

Permanent Machinery of Arbitration—regarding

Commercial disputes between Public Sector Enterprises *inter se* as well as between a Public Sector Enterprise and a Government Department (excluding disputes on income-tax, customs and excise) are settled through arbitration by Government officials or through the good offices of empowered Government agencies like BPE. After considering a note dated 8.5.1987 prepared by the Department of Legal Affairs the Committee of Secretaries in its meeting held on 26.6.1987 suggested that a Permanent Machinery of Arbitrators should be set up in BPE to settle all commercial disputes between PSEs *inter se* and between a PSE and a Government Department excluding the categories of disputes mentioned above. The Committee of Secretaries also suggested that there should be a contractual clause binding the parties to commercial contracts to refer all their disputes to this body. Committee of Secretaries also wanted BPE to bring a note for the consideration of the Cabinet for this purpose. Accordingly, BPE had prepared a note which was concurred in by the Department of Expenditure and the Department of Legal Affairs and was approved by the Cabinet in its meeting held on 24.2.1989.

2. To ensure that all PSEs include the contractual clause in all their future and current commercial contracts/supply orders/agreements etc. between PSEs *inter se* as well as between a Public Sector Enterprise and a Government Department, it is necessary that the administrative Ministries issue directives to the Chairmen/Chief Executives of the PSEs under the relevant clause of the Articles of Association of the respective enterprises or the relevant provisions of the Acts creating statutory corporations a draft of which is enclosed in Annexure-I. The procedure to be followed by the machinery in effecting settlement of disputes is also enclosed in Annexure-II. As the machinery is designed to be financially self-supporting, the disputants are required to share equally the cost of the service rendered by the machinery as would be intimated to them.

3. I would be grateful if you could issue a suitable directive to each of the PSEs under your administrative control and also communicate to them the details of the procedure to settle such disputes. You may kindly arrange to send to the BPE copies of communications sent to the PSEs.

ANNEXURE-I

Draft Directive to be issued by the Administrative Ministries to Central Public Sector Enterprises regarding settlement of dispute.

Settlement of disputes relating to commercial and other agreements between two public sector enterprises and between a public sector enterprise and a Government Department.

The question of devising an institutional arrangement for settlement of disputes regarding commercial and other agreements between a public sector enterprise and a Government Department and between two public sector enterprises has been under consideration of Government and Government have decided that such disputes should be referred to a Permanent Arbitration Machinery to be set up in the Bureau of Public Enterprises. This arbitration machinery will deal with all cases of disputes other than relating to income-tax, customs and central excise.

2. In exercise of the powers conferred by Article _____ of Articles of Association (name of the PSE/Section _____ of the _____ Act setting up (name of the PSE), the President of India is pleased to direct that all disputes relating to commercial and other

agreements between your company/corporation and another Public Sector Undertaking/Government Department shall be referred to the Permanent Arbitration Machinery set up in the Bureau of Public Enterprises. The President is further pleased to direct the following arbitration clause shall be included in all future contracts/agreements etc. and that in respect of ongoing contracts they should be suitably amended to include such a clause:

“In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party to the Arbitration of one of the Arbitrators in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in charge of the Bureau of Public Enterprises. The Arbitration Act, 1940 shall not be applicable to the arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.”

ANNEXURE-II

Draft outline of the procedure to be followed by the Permanent Machinery of Arbitrators in the Bureau of Public Enterprises:

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract between the parties hereto (except a dispute or difference concerning income-tax, customs and excise duties), such dispute or difference shall be referred by either party to the arbitration of one of the arbitrators in the Bureau of Public Enterprises to be nominated by Secretary to the Government of India in charge of the Bureau of Public Enterprises.

2. The Arbitration Act, 1940 (10 of 1940) shall not be applicable to the arbitration under this clause. The award of the sole arbitrator shall be binding upon the parties to the dispute. Provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such further reference, the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the parties finally and conclusively.

3. After entering upon the reference, the arbitrator will call for the papers, statements/comments from the parties and will hear the parties in person as and when he deems necessary. The arbitrator will also intimate to the parties the estimated amount of arbitration fees to be borne equally by them and paid within a month of intimation to the parties. All payments should be made to the Government of India through Demand Draft or other means as indicated by the arbitrator.

4. The arbitrator shall ordinarily fix the meeting at Delhi, unless, for reasons to be recorded in writing he decides otherwise. No outside lawyers shall be allowed to appear on behalf of the parties to argue their cases before the arbitrator but the parties can take the help of their own

full time Law Officers. Subject to the aforesaid procedure to be followed in the arbitration proceedings shall be determined by the arbitrator and the Law Secretary as the case may be.

5. The arbitrator shall make his award within six months after entering upon the reference or after having been called upon to act by notice in writing from any party to be the arbitration agreement or within such extended time as the parties may allow. The arbitrator may also, if he thinks fit, make an interim award.

6. The Arbitrator may make his award ex-parte when party/parties fail to furnish the particulars required from them and/or appear in person in spite of giving two chances to do so. Even in that case, the parties shall be bound to meet the cost of arbitration equally.

7. The arbitrator shall make a speaking award. The award may be published on plain paper.

8. At the time of communicating the award, the arbitrator shall fix the final amount of arbitration fees to be paid equally by the parties within one month of such communication or within such time as may be allowed by the arbitrator in this regard.

9. In the event of the sole arbitrator dying, neglecting or refusing to act or being unable to act for any reason, it shall be lawful for the Secretary to the Government of India in charge of the Bureau of Public Enterprises, to nominate another person in place of the outgoing arbitrator to act as sole arbitrator. The new arbitrator so appointed shall as far as practicable proceed from the stage where it was left by the outgoing arbitrator.

(DPE D.O. No. 15(9)/86-BPE(Fin) dated 29th March, 1989)