South Central Railway
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Have you any case law/ case study to be shared with other railwaymen?

Articles/write-ups on legal issues relevant to railways' working are invited from officers/ staff including from other zonal railways/ production units; Please mail them to:

Sr.Law Officer,
Law Branch, SCR,
3rd Floor,
Rail Nilayam,
Secunderabad
PIN- 500025.
email:
loscrhq@gmail.com

EDITORIAL

This issue contains the amendments made to the Arbitration and Conciliation Act, 1996. How a State is placed for condonation of delay caused by it while approaching a Court is covered. Court's reiteration that contract conditions cannot be changed by Courts, also is included. Issuance of a public notice instructing to collect Inquiry Report cannot be a cause for defamatory action by the concerned employee, is covered in this issue. Duty of a litigant to insist for framing of issues by a Court is explained. Regular features such as ABC of Acts, RTI Act Series, Know Our Constitution, Legal Maxims, Difference Between, FAQ, etc. also find place.

N. Murali Krishna, Sr.LO/HQ

Note: This is only a news capsule. For full information and understanding to cite the case, please go through the original judgment.

ABC OF ACTS

INDUSTRIAL DISPUTES ACT, 1947

This is a comprehensive law for the investigation and settlement of industrial disputes and covers railway workmen other than those who being employed in supervisory capacity draw wages exceeding Rs.10,000/- per month.

Object of the Act: Provisions for investigation and settlement of industrial disputes and for certain other purposes.

Important Definitions:

Industry – has attained wider meaning than defined except for domestic employment, covers from barber shops to big steel companies.(Sec.2 (I)

Works Committee–Joint Committee with equal number of employers and employees' representatives for discussion of certain common problems.(Sec.3)

Conciliation–is an attempt by a third party in helping to settle the disputes (Sec.4)

Adjudication – Labour Court, Industrial Tribunal or National Tribunal to hear and decide the dispute. (S.7,7A&7B)

Power of Labour Court to give Appropriate Relief

Labour Court/Industrial Tribunal can Modify the punishment of dismissal or discharge of workmen and give appropriate relief including reinstatement. (Sec.11A)

Persons Bound by Settlement - When in the course of conciliation proceedings etc., all persons working or joining subsequently.

Otherwise than in course of settlement upon the parties to the settlement. (Sec.18)

Right of a Workman during Pendency of Proceedings in High Court - Employer to pay last drawn wages to reinstated workman when proceedings challenging the award of his reinstatement are pending in the higher Courts. (Sec.17B)

Prohibition of Strikes

⇒ Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking.
⇒ Within fourteen days of giving such notice.
⇒ Before the expiry of the date of strike specified in any such notice as aforesaid.
⇒ During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
⇒ During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings.
⇒ During the pendency of proceedings before a Labour Court, Tribunal or National.
⇒ Tribunal and two months, after the conclusion of such proceedings.
⇒ During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under Sub-Section(3A) of section 10A.
⇒ During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award. (Secs.22&23)

Prohibition of unfair labour practice either by employer or workman or a trade union as stipulated in fifth schedule -Both the employer and the Union can be punished. **(Sec.25-T)**

Conditions of service etc. to remain unchanged under certain circumstances during pendency of proceedings:

⇒ Not to alter to the prejudice of workmen concerned the condition of service.

⇒ To seek Express permission of the concerned authority by paying one month's wages on dismissal, discharge or punish a protected workman connected with the dispute.

⇒ To seek approval of the authority by paying one month's wages before altering condition of service, dismissing or discharging or punishing a workman. **Sec.33**

Retrenchment of Workmen Compensation & Conditions:

⇒ Workman must have worked for 240 days.
⇒ Retrenchment compensation @ 15 days' wages for every completed year to be calculated at last drawn wages
⇒ One month's notice or wages in lieu thereof.
⇒ Reasons for retrenchment.
⇒ Complying with principle of 'last come first go'.
⇒ Sending Form P to Labour Authorities.

Sec	Offence	Penalty
25 U	Committing unfair labour practices	Imprisonment of upto 6 months or with fine upto Rs.3, 000.
26	Illegal strike and lock-outs	Imprisonment upto one month or with fine upto Rs.50 (Rs.1000 for lock-out) or with both.
27	Instigation etc. for illegal strike or lock-outs.	Imprisonment upto 6 months or with fine upto Rs.1, 000.
28	Giving financial aid to illegal strikes and lock-outs.	Imprisonment for 6 months or with fine upto Rs.1, 000
29	Breach of settlement or award	Imprisonment for 6 months and /or fine + an addl fine of Rs.200/- per day if breach continues after continuation.
30	Disclosing confidential information pertaining to S.21.	Imprisonment upto 6 months or with fine upto Rs.1, 000
30 A	Closure without 60 days' notice under Sec.25 FFA Contravention of S.33 pertaining to change of conditions of Service during pendency of dispute etc.	Imprisonment upto 6 months or with fine upto Rs.5, 000
31 (1)	When no penalty is provided	Fine upto Rs.100
31 (2)	Contravention of S.33 -Service conditions remaining unchanged during pendency of proceedings.	Imprisonment upto 6 months or with fine upto Rs.1, 000

V. Apparao, CLA/GM/O/SC

RTI Act Series:

More case laws on S. (2):

Scope of Information [S.2 (f)]: In Vibhor Dileep Barla Vs. Central Excise & Customs (Appeal No. CIC/AT/A/2006/00588 dated 9 July 2007), the appellant put questions in the form of inquiry which was rejected by the CPIO on the grounds that they did not fall within the ambit of RTI Act, 2005. CIC held that making an analysis of data or deriving certain inferences or conclusions based upon the data so collected cannot be expected to be done by the CPIO under the RTI Act. On the same analogy, answering a question or proffering advice or making suggestions to an applicant is clearly beyond the purview of the Right to Information Act.

Public Authority [S.2 (h)] - Bodies / Organisations / Institutes which are substantially funded by the Govt. come under the purview of RTI Act, ruled the Supreme Court [CA No.9828/2013. D.A.V. College Trust and Management Society & Ors. Vs. Director of Public Instructions & Ors., DOJ– 17.9.2019]. However, the Apex Court earlier held that Co-operative societies are not Public Authorities [Thalappalam Service Coop. Bank Ltd. & Ors. Vs. State of Kerala & Ors. Civil Appeal No. 9017/2013. DOJ - 07.10.2013].

"Held by or under the control of" Public Authorities: [S.2(j)] - In re Priyavadan H Nanavati Vs Institute of Chartered Accounts of India [Appeal no. CIC/AT/A/2007/00327 dt. 30.05.2007] the applicant had requested for a copy of the complaint filed by him before ICAI. Actually, before this complaint could be registered the ICAI had returned the complaint to the complainant to rectify defects etc. preparatory to its registration for the inquiry to commence. Therefore, the point to be established was whether the information which respondent have returned to the person who filed it can be said to be 'held' or be 'under the control of' the respondent in terms of section 2(j) of the RTI Act. The respondents during the hearing before the CIC stated that they cannot be said to be 'holding' this information, which they have admittedly returned to its originator. CIC held that till such time as the respondents received the information back and registered it, they could not be said to be 'holding' it or 'be in control of' it. According to them, arguably, the complainant to whom the documents have been returned may choose not to resubmit them. In such an event, the respondents providing the documents to the present appellant will be wholly untenable because then they would have supplied to the appellant an information which they did not even 'hold'. The expression 'held' or 'under the control of' used in the subsection 2(j) of the Act are significant. These expressions mean that information can be said to be under the control of a public authority only when such public authority holds that information authoritatively and legitimately. Information which a public authority might receive casually or, which it had returned to its point of origin for supplying omissions, will not qualify to be 'held' or 'under the control of' the public authority. The present information solicited by the appellant falls in this category. Having been returned by the public authority the respondents herein, to its originator, the information cannot be said to be under the control of the respondents.

Frivolous requests: In the case of Sh. A.P. Tripathi Vs IIT Delhi. (No CIC /OK /A/2006 /00655 dt. 28.3.2007), the applicant had applied for long list of varied information pertaining to GATE and JEE for preceding 20 years. It was held by the CIC that this amounted to a making a mockery of the Act. Though the respondents are duty bound to supply information asked for by the appellants, the appellants are also expected to keep in mind the objectives of the RTI Act. The CIC failed to appreciate how these objectives would be met with if the appellant asked for such diverse and lengthy information which seemed to be designed only to put the public authorities under undue and uncalled for pressure. The CIC, in fact, appreciated the effort of the public authority to collect and provide as much information to the Applicant as possible and dismissed the case as frivolous and inconsequential.

In the case of Hitesh Kumar Vs. Oriental Insurance Company Limited (Decision No. 570/ICPB/ 2007 F.No. PBA/06/562 dt. 15th June 2007) the appellant sought for copies of documents and various other details in 62 serials covering the entire gamut of functioning of the insurance company. The respondent while furnishing a copy of the annual report expressed their inability to collect the other information sought for as being voluminous, and is beyond the available fiscal and human resources of the organisation. He also advised the appellant to visit their website where relevant information was available. The CIC, while dismissing the appeal, was in full agreement with the decision of CPIO and the AA. The information sought for is so voluminous covering practically the entire gamut of functioning of the company, that it would definitely cause a lot of pressure on the resources of the company. The appellant is at liberty to ask for specific information which would not cause enormous time and efforts to collect and furnish.

File Notings not exempt from disclosure: [S.2(i) & 2(j)]: In the case of Satyapal Vs. CPIO, TCIL (Appeal No.ICPB/A-1/CIC/2006, dated 31.1.2006), the main issue for consideration was whether the file notings are exempt from disclosure. The CIC held that in terms of the definition given under Section 2(i) of the Act, a record includes a file, and in terms of Section 2 (j), the right to information includes access to a record. Therefore an applicant under RTI has the right to access a file, and file notings are an integral part of any file which cannot be exempt from disclosure. In Appeal No. CIC/OK/A/2006/00154 [Pyare Lal Vs. Min. of Railways & DoPT] CIC held on 2.01.2007 that 'notings' are an inextricable part of a record as defined u/s 2(f) and further defined u/s 2(i). Therefore, file notings cannot be held to be excluded unless they come in conflict with public interest or are excluded under any of the provisions of RTI Act. In File No.CIC/WB/A/2009/000945, 992 & 993-SM CIC held on 12.01.2011 that even file notings in vigilance cases have to be supplied, if need be after applying S.10, thereby over ruling its earlier decision on the issue.

Shaji.M.K, CLA, GM/O/SC

Issuing Public Notice to collect Inquiry Report is not defamatory

In an interesting judgment, High Court of Delhi has held that issuing a Public Notice would not be defamatory. The case before the High Court was for quashing of a criminal complaint under S.499 & 500 of the IPC in which the petitioner was summoned to stand trial. Section 499 of the Indian Penal Code defines the offence of defamation and Section 500 provides the punishment for such offence.

The complainant (respondent before High Court) was a clerical employee of M/S Killick Nixon Ltd and the Petitioner before the High Court was the Branch Manager. Allegedly there was some acts of gross disobedience and therefore a charge sheet dated 29.09.1994 was issued to the complainant-respondent. He was under suspension from 6.1.1995. After the inquiry, the charges against the complainant-respondent was held to be proved and the inquiry report was submitted on 1.2.2002.

A copy of the inquiry report was sent by registered post to the respondent, which was returned with endorsement that the addressee not available. The effort to serve on person by deputing the office peon also turned out futile, since the respondent's wife refused to accept the same. The company then wanted to serve the inquiry report along with the cheque for subsistence allowance. However, the respondent quietly visited the company's office, collected the cheque and rushed out.

Having no other option, the company opted to inform the respondent through public notice. Accordingly, a notice dated 9th April, 2002 was issued by the company through petitioner, as 'Manager' of Delhi office, asking the respondent to collect his inquiry report dated 1st January, 2002 within 7 days from the said notice.

The respondent felt the said notice as defamatory and hence filed a complaint on the grounds that the charges were frivolous and non-existent in addition to the public notice being defamatory in nature. The Metropolitan Magistrate of Delhi observed that there was sufficient ground to summon the petitioner and ordered issue of summons. The petitioner hence, approached the High Court for quashing the complaint and re-calling the notice.

The respondent stated that the word "Charge-sheet" used in the notice was defamatory. High Court observed that no charges which were levelled against the respondent in the charge-sheet were spelt out in the public notice. There is no mention of any misconduct on the part of the complainant nor there was any observation of any kind touching the character or affecting the reputation of the complainant. What kind of disciplinary action was taken and what were the imputations were not made public. Therefore, the High Court, held that it cannot be said that any harm had been caused to the respondent. The High Court further observed that what was stated in the public notice was a statement of fact. It was further observed that serving a copy of the inquiry report on the charged employee to give him an opportunity to elicit his response thereto is mandated by law. The High Court further observed that in fact it was held in many cases that the charged employee should be served by public notice (Bata Show Company Pvt. Ltd. Vs. D.N.Gnaguly AIR 61 SC 1158).

Therefore, if it is a legal requirement without which the company could not have completed departmental action, publication of the notice to fulfill such legal requirement will not be treated as defamatory. The High Court further observed that the case would be covered by the first and seventh exceptions to S.499. First exception states that it may not be defamatory as public good requires that such imputation be made or published. The 7th exception states that it is not defamation if a person having authority over another, either conferred by law or arising out a lawful contract made with that other person, to pass in good faith any censure on the conduct of that other person in matters to which such lawful authority relates.

Reliance was placed on the order in A.D.M.Stubbings Vs. Sheela Muthu 1972 Crl.J 968 (Ker) wherein it was held that once the charge of theft is proved in a departmental inquiry, wherein the charged employee participated, the finding of such a domestic inquiry cannot form basis of a defamation case as it is fully protected by Exception 7 & 8 of S.499 IPC. To hold otherwise would amount to paralysing the administration justice.

Finally, concluding that the case on hand falls in category 1 (the allegations in FIR/ complaint do not prima facie constitute any offence even if taken at their face value) and 4 (the allegations in the FIR / Complaint do not disclose the commission of any offence) of the circumstances listed by the Supreme Court in State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. for quashing the investigation / FIR / Complaints, the High Court quashed the summoning order against the petitioner and dismissed the complainant of the respondent.

[V.K.Bagga Vs. O.P.Arora 2007 Cri LJ 1101. High Court of Delhi. DOJ – 22.11.2006]

S. Srinivas, CLA/GNT.

Legal Maxims

Actio personalis moritur cum persona - A personal action dies with the person.

Actiones legis - Law suits.

Actori incumbit onus probandi - The burden of proof lies on the plaintiff.

Actus nemini facit injuriam - The act of the law does no one wrong.

Actus Curiae Neminem Gravabit: An act of the court shall prejudice no one.

K.Gopinath, CLA/GM/O/SC

Contract conditions cannot be changed by Courts

The Union of India has challenged the legality of the order dated 28.03.2019, passed by a Single Judge of the High Court, Hyderabad in W.P.No.39292 of 2018, whereby the learned Single Judge had allowed the writ petition and directed the Union of India to permit the petitioner-contractor to load/unload the consignment at Howrah Station during the subsistence of the contract.

Briefly the facts of the case are that on 20.04.2018, the appellants had called for a sealed tender for leasing of 23 tonnes space in VPH by Train No.18646/18645 East Coast Express (Hyderabad-Shalimar-Hyderabad), on round trip basis, for seven days a week, for a period of five years. On 25.05.2018, the contractor-petitioner had submitted his tender form, wherein he sought permission to load/unload the consignment at various railway stations, including the Howrah Station. On 05.07.2018, the contract was awarded to the petitioner. According to the contract, under Clause 5, it was made abundantly clear that the petitioner-contractor would be permitted to load/unload the consignment only at BZA (Vijayawada) and VSKP (Visakhapatnam) Stations. Since the petitioner wanted to unload the consignment at Howrah Station, on 10.07.2018, he filed a representation before the Railways. However, the said request was rejected by the Railways by its letter dated 18.07.2018. Thereafter, on 23.07.2018, the petitioner again requested the Railways to implement the contract and further requested to attach the parcel van as the last bogie.

On 24.08.2018, the contract commenced. On 03.09.2018, an agreement was entered between the parties. In Clause 8.18 of the agreement, it was clearly mentioned that the petitioner would be permitted to load/unload the consignment only at Secunderabad, Vijayawada and Visakhapatnam. The contract commenced from 26.08.2018, for a period of five years. On 07.09.2018, the petitioner again filed a representation requesting the Railways to permit him to load/unload his consignment at Howrah Station. However, by letter dated 15.09.2018, the Railways rejected the said request. Since the petitioner was aggrieved by the letter dated 15.09.2018, he filed the writ petition before the learned Single Judge which was allowed on 28.03.2019. Hence, appeal was filed before the High Court.

The High Court observed: "It is, indeed, trite to state that the parties are bound by the terms and conditions of the contract which they enter into. Once a contract has been agreed upon and signed, neither of the parties are permitted to wriggle out of the conditions of the contract. Moreover, a party cannot seek modification of the contract. Furthermore, it is needless to say that a Court is also bound by the contract entered between the parties, and cannot travel beyond the parameters of the contract. Most importantly, the Court is not permitted to modify the terms and conditions of the contract.

A bare perusal of the Tender Notice does indicate that as far as the restriction with regard to the intermediate loading/unloading stations was concerned, there was "nil" restriction. However, Clause 8 of the Tender Notice made it clear to the tenderer that the conditions of the tender may be modified. And once modified and mutually agreed upon, those conditions of the agreement will be binding on the lease holder. Even in the contract awarded to the petitioner, it was made crystal clear that he would be permitted to unload his consignment only at Vijayawada and Visakhapatnam Stations. Knowing this fact fully well, the petitioner had agreed to the said term. Once having agreed to the said term, the petitioner is unjustified in claiming that he has a right to unload his consignment even partially at Howrah Station.

A bare perusal of the impugned order clearly reveals that the learned Single Judge has modified the terms of the contract. Thus, the learned Single Judge has travelled beyond his jurisdiction." Thus, the impugned order was set aside and the appeal of S.C.R was allowed.

[W.A. No. 391 of 2019 (GM, SCR Vs. Md. Akram) DOJ- 13.09.2019]

I.V.V.R.P.Prasad, Sr.LO/HQ.

KNOW OUR CONSTITUTION

RIGHT AGAINST EXPLOITATION

Article 23: Prohibition of traffic in human beings and forced labour -

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;

(2)Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 24: Prohibition of employment of children in factories, etc -

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7).

JOKE

A man went into a local Chamber of Commerce, obviously desperate. He asked the man at the counter, "Is there a criminal lawyer in town?" The man replied, "Yes – but we can't prove it yet."

Mere suspension of sentence, pending an appeal, doesn't imply a suspension of order of conviction:

Delhi High Court in WP(C) 10100/2017 & CM No.41286/2017 in Santhosh Kumar Vs. Delhi Jal Board case vide its decision dt.15.10.2019 has reiterated that suspension of sentence, pending an appeal, doesn't imply a suspension of order of conviction.

It is held by Justice Rekha Palli that in a criminal trial, if a convict has been granted bail or suspension of his sentence pending his appeal, that doesn't mean that his conviction ceases to operate.

In the present case, The petitioner, who was working as an Assistant Pump Driver in the respondent/ Delhi Jal Board was involved in an incident leading to registration of a FIR No.51/2010 against him under Section 363, 366, 368 and 376 of the Indian Penal Code, 1860 (IPC) at Police Station Kotwali Dehat, Bulandsahar, U.P and the petitioner was convicted of offences under sections 363, 366, 368 and 376 of IPC, however upon filing of an appeal, the appellate court suspended his sentence and granted him bail pending his appeal.

Meanwhile, Delhi Jal Board relieved the appellant of his services. Aggrieved by his termination, he raised an industrial dispute which came to be rejected after the Labour Court found that the disciplinary authority had, after considering the relevant factors, rightly reached its conclusion. Hence, the present writ was filed.

Petitioner's counsel argued that even though the petitioner's appeal is still pending adjudication before the High Court, once his sentence stands suspended and he has been released on bail, the respondent is duty-bound to take him back in service as the effect of the said suspension, would tantamount to the order of conviction and sentence being treated as non est.

Appearing for the Respondent, Mr Rameezuddin Raja argued that in view of the settled position that mere suspension of sentence does not imply that the order of conviction has been stayed or that the employer should ignore the fact and effect of such conviction.

The court rejected the claim of the petitioner by relying upon the rule laid down by the Supreme Court in Union of India & Ors. v. Ramesh Kumar AIR 1997 SC 3531 which says that:

'If the Disciplinary Authority comes to the conclusion that the offence for which the public servant has been convicted was such as to retention in the public service prima facie undesirable, it can impose upon him under Rule 19(1) of CCS (CCA) Rules, 1965, the penalty of dismissal or removal..'

While rejecting the writ petition, the court opined that the Delhi Jal Board was justified in coming to the conclusion that further retention of the petitioner in service was undesirable. A cost of Rs. 10000 has also been imposed upon the petitioner.

G.Ratna Kumar, CLA/P/BZA.

Difference between:
Assault & Battery

Assault is to threaten a person whereas battery is to harm a person. For an Assault a mere apprehension of danger is sufficient. For a battery there must be an actual application of physical force. Every battery includes assault. Battery is an aggravated form of assault. Every assault does not include battery. Since there is actual application of physical force in battery it is considered more serious than assault. There is an element of fear in assault. Assault is not physical whereas battery is necessarily physical. Battery essentially involves assault but an assault does not necessarily involve battery. Threatening an individual verbally is assault but hitting the person is battery. Throwing a rock at someone for the purpose of hitting him is battery if the rock in fact strikes the person and is an assault if the rock misses. Trying to punch a person is assault, whereas actual punching on the body is battery. Assault creates reasonable apprehension in the recipient's mind that immediate force will also be used. In battery there should be use of force and the same should be without any lawful justification.

S. 351 IPC. Assault - Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or prepa-ration will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation - Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

S. 352 IPC. Punishment for Assault – 3 Months' imprisonment or Rs.500 penalty or both.

S.353 to 358 IPC deals with different types of assaults.

Essentials of Assault:

1. Intent
2. Apparent ability to carry it our
3. Apprehension
4. Knowledge of threat

Essentials of Battery:

1. There should be a physical touch (directly or indirectly) .
2. Intention must be present.
3. The physical contact must be without lawful justification.
4. Use of force
5. Battery must be voluntary.

Defenses to trespass to person:

1. Consent of Plaintiff
2. Contributory Negligence
3. Self-Defence
4. Prevention of Trespass
5. Parental Authority
6. Statutory Authority
7. Necessity
8. Inevitable Accident
9. Preservation of Public Peace

K.Gopinath, CLA/GM/O/SC

Framing of Issues – If Court fails to frame, it is incumbent on parties to insist for:

Order 14 of CPC, 1908 deals with framing of issues. An issue in a civil case means a dispute between parties that is required to be decided by the Court. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. Material propositions are those propositions of law or fact which a plaintiff alleges in order to show a right to sue or a defendant alleges in order to constitute his defence. Further, each material proposition affirmed by one-party and denied by the other shall form the subject of distinct issue.

Duty of Court to frame issues:

In Makhan Lal Bangal vs. Manas Bhunia [2001 (2) SCC 652], the Supreme Court held that the issues are important as they determine the scope of a trial by laying down the path for the trial to proceed, free from diversions and departures. Hence, At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance. The Court shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

Court to pronounce judgment on all issues. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force.

The Court may frame the issues from all or any of the following materials: (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties; (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; (c) the contents of documents produced by either party.

When framing of issues not necessary:

When one party affirms and other party denies a material proposition of fact or law, then only issues arise. However, if there is no specific denial, the question of framing issue does not, generally, arise. The Supreme Court in Fiza Developers & Inter-Trade ... vs Amci (I) P.Ltd.& Anr on 27 July, 2009 held that **"**There is no doubt that framing of issues is necessary in every contested regular civil suit. Equally clear is the position that in proceedings which are intended to be summary in nature, issues are not framed. Proceedings for setting aside ex parte decrees, proceedings for restitution, proceedings for execution and proceedings for permission to sue as an indigent person, are illustrative of summary proceedings which are governed by the Code, where issues are not framed. In a summary proceeding, the respondent is given an opportunity to file his objections or written statement. Thereafter, the court will permit the parties to file affidavits in proof of their respective stands, and if necessary permit cross examination by the other side, before hearing arguments. Framing of issues in such proceedings is not necessary".

However, there may be situations, where the court failed to frame any issues. In a case before the High Court, appellants have vehemently argued that the trial Court has not framed issue regarding the pleadings raised by the appellants that the appellants are absolute owners of part of the suit land, which has been allotted to them during consolidation and in the absence of any pleadings, the appellants have suffered serious prejudice and, therefore, the judgment and decree passed by the Courts below are not sustainable. The High Court held that it is the duty of the Court to read the plaint and written statement to frame issues. Even if the Court has failed to frame any issue, it was incumbent upon the appellants to draw attention of the trial Court to frame proper issues at the earliest. However, now in the second appeal, it is too late for the appellants to allege that the proper issues were not framed. [Chanan Singh *Vs* Santokh Singh, R.S.A. No. 492 of 1981, decided on January 10, 2007, Punjab and Haryana High Court, 2007 SCC OnLine P&H 15].

N.Murali Krishna, Sr. LO/HQ.

FAQ

What is a PIL?

PIL stands for Public Interest Litigation. PIL can be filed by a public spirited individual, NGO etc. In other words, the issue of person filing the PIL to have a locus standi is not applicable in PILs. Martin Luther King, Jr.'s words "Injustice anywhere is a threat to justice everywhere" is relevant in this context. The person who is filing the petition must not have any personal interest in the litigation and PIL will be accepted by the court only if there is interest of large public involved.

PIL is filed –

⇒ Under Art 32 of the Indian Constitution, in the Supreme court.

⇒ Under Art 226 of the Indian Constitution, in the High court.

⇒ Under Sec. 133 of the Criminal Procedure Code, in the court of Magistrate.

A PIL may be filed against state government, central government, municipal authority etc. but not against any private party alone. However, a private person / institution may be included in PIL as a 'Respondent', in addition to the State authority. The concept of Public Interest Litigation (PIL) is in consonance with the principles enshrined in Article 39A of the Constitution of India to protect and deliver prompt social justice with the help of law.

After the emergency era, the High Courts reached out to the people, devising a means for any person of the public (or an NGO) to approach the court seeking legal remedy in cases where the public interest is at stake. Filing a PIL is not as cumbersome as a usual legal case; there have been instances when letters and telegrams addressed to the court have been taken up as PILs and heard.

YOURS LEGALLY

Delay condonation of State – To condone or Not To Condone?

A two-judge Bench of the Supreme Court while declining to condone delay in a SLP filed by the State of Bihar held on 09.05.2019: "We are of the view that a clear signal has to sent to the Government Authorities that they cannot approach the Court as and when they please, on account of gross incompetence of their officers and that too without taking any action against the concerned officers. No detail of this delay of 728 days have been given as if there is an inherent right to seek condonation of delay by State Government." Reliance was placed on its earlier order in the Chief Post Master General Vs. Living Media India Ltd. [2012(3) SCC 563]. Apex Court imposed a cost on the petitioner of Rs. 20,000/- to be recovered from the officers responsible for the delay. [SLP (C) No.13348/2019. State of Bihar & Ors. Vs. Deo Kumar Singh].

However, very recently (on 22.10.2019) a three-judge Bench of the Apex Court has taken a different view. In the instant case, there was a delay of 312 days in filing Regular First Appeal and it was declined to be condoned by the High Court of Manipur and the appeal was dismissed. The reason indicated for condonation of delay was that they made a bonafide mistake by pursuing the appeal before a wrong forum i.e, District Judge, Imphal West. However, for want of pecuniary jurisdiction, the District Judge did not entertain the appeal, permitting the appellant to approach the High Court, Imphal.

However, the High Court observed that the delay in pursuing the wrong forum was only 44 days and no explanation was given for the rest of the period. On that basis, the Regular First Appeal was not entertained on merits. Hence, the Supreme Court was approached.

During the course of hearing before the Apex Court it was contended by the respondent that after the decree the execution proceedings commenced and was finally concluded and nothing survives in the RFA to be considered on merits and the possession was handed over to the respondent.

This was strongly refuted by the appellants and stated that the State of Manipur and other defendants continue to be in possession of the disputed land, notwithstanding the decree and the execution proceedings.

The Supreme Court observed: *"8....But while concluding as above, it was necessary for the court to also be conscious of the bureaucratic delay and the slow pace in reaching a Government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it……*
9. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by State are lost for individual default, those who are at fault, will not usually be individually affected."

The Apex Court further observed that if the merit of the defendant's RFA was not permitted to be examined by the Appellate Court, the State will have no opportunity to address their grievances before a higher Court. The Supreme Court further observed that if consideration of the RFA was not permitted on strategically sensitive case involving security, in the ultimate analysis, the public interest was likely to suffer. Thus, it was held that the First Appeal should therefore be considered on merit instead of the State being non-suited, on the ground of delay.

Taking into account the special circumstances in the matter at issue, the delay in filing the RFA was condoned by the Supreme Court. However, a cost of Rs.50,000/- was imposed on the appellants. The RFA 5/2017 was restored to the file of High Court. In view of the rival contentions about possession, the same was ordered to be subjected to the final decision of the High Court. [CA No. 8298/2019. State of Manipur & Ors. Vs. Koting Lamkang. DOJ - 22.10.2019]

- Shaji.M.K, CLA/GM/O/SC.

Legal Update:

Carbon copy to be treated as original

Supreme Court has held that since "carbon copy was prepared in the same process as the original document and once it is signed by both the parties, it assumes the character of the original document." The above ruling came in Civil Appeal No. 6706/2013 (Mohinder Singh Vs. Jaswant Kaur (D). DOJ - 11.09.2019) when the order of the Punjab & Haryana High Court came under challenge before it. Earlier the High Court held that a carbon copy of a document which carbon copy is signed by both the parties cannot be termed as an original document under Section 62 of the Evidence Act. This finding of the High Court, it was held by the Apex Court, is absolutely incorrect and against the provision of Section 62 of the Evidence Act.

Know the lesser known:

Suspension period cannot be treated as 'dies non'. Instead it is to be treated as 'duty' or 'suspension' or 'leave due'. Since the rules do not permit the recovery of subsistence allowance subsequently, treating the suspension period as 'dies non' does not arise, as treating the period as 'dies non' warrants recovery.

A Group 'C' employee who has been dismissed, removed or compulsorily retired from service may, after the disposal of his appeal and within 45*days thereafter submit a revision petition to the General Manager. In this revision petition, the Charged Employee may request the General Manager to refer the case to the Railway Rates Tribunal before he disposes of the revision petition [Rule 24 (2) of D&AR 1968]. GM cannot supersede the advice of the RRT without the prior approval of the Railway Board [RB's Lr. No. E(D&A) RG 6-20 dated 17.5.1952, E (D&A)61 RG 6-28 dated 05.6.1963 & E(D&A) 83 RG 6-8 dated 25.3.1983]. Reference to RRT by the GM is mandatory when employee seeks for it [E (D&A) RG 6-23 dated 04.2.1963]. * - However RRT's Lr No. RRT/40 dated 26.4.1967 stipulates 2 months time for submission of Revision Petition.

TREATISE ON

Appointment of arbitrators
(continued from last issue…)

A&C Act, 1996 has further been amended in 2019 and already came into effect. In a recent judgement in CA No.7023 OF 2019, M/s Mayavathi Trading (P) LTD. Vs Pradyut Deb Burman (DOJ: 05.09.2019), by a three member bench had an occasion to consider the effect of deletion of S.11(6)(A). After the amendment Act of 2019, Section 11(6A) has been omitted because appointment of arbitrators is to be done institutionally, in which case the Supreme Court or the High Court under the old statutory regime are no longer required to appoint arbitrators and consequently to determine whether an arbitration agreement exists.

Analysing the situation prior to inclusion of Section 11(6A) in 2015 amendment, the Supreme Court held that at the stage of a Section 11(6) application being filed, the Court need not merely confine itself to the examination of the existence of an arbitration agreement but could also go into certain preliminary questions such as stale claims, accord and satisfaction having been reached etc. After the amendment of 2015, Section 11 (6A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment *Duro Felguera, S.A.*

The Supreme Court in this judgement [CA No.7023 OF 2019, M/s Mayavathi Trading (P) LTD. Vs Pradyut Deb Burman (DOJ: 05.09.2019)], clarified that the omission of the Section 11(6) (A) is not so as to resuscitate the law that was prevailing prior to the amendment Act of 2015 but to follow the ratio in M/S Duro Felguera S.A vs M/S. Gangavaram Port Limited, (2017) 9 SCC 729.

The 2019 amendment to A&C Act, 1996 has made the following major changes relating to domestic arbitration: They are:

1. Power to designate Arbitration institutions: The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time. Where no arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution.

2. Appointment of arbitrator shall be made by the arbitral institution designated by Supreme Court/High Court.

3. Sections 11 (6A) and 11 (7) are omitted.

4. Arbitral institution within a period of thirty days from the date of service of notice on the opposite party, shall appoint arbitrator.

5. In 17(1) the words and figures "or at any time after the making of the arbitral award but before it is enforced in accordance with section 36" are omitted.

6. Sub section 23 (4) inserted by which the statement of claim and defence shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.

7. In Section 34 (2) (a), for the words "furnishes proof that", the words "establishes on the basis of the record of the arbitral tribunal that" are substituted.

8. Two sections 42A & 42B inserted, stating that the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award and that no suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done.

Disclosure by Arbitrator S.11(8):

In terms of S.11(8), every arbitrator has to disclose in writing in terms of Section 12(1) due regard to—

(*a*) any qualifications required for the arbitrator by the agreement of the parties; and

(*b*) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

As has already been noticed, in tune with the amendments of 2015 to the A&C Act, 1996, GCC for works, IRS conditions, GCC for Services on the Railways has been amended. Accordingly, as per Cl. 64.3(c) (iii) annexure –XVI has to be submitted by every prospective arbitrator before his appointment as to i) Prior experience (including Experience with Arbitrations), ii) his past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of The Arbitration and Conciliation Act-1996, (iii) no concurrent circumstances which are likely to affect his ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months.

N.Murali Krishna, Sr.LO/HQ.

Funny Lawyer Quotes:

There are three sorts of lawyers - able, unable and lamentable. - *Robert Smith Surtees*

Whoever tells the best story wins. - *John Quincy Adams*

A Lawyer will do anything to win a case, sometimes he will even tell the truth. - *Patrick Murray*

Ignorance of the law excuses no man - from practicing it. - *Adison Mizner*

In almost every case, you have to read between the lies. - *Angie Papadakis*

A lawyer is a gentleman who rescues your estate from your enemies and keeps it for himself. - *Lord Brougham*