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Writ Jurisdiction and Arbitral Autonomy: Striking the Right Balance in India's Arbitration Landscape



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Writ Jurisdiction and Arbitral Autonomy: Striking the Right Balance in India's Arbitration Landscape

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Introduction

In India, the maintainability of writ petitions in respect of arbitration matters presents a nuanced legal challenge, requiring the balancing of the extraordinary powers of High Courts under Articles 226 and 227 of the Constitution of India with the objectives of the Arbitration and Conciliation Act, 1996 (Arbitration Act).

Section 5 of the Arbitration Act minimises judicial interference in arbitral proceedings, confining intervention strictly to the circumstances outlined within the statute. However, courts have frequently grappled with situations where exercising the writ powers was deemed necessary to preserve justice. Over the years, landmark judgments have delineated the scope of judicial intervention, affirming two fundamental principles: (i) the writ jurisdiction of High Courts remains intact despite Section 5 of the Arbitration Act; and (ii) its exercise must be limited to rare and exceptional cases, such as those involving a manifest lack of jurisdiction, bad faith, or violations of natural justice principles.

This debate assumes greater importance as arbitration continues to gain prominence as an alternative dispute resolution mechanism in India. While Arbitral Tribunals are afforded significant autonomy to adjudicate disputes, judicial scrutiny is sometimes required to prevent the misuse of arbitration or a miscarriage of justice. Recent Supreme Court rulings have further clarified the contours of this balance, emphasising that writ petitions should be entertained sparingly and in line with the Arbitration Act's objective of efficient, independent dispute resolution.

This article will explore how the judiciary continues to harmonise its constitutional powers with the autonomy of Arbitral Tribunals, ensuring the arbitral process remains efficient, just, and consistent with the parties' rights.

Writ jurisdiction of High Courts

The extraordinary jurisdiction of High Courts in India, enshrined in Articles 226 and 227 of the Constitution, serves as a foundation for protecting fundamental rights and administering justice. Article 226 empowers High Courts to issue writs for the enforcement of fundamental rights, offering a remedy against both legislative and executive actions.

Article 227, on the other hand, confers every High Court with supervisory powers over all courts and tribunals within the jurisdiction of such High Court. Together, these articles establish a robust framework for judicial review, reinforcing the rule of law and providing a mechanism to check the misuse of power.

Legislative framework for arbitration

The Arbitration Act establishes a robust legal framework designed to facilitate efficient dispute resolution through arbitration. This landmark legislation was crafted to minimise judicial intervention and enhance party autonomy, thereby aligning Indian arbitration practices with international norms and expectations.

Section 5 of the Arbitration Act embodies a fundamental principle: courts are expressly prohibited from interfering in matters governed by the Arbitration Act, except as explicitly stipulated within its framework. Through this provision, the legislature aims to preserve the integrity of arbitration as a preferred dispute resolution mechanism, ensuring that Arbitral Tribunals operate with the requisite independence to deliver fair and impartial awards.

In addition to defining the limits of judicial oversight, the Act encompasses provisions that further reinforce the principle of minimal intervention. It grants arbitrators substantial discretion to determine procedural matters and the scope of their jurisdiction.

In *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*¹, the Supreme Court characterised the Arbitration Act as a comprehensive and specialised law designed to facilitate quick and efficient dispute resolution through arbitration while reducing judicial interference. The relevant excerpt from the judgment in *Fuerst Day Lawson case*² is as follows:

89. It is, thus, to be seen that the Arbitration Act, 1940, from its inception and right through to 2004 (in *P.S. Sathappan v. Andhra Bank Ltd.*³) was held to be a self-contained Code. Now, if the Arbitration Act, 1940 was held to be a self-contained Code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so.

(emphasis supplied)

The Arbitration Act enshrines the finality of arbitral awards, offering limited grounds for

judicial scrutiny. Sections 34 and 37 outline specific circumstances under which a court may set aside an arbitral award, primarily focusing on procedural irregularities or questions concerning the jurisdiction of the Arbitral Tribunal. This circumscribed approach to appeals is designed to deter frivolous litigation and encourage parties to uphold the legitimacy of arbitral decisions.

Overall, the legislative framework established by the Arbitration Act reflects a steadfast commitment to ensuring that arbitration remains a viable and efficient means of resolving disputes.

Judicial precedents

The interplay between the legislative framework under the Arbitration Act and the constitutional powers of the High Courts under Articles 226 and 227 of the Constitution has been discussed in several matters. These rulings have not only elucidated the parameters within which High Courts may exercise their writ powers but have also reinforced the fundamental principles underlining the Arbitration Act.

(i) Matters involving the State

In *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.*⁴, the Supreme Court explored the relationship between arbitration and writ jurisdiction. The Supreme Court emphasised that the Arbitration Act was designed to minimise excessive judicial interference in arbitration. Consequently, courts must exercise caution when intervening in arbitral proceedings.

Similarly, in *Deep Industries Ltd. v. ONGC Ltd.*⁵, the Supreme Court stated that writ jurisdiction should be exercised sparingly, primarily when a petitioner has no alternative remedies or when one party demonstrates clear bad faith. Moreover, the threshold for invoking writ powers is even higher in cases related to arbitration, reflecting the legislative intent behind the Arbitration Act.

The issue was revisited in *Unitech Ltd. v. Telangana State Industrial Infrastructure Corpn.*⁶, where the Supreme Court reiterated the principles established in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*⁷. It confirmed that, in certain situations, writ petitions under Article 226 or Article 227 can be maintained to assert contractual rights against the State or its entities. The Supreme Court also identified the exceptional circumstance where writ jurisdiction may be exercised, despite the availability of an effective alternative remedy, particularly when a State entity violates the constitutional mandate of fairness under Article 14.

In *Surendra Kumar Singhal v. Arun Kumar Bhalotia*⁸, the Delhi High Court reviewed various Supreme Court decisions and established key principles regarding interference in arbitration under Article 226 or Article 227 of the Constitution. The Delhi High Court concluded that orders of an Arbitral Tribunal can be subject to a writ petition in exceptional cases. However, the writ court would only intervene if the Tribunal's order is egregiously flawed or lacks jurisdiction. Additionally, the High Court clarified that Section 5 of the Arbitration Act does not

apply to the inherent powers of writ courts under Article 227, which is a constitutional provision. Nonetheless, the Court emphasised that the integrity of the arbitral process should be preserved.

(ii) Challenging arbitral orders passed under Section 16 of the Arbitration Act

A careful reading and interpretation of Sections 5 and 37 of the Arbitration Act reveal several vital aspects.

Firstly, the Arbitration Act serves as a comprehensive framework specifically outlining the procedures for both domestic and international arbitration in India. Accordingly, Section 5 of the Act stipulates that there shall be no judicial interference in arbitral proceedings except as expressly provided within the Arbitration Act itself. Notably, this provision includes a non obstante clause that states, “notwithstanding anything contained in law”. This clause brings out the legislative intent to protect arbitration proceedings from unnecessary judicial oversight, ensuring that the arbitral process remains effective and uninterrupted. The clear language of Section 5 reinforces the self-contained nature of the Arbitration Act and explicitly prohibits any external judicial intervention unless specifically provided for in the Arbitration Act.

Secondly, an appeal concerning an order issued under Section 16 of the Arbitration Act is permissible under Section 37 only when the order is made in the context of “accepting” the plea under Section 16(2) or Section 16(3). This interpretation is supported by Section 37(2)(a), which specifies the circumstances under which appeals are allowed which only mentions the words “accepting the plea referred to in....” Further, this is also supplemented by the phrase in Section 37(1) of the Arbitration Act which reads as: “(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others)....”

In *SBP & Co. v. Patel Engg. Ltd.*⁹, the Supreme Court emphasised that judicial intervention in matters covered by the Arbitration Act should be limited and strictly adhere to specific statutory provisions. The Supreme Court observed as below:

45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or Article 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand

adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or Article 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.

(emphasis supplied)

In *Deep Industries Ltd. case*¹⁰, the Supreme Court while referring to the scheme of Section 16 of the Arbitration Act, held as below:

22. ... The drift of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34. What the High Court has done in the present case is to invert this statutory scheme by going into exactly the same matter as was gone into by the arbitrator in Section 16 application, (...) For this reason alone, the judgment under appeal needs to be set aside.... Even otherwise, entering into the general thicket of disputes between the parties does not behove a court exercising jurisdiction under Article 227, where only jurisdictional errors can be corrected....

(emphasis supplied)

In terms of the observations of the Supreme Court in *Deep Industries Ltd. case*¹¹ it is clear that when an application under Section 16 of the Arbitration Act is dismissed by the arbitrator, no further appeal is provided in that regard. In such a case, the aggrieved party must await the passing of the final award and raise their challenge under Section 34 of the Arbitration Act.

In *Bhaven Construction case*¹², with respect to the maintainability of a challenge to an order of the Arbitral Tribunal dismissing an application under Section 16 of the Arbitration Act, the Supreme Court had the following observations to make:

18. ... It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

(emphasis supplied)

In *Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd.*¹³, the Supreme Court clarified that a direct recourse to the writ court from a dismissal of an application under Section 16 of the Arbitration Act is permissible only if the order passed is so perverse that the only possible conclusion is that there is a patent lack of inherent jurisdiction. The Supreme Court clarified "patent lack of inherent jurisdiction requires no argument whatsoever and the perversity of

the order must stare one in the face”.

The decisions in *Deep Industries Ltd. case*¹⁴, and *Punjab State Power Corpn. Ltd. case*¹⁵ came to be followed by this Court in *Odisha SRTC v. ARSS Bus Terminal (P) Ltd.*¹⁶. In *ARSS Bus Terminal case*¹⁷, the Supreme Court opined as below:

66. Entertaining an application under Article 227 of the Constitution at this stage will also result in piecemeal trial of the arbitration proceedings, which is deprecated by the Supreme Court time and again. Further, all the arguments raised by the petitioner could have been raised in a petition under Section 34 of the Arbitration Act after finality of the arbitration proceedings. Law is well-settled as stated above that when an alternative and efficacious remedy is available to the petitioner, the writ petition should not be entertained which would impliedly circumvent the efficacious statutory provision made in the Arbitration Act itself.

(emphasis supplied)

In *GTPL Hathway v. Strategic Marketing (P) Ltd.*¹⁸, the Gujarat High Court reaffirmed that orders issued by an arbitrator during ongoing arbitration proceedings cannot be challenged under Articles 226 and 227 of the Constitution. In this case, the Arbitral Tribunal determined that the disputes were arbitrable despite the petitioner raising allegations of fraud and cheating.

The High Court dismissed the petition, emphasising on two key points: first, that Section 5 of the Arbitration Act allows for limited judicial intervention, only as expressly permitted; and second, that the petitioner had an alternative and effective remedy available under Section 34 of the Arbitration Act. Based on these considerations, the Gujarat High Court upheld the dismissal of the petition.

Conclusion

The delicate balance between the constitutional powers of the High Courts and the autonomy of Arbitral Tribunals poses a significant challenge. While the Arbitration Act aims to reduce judicial intervention and promote efficient dispute resolution, the judiciary must carefully navigate its role in maintaining this equilibrium.

The Supreme Court has provided clear guidelines in several landmark judgments, highlighting the importance of judicial restraint in arbitral matters.

Moving forward, courts must continue to exercise caution, ensuring that writ jurisdiction in arbitration cases is applied judiciously and only in exceptional circumstances. The future of arbitration law in India depends on preserving this balance, ensuring that arbitration remains a trusted and effective mechanism for resolving disputes in a complex and evolving legal environment.