

Challenge to Arbitral Tribunal's Jurisdiction Impermissible After Submission of Defence: Supreme Court of India

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Introduction

In a recent decision in *Vidyawati Construction Company v. Union of India*¹, the Supreme Court of India addressed a dispute concerning the jurisdiction of a sole arbitrator appointed in deviation from the contractual arbitration clause. The case revolved around whether an objection to the jurisdiction of an arbitral tribunal could be raised belatedly after submission to its authority and whether such an award could be invalidated based on procedural grounds.

The Apex Court ruled that once a party submits to the jurisdiction of an arbitrator and participates in the proceedings, it cannot later challenge the arbitral tribunal's authority. Emphasising upon the doctrine of *kompetenz-kompetenz*, which allows an arbitral tribunal to rule on its own jurisdiction, the judgment reiterates that objections to arbitrator appointments must be raised at the earliest opportunity, failing which they are deemed to be waived. In this article, we navigate through the facts of the case, and findings of the Supreme Court.

Facts

The case originated from a contract executed between *Vidyawati Construction Company* (the appellant) and the *Union of India* (the respondent) for constructing a building for the office of the General Manager Railway Electrification Project, Allahabad. A dispute arose regarding the payment under the contract, leading to arbitration as per the arbitration/dispute resolution clause.

While the underlying arbitration clause prescribed that the arbitral proceedings would be held before a three-member arbitral tribunal, after multiple rounds of litigation and attempts to constitute a three-member tribunal, the parties were ultimately referred to a sole arbitrator by the Allahabad High Court.

The arbitration proceedings commenced before the sole arbitrator. The respondent filed its statement of defence on 14.02.2004 but later raised an objection to the tribunal's jurisdiction, arguing that the arbitration clause prescribed a three-member panel and not a sole arbitrator. The sole arbitrator rejected this objection and proceeded with the case and passed an award on 21.02.2008 in favour of the appellant.

Challenging the award, the respondent filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") before the District Judge, Allahabad, who set aside the award solely on the ground that the sole arbitrator's appointment was contrary to the contractual arbitration clause. The appellant's appeal under Section 37 was dismissed by the Allahabad High Court, affirming the District Judge's ruling. Ultimately, the appellant then approached the Supreme Court.

¹ 2025 INSC 101.

Arguments of the Petitioner

The appellant contended that the respondent had explicitly accepted the appointment of the sole arbitrator during arbitration proceedings. In this regard, the appellant made the following submissions:

- (i) The appellant pointed out that on 05.12.2003, the respondent's counsel had expressly agreed that the sole arbitrator would now adjudicate the dispute.
- (ii) The respondent had participated in the proceedings, filed its statement of defence, and even sought time to modify its pleadings, yet it never raised a jurisdictional objection.

Under Section 16(2) of the Act, the appellant argued that objections to jurisdiction must be raised before or at the time of submitting the statement of defence, not after.

- (iii) The appellant relied on the doctrine of estoppel and submitted that once a party voluntarily submits to a forum, it cannot later turn around and challenge it when the result is unfavourable.
- (iv) The appellant argued that both the District Judge and the High Court had erred in setting aside the arbitral award solely on jurisdictional grounds, ignoring that the respondent had acquiesced to the tribunal's authority.

Arguments of the Respondent

The Union of India, defended the High Court's ruling on the following grounds:

- (i) The underlying contract explicitly required a three-member tribunal, and the appointment of a sole arbitrator was *ultra vires* and amounted to the modification of the arbitration clause.
- (ii) The respondent argued that its jurisdictional objection, though raised after filing the defence, was still permissible under Section 16 of the Arbitration Act, as there was a procedural delay in transitioning from the three-member tribunal to the sole arbitrator.
- (iii) The respondent claimed that when the High Court appointed the sole arbitrator, the law treated Section 11 appointments as administrative orders, which did not preclude jurisdictional objections being raised later in the proceedings.

Supreme Court's Analysis and Decision

The Supreme Court, after examining the facts and arguments, ruled in favour of the appellant and set aside the High Court's judgment.

The Apex Court emphasised that the respondent had explicitly agreed to the appointment of the sole arbitrator. Having done so, it could not later contest the jurisdiction of the arbitrator. Furthermore, the Supreme Court opined that under Section 16(2) of the Arbitration Act, an objection to an arbitral tribunal's jurisdiction must be raised at the latest

by the submission of the statement of defence. Since the respondent filed its defence on 14.02.2004, the objection raised on 24.04.2004 was belated and impermissible.

The Supreme Court held that the District Judge and the High Court had erred in setting aside the arbitral award solely on jurisdictional grounds without considering the fact that the respondent had voluntarily submitted to arbitration. The Apex Court opined that arbitration must not be derailed by belated procedural objections. It reaffirmed that courts must adopt a pro-arbitration approach, ensuring minimal interference in arbitral proceedings.

Since the District Court had not adjudicated on other substantive challenges to the award, the Supreme Court restored the case to the District Judge for reconsideration of other grounds, excluding jurisdictional objections.

Comment

The Supreme Court has clarified that jurisdictional objections must be raised at the earliest stage, firmly discouraging delays and frivolous challenges that could disrupt arbitration. The ruling also reinforces a crucial principle, *i.e.*, once a party agrees to arbitration and actively participates in the process, it cannot later dispute the tribunal's authority simply because the outcome is unfavourable.

Contact

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