

18th Dec, 2025

"ARBITRABILITY OF TERMINATION OF EMPLOYEE CONTRACT" –SREEPRAD BHIWANIWALA CASE STUDY

Introduction

The time and cost effectiveness makes the arbitration as the preferred mode of dispute resolution including in the areas of employment contracts. On 30.06.2025, the Single Bench of the High Court at Calcutta (Ordinary Original Civil Jurisdiction) delivered an important decision on the scope of the referral court's enquiry under Section 11 of Arbitration and Conciliation Act 1996, in the context of the termination of an employee contract containing both dispute resolution and termination clause. [*Sreeprad Bhiwaniwala v. Grant Thornton US Knowledge and Capability Center India Pvt. Ltd., AP No. 62 of 2025*]. The HC was hearing an application being filed by a terminated employee (Petitioner) against his employer company (Respondent) for the referral of the termination dispute to an arbitration and seeking appointment of an arbitrator based on the dispute resolution clause contained in the Terms and Conditions (T&C) of the employment contract. The HC not only referred the matter to arbitration but also appointed an arbitrator in its decision. In this case study, this interesting finding of the HC along with the reasons behind it has been analysed.

Brief Facts

- The Petitioner was appointed as a Senior Manager in Audit, at the Respondent Company-Grant Thornton ('the Company').
- T&C under Annexure "A" was issued to the Petitioner along with the appointment letter dated 27.02.2023 and as per the requirement the Petitioner signed the same and submitted the Annexure to the Company.
- Clause 16 of T&C provided for resolution of disputes through arbitration. The seat had been selected as Kolkata. The language was 'English'.
- On 28.06.2024, a Show Cause Notice was issued to the Petitioner on the basis of certain allegations levelled by a female employee. The Petitioner filed a reply. Upon enquiry, a report was submitted on 22.10.2024.

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- The Petitioner was terminated vide letter dated 22.11.2024 on the ground of 'business reasons'.
- The Petitioner requested the Respondent to recall the order of termination.
- The Petitioner called upon the Company by a notice dated 02.01.2025, to refer the dispute to arbitration. The Petitioner also nominated a Ld. Senior Advocate as an Arbitrator. The Respondent didn't submit itself to the arbitration.
- The Petitioner filed an application before the HC for referral of the dispute to arbitration and for appointment of a Ld. Arbitrator.

Issue

1. Whether at the Section 11 Stage, a dispute arising out of termination of a private employment contract containing an arbitration clause be referred to arbitration, leaving questions of arbitrability and jurisdiction to the arbitral tribunal??

Arguments advanced

- The Petitioner's main argument was that T&C is in the nature of a contract between the employer and employee and the said contract provides for a dispute resolution mechanism along with the termination clause.
- Further, although the allegation of sexual harassment had not been established, the Petitioner argued that the termination was the outcome of the complaint lodged by the co-employee and not a simpliciter termination. Therefore, since the termination has adversely affected Petitioner's reputation, he has right to refer the matter to arbitration.



Vidushi Tripathi

Associate

B.A, LLB(Hons.),
Rajiv Gandhi National
University of Law, Patiala

Expertise:

Corporate Litigation



Amit Singhal

Research Partner

LL.M. and B.A. LL.B. (Hons.),
National Law Institute
University, Bhopal

- Although, the Respondent contended that the appointment of the Petitioner is a private employment and is not statutorily protected and, therefore, there is no scope for the applicability of the principles governing administrative law or public law.
- The Respondent retains the right to terminate the Petitioner with or without notice and the terms of employment has been followed by paying the 60 days gross salary to the Petitioner in lieu of the notice. Thus there is no breach on the part of the Respondent.
- The Respondent further submitted that the courts in various decisions¹ confirmed that damages for anguish and vexations caused by breach of contract, could not be awarded in an ordinary commercial contract.
- Moreover, any order referring such non-arbitrable dispute to arbitration, would be forcing a contract of personal wages which is not permissible in law.
- That dragging the Respondent to an unnecessary prolonged litigation which will ultimately result in the dismissal of the Petitioner's claim, cannot be the ethos of Section 11 of the Arbitration and Conciliation Act, 1996. Respondent placed reliance on another decision of the Hon'ble Apex Court in the matter of *Dushyant Janbandhu v. Hyundai Autoever India Pvt. Ltd.*, (2024) 12 SCR 492 in support of the contention that the referral Court is well within its jurisdiction to enquire as to whether an arbitration clause can be invoked by a party in a situation of like nature.
- That the Respondent also relied on the decisions of the Delhi High Court in support of his claim that the referral court is not a mere post office but can make a preliminary enquiry to satisfy itself that the disputes are *ex facie* arbitrable.

Findings

- The HC held that the parties are bound by the employment T&C, which contains a Resolution Clause Dispute whereby adjudication of any dispute has to be done by an Arbitrator. For the referral court, the prima facie existence of an arbitration clause and a live dispute was sufficient to appoint an arbitrator.
- The recommendation of the enquiry committee also suggests that the employer was given the option to take steps. The Court observed that the termination, though described as being for "business reasons", could not be treated as termination simpliciter at the Section 11 stage, particularly in light of the prior enquiry proceedings and post termination compliances imposed on the Petitioner.

¹Emaar India Ltd. v. Tarun Aggarwal Projects LLP and Ors., AIR 2022 SC 4678; G4S Security Services (I) Pvt. Ltd. v. Dhiraj Negi, Manu/DE/3030/2018; L.M. Khosla v. Thai Airways International Public Company Limited and Ors., Manu/DE/3868/2012; SDU Travels Pvt. Ltd. v. Vipin Sharma, Manu/De/1242/2017; Pearlite Liners Pvt. Ltd. v. Manorama Sirsi, AIR 2004 SC 1373, Hitachi Plant Technologies India Pvt. Ltd. v. Sanjib Kumar Jena

- Further the HC held that for the referral court, the prima facie existence of the arbitration clause is sufficient to appoint an Arbitrator. In *BCC-Monalisha (JV) v. Container Corporation of India Limited*, 2023 DHC 6189, the Court came to the finding that the arbitration clause did not cover the dispute raised. In *Blue City Indane v. Indian Oil Corporation Ltd.*, 2024 RJJ 20076, also a similar finding was arrived at. In *Dushyant Janbandhu case* the Apex Court set aside the order of the referral Court on the ground that the Payment of Wages Act and the Industrial Dispute Act would bar any further adjudication by an arbitrator. In the other decisions relied on by the Respondent, the Apex Court had laid down the law that apart from salary in lieu of notice period, damages for mental agony etc. could not be claimed by the employee. The judgments were delivered by the Apex Court and the stage of the appeal and after the adjudication was complete before the Trial Court and the First Appellate Court.
- Thus, in view of the existence of an arbitration clause, the HC held that the dispute be referred to a sole arbitrator.

Judicial Approach on Arbitrability

- The Supreme Court's landmark decisions in the cases of *Vidya Drolia & Others v. Durga Trading Corporation*, CA 2402/2019 (SC) and *Booz Allen and Hamilton Inc v. SBI Home Finance Ltd. and Ors.*, CA 5440/2022 (SC) indicate that disputes where the cause of action or subject matter thereof, involves or impacts, *inter alia*, third party rights, sovereign or public interest functions and criminal offences, are generally non-arbitrable.

Conclusion

The Calcutta High Court ultimately held that this being a case of private contractual employment and not statutorily protected, the existence of the arbitration clause and a subsisting dispute is sufficient to appoint an arbitrator. While appointing a sole arbitrator, the HC consciously refrained from entering into the merits of the termination and preserved the Respondent's right to challenge arbitrability and jurisdiction before the arbitral tribunal..It is the Arbitrator who shall go into the merits of the case and decide all the issues upon looking at the evidence and material placed before him.

and Ors., (2019) 194 PLR 94; GE Capital Transportation Finance Services Ltd. v. Tarun Bhargava, Manu/DE/1446/2012, decided on 20.3.2012; Vinod Pathak v. American Express Bank Ltd., 2015(153) DRJ 172; Lekh Raj Khurana v. Union of India, AIR 1971 SC 2111; Ghaziabad Development Authority v. Union of India & Ors., AIR 2000 SC 2003; Vidya Drolia & Ors. v. Durga Trading Corporation & Ors., 2020 INSC 4 697.

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP No. 62 of 2025

SREEPRAD BHIWANIWALA
VS
GRANT THORNTON US KNOWLEDGE AND CAPABILITY CENTER INDIA PVT. LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date 30th June, 2025

Appearance:-
Mr. Satadeep Bhattacharyya, Adv.
Ms. Sriparna Mitra, Adv.
Mr. Sayan Banerjee, Adv.
Ms. Sayani Gupta, Adv.
... for petitioner
Mr. Suhail Sehgal, Adv.(VC)
... for respondent

The Court:- This is an application for appointment of a learned Arbitrator on the basis of the dispute resolution clause, being Clause 16 of the terms and conditions of Employment. The said terms and conditions of employment were set out in Annexure "A" of the appointment letter of the petitioner dated February 27, 2023. The respondent issued the letter. The dispute arose when the petitioner was terminated. The letter of termination was issued on November 22, 2024. The ground for termination was "business reasons".

The petitioner submits that he was appointed as a Senior Manager in Audit, at Grant Thornton. The terms and conditions under Annexure "A" was forwarded to the petitioner along with the appointment letter and the

petitioner was required to sign the same and submit the Annexure to the employer.

Accordingly, the terms and conditions became a binding contract between employer and employee. The terms and conditions provided for resolution of disputes through arbitration. The seat had been selected as Kolkata. The language was `English`.

The case as narrated by the petitioner is that on June 28, 2024, a show cause notice was issued on the basis of certain allegations levelled by another female employee. The petitioner filed a reply. Upon enquiry, a report was submitted on October 22, 2024. The notice of termination was issued on November 22, 2024. The petitioner's specific case is that although the allegation of sexual harassment had not been established, the petitioner has reason to believe that the termination was the outcome of the complaint lodged by another employee and not a simpliciter termination.

The petitioner requested the respondent to recall the order of termination. The petitioner called upon the employer by a notice dated January 2, 2025, to refer the dispute to arbitration. The petitioner also nominated a learned Senior Advocate as an Arbitrator.

Mr. Bhattacharyya, learned Counsel for the petitioner submits that although the terms and conditions provided that an employee may be terminated without any notice and without assigning any reasons upon payment of 60 days gross salary, the termination in this case was a reaction or a counter-blast to the proceedings initiated by a co-employee. The termination had adversely affected the reputation of the petitioner and was wrongful. Thus, the petitioner has a right to get such dispute adjudicated by

a forum agreed to by the parties, under clause 16 of the terms and conditions of employment. The terms and conditions is in the nature of a contract between the employer and employee.

Mr. Sehgal, learned Counsel for the respondent, submits that the petitioner's employment is not statutorily protected. Neither Article 311 of the Constitution of India nor any other statute covers the employment. This is a case of private employment. The employer retains the right to terminate the petitioner with or without notice and the terms of employment has been followed. The law is well-settled that, the petitioner does not have any other claim towards the employer. As long as the 60 days gross salary is paid to the petitioner in lieu of the notice, the termination is valid.

Reliance is placed on the decisions of:- Emaar India Ltd. Vs. Tarun Aggarwal Projects LLP and Ors., reported in AIR 2022 SC 4678; G4S Security Services (I) Pvt. Ltd. Vs. Dhiraj Negi, reported in Manu/DE/3030/2018; L.M. Khosla Vs. Thai Airways International Public Company Limited and Ors., reported Manu/DE/3868/2012; SDU Travels Pvt. Ltd. Vs. Vipin Sharma, reported in Manu/De/1242/2017; Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, reported in AIR 2004 SC 1373, Hitachi Plant Technologies India Pvt. Ltd. Vs. Sanjib Kumar Jena and Ors., reported in (2019) 194 PLR 94; GE Capital Transportation Finance Services Ltd. Vs. Tarun Bhargava, reported in Manu/DE/1446/2012, decided on 20.3.2012; Vinod Pathak Vs. American Express Bank Ltd., reported in 2015(153) DRJ 172; Lekh Raj Khurana Vs. Union of India reported in AIR 1971 SC 2111; Ghaziabad Development Authority Vs. Union of India & Ors. reported in AIR 2000 SC 2003; Vidya Drolia & Ors. Vs. Durga Trading Corporation & Ors. reported in 2020 INSC

697, in support of the contentions that courts had refused to award damages for hurt feelings and anxiety to a wrongfully dismissed employee and confirmed that damages for anguish and vexations caused by breach of contract, could not be awarded in an ordinary commercial contract.

Learned Counsel further submits that if the contract of employment expressly provides a termination clause and the said clause is followed by the employer, the employee is not entitled to any other relief, apart from what the terms and conditions in the termination clause provide. Argument is advanced on the principle that the contract of private employment is not similar to public employment and in such case of private employment there is no scope for the applicability of the principles governing administrative law or public law.

The notice invoking arbitration is referred to by Mr. Sehgal in support of the contention that the claim for reinstatement and/or continuation in service and other consequential benefits are not available to the petitioner as he is not governed by any of the statutes which protect the services of either workmen or public servants.

Presuming there was a breach by the employer, at best the salary or the pay can be granted to the aggrieved employee. In this case, 60 days gross salary was paid to the petitioner in terms of the termination clause. Thus there is no breach on the part of the employer.

Mr. Sehgal further submits that any order referring such non-arbitrable dispute to arbitration, would be forcing a contract of personal wages which is not permissible in law. Dragging the respondent to an unnecessary prolonged litigation which will ultimately result in the dismissal

of petitioner's claim, cannot be the ethos of Section 11 of the Arbitration and Conciliation Act, 1996.

Reliance was placed on another decision of the Hon'ble Apex Court in the matter of ***Dushyant Janbandhu vs. Hyundai Autoever India Pvt. Ltd.*** reported in **(2024) 12 SCR 492** in support of the contention that the referral Court is well within its jurisdiction to enquire as to whether an arbitration clause can be invoked by a party in a situation of like nature. Mr. Sehgal also relies on the decisions of the Delhi High Court in support of his claim that the referral Court is not a mere post office but can make a preliminary enquiry to satisfy itself that the disputes are ex facie arbitrable.

Having considered the rival contentions of the parties, this Court, prima facie, finds that this is a case governed by the terms and conditions of employment, which contains a Dispute Resolution Clause. Parties bound themselves by the said clause. Adjudication of any dispute shall be done by a learned arbitrator. The petitioner has made out a case that, the termination was a fall out of the enquiry in respect of a complaint of sexual harassment. The recommendation of the enquiry committee also suggests that the employer was given the option to take steps. The ground showed for termination is other "business reasons". This is not in my prima facie, view a termination simpliciter as urged by the Sehgal. The letter of termination contains a lot of compliances to be maintained by the petitioner for a considerable period, even after the termination. Thus in my view, the judgments which have been relied on by Mr. Sehgal will not be applicable at this stage. The learned arbitrator can rule on his own jurisdiction, which includes the arbitrability of the claim made by the petitioner. For the referral

Court, the, prima facie, existence of the arbitration clause is sufficient to appoint an Arbitrator. The dispute is alive. The decision of the Delhi High Court will not squarely apply, in this case. In ***BCC-Monalisha (JV) vs. Container Corporation of India Limited*** reported in **2023 DHC 6189**, the Court came to the finding that the arbitration clause did not cover the dispute raised. In ***Blue City Indane vs. Indian Oil Corporation Ltd.*** reported in **2024 RJJ 20076**, also a similar finding was arrived at. In ***Dushyant Janbandhu (supra)*** the Hon'ble Apex Court set aside the order of the referral Court on the ground that the Payment of Wages Act and the Industrial Dispute Act would bar any further adjudication by an arbitrator. In the other decisions relied on by Mr. Sehgal, the Apex Court had laid down the law that apart from salary in lieu of notice period, damages for mental agony etc. could not be claimed by the employee. The judgments were delivered by the Apex Court and the stage of the appeal and after the adjudication was complete before the Trial Court and the First Appellate Court. Thus, in view of the existence of an arbitration clause, this Court holds that the dispute should be referred to a sole arbitrator, leaving it open to the respondent to challenge the jurisdiction of the learned Arbitration and/or arbitrability of the dispute at the appropriate stage and if such issues are raised, the same shall be disposed of as preliminary issues.

The observations made hereinabove are only in support of the role of the referral Court to refer the dispute, by giving supremacy to party autonomy and the doctrine of competence-competence.

This Court has not gone into the merits. A preliminary enquiry has been made in order to satisfy itself that this matter should be referred to an

arbitrator, who shall decide all the issues upon evidence and pass necessary orders.

Under such circumstances, the application is disposed of by appointing Mr. Aritra Basu, learned Advocate (M-9903176497) as the sole arbitrator, to arbitrate upon dispute between the parties. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the Schedule of Arbitration and Conciliation Act, 1996.

Learned Arbitrator is requested to allow virtual hearing to Ms. Sehgal, learned Counsel, who appears from Delhi.

(SHAMPA SARKAR, J.)