

Verdict reserved on arbitrator dispute between RIL, govt

Supreme Court said further appointments will be on hold until there is clarity on what the appropriate forum to hear the case is



The Arbitration and Conciliation (Amendment) Ordinance 2015, approved on 23 October, changes the manner in which disputes over appointment of arbitrators between parties are to be settled by courts. Photo: Priyanka Parashar/Mint

New Delhi: Reserving his verdict in the dispute between Reliance Industries Ltd (RIL) and the Union government over appointment of a third arbitrator in the KG Basin case, Justice Ranjan Gogoi of the Supreme Court on Monday said further appointments will be on hold until there is clarity on what the appropriate forum to hear the case is.

“The whole matter to be decided now is which will be the forum to hear the case,” Gogoi said, adding, “In light of the... ordinance, orders are reserved.”

The Arbitration and Conciliation (Amendment) Ordinance 2015, approved on 23 October, changes the manner in which disputes over appointment of arbitrators between parties are to be settled by courts.

“Earlier the language was that the chief justice of India shall appoint or designate someone to appoint arbitrators in case of international commercial arbitration. Now the power to appoint shifts to the courts. This change in the language of the law gives the power to appoint more of an administrative undertone than a judicial one,” said Vyapak Desai, alternate dispute resolution partner at Nishith Desai Associates, a law firm.

Earlier, a person designated by the chief justice of India heard cases of disputes in international commercial arbitration cases. However, after the amendment, “the Supreme Court... or any person or institution designated by such court” will hear the case.

Reliance Industries had moved the apex court over selection of the third neutral arbitrator to head the three-member arbitral panel to decide the gas pricing issue that arose in relation to production-sharing contracts (PSC) the company entered into with the government in 1994.

Gogoi had in August reserved verdict on this issue. However, shortly thereafter, he asked the two parties if the case ought not to be heard along with two pending public interest litigations (PIL) pending on the gas pricing issue.

Solicitor general Ranjit Kumar told the court that it was preferable that Reliance Industries’ plea to appoint a third arbitrator also be heard with these two PILs.

The ordinance is silent about whether it applies retrospectively, especially since Reliance Industries’ application for appointment of the third arbitrator was filed before the same.

Experts are divided on the issue. “The changes made through the ordinance have to be dissected section by section. Since, the appointment of arbitrator is a procedural change, the amended law must take effect and also affect existing cases,” Desai said.

However, Anirudh Krishnan, partner at AK Law Chambers, another law firm, and a member of the sub-committee of the Law Commission committee which recommended changes to the Arbitration Act, disagreed.

“The recent amendment made to the arbitration law has created some confusion on applicability of the changes to existing cases. The Law Commission in Section 85 had gone into details of what provisions have to be retrospectively applied and what provisions should be applied in a transitory manner. However, the ordinance has omitted this entire section while adopting many other sections verbatim. This could mean that the omission is deliberate and the amendment must only be applied prospectively,” Krishnan said.