

Delhi High Court Sets Aside Arbitral Award Over Lack Of Proper Disclosure And Procedural Violations By Arbitrator

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Introduction

In ***FLFL Travel Retail Lucknow Private Limited v. Airports Authority of India***¹, the Delhi High Court addressed significant procedural lapses in the arbitration process, particularly concerning the arbitrator's failure to make necessary disclosures and the receipt of documents *ex-parte* after proceedings were reserved for the award. The judgment reaffirms the importance of maintaining procedural fairness in arbitration and upholding the mandatory disclosure requirements under Section 12 of the Arbitration and Conciliation Act, 1996 ("**the Act**"). As a result, the arbitral award was set aside on grounds of breach of both Sections 12 and 24 of the Act, marking a critical reinforcement of procedural safeguards in arbitration.

Facts

The dispute between FLFL Travel Retail Lucknow Private Limited ("**the petitioner**") and the Airports Authority of India ("**AAI**") arose from a Concession Agreement dated March 23, 2018, wherein the petitioner was granted the rights to develop and operate retail outlets at various airports, including Chaudhary Charan Singh Airport in Lucknow. The petitioner's claims stemmed from alleged delays caused by AAI in obtaining the necessary security clearances for operating the retail outlets.

The petitioner sought a refund of the concession fees it had paid for certain periods during which it could not fully operate the outlets due to delays attributable to AAI. These claims, totalling over INR 4 crores, were submitted for arbitration. In August 2022, the learned arbitrator awarded a sum of approximately INR 20 lakhs in favour of the petitioner, rejecting the bulk of the petitioner's claims.

The petitioner challenged the award under Section 34 of the Act, contending that the arbitrator failed to comply with the disclosure requirements under Section 12 and that the arbitrator improperly received documents from the respondent *ex parte* after reserving the award.

Legal Issues and Contentions

1. Failure to disclose appointment in another arbitration

The petitioner argued that after reserving the award, the arbitrator was appointed by AAI in another arbitration matter. However, the arbitrator did not disclose this subsequent appointment to the petitioner in writing, as required under Section 12 of the Act. The petitioner contended that this omission raised justifiable doubts about the arbitrator's impartiality and independence.

¹ *FLFL Travel Retail Lucknow Private Limited v. Airports Authority of India*, 2024: DHC: 7800.

The petitioner asserted that the continuous obligation to disclose any developments that may affect the arbitrator's independence throughout the proceedings was violated. The petitioner emphasised that the arbitrator's failure to disclose this new appointment vitiated the arbitration proceedings and the resultant award.

2. Receipt of documents without notice to the petitioner

The petitioner also challenged the award on the ground that the arbitrator had received additional documents from AAI after the award had been reserved, which were not shared with the petitioner in a timely manner. These documents, consisting of circulars and notifications from the Bureau of Civil Aviation Security (BCAS) and the Ministry of Home Affairs, pertained to the closure of certain areas of Lucknow Airport, which formed the basis for the petitioner's claims for a concession fee rebate.

The petitioner was only made aware of these documents after a delay of three weeks and was given just one working day to respond, which it contended violated Section 24(3) of the Act and denied the petitioner a fair opportunity to present its case.

Findings

1. Violation of Section 12 of the Act

The High Court found that the arbitrator's failure to disclose his appointment by AAI in another arbitration matter violated Section 12(2) of the Act. The High Court emphasised that the obligation to disclose potential conflicts of interest is ongoing and does not end with the initial disclosure at the time of appointment. The High Court held that a telephonic disclosure, as claimed by the arbitrator, was insufficient and contrary to the statutory requirement that disclosures be made in writing.

The High Court relied on established jurisprudence regarding arbitrator impartiality and transparency, holding that the failure to disclose the subsequent appointment created justifiable doubts about the arbitrator's independence. This procedural failure undermined the legitimacy of the arbitral proceedings and justified setting aside the award.

2. Violation of Section 24 of the Act:

On the second issue, the High Court agreed with the petitioner that the arbitrator had violated Section 24(3) by receiving documents from AAI without sharing them promptly with the petitioner. The High Court found that the petitioner was deprived of a reasonable opportunity to respond to these documents, which played a crucial role in the arbitrator's decision-making process. The High Court emphasised that the principle of natural justice mandates that all parties to arbitration must have equal access to evidence and the opportunity to present their case fully.

The High Court held that the arbitrator's conduct in receiving and considering ex parte documents after reserving the award amounted to a serious procedural irregularity, warranting the setting aside of the award under Section 34 of the Act.

Conclusion

The Delhi High Court set aside the arbitral award dated August 11, 2022, holding that the arbitrator's failure to disclose his subsequent appointment by AAI and the improper receipt of documents from the respondent without giving the petitioner a fair opportunity to respond were clear violations of the Act. These procedural lapses undermined the fairness and integrity of the arbitral process, necessitating the setting aside of the award. The judgment highlights the importance of procedural fairness in arbitration and reinforces the need for arbitrators to strictly comply with the disclosure and natural justice requirements set out in the Act.

Comment

This judgment serves as an important reminder of the principles of impartiality and transparency that are fundamental to arbitration proceedings. Arbitrators are bound by a continuous duty to disclose any circumstances that may affect their independence, and failure to do so can invalidate the entire process. Additionally, the decision reinforces the principle of natural justice, ensuring that parties are given a fair and equal opportunity to present their case, without *ex parte* communications influencing the tribunal's decision.

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