



Delhi High Court holds that an arbitral tribunal that is *functus officio* cannot recall its termination order and revive the arbitral proceedings

A single bench of the Delhi High Court (“**Delhi HC**”) in *M/s Vag Educational Services v. Aakash Educational Services Ltd.*¹ has held that once the mandate of an arbitrator terminates, the arbitrator no longer has jurisdiction to entertain any application or pass any orders in the proceedings including those for recall of termination orders or revival of proceedings.

Brief Facts

The arbitral proceeding pending between M/s Vag Educational Services (“**Petitioner**”) and Aakash Educational Services Ltd. (“**Respondent-Claimant**”) was withdrawn by the Respondent-Claimant. Consequently, the sole arbitrator passed an order dismissing the proceedings as withdrawn. Subsequently, the Respondent-Claimant moved an application before the sole arbitrator seeking recall of the withdrawal order on the grounds that – (a) the withdrawal application had been inadvertently signed by the counsel for the Respondent-Claimant; and (b) no consent, for withdrawal of the arbitral proceedings, had been granted by the Respondent-Claimant. Accordingly, the sole arbitrator passed an order allowing the Respondent-Claimant’s application and restoring the arbitral proceedings (“**Impugned Order**”).

The Petitioner filed a petition under Article 227 of the Constitution of India challenging the Impugned Order.

Issue

Whether an arbitral tribunal which has terminated arbitral proceedings as withdrawn could thereafter entertain an application for recall of the said order and revive the arbitral proceedings.

Findings and Analysis

The Delhi HC allowed the petition and set-aside the Impugned Order while making the following observations:

1. Interlocutory orders passed by an arbitral tribunal cannot be challenged under Article 227 of the Constitution given that such orders are amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996

¹ CM(M) 92/2021 & CM APPL.4050/2021.

(“**Arbitration Act**”). However, the Court distinguished the facts of the present case and held that it could exercise its jurisdiction under Article 227 of the Constitution in this case.

2. The termination of the arbitral proceedings based on the withdrawal by a claimant falls under Section 32 (2)(a) of the Arbitration Act.
3. The termination of the arbitral proceedings under Section 32(3) of the Arbitration Act are subject to Section 33 and Section 34(4) of the Arbitration Act which only provide for correction, interpretation or addition to an award and allowing the tribunal time to eliminate any grounds for setting aside of the award, respectively. In the present case, the Delhi HC found Sections 33 and 34(4) of the Arbitration Act to be inapplicable.
4. By operation of Section 32(3) of the Arbitration Act, once the mandate of the arbitral tribunal terminates, the arbitral tribunal is rendered *functus officio* and has no jurisdiction thereafter to entertain any application or pass any orders in the proceedings.
5. The orders which an arbitrator whose mandate stands terminated may pass, are limited to orders under Section 33 of the Arbitration Act.

After considering the above, the Delhi HC held that the Impugned Order was without jurisdiction and set aside the same. The Delhi HC reinstated the withdrawal order passed by the sole arbitrator terminating the arbitral proceedings.

JSA Comment

This judgement sets a notable precedent in disallowing revival/restoration of arbitral proceedings by an arbitral tribunal once its mandate has been terminated. Further, the Delhi HC has, in this judgment, noted the limited scope of powers that an arbitral tribunal may exercise post the termination of its mandate. The Delhi HC has clarified the provisions concerning termination of arbitral proceedings under the Arbitration Act and the contours for challenging orders of an arbitral tribunal under Article 227 of the Constitution. Having said the same, this judgement remains silent on the remedies available to a party that has inadvertently withdrawn its claim leading to termination of the arbitral proceedings.

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