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A Reasoned Dilemma: Unraveling the Knots of Section 31(3) of India's Arbitration Act 1996

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The evolution of the Indian arbitration jurisprudence regarding reasoned awards has been marked by ambiguity and divergent approaches. Initially, the requirement for reasons for arbitral awards was not firmly established. However, with the insertion of Section 31 in the Indian Arbitration and Conciliation Act, 1996 ("**the Act**") the requirement of stating reasons in arbitral awards was introduced. Despite this provision, the precise scope and consequences of inadequate reasoning in awards remain unclear. While some courts emphasize the need for adequate reasoning, others are hesitant to interfere based on the adequacy of reasons alone. This lack of uniformity poses challenges and raises questions about the potential impact on arbitration jurisprudence in India. It is in this broad context that this blog post aims to critically analyze the current position of law around Section 31(3) of the Act.

Legal Background

The Indian arbitration jurisprudence did not always contain a requirement for reasoned awards. In *Raipur Development Authority v. Chokhamal Contractors*, the Supreme Court while interpreting the scope of Section 30 of the erstwhile Arbitration Act, had stated that the arbitrator is under no legal obligation to provide reasons unless the agreement specifically provides for it. The UNCITRAL Model Law on International Commercial Arbitration, 1985 was the first to expressly delineate the contents of an arbitral award, one of which happened to be the reasons for the award's basis. Article 31 of the UNCITRAL Model Law which laid down the form and contents of an award was then incorporated as Section 31 in the Act in 1996.

Section 31(3) and Judicial Review

Section 31(3) of the Act requires the arbitral award to state its reasons, except when the parties agree otherwise, or it is an award on agreed terms under section 30. The Supreme Court in *Som Datt Builders Ltd. v. State of Kerala* had stated that Section 31(3) of the Act is not merely an empty formality. It ensures that the arbitral tribunal fairly and legitimately deals with the issues presented by the parties. It was further observed that while the arbitral tribunal is not expected to write judgments like a court, it must ensure that however briefly, the process leading to a

conclusion must be explained. Almost a decade later, the Supreme Court in *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.* specified that a "reasoned award" has three characteristics, *i.e.*, proper, intelligible, and adequate. The Court noted, however, that in cases wherein the award does not possess the said characteristics, it would be suitable to remand the matter back to the arbitral tribunal under Section 34(4) of the Act to cure any defects. The issue with this stance of the Supreme Court is that Section 34(4) clearly stipulates that a matter can only be sent back to the arbitral tribunal to the extent that they "will eliminate the grounds for setting aside the arbitral award" (emphasis added). Hence, the first exercise that the courts need to undertake is to place the lack of reasoned awards under any of the grounds mentioned under Section 34(2) of the Act which was not done in *Dyna Technologies*, or most subsequent judgements. The 176th Law Commission Report of India had noticed this issue in 2002 wherein it had recommended the insertion of a "Section 34A" under which matters could be remanded back to the tribunal to rectify any errors arising from Section 31 of the Act. Since, this provision was never enacted in the statute, the implications of an unreasoned award remain unclear.

Although in many cases, the Courts might remand the matter back to an arbitral tribunal to fix the gap in reasoning, owing to the above-mentioned precedents, we can also reach a situation wherein an award is set aside for not being reasoned enough. For instance, in *Gupta and Co. v. DDA*, the arbitral award was simply set aside by the Delhi High Court for not considering the petitioner's claim for pre-reference interest on a specific claim. As noted above, no attempt was made to place this ground under any of the provisions of Section 34(2) of the Act. Recently however, the Supreme Court in *Delhi Airport Metro Express (P) Ltd. v. DMRC* stated that an unreasoned award would be considered "patently illegal" under Section 34(2-A) of the Act. This judgment was in furtherance of the holding in *Associate Builders v. DDA* wherein the Supreme Court had ruled that patent illegality includes a violation of the Arbitration Act itself. The idea in *Delhi Airport Metro Express* was that if an award does not state any reasons for its findings then the court cannot assess whether it is patently illegal or not, and hence logically, an award devoid of reasons should be held to be patently illegal. At this juncture, it is also important to distinguish "findings" and "reasons." Simply put, a finding is a decision on an issue, while the reasons are its basis. In *I Pay Clearing Services v. ICICI Bank*, the Supreme Court had observed that "[u]nder guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the Arbitrator, where there are no findings on the contentious issues in the award." Thus, it was held that the absence of findings on contentious issues in the arbitral award or the inclusion of findings that disregard material evidence can constitute valid grounds for setting aside the award.

Adequacy of Reasoning

While the consequence of an award lacking reasons may seem clear, the jurisprudence around the extent of the reasoning itself appears to be muddled. Back in 2002, in *UOI v. Royal Construction*, the Calcutta High Court attempted to summarize the law on the extent of reasoning in an arbitral award. It was observed that *first*, to make a reasoned award the arbitrator has to make his mind known on the basis on which he has acted; *second*, the statement of reasons is not the same thing as the giving of a detailed judgment; *third*, reasons are nothing more than short and intelligible indications of the arbitrator's mind; *fourth*, the reasons must have such connection with the conclusions reached by the arbitrator as to show that the arbitrator has not acted irrelevantly, unreasonably, or capriciously; and *fifth*, the reasons should deal with the substantial points raised in the reference.

However, the issue lies in the fact that the courts are not clear on what the consequence would be for an award that has inadequate reasoning. In *NCT of Delhi v. M/s. Garg Builder*, the Delhi High Court observed that adequacy of reasons may not be a ground for interference by courts under Section 34 of the Act. However, in various other cases, the courts have undertaken the analysis of looking at the extent of reasoning by the arbitrators. For instance, in *Roshan Real Estate Pvt. Ltd. v. UOI*, the Court stated that an award cannot be a simple reiteration of facts and claims, and there must be something to showcase that there has been an application of mind. In other cases as well, courts have held that unsubstantiated single-sentenced assertions as reasons or instances of reasons not referenced with relevant documents can be set aside. Hence, there is currently a lack of uniformity in the approach to understanding the effects of an inadequately reasoned award.

Attempting to set a higher threshold of reasoning for arbitral awards is also not the solution. For example, the Victorian Supreme Court in *BHP Billiton Ltd. v. Oil Basins Ltd.* held that the standard of reasoning should be dependent on the facts of the case, procedures adopted by the parties, the conduct of the parties during the proceedings, and the qualifications of the arbitrators. The illustration presented was that in a simple trade dispute arbitration which is set in front of a trade expert does not require elaborate reasons for its findings. However, in a high-stakes commercial arbitration involving a big sum where the parties engage in detailed pleadings before a highly qualified arbitrator, a higher standard of reasoning may be warranted. It is argued that having such a wide sliding scale as a standard within the threshold of reasoning would create more problems than it would solve. Since only a court would be a competent body to assess the adequacy of reasons, it would needlessly give rise to the potential of every case being dragged into litigation. If the disputed amount is small, the costs incurred via litigation may end up being highly disproportionate thus disincentivizing arbitration itself. One of the core objectives of the Act was to minimize judicial intervention. The lack of a set standard concerning the adequacy of reasoning could hurt the legitimacy of the Indian arbitration system in the long run with courts having to deal with frivolous litigation under Section 34 of the Act. Thus, while it is acknowledged that a rigid standard cannot be imposed owing to the diversity of approaches by the arbitrators, the solution does not lie in a standard so ambiguous that it leads to contradictory outcomes or defeats the very purpose of the Act.

This entry was posted on Friday, July 28th, 2023 at 8:54 am and is filed under Awards, India, Reasoned Awards, Reasoning
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