



## **Bias Arising from Past Professional Ties Warrants Termination of an Arbitrator's Mandate**

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An Arbitrator's mandate has always been a debatable question when arbitration is being considered. The authority and responsibility of an Arbitrator is paramount in nature and one must fulfill it with due diligence and without prejudice. This brings into account an essential stage in the arbitration process which is the appointment of an Arbitrator. Section 11 of the Arbitration and Conciliation Act, 1996 defines the eligibility criteria for a person to be appointed as an Arbitrator. A more complex question that is raised frequently in the courts of law is about who cannot be appointed as an Arbitrator. Seventh Schedule of the Arbitration and Conciliation Act, 1996 distinctly defines the persons who cannot be appointed as Arbitrators in an arbitration proceeding.

The Hon'ble High Court of Delhi in its recent judgement addressed this vital issue. The bias arising from past professional ties is an aspect, ignorance of which will amount to ignorance of law. Thus, in the landmark judgement of *Roshan Real Estates Private Limited versus Government of NCT of Delhi*<sup>1</sup>, the Hon'ble High Court of Delhi has clearly stated that past professional ties create enough bias that warrants termination of an Arbitrator's mandate. In this case, the petitioner was awarded a contract with Central Public Works Department for constructing additional classrooms, laboratories, toilets and allied services at seven government schools in South-East Delhi. The final bill that was raised by the petitioner amounted to Rs.20,73,39,891/- (Rupees Twenty Crores Seventy Three Lakhs Thirty Nine Thousand Eight Hundred and Ninety One only) out of which the respondent paid only Rs.5,09,52,388/- (Rupees Five Crores Nine Lakhs Fifty Two Thousand Three Hundred and Eighty Eight only). This led to a dispute between the parties which led to an invocation of Arbitration Proceedings.

The Arbitrator appointed was a retired engineer of Central Public Works Department. This led to the present Case before the Hon'ble High Court of Delhi. As per Entry I of Seventh Schedule of the Arbitration and Conciliation Act, 1996 any person who has had past business relations with a party or served in a managerial or supervisory capacity is disqualified from retaining a position as an Arbitrator in such a matter. The Hon'ble Court relied on the precedents laid down in the following judgements in order to establish its veracity:

*TRF Limited versus Energo Engg. Projects Limited*<sup>2</sup>, categorically held that any person having an interest in the dispute or a past relationship with any of the parties that may impact the decisiveness of the dispute is disqualified. Further, explaining the statement the Hon'ble court stated that the reason for this is clear that whatever advantage a party may derive by nominating an Arbitrator of its choice would get counterbalanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole Arbitrator, it always has a choice of an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint or be a sole Arbitrator. That has been taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015.

In *Voestalpine Schienen GmbH versus Delhi Metro Rail Corporation*<sup>3</sup>, the Hon'ble Supreme Court emphasized the importance of appointing Arbitrators who inspire confidence in their neutrality, even if their domain or expertise is otherwise relevant and underlined the need for

<sup>1</sup> O.M.P.(T)(COMM.) 23/2025

<sup>2</sup> (2017) 8 SCC 377

<sup>3</sup> (2017) 4 SCC 665



arbitral panels to be broad-based and composed of persons not drawn solely from the same institutional framework as one of the parties, in order to preserve the faith of parties in the neutrality of the proceedings. Keeping in view the spirit of the amended provision and in order to instigate confidence in the minds of the parties, it is imperative that panel should be broad based.

Further, the Hon'ble Supreme Court in *Government of Haryana Pwd versus M/S G.F. Toll Road Private Limited*<sup>4</sup>, explicitly explained that the words "is an" indicate that the person so nominated is only disqualified if he/she is a present/current employee, consultant, or advisor of one of the Parties in the statement "the Arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party" as mentioned in the first entry of the Fifth Schedule . In addition to this, the Hon'ble Court said that an Arbitrator who has "any other" past or present "business relationship" with the party is also disqualified. The word "other" used in Entry 1, would indicate a relationship other than an employee, consultant or an advisor. The word "other" cannot be used to widen the scope of the entry to include past/former employees

The Hon'ble High Court of Delhi held the appointment of Arbitrator done in the given case as ineligible and further, ordered termination of mandate of the Arbitrator. This judgement of the Hon'ble court well settles that independence and impartiality of the Arbitrator are the bedrock of any arbitration proceeding and the rule against bias constitutes a fundamental principle of natural justice. Thus, the ruling of the Hon'ble High Court of Delhi marks a crucial reaffirmation of the core principles of impartiality and neutrality in arbitration. By terminating the mandate of an Arbitrator with previous professional connections to one of the parties, the Court has upheld the intent of the Seventh Schedule of the Arbitration and Conciliation Act, 1996, along with the objectives of the 2015 amendments. This judgment underscores that even the appearance of bias can compromise the integrity of arbitral proceedings and highlights that an Arbitrator's independence is not merely procedural but central to fair dispute resolution. The decision reinforces confidence in arbitration as a reliable and principled mechanism, firmly rooted in natural justice.

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<sup>4</sup> (2019) 3 SCC 505