

**Author:** Dishari Roy  
**University:** Karnataka State Law University  
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# **THE DOMINANCE OF SUPERVISORY JURISDICTION** **OF COURTS IN INDIA OVER THE ARBITRAL** **TRIBUNAL'S ORDER**

## *Abstract*

*The judiciary has been streamlining its observation to understand the extent of High Court's supervisory jurisdiction over arbitral tribunals under the Indian Constitution. Continuing this endeavour, the order of the Division Bench of the Delhi High Court, through the prominent Future-Amazon case brought a paradigm shift, disregarding the maintainability of the suit under Article 227 of the Indian Constitution. The analysis holds firm to the view that Article 227 cannot interfere with the tribunal's order. The contention that tribunals have the power to deliver justice is also defective; however when it comes to private disputes, it is completely regulated according to the consent of parties. This article highlights the scope of Article 227 and further inclines towards its applicability through landmark cases. To conclude, the article aims to emphasise on the aspect of least intervention to promote rapid arbitration proceedings and also build a lesser impact relating to certain orders under Section 37 of the Arbitration & Conciliation Act.*

***Keywords-*** *Jurisdiction, arbitration, tribunal, High Court, proceedings*

Last year, India saw an interminable corporate battle to gain control over one of the largest retail groups which went beyond the realms of various Indian Courts to the India-seated SIAC arbitration. This profoundly broadcasted the issue between Amazon and the Future Group<sup>1</sup> which took an unpredictable spin when the Supreme Court of India permitted to resume the SIAC arbitration proceedings after the Delhi High Court ordered an interim stay. The order of the Apex Court, highlights quite an intricate issue which shifts the

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**1** *Future Retail Ltd. v. Amazon.com NV Investment Holdings LLC & Ors*, Civil Appeal Nos. 4492-93 of 2021.

**Author:** Dishari Roy

**University:** Karnataka State Law University

**Date:** 27<sup>th</sup> February 2023

attention towards the High Court's supervisory jurisdiction over the tribunals under Article 227 of the Indian Constitution<sup>2</sup>.

The SIAC arbitral tribunal had rejected the Future Group's early hearing pleading for an application seeking termination of the arbitral procedures. This procedural order was then challenged by the Future Group before a Single Judge bench of the Hon'ble Delhi High Court under Article 227 of the Constitution. The Court thereupon declined the Future Group's plea citing the reason that suits against case management orders of tribunals are not maintainable and that the jurisdiction under Article 227 could only be exercised in certain "exceptional circumstances", "where the order is so perverse that it is patently lacking in inherent jurisdiction."<sup>3</sup>

This decision was appealed before a Divisional Bench wherein the Court disregarded the contention of maintainability of the suit under Article 227 and granted an interim stay which contributed to shifting the course of the arbitration proceeding. With the consent of both the parties, the Supreme Court allowed for the resumption of the arbitral procedures.

Article 227 of the Indian Constitution elaborates upon the High Court's power of "superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction". Such a supervisory jurisdiction is only applicable in cases wherein the court/tribunal has assumed jurisdiction that it does not possess; the court/tribunal has failed to exercise jurisdiction that it does not possess; and the court/tribunal has over-assumed the scope of its jurisdiction. Hence the supervisory jurisdiction cannot be applied to disregard the findings of fact or law or to sit as a court of appeal. With regards to the applicability of such jurisdiction, the purview of Article 227 concerning "tribunals" should only extend to tribunals constituted by the statute, under Article 323-A and 323-B of the Indian Constitution or to tribunals exercising sovereign and statutory powers. However, with the advent of recent judicial decisions, there is an endeavour to bring arbitral tribunals under the purview of Article 227.

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<sup>2</sup> The Constitution of India 1950, Art. 227.  
<sup>3</sup> [2022] DHC 000026.

**Author:** Dishari Roy  
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In the case of *SBP and Co. v. Patel Engineering & Anr*<sup>4</sup>, the seven-judge bench of the Supreme Court for the first time in its history discussed the issue of Article 227 with regard to arbitration. The Court, while referring to the High Court's power of extending its jurisdiction to orders passed by the tribunal, highlighted that the Arbitration and Conciliation Act of 1996 ("Act") does not empower a statutory appeal. It was thereupon held by the Hon'ble Court that such an exercise of jurisdiction by the High Court is not permissible as an arbitral tribunal is a **creature born out of a contract made by the parties**. If such a power were to be in existence, it shall then contribute to defeating the purpose of the Act which prioritises minimal judicial intervention.

Almost a decade later, this issue took a spur with the case of *SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited*.<sup>5</sup> The Division Bench of the Supreme Court held that Section 25(a) of the Act which provides for the termination of arbitral proceedings when default in filing the statement of claim, can be challenged under Article 227. It was mainly due to the reason that private tribunals do exercise quasi-judicial power. The Act also confers statutory powers and obligations on the tribunal and hence under Article 227 there is no apparent difference between an arbitral tribunal and one constituted under the statute. Although this judgment extended the jurisdiction of Article 227, it was bound by the seven-judge order in the SBP case.

Thereupon, in the case of *Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr*<sup>6</sup>, the two-judge bench provided their stance on this contention and held that Article 227 cannot ultimately be used to interfere with the order of the tribunal. To solidify its ground, in *M/S Deep Industries v. Oil and Natural Gas Corporation Limited & Anr*,<sup>7</sup> the three-judge bench of the Apex Court in 2019 took up the contention to determine the extent of jurisdiction under Article 227 in arbitration-related court proceedings. The aim was to strike a balance with the Constitutional remedy under Article 227 along with the aspect of Section 5 dealing with minimised judicial intervention and Section 37 dealing with limited right of appeal under the Arbitration Act. The Court outrightly declined from adhering to a firm standing that extended its

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<sup>4</sup> AIR 2006 SC 450.

<sup>5</sup> Civil Appeal No: 15036 of 2017.

<sup>6</sup> Civil Appeal No: 14665 of 2015 (p 12).

<sup>7</sup> Civil Appeal No: 9106 of 2019 (p 5).

**Author:** Dishari Roy  
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jurisdiction, which therefore kept the route for intrigued litigants to pursue the contention under Article 227.

It took yet another complex turn with the case of *Punjab State Power Corporation Limited v. Emta Coal Limited & Anr*<sup>8</sup> when the three-judge bench of the Apex court exercised the jurisdiction directly against the tribunal's order. It was considered by the Hon'ble Court that the Deep Industries' ruling did not favour the exercise of supervisory jurisdiction over the tribunal's order. Therefore, this resulted in an expansion of jurisdiction under the ambit of Article 227 to orders against tribunals.

The ratio decidendi in the above-cited cases is quite distinct from the larger bench decision provided in the SBP judgment. Considering the statute's emphasis on minimal judicial intervention in arbitration procedures, applying the judgment laid down in Deep Industries would have limited that scope but instead, it has currently widened the ambit of direct interference with tribunal's orders, moulding it into a double-edged sword.

It is pertinent to mention that the Act and Article 227 do not pave the way towards direct interference with orders of the tribunal. The ratio decidendi stated in the case of *SREI Infrastructure* focused on Article 227's jurisdiction exercisable as a quasi-judicial power. This reasoning is considered to be defective and unsound merely because the statute does not confer the mighty power of delivery of justice on tribunals and also does not transfer the jurisdiction of civil courts. It truly remains a private tribunal as its birth is solely dependent on the mutual agreement between the parties to a contract. This rationale was then affirmed in the SBP judgment which was later adopted by the Deep Industries case.

When the stance is shifted from private disputes, it is pertinent to mention the case of *Rohtas Industries Ltd. v. Rohtas Industries Staff Union*<sup>9</sup> in which the Supreme Court held that any order of the tribunal that was born out of the consent of the parties under the provisions of the Industrial Disputes Act, 1947 ("ID Act") was subjected to jurisdiction under Article 227. It was because under the ID Act, the tribunal could bind parties that are not a party to the principal agreement and the procedure of arbitration and enforcement of the award is derived from the ID Act. Hence such a procedure is

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<sup>8</sup> Appeal C No: 8482/2020.  
<sup>9</sup> [1976] 2 SCC 82 (p 2).

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considered to be an integral part of “the sovereign’s dispensation of justice” and thus amenable under Article 227.

The dominance of supervisory jurisdiction imposed by Article 227 over orders of tribunals undermines the legislator’s goal of minimal intervention and quicker arbitration procedures which is seen to be defeated in the Amazon-Future dispute. Opening all avenues to enforce the supervisory jurisdiction could serve to be quite vulnerable for orders by the tribunals. The Act has therefore made a conscious effort to limit challenges pertaining to certain orders under Section 37 and allows other challenges as a part of the challenge to the award. Hence, challenging an order under Article 227 not only outmanoeuvres Section 37 and the object of the legislation but also hinders the arbitration process as a whole. Even after multiple precedents laid down by the Supreme Court over the years to prohibit the imposition of Article 227’s jurisdiction, the rectification has not been able to make proper amends to mitigate the risk that it poses to the legislature.