

**MINUTES OF THE COURT CASES MEETING HELD WITH LAW OFFICERS
AND CHIEF LAW ASSISTANTS ON 8th February 2019**

Shri N. Murali Krishna, Sr. LO
Shri K. Phani Raj, ACM/M&D
Shri I.V.V.R.P. Prasad, LO/Hqrs
Shri M.V. Ramana, LO/BZA
Smt. T. Satyavathy, LO/SC Divn

Shri B.R.R.Naidu, CLA/Con
Shri K. Gopinath, CLA/Hqrs
Shri A. Bhagwat Prasad, CLA/G/SC
Shri M.K. Shaji, CLA/Hqrs
Shri S. Venkateswarlu, CLA/Hqrs
Shri Kumar Kotappa, CLA/GTL
Shri D.R.V.S.S.N. Raju, CLA/G/BZA
Sri G.S.Ratna Kumar, CLA/P/BZA
Shri S Srinivas, CLA/GNT
Shri S. Nagender, CLA/HYB
Shri Amjad Ali, OS/Law

Powers of Arbitrator to grant Interest: Shri D.R.V.S.S.N. Raju, CLA/BZA presented the judgement in CA No.1539 of 2019 arising out of SLP No.13551 of 2013 in the matter of Jai Prakash Associates Vs. Tehri Hydro Development Corporation of India Ltd. wherein the Hon'ble Apex Court held that unless parties agree that arbitrator has power to grant interest for all the periods, arbitrator is barred from awarding pendente lite interest and pre-reference period.

Commenting on the judgement, Sr. LO stated that Clause 16(3) of GCC prescribes that No interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the Contract, Further, as far as powers of arbitrator are concerned, 64(5) of GCC specifically states that arbitrator is not empowered to grant interest. IRS conditions are modified w.e.f. 11.11.2018 also bars arbitrator to grant pre and post pendente lite interest. However, in commercial contracts there is no such clause.

Land Acquisition Act: Shri S. Venkateswarlu, CLA/Hqrs presented the judgement in CA No.3827, 23859 of 2018 in SLP (C) 4413-4485 of 2017 in the matter of Mohammad Yusuf & Ors. Vs. State of Haryana & Ors. delivered on 16.04.2018. The High Court of Haryana enhanced the compensation to Rs. 64,80,000 per acre along with other benefits. Not satisfied with the Order of the High Court, the appellants filed appeal wherein it is contended that the High Court of Haryana failed to arrive at proper valuation of the acquired land which should be assessed on urban land criteria since the land had all basic amenities like water, sewer, electricity and telephone lines were already present on the date of Notification under Section 4 of the LA Act. While discussing the matter, the Apex court opined that these factors seems to have been taken into consideration properly by the High Court of Haryana while reducing the development charges by the from 60% to 10% and with this view, the Apex court not inclined to interfere in the impugned decision of the High Court of Haryana.

Shri G.S. Ratna Kumar, CLA/BZA presented the following judgements:

- (i) **Criminal Proceedings Vs. Departmental Proceedings** Patna High Court in the case of Shyam Kishore Prasad Vs. The State of Bihar Civil Misc. 15423 of 2018 delivered on 01.02.2019. In the petition, the petitioner prayed for quashing criminal proceedings against him considering the departmental

exoneration. The High court held that that the exoneration in the departmental proceeding ipso facto would not result into the quashing of the criminal prosecution and rejected the instant petition as the same is sans merit.

- (ii) **Discretionary Powers of High Court:** Cr. A. No.1723/2009 in the matter of *Ambiram Vs. State of Uttarakahnd* The Apex Court, keeping in view the age of the appellant and the meagre amount of bribe involved, invoked the powers under proviso to Section 5 (2) of the PC Act and altered the jail sentence imposed on the appellant by the two Courts below and reduced it to "what is already undergone by the appellant", i.e., 1 month and 10 days.
- (iii) **Registration of Marriage – Physical Presence of Parties:** WP MD No.1567/2016 and 1328/2016 in the matter of *A Kannan Vs. Govt. of Tamil Nadu* held that the physical presence of the parties to the marriage is necessary for the registration of their marriage and it shall be incumbent upon the parties applying for the registration of marriage to establish that the marriage between them has been performed in accordance with their personal laws or custom or usage or tradition. On this, Sr. Law Officer observed that there is dichotomy between various high courts in calling for physical presence of the parties for marriage registration and in a similar matter, High Court of Kerala decided against the requirement or physical presence for registration of marriage.

Union Leader should be role model - Shri Kumar Kotappa, CLA/GTL presented the judgement delivered by the Hon'ble CAT/HYB in OA No.20/1373/2015. The OA filed challenging the recovery of certain amount from the settlement dues of the appellant – a union leader. Said recovery resulted because of misuse of the privilege pass by him. Dismissing the OA, CAT held that union leaders should be more responsible and are role models and not to misuse the benefits. The process of issuing and withdrawing the charge sheet took some time and resulted in some delay in processing the settlement dues. The court held that there is no mala-fide intention as alleged hence the claim of the appellant is unjustified and dismissed the OA holding devoid of merit.

Back-wages - Admissibility after retirement : Shri Gopinath, CLA/Hqrs dwelling on the various judgements of the Supreme Court while deciding on the back-wages after reinstatement, presented the following judgements:

- (i) *Ranchhodji Chaturji Thakore vs The Superintendent Engineer* dated 28 October, 1996. The appellant while working as Jr. Clerk in Gujarat State Electricity Board involved in a crime and the Board dismissed him from service. The petitioner challenged the validity of the dismissal order Pending disposal, the Division Bench of the High Court by its judgment dated October 14,1992 acquitted him of the offence. Consequently, the single judge directed the respondent to reinstate him into the service with continuity of the service, but denied back wages. The Supreme Court held that since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Hence, held that the petitioner is not entitled to payment of back wages

- (ii) Union of India Vs. Jaipal Singh, Civil Appeal No.8565 2003, the Apex Court observed that since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service and the respondent has to be re-instated, for the reason that the earlier discharge was on account of those criminal proceedings and conviction, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service.

Further the Supreme Court held that the respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break.

- (iii) CA No.1756 of 2010 - Rajasthan State Road Transport Vs. Phool Chand, in their judgement delivered on dated 20th September 2018 the Hon'ble Supreme Court considering the facts and circumstances of the case coupled with the fact that the workman Phool Chand has since expired, in the interest of justice to award to the respondents (legal representatives of late Phool Chand) 50% of the total back wages.

Minimum Wages – Scheduled Employment : Shri Shaji, CLA/Hqrs presented the following judgements:

- (i) Judgement in the matter of Lingegowd Detective & Security Chamber (P) Ltd. Vs. Mysore Kirloskar Ltd. 2006 (5) SCC 180 delivered on 4th May 2006 where the Hon'ble Court held that there was no master and servant relationship in between the employer and workman since the detective services does not come in the ambit of "scheduled employment"
- (ii) Allowing the Appeal filed by Secretary Padipu K. Sangam Ltd. Vs. C. Varghese CA 1497/2017 the Hon'ble Supreme Court held that the mere activity of buying milk from its members and distributing it will not constitute 'dairy farming' when there is no rearing of milch cows and no agriculture or farming activity is carried on by the Society. Thus since the employment of the applicant is not covered under the Minimum Wages Act, provisions of the said Act are not applicable to him.

Sr. Law Officer advised that while delivering opinion in any particular case, such as tender agreements, etc. respective GCC must be obtained and thoroughly gone through to decide whether the job in question comes within the ambit of scheduled employment or not for applying Minimum Wages Act..

Specific performance – Ready and willing to perform : Shri S. Nagender, CLA/HYB presented judgement dated 3rd September 2018 in CA 10191/2018 SLP 3768/16.

The issue involved is The appellants-defendant and the respondent-plaintiff had entered into an agreement for sale in respect of a shop for a total sale consideration of Rs.26,00,000 (Rupees twenty six lakhs). Rs.4,00,000/- (Rupees four lakhs) was paid by the respondent-plaintiff to the appellants-defendant as earnest money and the remaining amount of Rs.22,00,000/- to be paid at the time of

registration. Both the parties went to the concerned Sub-Registrar's Office on 31st March, 2008; but the sale deed was not executed. The respondent-plaintiff filed a suit on 29 th April, 2008 for specific performance.

The Supreme Court held that when the plaintiff was not ready to perform his part of contract, respondent cannot be forced to perform/execute the sale deed and ordered that the earnest money of Rs.4,00,000/- has to be paid back with interest at the rate of 12% per annum.

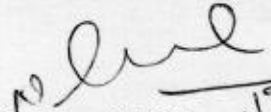
Territorial jurisdiction of High Court over order passed by Principal Bench of CAT: Shri S. Srinivas, CLA/GNT presented the judgement of Apex Court in the matter of PSR Krishna Vs. UOI wherein the Apex court observed that the location of the Principal Bench of the Central Administrative Tribunal at New Delhi, outside the territorial limits of the A.P. High Court, notwithstanding, even if a part of the cause of action has arisen within its territorial limits, falls within the jurisdiction of the A.P. High Court, and has power to issue a writ of certiorari to quash the impugned order of the Tribunal. The test to determine territorial jurisdiction of a High Court is not the location of the Authority/Tribunal or the residence of the person to whom the writ is to be issued or even the seat of the Government but whether the "cause of action, either wholly or in part", has arisen within its territorial limits.

In the same judgement, the court has made further important observations that it is well settled that Contempt Proceedings are quasi-criminal in nature, that the power of contempt must be exercised sparingly and not as a matter of course and that the proof required to establish Contempt is of a very high order. It is only when an order has been violated, willfully and deliberately, can Contempt of Court be said to have been committed.

A. Bhagavat Prasad, CLA presented judgement dated 4th January 2019 in CP No.1624/2017 SLP(C)29876/2016 of the Hon'ble Supreme Court of India in matter of Mdda Ramky Isbt Ltd. Vs. Ombir Singh Tomar. While dropping the contempt proceedings, the Court observed that contempt is between the contemnor and the court but not between the parties.

Sr. Law Officer concluding the meeting advised the Law Assistants to update the LIMBs portal and also include the LIMBS number in respect of each case in the PCDOs furnished by them.

Next Meeting will be held on 8th March, 2019. All the members are requested to come prepared to present atleast one case. Brief of the case may be emailed to loscrhq@gmail.com 2 days in advance.


(N. Murali Krishna) 19/2/19
Sr. Law Officer

G.265/V/IV/Misc./Meeting/2019

Date: 19.02.2019

To

All ADRMs, CCO/SC, PCPO/Hqrs, LO/P/Hqrs, LO/BZA,
LO/SC, All CLAs – for information please.