



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B.

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SUBJECT: Alternative Dispute

Resolution

SUBJECT CODE: BAL803

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Lecture-10



LECTURE 10: Jurisdictions of Arbitral Tribunal

It would not be appropriate to say that an arbitral tribunal has statutory jurisdiction. The tribunal determines its jurisdiction to adjust the needs of the parties. The arbitral agreement mainly determines the ambit of jurisdiction of the arbitral tribunal. The focal of party-autonomy declares that when the two parties have the remedy to resolve their disputes on their own then they have the remedy to show this right to any third party, to determine overt that squabble.

Thus it is very essential to contemplate a well-drafted agreement because it results in giving complete strength to the tribunal to determine matters related to the jurisdiction. The Arbitration and Conciliation Act, 1996 also specifically mentions the jurisdiction to determine explicit matters in Section 17 of the Act.

- Appointment of a guardian for a person who is of unsound mind or minor age in between the process of arbitration
- Safety/Security/ Confinement/ provisional injunction of the subject matter of the arbitration.

There are some cases in which the competency of the arbitral tribunal is contingent on gaining questions.

The relevant provision under the act (Section 16):-

Section 16 of the Arbitration and Conciliation Act provides the following provisions:

- The arbitral tribunal may regulate or direct on its own jurisdiction, which also incorporates any objection regarding the validity or existence of the arbitration agreement, and for that objective:
 - An arbitration clause which is a term of a contract agreement must be deemed as an agreement free and autonomous of the other terms of the contract, and
 - A decision of the arbitral tribunal declaring the contract as invalid does not necessitate *ipso jure* the invalidity of the arbitration clause.
- A plea which emanates that the arbitral tribunal doesn't have jurisdiction shall not be made after the defense statement is submitted; however, a party shall not be prevented from making such a plea only because of his participation in the appointment of, or he appointed, an arbitrator.

- A plea claiming that the arbitral tribunal is surpassing the scope of its authority shall be made as soon as the matter alleged to be transcended the scope of its authority is made during the arbitral proceedings.
- In each of two cases referred to in sub-section (2) or sub-section (3), The arbitral tribunal may accept a delayed plea if it concludes with an opinion that the delay is justified.
- The arbitral tribunal shall determine the plea referred to in sub-section (2) or sub-section (3) and take up with arbitral proceedings where the arbitral tribunal takes a decision rejecting the plea.
- A party, if disgruntled by such an arbitral award, may make an application for rescinding such an arbitral award according to Section 34.

Competence of the arbitral tribunal:-

The Arbitration Act of 1940 lacked such provisions which authorized the Arbitral Tribunal to regulate on its own jurisdiction and it was upon the court to scrutinize and decide on the jurisdiction of the arbitral tribunal. But Section 16 of the Arbitration and Conciliation Act, 1996 grants power to the Arbitral Tribunal to look on its own jurisdiction. Section 16 (1) of the Act provides that the arbitral tribunal may regulate or direct on its own jurisdiction, which also incorporates any objection regarding the validity or existence of the arbitration agreement.

Section 16 of the Arbitration and Conciliation Act incorporates the concept of competence-competence. It contains two facets i.e. the first one reflects that without support from the courts, the tribunal may decide on its jurisdiction and secondly, it shows reluctance from the courts in deciding this issue before the tribunal has decided on this issue. But questions regarding the binding effect of the decisions made by the arbitral tribunals need to be discussed and can these decisions be challenged in courts

In **Union of India vs. M/s. East Coast Boat Builders & Engineers Ltd.**, the Hon'ble Delhi High Court observed that it was apparent from the scheme of the act that the legislature didn't grant appeal against the order under Section 16(5) where the arbitral tribunal decides rejects a plea that it has no jurisdiction. Apparently, the intention is that the arbitral tribunal shall proceed with the arbitral proceedings and make an award without any delay and without interference at any stage in the arbitral process due to supervisory role of the court.

In the case of **Nav Sansad Vihar Coop. Group Housing Society Ltd. (Regd.) vs. Ram Sharma and Associates** the Hon'ble Delhi High Court held that if the Arbitral Tribunal rejects a plea under

Section 16(5) of the Arbitration and Conciliation Act, the arbitral process shall take place and the award shall be declared and meanwhile, the aggrieved party shall wait till the award is announced and there is no remedy against such order.

But determination made by the tribunal to admit the plea that it doesn't have jurisdiction or that it is surpassing its ambit of authority is appealable and triable under Section 37(2) of the Arbitration and Conciliation Act. In the case of **Pharmaceutical Products of India Ltd. vs. Tata Finance Ltd.**, the Hon'ble Bombay High Court opined that in cases where the Arbitral Tribunal rejects the plea related to its jurisdiction, Section 16(5) of the Arbitration and Conciliation Act clearly empowers the Tribunal to resume with the arbitral proceedings and declare an arbitral award. Section 16(5) grants procedure to challenge an arbitral award. It states that only in accordance with Section 34, such an award can be challenged. whereas, if the Arbitral Tribunal determines to accept the plea that it does not have jurisdiction, then such decision can be appealed under Section 37(2) of the Arbitration and Conciliation Act.

Thus, it is clear that when the Arbitral Tribunal decides to reject a plea that it does not have the jurisdiction then the order made related to its jurisdiction cannot be appealed but when the Arbitral Tribunal accepts the plea that it does not have jurisdiction then such an order can be appealed under Section 37(2) of the Arbitration and Conciliation Act.