INDIAN LABOUR & INDUSTRIAL DISPUTES ARBITRATION: PUBLIC-POLICY BASED THEORIZATION

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ABSTRACT

The Arbitration and Conciliation Act of 1996 in India does not address the subject of which types of conflicts are amenable to arbitration and which are not. Rather, Indian courts have already considered and resolved this issue in a number of settings. Courts have recently addressed arbitrability allegations in the setting of fraud issues emerging from and involving trusts, shareholder conflicts, and IPR litigation. Notwithstanding the persistent attention the question of arbitrability has gotten in India, there has been little discussion of whether labour and industrial conflicts are arbitrable under the 1996 Arbitration and Conciliation Act. This topic merits detailed criticism for two reasons. First, two Supreme Courts have separately reached the opinion that industrial and labour conflicts are not arbitrable when presented with this challenge. Second, these decisions raise questions about the growing trend of include arbitration provisions in employment contracts, and are therefore informative for practitioners. This article starts with a discussion of the decisions that have addressed and ruled on the arbitrability of labour disputes. The article then contends that these examples achieve the correct outcome. It also discusses the possibilities these instances offer for reasoning about arbitrability in a manner that varies from the prevailing paradigm for addressing this issue.

Introduction

Capt. Prithvi Malhotra & Rajesh Korat Case

Kingfisher Airlines vs. Captain Prithvi Malhotra et al. ("Captain Prithvi Malhotra") established the arbitrability of labour disputes for the first time. Pilots and other employees of the now-defunct Kingfisher Airlines initiated several labour recovery processes, which led to this lawsuit. The cases were brought before labour tribunals with the authority to collect unpaid salaries and other pay perks. Within those hearings, Kingfisher Airlines opposed the labour court's jurisdiction by using the employment agreements' arbitration provision. In this regard, Kingfisher submitted a request under Section 8 of Arbitration and Conciliation Act, 1996 requesting that the employment agreements be referred to arbitration. The application was denied and the labour court-maintained jurisdiction over the matter. Kingfisher then petitioned the Mumbai High Court to review the legitimacy of the labour court's ruling. The Bombay High Court upheld the labour court's ruling that labour disputes are not arbitrable under the 1996 Arbitration and Conciliation Act. The Court has held that inquiry isn't really limited to whether the asserted claim is in personam or in rem just as the Supreme Court held in Booz Allen and Hamilton vs. SBI Home Finance, and also if the settlement of the lawsuit has been reserved for exclusive judgement by a specific tribunal or court for reasons of public policy. The Court finds that now the Industrial Disputes Act, 1947 reserves the adjudication of labour and industrial disputes to the judicial fora established by that act. Invoking the prologue of the Act and the process for resolving labour disputes, the Court concludes that compelling public policy considerations justify this determination.

The reasoning in *Rajesh Korat* greatly resembles the reasoning in *Captain Prithvi Malhotra*. The Court concludes that there are strong and compelling public policy reasons to ensure that labor and industrial disputes are exclusively resolved by courts and tribunals under the Industrial Disputes Act. In *Rajesh Korat*, the Court goes slightly further in concluding that the Industrial Disputes Act is a self-contained code, and to that extent the Arbitration and Conciliation Act, does not have any application to matters governed by the Industrial Disputes Act. Although it does not expressly address this question, *Rajesh Korat* impliedly endorses the proposition that any arbitration of labor disputes would have to be in conformity with the procedure under the Industrial Disputes Act, 1947 and not the Arbitration and Conciliation Act, 1996.

In Captain Prithvi Malhotra, the Court goes beyond just considering whether labour conflicts may be arbitrated. The report indicates that the Industrial Disputes Act of 1947 offers a unique procedure for the arbitration of collective labour disputes. It contends that if there were to be any adjudication of labour and industrial claims outside the courts and tribunals established there under Act, the citation to this and resolution through arbitration would need to be guided by the special regulations of Industrial Disputes Act of 1947 (as well as the rules made thereunder), as opposed to the Arbitration and Conciliation Act of 1996. The Court determines two essential concerns: assertions there under Industrial Disputes Act, 1947 really aren't arbitrable under the Arbitration and Conciliation Act, 1996, and when it is arbitrable, it must adhere to the Industrial Disputes Act's standards and process. It is essential to keep in mind that labour and industrial disputes are not arbitrable per se, but only in the way and to the degree provided by Industrial Disputes Act of 1947.

A similar issue occurred in front of the Karnataka High Court after five years in Rajesh Korat vs. Innoviti ("Rajesh Korat"). In this instance, the application for reference to arbitration was granted by the labour courts, and the parties were sent to arbitration in line with the arbitration pact (in contrast to Captain Prithvi Malhotra where the labour court refused the request & the jurisdiction was retained).

Comparative Evaluating of Captain Prithvi Malhotra & Rajesh Korat Cases

Both Captain Prithvi Malhotra & Rajesh Korat independently arrive at the proper conclusion after reaching the correct decision. Both judgements explore the substance and broader context of both the Industrial Disputes Act and give special attention to the many sorts of judicial and quasi-judicial forums created by the Act. After conducting this analysis, both decisions arrive at the correct conclusion that labour & industrial claims seem to be non-arbitrable underneath Arbitration as well as Conciliation Act of 1996, and since they may be forwarded to arbitration, the citation and resolution must comply with Industrial Disputes Act's protocol.

Crucially, both verdicts account for the inherent imbalance of negotiating power in labour conflicts. Industrial Disputes Act & labour regulations in India in general are primarily intended to solve this problem. Industrial Disputes Act of 1947 creates specialised tribunals and courts to perform a portion of this corrective duty. A examination between Capt. Prithvi Malhotra as well as Rajesh Korat reveals that perhaps the Court was largely convinced by the relegation of labour conflicts to privatized arbitration proceedings.

If these cases were decided differently and labour disputes were deemed arbitrable, individual and collective labour disputes would need to be resolved through private arbitration in which employers will indeed possibly have enough ultimate power to select arbitrators, bosses might decline to take part in the appointment process requiring workers to adhere to the procedure outlined in Section 11 of the Act, and/or employers could also have the authority to designate arbitrators. In conclusion, the Courts seem satisfied that ruling industrial disputes to really be arbitrable would impose unreasonable hurdles on aggrieved employees in obtaining and then engaging in private arbitral procedures under the Arbitration and Conciliation Act of 1996. The public policy reasons for making certain types of conflicts non-arbitrable are persuasive and true on the surface.

Further than the soundness of these judgements, practitioners may gain invaluable insight. Employment agreements are increasingly being reduced to writing and include arbitration provisions for the resolution of employment-related issues. Then, these rulings should inform practitioners about the dangers of such a tendency and the fact that all these arrangements are rarely to be implemented if employers attempt to impose arbitration.

The Practicability of Arbitration

Considering that Arbitration and Conciliation Act is silent on the question of whether issues are amenable to private arbitration, it is useful to consider a potential theory of arbitrability. This is particularly important in the Indian setting, where the regulatory and legal framework continues to evolve and the issue of whether certain types of claims and disputes are arbitrable is likely to persist for the near future.

In view of the Supreme Court's ruling in Booz Allen and Hamilton, the predominant paradigm for considering arbitral awards has been the classification of claims implicated. Simply stated, Booz Allen & Hamilton informs that the Arbitration and Conciliation Act of 1996 does not permit arbitration of disputes involving rights in real property. Nonetheless, if the claim is defined as just a right in personam, it may be subject to arbitration. While this formulation is a useful beginning point (and has been utilised by later court decisions to evaluate arbitrability issues), it doesn't help us gain a comprehensive knowledge of arbitrability.

The judgements made by Capt. Prithvi Malhotra & Rajesh Korat were useful for this reason. Together, they argue that even if the claim in issue is a privilege in personam and it would nevertheless be ruled non-arbitrable due to public policy grounds articulated in the legislation

that govern the execution of the alleged right regardless of whether it is in personam or in rem. This is an intriguing and persuasive interpretation of arbitrability that focuses our emphasis not only on the substance of the claims or the connection here between parties, but also on the repercussions of permitting private arbitration. It allows us to assess if the statutory framework displays or has inherent constraints on private arbitrations, as well as the plausible explanations for these kind of legislative policy decisions.

Conclusion

Indeed, the author do not contend that these rulings constitute an all-encompassing theory of arbitrability. Instead, they contribute only somewhat to broadening our knowledge of arbitrability and moving it beyond the Booz Allen & Hamilton holding. A comprehensive and full theory of arbitrability could be both elusive and unwanted.

[i] Endnotes

I. [i] Everything You Need to Know about Arbitration in India; Tariq Khan
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III. Undervalued Dissent: Informal Workers' Politics in India; Manjusha Nair
IV. Fundamentals of Labor Arbitration; Jay E. Grenig, Rocco M Scanza
V. Punjab National Bank Ltd. v. A. N. Sen, AIR 1952 Punj 143
VI. Mehr Singh v. Delhi Administration, ILR (1973) I Delhi 732
VII. Jeevanlal (1929) Ltd. v. State of West Bengal, (1975) Lab. I. C. 1162 (Cal)
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IX. Section 10 IDA act 1947
X. 2013 (7) Bom CR 738
XI. (2011) 5 SCC 532
XII. Supranote 13
XIII. 7 IJAL (2018) 120
XIV. Compulsory Arbitration in Industrial Disputes; William Frederick Hamilton
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XVI. Collective Bargaining and Collective Action: Labour Agency and Governance in the 21st Century; Julia Lopez
XVII. Supreme Court on Arbitration; Anoopam Modak