Alternative Dispute Resolution Board, NLSIU

Discussion Report on

Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML

- Abhyudaya Singh

Discussion Leaders: Aditya Singh and Suyash Pandey

The Supreme Court's Constitution Bench delivered its judgment in CORE v. ECI on November 8, 2024. The case focused on whether a government entity's unilateral power to curate panels for arbitrator appointments complied with the principles of impartiality, equality, and Article 14 of the Constitution. The judgment, authored by Chief Justice D.Y. Chandrachud (majority) and partially dissenting opinions from Justices Hrishikesh Roy and P.S. Narasimha, addressed critical questions surrounding independence and fairness in arbitration but raised some questions as well.

The attendees analysed whether allowing one party—typically a government entity—to curate or appoint arbitrators violated statutory requirements of impartiality under Section 12(5) of the Arbitration Act. Justice Chandrachud's view underscored the inherent bias in such clauses, emphasizing equality under Section 18 of the Act and Article 14 of the Constitution.

Divergent views arose about applying constitutional principles in arbitration. The majority held that equality under Article 14 was paramount, while the dissenting judges advocated for limiting analysis to statutory safeguards within the Arbitration and Contract Acts. The Reading circle mostly disagreed about the application of administrative law and constitutional law principles into a self-sufficient act such as the Arbitration and Conciliation Act.

The reading group also debated whether institutional safeguards, like broader panels, could ensure fairness without requiring judicial intervention at the appointment stage. The use of institutional arbitration and their panel of arbitrators was brought up by the discussion leader Suyash.

Critical Reflections on the Judgment

The majority invalidated unilateral appointment clauses, emphasizing that fairness begins at the appointment stage. It clarified that while PSUs could maintain panels, parties must have an equal role in selecting arbitrators. Justices Roy and Narasimha stressed that statutory safeguards were sufficient, and the application of Article 14 was unnecessary. They warned against over-regulation potentially deterring public entities from choosing arbitration.

Participants debated the prospective application of the ruling, noting its potential to encourage institutional arbitration while expressing concern about its chilling effect on arbitration usage by government entities. Aditya brought forth the importance of making the judgment prospective since the government already had many favourable decisions passed in the past and a retrospective application favoured them. He also highlighted the introduction of the Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement by the Ministry of Finance which suggested that Arbitration as a method of dispute resolution should not be routinely or automatically included in procurement contracts/ tenders, especially in large contracts.