceed ex parte against the defaulting Party after giving him written notice of his (Arbitrator's) intention to proceed ex parte in case of his failure to appear and participate in the proceedings.

The authority of the Arbitrator can not be revoked except with the leave of the Court.
