
(2013) 04 DEL CK 0101
In the Delhi High Court
Case No : Arbitration A. No. 4 of 2013

Sheo Murti Shukla

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Arbitration Act, 1940 — Section 39, 5
Arbitration and Conciliation Act, 1996 — Section 11, 11(2), 11(6), 11(6)(c), 11(8)
Constitution of India, 1950 — Article 13(3), 136, 16, 25

Citation : (2013) 6 AD 546 : (2013) 200 DLT 270

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : S.R. Padhy, for the Appellant; Rajat Navet, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The appellant was allotted a retail outlet of the respondent company on 11th April, 1994 at DSIDC Complex, Narela for the sale of its petroleum products i.e. Petrol, Diesel and Lubricants etc. A surprise inspection was conducted at the retail outlet of the appellant on 5th November, 2011 by a team of the respondent/IOC Ltd.

2. The appellant as a routine practice deposited a sum of Rs. 7,66,000/- (Rupees Seven lac sixty six thousands) vide pay order No. 139388 drawn on Standard Chartered Bank, Punjabi Bagh on 15th December, 2011 but did not receive the supply till that evening.

3. On inquiry from the Bijwasan Supply Depot of the respondent/IOC Ltd. on 16th December, 2011 morning, it was revealed that the supply has been stopped advising the appellant to speak to the Divisional Office the next day. So, the appellant spoke to the Chief Divisional Retail Sales Manager at Barakhamba Road office of respondent IOC Ltd. who informed over phone that he has stopped the supply to the retail outlet of the appellant and he is going to cancel the dealership and the appellant would get the letter in this regard within a couple of

days.

4. This Court on 21st December, 2011 was pleased to grant interim stay till 12th March, 2012, but contemptuously respondent did not comply with the restoration order.

5. This Court disposed off the WP (C) No. 8880/2011 of the appellant on 12th March, 2012 with the liberty to apply for arbitration as per Clause 67 of the dealership agreement after the respondent failed to move for the same.

6. Sh. M. Nene, Director (Marketing) of the respondent/IOC on 2nd April, 2012 appointed Sh. Piyush Mittal as sole Arbitrator.

7. The appellant filed an application u/s 14 and 15 of the Arbitration and Conciliation Act, 1996 for replacing Sh. Piyush Mittal on 26th May, 2012 by an independent and impartial arbitrator as per the statutory provisions, preferably a retired Judge of this Court.

8. The application of the appellant was rejected on two counts by Sh. Piyush Mittal, the learned sole Arbitrator vide impugned order dated 8th October, 2012.

Grounds for filing the application under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 for substitution of Arbitrator:

(a) The appellant filed an application u/s 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") for substitution of an independent and impartial arbitrator.

(b) The disputes give rise to some basic and substantial questions of law and its legal proposition in regard to the unregistered fabricated Partnership Deed and therefore, a sole Arbitrator from a judicial background may be appointed.

(c) The sole Arbitrator is under regular employment of the respondent and there exists circumstances which gives rise to justifiable doubts as to his capability to give an independent and impartial award or decision bypassing the pressure of his employer, i.e. the respondent.

(d) The appellant does not have faith in the present Arbitrator being an employee of the respondent and as such, the appellant wishes to have an impartial Arbitrator in the matter and has quoted from the Act on the basis of Section 11 Clause (8) page 9, Section 16 Cl.(6) pg. 12 and Section 34 Cl.(2)(a)(ii) pg. 19.

9. The respondent has raised the following contentions:

(a) The application is an abuse of process of law and is based on mere assumptions, surmises and conjectures of the appellant.

(b) Admittedly, arbitration proceedings have not even commenced so far and the appellant has assumed without any basis or evidence that the Arbitrator being an employee of the respondent would be biased.

(c) The application is without any basis and does not even disclose any bias, reason or ground available to the appellant under the Act for challenging the appointment of the sole Arbitrator.

(d) The appellant has signed the dealership agreement dated 1st August, 2001 with open eyes and fully accepted the terms and conditions thereof. The appellant has taken benefit of the same for almost over ten years and the appellant cannot now agitate and raise any objection on the appointment of the arbitrator on the ground that he is an employee of the respondent.

(e) Merely because the arbitrator is in the employment of the respondent it does not give rise to a circumstance that raises justifiable doubts so as to his independence or impartiality.

(f) The Arbitration Clause contained in dealership agreement dated 1st August, 2001, provides that all disputes shall be referred to Director (Marketing) of the respondent or some officer of the respondent who may be nominated by the Director (Marketing). The appellant was well aware of the above Arbitration Clause at the time of entering into the said Dealership Agreement and he had accepted the terms and conditions thereof.

10. I have gone through the petition and also have given careful consideration to the submissions advanced by them. Let me now proceed to discuss the same point wise upon application of the law on the subject.

11. For the purposes of convenience, Section 11 of the Act is reproduced hereinafter:

11. Appointment of arbitrators.

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators, shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section (3) applies and-

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made upon request of a party, by the chief justice or any person or institution designated by him.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice of any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties,-

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or the person or institution designated by him is final.

(8) The Chief Justice or the person or institution designated by him, in appointing arbitrator, shall have due regard to-

(a) any qualifications required of the arbitrator by the agreement of the parties and

(b) other considerations as are likely to secure the appointment of an independent, and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

(11) Where more than one request has been made under sub-section (4) or subsection (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant subsection shall alone be competent to decide on the request.

(12) (a) Where the matters referred to in sub-sections (4), (6), (7), (8) and (10) arise in an international commercial arbitration the reference to " Chief Justice" in those subsections shall be construed as a reference to the " Chief Justice of India."

(b) Where the matters referred to in sub-sections (4), (5), (7), (8), and (10) arise in any other arbitration, the reference to " Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situated and, where the High Court itself is the Court referred to in that clause, to the Chief justice of that High Court.

12. A conjoint reading of Section 11 (2) read with Section 11(6) and Section 11(8) reveals that Section 11(2) is subject to Section 11(6) which means that the parties to an agreement are free to agree for the procedure for appointment of the arbitrator subject to contingencies prescribed u/s 11(6) which are the following in the agreed procedure:

- a) A party fails to act as required under the procedure or
- b) The parties or two appointed arbitrators fail reach an agreement expected out of them under that procedure.
- c) A person, including institution fails to perform its function.....

13. Only under these eventualities, the Hon"ble Chief justice or his designate or for that matter the designated court can step in and take the necessary measures unless the agreement on the appointment procedure provides other means for securing the appointment.

Things become immediately clear upon reading the aforementioned provisions:

- a) That the satisfaction of the eventualities prescribed u/s 11 (6) of the Act gives jurisdiction to this court as the same are jurisdictional facts enabling this court to exercise jurisdiction for appointment of arbitrator.
- b) That the court has to first respect the agreed procedure and if the measures in the agreed procedure are already provided for securing the appointment, the court should not intervene unless the contingencies prescribed under sub section 11 (6) are satisfied.

14. This has also been emphasized by the Supreme Court from time to time that the court must respect to the agreed procedure of appointment of the arbitrator prior to stepping into the process of the appointment of the arbitrator u/s 11(6). (Kindly see The Iron and Steel Company Limited Vs. Tiwari Road Lines, India Household and Healthcare Ltd. Vs. LG Household and Healthcare Ltd.,

15. The court may, no doubt, intervene to take measures for appointment of the arbitrator only when the party fails to act as required under the procedure or fails to reach an agreement expected out of them under that procedure or a person fails to perform the function.

16. The issue about employee/officer of large corporations being nominated as Arbitrators has been dealt with and discussed by the Supreme Court in the various matters which are referred as under:-

(a) Indian Oil Corporation Ltd. and Others Vs. Raja Transport (P) Ltd.,

The process of arbitration is a binding and voluntary alternative dispute resolution process by a private forum chosen by the parties. It is quite common for governments, statutory corporations and public sector undertakings while entering into contracts, to provide for settlement of disputes by arbitration, and further provide that the Arbitrator will be one of its senior officers. If a party, with open eyes and full knowledge and comprehension of the said provision enters into a contract with a government/statutory corporation/public sector undertaking containing an arbitration agreement providing that one of its Secretaries/Directors shall be the arbitrator, he cannot subsequently turn around and contend that he is agreeable for settlement of disputes by arbitration, but not by the named arbitrator who is an employee of the other party. No party can say he will be bound by only one part of the agreement and not the other part, unless such other part is impossible of performance or is void being contrary to the provisions of the Act, and such part is severable from the remaining part of the agreement. The arbitration clause is a package which may provide for what disputes are arbitrable, at what stage the disputes are arbitrable, who should be the arbitrator, what should be the venue, what law would govern the parties etc. A party to the contract cannot claim the benefit of arbitration under the arbitration clause, but ignore the appointment procedure relating to the named Arbitrator contained in the arbitration clause.

It is now well settled by a series of decisions of this Court that arbitration agreements in government contracts providing that an employee of the Department (usually a high official unconnected with the work or the contract) will be the Arbitrator, are neither void nor unenforceable.

There can however be a justifiable apprehension about the independence or impartiality of an Employee-Arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate (as contrasted from an officer of an inferior rank in some other department) to the officer whose decision is the subject matter of the dispute. Where however the named arbitrator body/government company, had nothing to do with execution of the subject contract, there can be no justification for anyone doubting his independence or impartiality, in the absence of any specific evidence. Therefore, senior officer/s (usually heads of department or equivalent) of a government/statutory corporation/public sector undertaking, not associated with the contract, are considered to be independent and impartial and are not barred from functioning as Arbitrators merely because their employer is a party to the contract.

(b) Department of Telecommunications Vs. Gujarat Co-operative Milk Marketing Federation Ltd.,

The Apex Court has held that the fact that the named Arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or

partiality of lack of independence on his part. The Hon'ble Supreme Court has observed that although there can be a justifiable apprehension about the independence or impartiality of an employee Arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate (as contrasted from an officer of an inferior rank in some other department) to the officer whose decision is the subject matter of the dispute. Where however the named Arbitrator though a senior officer of the government/statutory body/government company, had nothing to do with execution of the subject contract, there can be no justification for anyone doubting his independence or impartiality, in the absence of any specific evidence. Therefore, senior officer/s (usually heads of department or equivalent) of a government/statutory corporation/public sector undertaking, not associated with the contract are considered to be independent and impartial and are not barred from functioning as Arbitrators merely because their employer is a party to the contract.

(c) Secretary to Government, Transport Deptt., Madras Vs. Munuswamy Mudaliar and Another,

The Apex Court has held that although reasonable apprehension of bias in the mind of a reasonable man can be a ground for removal of the arbitrator however, there must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct.

(d) Union of India (UOI) Vs. Singh Builders Syndicate,

The Apex Court while dealing with a situation of an arbitration clause mandating the nomination of employee arbitrators, held that the process as contemplated under the Arbitration clause has to be adhered to 9 para 13, 14) as closely as possible and it was only in an exceptional circumstance (see paras 4 to 9, 18 and 19) that the Court would intervene.

(e) It is now well settled by a series of decisions of this Court that arbitration agreements in government contracts providing that an employee of the Department (usually a high official unconnected with the work or the contract) will be the arbitrator are neither void nor unenforceable.

(f) In Executive Engineer, Irrigation Division, Puri Vs. Gangaram Chhapolia, this Court was considering the validity of the appointment of the arbitrator where the arbitration required that the disputes shall be referred to the sole arbitration of a Superintending Engineer of the Public Works Department unconnected with the work at any stage nominated by the Chief Engineer concerned.

(g) The Supreme Court in Executive Engineer, Irrigation Division, Puri Vs. Gangaram Chhapolia,

9.The use of the expression "Superintending Engineer, State Public Works

Department" in Clause 23 qualified by the restrictive words "unconnected with the work" clearly manifests an intention of the parties that all questions and disputes arising out of a works contract shall be referred to the sole arbitration of a Superintending Engineer of the department concerned. From the very nature of things, a dispute arising out of a works contract relating to the Department of Irrigation has to be referred to a Superintending Engineer, Irrigation as he is an expert on the subject and it cannot obviously be referred to a Superintending Engineer, Building & Roads. The only limitation on the power of the Chief Engineer under Clause 23 was that he had to appoint a "Superintending Engineer unconnected with the work" i.e. unconnected with the works contract in relation to which the dispute has arisen. The learned Subordinate Judge was obviously wrong in assuming that since D. Sahu, Superintending Engineer, Irrigation was subordinate to the Chief Engineer, he was not competent to act as an arbitrator or since he was a Superintending Engineer, Irrigation, he could not adjudicate upon the dispute between the parties. The impugned order passed by the learned Subordinate Judge is accordingly set aside.

(h) In another case, namely Larsen and Toubro Ltd. Vs. Fertilizer and Chemicals Travancore Ltd., the Supreme Court has held as under:

9. In Secretary to Government, Transport Deptt., Madras Vs. Munuswamy Mudaliar and Another,

7. Pursuant to this the Superintending Engineer of that Circle, at the relevant time, was previously appointed as arbitrator. There was succession to that office by another incumbent and the succeeding Superintending Engineer wanted to continue the arbitration proceedings but before that an application was made u/s 5 of the Arbitration Act, 1940 (hereinafter called "the Act") for removal of the arbitrator, before the learned Judge of the City Civil Court, Madras.

Again in paras 11 to 13 it was noted as follows: (SCC pp. 654-55)

11. This is a case of removal of a named arbitrator u/s 5 of the Act which gives jurisdiction to the court to revoke the authority of the arbitrator. When the parties entered into the contract, the parties knew the terms of the contract including arbitration clause. The parties knew the scheme and the fact that the Chief Engineer is superior and the Superintending Engineer is subordinate to the Chief Engineer of the particular Circle. In spite of that the parties agreed and entered into arbitration and indeed submitted to the jurisdiction of the Superintending Engineer at that time to begin with, who, however, could not complete the arbitration because he was transferred and succeeded by a successor. In those circumstances on the facts stated no bias can reasonably be apprehended and made a ground for removal of a named arbitrator. In our opinion this cannot be, at all, a good or valid legal ground. Unless there is allegation against the named arbitrator either against his honesty or capacity or mala fide or interest in the subject-matter or reasonable apprehension of the bias, a named and agreed arbitrator cannot and should not be removed in

exercise of a discretion vested in the Court u/s 5 of the Act.

12. Reasonable apprehension of bias in the mind of a reasonable man can be a ground for removal of the arbitrator. A predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. There must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials. See the observations of Mustill and Boyd, *Commercial Arbitration*, 1982 Edn., p. 214. Halsbury's Laws of England, 4th Edn., Vol. 2, Para 551, p. 282 describes that the test for bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias.

13. This Court in *International Airports Authority of India Vs. K.D. Bali and Anr*, held that there must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct. In this country in numerous contracts with the Government, clauses requiring the Superintending Engineer or some official of the Government to be the arbitrator are there. It cannot be said that the Superintending Engineer, as such, cannot be entrusted with the work of arbitration and that an apprehension, simpliciter in the mind of the contractor without any tangible ground, would be a justification for removal. No other ground for the alleged apprehension was indicated in the pleadings before the learned Judge or the decision of the learned Judge. There was, in our opinion, no ground for removal of the arbitrator. Mere imagination of a ground cannot be an excuse for apprehending bias in the mind of the chosen arbitrator.

10. The apprehension that named arbitrator may not act fairly is without any foundation. The High Court has rightly held that by Article 16 of the special terms and conditions of purchase there was an amendment to Article 25 which reads as follows:

The provisions of the Arbitration Act, 1940, and the Rules made thereunder, any statutory modifications thereof for the time being in force will be applied. The venue of the arbitration shall be Cochin, and the language of the proceedings shall be the English language. During the arbitration proceedings, both parties shall continue to discharge their obligations under the purchase order.

(i) The Delhi High Court in a case titled as *Valecha Engineering Limited Vs. D.S. Constructions Ltd. and Another*, held as under:

28. The plea of the petitioner that the named arbitrator is impartial and biased cannot be accepted in view of *Dina Nath's* case (*supra*). When the petitioner itself has agreed that the dispute pertaining to both the contracts ought to be referred to MD, DSC, it cannot now take a stand that respondent no. 2 is acting in a subjective manner. The respondent No. 2 has entered into reference and initiated arbitration proceedings. If after making the award by the arbitrator, the petitioner has any objections to the award, he can file objections u/s 34 of the

Act. The provisions of Section 11(6)(c) cannot be invoked in the present case. The clause referred above in both the contracts is clearly an arbitration clause though the words "arbitration" or "arbitrator" are not included (Dina Nath's case (supra)).

(j) The Delhi High Court in a case titled as Shyam Telecom Ltd. Vs. A.R.M. Ltd., held as under:

(19) The Arbitration Act which is a consolidating and amending Act, being substantially in the form of a code relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals. The words of the statute are plain and explicit and they must be given their full effect and must be interpreted in their natural meaning, uninfluenced by any assumptions derived from the previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In our view the legislature has made a deliberate departure from the law prevailing before the enactment of Act of 1940 by codifying the law relating to appeals in Section 39....

(k) A Division Bench of this Court reported in Progressive Career Academy Pvt. Ltd. Vs. FIIT JEE Ltd., in the case of Progressive Career Academy Pvt. Ltd. Vs. FIIT JEE Ltd. held as under:

20. A comparison of the provisions dealing with the challenge to the arbitrator's authority in the A&C Act and the UNCITRAL Model Law discloses that there are unnecessary and cosmetic differences in these provisions, except for one significant and far-reaching difference. The UNCITRAL Model Law, in Article 13(3), explicitly enables the party challenging the decision of the Arbitral Tribunal to approach the Court on the subject of bias or impartiality of the Arbitral Tribunal. However, after making provisions for a challenge to the verdict of Arbitral Tribunal on the aspect of bias, the UNCITRAL Model Law prohibits any further Appeal. It seems to us, therefore, that there is no room for debate that the Indian Parliament did not want curial interference at an interlocutory stage of the arbitral proceedings on perceived grounds of alleged bias. In fact, Section 13(5) of the A&C Act indicates that if a challenge has been made within fifteen days of the concerned party becoming aware of the constitution of the Arbitral Tribunal or within fifteen days from such party becoming aware of any circumstances pointing towards impartiality or independence of the Arbitral Tribunal, a challenge on this score is possible in the form of Objections to the Final Award u/s 34 of the A&C Act. Indeed, this is a significant and sufficient indicator of Parliament's resolve not to brook any interference by the Court till after the publication of the Award. Indian Law is palpably different also to the English, Australia and Canadian Arbitration Law. This difference makes the words of Lord Halsbury in Eastman Photographic Materials Co. all the more pithy and poignant.

21. In this analysis, we must immediately observe that the approach taken by

one of us (Vikramajit Sen, J.) in *Interstate Constructions* is not correct as it transgresses and infracts the provisions of the A&C Act. Learned Single Benches have interfered and removed arbitrators obviously on pragmatic considerations, viz. the futility and idleness of pursuing arbitral proceedings despite lack of faith therein because of justifiable doubts as to the independence or impartiality of the arbitrators. Clearly, Parliament has also proceeded on the compelling expediency and advisability of expeditious conclusion of these proceedings. Relief against possible mischief has been provided by making clarification in Section 13(5) that apart from the challenges enumerated in Section 13(4), an assault on the independence or impartiality of the Arbitral Tribunal is permissible by way of filing Objections on this aspect after the publishing of the Award. We, therefore, affirm the approach in *Pinaki Das Gupta, Neeru Walia, Ahluwalia Contracts (India) Ltd. and Newton Engineering and Chemicals Ltd.* We are of the opinion that the Single Benches who interfered with the progress of the proceedings of the Arbitral Tribunal in the pre-Award stage fell in error. Humans often fall prey to suspicions which may be proved to be ill-founded on the publication of an Award. There is compelling wisdom in Parliament's decision to allow adjudication on grounds of bias, lack of independence or impartiality of the Tribunal only on the culmination of the arbitral proceedings.

22. Having arrived at the conclusion that curial interference is not possible at the pre-Award stage on the allegations of bias or impartiality of the Arbitral Tribunal on the one hand, and our understanding that the Appeals are not maintainable on the other hand, is any further relief to be granted? We think it expedient to abjure from passing any further orders for several reasons including - firstly, the reality that arbitration proceedings would inevitably have already come to an end in those instances where the arbitrator had been removed by orders of the Court, and secondly the availability of redress under Article 136 of the Constitution of India. All pending applications stand disposed of. The Referral Order is answered by reiterating that the statute does not postulate judicial interference in arbitral proceedings till the Award is published, whereupon Objections can be raised also on the platform of the alleged bias of the Tribunal. This challenge is possible provided the grievance is articulated in consonance with Section 13 of the A&C Act.

17. The above judgments make it amply clear that firstly, Arbitration Agreements, containing named Arbitrators in the employment of a party, mostly being a PSU or a State owned company, are valid Arbitration Agreements and secondly, the apprehension of an Arbitrator being bias must be based on cogent material and not otherwise. In the present case, no cogent material has either been pleaded or specified by the appellant, which would create reasonable apprehension in his mind so as to indicate the predisposition of the Arbitrator.

18. The appellant's claim is based on mere apprehensions which are whimsical as the respondents have appointed an official of the company. The said apprehension cannot be said to be one which should persuade this court to

appoint a fresh arbitrator.

19. A reading of Section 11(8) further reveals that while exercising jurisdiction vested u/s 11(6), the court can take due regard. The consideration u/s 11(8) shall become relevant only upon satisfaction of the provisions u/s 11(6). This is relevant due to the reason that if the eventualities existing u/s 11(6) are not satisfied, the court shall not even proceed further as the said Section 11(8) shall not come into play. It is only when the court's jurisdiction is exercised, (by way of presence of the eventualities u/s 11(6), the court can have due regard for the purposes of the sub-section (8).

20. Admittedly, the Arbitration Proceedings have not even commenced. As such there cannot be any basis for the appellant to contend that there is an apprehension in his mind regarding bias of the Arbitrator. The apprehension of the appellant that merely because the Arbitrator is an employee of the respondent so he would be biased is thus, without any basis and merit.

21. Hence, there is no merit in the petition. The same is dismissed. No costs.