



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B.

Semester: VIII

SUBJECT: Alternative Dispute

Resolution

SUBJECT CODE: BAL803

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Lecture-12



LECTURE 12: Grounds for challenge of appointment of arbitrator

An arbitrator may be challenged only in two situations. First, if circumstances exist that give rise to justifiable grounds as to his independence or impartiality; second, if he does not possess the qualifications agreed to by the parties. A challenge is required to be made within 15 days of the petitioner becoming aware of the constitution of the arbitral tribunal or of the circumstances furnishing grounds for challenge. Further, subject to the parties' agreement, it is the arbitral tribunal (and not the court - unlike under the old Act of 1940) which shall decide on the challenge. If the challenge is not successful the tribunal shall continue with the arbitral proceedings and render the award, which can be challenged by an aggrieved party at that stage. This is another significant departure from the Model Law, which envisages recourse to a court of law in the event the arbitral tribunal rejects the challenge. The Indian courts have held that "the apprehension of bias must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision.

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

An arbitrator may be challenged only if—

- A) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
- B) he does not possess the qualifications agreed to by the parties.

A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Challenge procedure:-

Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

Where an arbitral award is set aside on an application made under sub-section (5), the court may decide as to whether the arbitrator who is challenged is entitled to any fees.

Failure or impossible to act:-

The mandate of an arbitrator shall terminate if—

- A) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and
- B) he withdraws from his office or the parties agree to the termination of his mandate.

If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate.

If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.