South Central Railway
Lex Info – e Magazine
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Do you have 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:

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EDITORIAL

In this issue SCR's instructions directing the lowest authority to sign appointment order, promotion order and penalty order has been included. Some important Supreme Court judgments such as limitation for appeal u/s 37 of A&C Act, State cannot claim adverse possession etc. have been added. High Court's order on disqualification of candidates for wrong filling up of application, deceased passenger who boarded a wrong train and died entitled for compensation etc. are incorporated. Regular features like ABC of Acts, Arbitration, RTI Act, Know our Constitution, Legal Maxims, FAQ, Difference between etc. are also finding place.

N.Murali Krishna, Editor.

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

THE INDIAN CONTRACT ACT, 1872

(Continuation to previous issue)

Performance of Contract (Sec. 37, 43 & 44):

The promisor or his representative must perform unless the nature of contract shows that it may be performed by a third person, but the promisee may accept performance by a third party.

In case of joint promisors, all must perform, and after the death of any of them, the survivors and the representatives of the deceased must perform. But their liability is joint and several. If the promisee requires any one of them perform the whole promise, he can claim contribution from others. (**Sec. 42, 43 and 44**).

Joint promisees have only a joint right to claim performance. (**Section 45**).

The promisor must offer to perform and such offer must be unconditional, and be made at the proper time and place, allowing the promisee a reasonable opportunity of inspection of the things to be delivered. (**Sections 38, 46, 47, 48, 49 and 50**)

If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61.

If an offer of performance is not accepted, the promisor is not responsible for non-performance and does not lose his rights under the contract; so also if the promisee fails to accord reasonable facilities. He may sue for specific performance or he may avoid the contract and claim compensation (**Sections 38, 39, 53 and 67**).

Rescission is communicated and revoked in the same way as a promise. The effect is to dispense with further performance and to render the party rescinding liable to restore any benefit he may have received. (**Sections 64 and 66**)

Parties may agree to cancel the contract or to alter it or to substitute a new contract for it. (**Section 62**)

Breach of contract and its remedies (Sec.73 to 75)

In case of breach of contract by one party, the other party need not perform his part of the contract and is entitled to compensation for the loss occurred to him.

Damages for breach of contract must be such loss or damage as naturally arise, in the usual course of things or which had been reasonably supposed to have been in contemplation of the parties when they made the contract, as the probable result of the breach.

Any other damages are said to be remote or indirect damages, hence, cannot be claimed.

Contingent and Quasi contracts (Sec. 31):

Contingent Contracts are the contracts, which are conditional on some future event happening or not happening and are enforceable when the future event or loss occurs.

Rules for enforcement:

If it is contingent on the happening of a future event, it is enforceable when the event happens. The contract becomes void if the event becomes impossible, or the event does not happen till the expiry of time fixed for happening of the event.

If the future event is the act of a living person, any conduct of that person which prevents the event happening within a definite time renders the event impossible. If the future event is impossible at the time of the contract is made, the contract is void ab initio. Wagering Contracts are void.

Quasi Contracts arise where obligations are created without a contract. The obligations which they give rise to are expressly enacted:

If necessaries are supplied to a person who is incapable of contracting, the supplier is entitled to claim their price from the property of such a person

A person who is interested in the payment of money which another is bound to pay, and who therefore pays it, is entitled to be reimbursed by the other

A person who enjoys the benefit of a non-gratuitous act is bound to make compensation.

A person who finds lost property may retain it subject to the responsibility of a bailee.

If money is paid or goods delivered by mistake or under coercion, the recipient must repay or make restoration.

Discharge of a Contract

It means "termination" of a contract. By discharge, the rights and obligations of the parties come to an end. A contract is discharged by performance; by death; by refusal to accept "offer of performance"; by breach of contract – actual or anticipatory breach of contract; by impossibility of performance; Discharge by lapse of time; by promisee failing to offer facilities for performance; by operation of law; by insolvency or bankruptcy; by merger; By unauthorized material alteration of a contract; by agreement or by consent – by Novation, by Accord & Satisfaction, by Waiver, by Rescission.

V. Apparao, CLA, GM/O/SC

RTI Act Series

Payment of application processing fee:

Application processing fee of Rs.10/- under RTI Act is payable under S.6 (1) may be made in the form of (a) By cash, against proper receipt; (b) By DD, Banker's cheque or *IPO & (c) By electronic means [Rule 6 of RTI Rules 2012]. *Included by RTI (Regulation of Fee & Cost) (Amendment) Rules 2006. If the instrument for payment is drawn in the name of the Accounts Officer, that shall suffice the requirement.

As per DoP&T OM No.F.10/9/2008-IR dated 05.12.2008, "Refusal to accept an application on the ground that the demand draft / banker's cheque/IPO submitted by the applicant has been drawn in the name of the Accounts Officer may amount to refusal to accept the application. It may result into imposition of penalty by the Central Information Commission on the concerned Central Public Information Officer under Section 20 of the Act."

Disposal of RTI requests is being dealt with elaborately in Section 7 of the RTI Act. Sub-section 1 requires that the request shall be disposed of at the earliest and in any case within 30 days of receipt of receipt of the request. Additional time of 5 days is permissible if the RTIA request is received by APIO. This section further stipulates that the information shall be either provided on payment of further fees or reject the request for reasons mentioned in Sections 8 and 9. The proviso below Section 9 warrants supply of information within 48 hours, if the information sought for concerns the life or liberty of a person.

As can be seen from S.7 (1), the denial of information has to be for reasons specified either in Section 8 or 9. [The reasons specified in Section 8 and 9 will be explained at a later stage.] S. 7 (2) states that if the PIO fails to give his decision within the stipulated period, then it shall be deemed to have refused the request.

In the event if the PIO decides to provide the information on payment of any further fee representing the cost of providing the information then the PIO shall send an information to the applicant giving the details of further fees together with calculations made to arrive at the amount, requesting him to deposit the said fee. The period intervening between the despatch of intimation and payment of fees shall be excluded for the purpose of calculating the 30 days' time limit. It is also necessary that such an intimation shall contain an information about the applicant's right to review the decision about the amount of further fees being charged, duly giving the particulars of the appellate authority, time limit, process etc. [S. 7 (3)].

Demand for additional fee by PIO:

As a matter of practice it is observed that the intimation to the RTI applicant, wherein the PIO instructs the RTI applicant to pay further fees, many a times do not contain the particulars of the appellate authority, as required under S. 7 (3) (b). This mandatory requirement has to be kept in mind while instructing to pay further fees for supply of information.

In accordance with the Right to Information Rules, 2012 rates of fee are as given below: (a) rupees two (Rs. 2/-) for each page (in A-3 or smaller size paper) ; (b) actual cost or price of a photocopy in larger size paper; (c) actual cost or price for samples or models; (d) rupees fifty (Rs.50/-) per diskette or floppy; and (e) price fixed for a publication or rupees two per page of photocopy for extracts from the publication. (f) so much of postal charges involved in supply of information that exceeds fifty rupees.

An RTI applicant has a right to inspect the records of a public authority. As per RTI Rules, 2012, for inspection of records, the public authority shall charge no fee for the first hour. But a fee of rupees five (Rs.5/-) for each subsequent hour (or fraction thereof) shall be charged.

CIC has already held that the fee under S. 6 (1) is the application fee. S. 7 (1) is the fee charged for photocopying etc. Fee under S. 7 (5) is for getting information in printed or electronic format. The expression further fee mentioned in S. 7 (3) only refers to the procedure in availing of the further fee already prescribed under S. 7 (5) of the RTI Act, which is "further" in terms of the basic fee of Rs.10/-. Section 7 (3), therefore, provides for procedure for realizing the fees so prescribed" [Appeal No.CIC/MA/A/2008/0185. K.K. Kishore Vs. Institute of Company Secretaries of India]. Hence, charging any additional fees towards miscellaneous or overhead expenses is against the provisions of the RTI Act, 2005.

Section 7 (4) requires the PIO to give necessary assistance to sensorily disabled RTI applicant. Section 7 (5) requires an applicant to pay the necessary fees for supply of printed or electronic format medium, subject to the condition that such fees shall be reasonable and persons below the poverty line are exempted.

The necessity to adhere to the time-line for supply of information is of utmost importance, failing which the PIO will be required to supply the whole information free of cost [S. 7 (6)]. The PIO is obliged to consider the representation, if any, made by a 3rd party under S.11 [S. 7 (7)].

The procedure to be adopted in the even the RTI request is rejected is given in S. 7 (8). The communication to this effect shall contain the reasons for such rejection, the limitation for preferring an appeal and the particulars of the appellate authority.

It is required that the information shall be ordinarily provided in the form in which it is sought unless it would disproportionately divert the resources of the PA or would be detrimental to the safety or preservation of the record in question [S. 7 (9)].

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

Signing of Appointment / Promotion / Penalty Orders

Instances have come to notice that order of appointment, promotion or penalty under D & AR has not been signed by lowest permitted authority, resulting in avoidable escalation of cases to higher officers for dealing at subsequent stages. Many times, authorities are signing "for DRM", "for DRM/P" etc, creating an impression that the said orders are passed by said authorities and Courts also treating as such. In this regard the instructions issued by South Central Railway are extracted below for adherence:

Letter No.P(R)563/VI **Date:- 11-08-06**

Sub: Appointing authority in relation to appointment / promotions of non-gazetted staff.

Instructions have been issued time and again that the orders of appointment as well as promotion of staff in all categories of non-gazetted staff should be issued under the designation of the lowest authority competent to issue such appointment/promotion orders as per the delegation made under the Schedule of Powers.

Despite the above instructions a case has come to notice where the level of Disciplinary authority had to be raised, as the appointment/promotion order of the charged employee was issued, under the designation of a higher authority. Cases have also come to notice in which although the appropriate or a lower authority actually signed the order, it was signed on behalf of a higher authority for example – for DRM, for CWM, for CPO, for Dy.CSTE, for Dy.CME etc.

Attention is invited to instructions contained in this office letter No.P(R)227/IX dt.16.2.1987, reproduced below, reiterating that the appointment/confirmation as well as promotion orders should be signed under the designation of the appropriate appointing authority.

These instructions should be followed strictly and any deviation will be viewed seriously.

ANNEXURE

Copy of letter No.P(R)/227/IX, dt.16.02.1987.

Sub: DAR action against Non-gazetted staff – Initiating action under DAR.

While dealing with the DAR files of the Non-gazetted staff received from the Divisions/Units, it has come to light that in certain cases the level of the disciplinary authority had to be raised, as the appointment / confirmation /promotion order of the charged employee was issued, under the designation of a higher authority. Cases have also come to notice, in which although the appropriate or a lower authority has actually signed the order, it was signed on behalf of a higher authority for example – for DRM, for ACME and for CPO etc. This causes much delay to verify the authority who has actually issued the order of initial appointment/confirmation or any of his subsequent promotion etc., at the time of initiating DAR cases.

In this connection attention is invited to this office letter No.P(R)521/II dated 18.10.70, wherein it was made clear in unequivocal terms that the orders of appointment/promotion/confirmation of staff in any categories, should be issued under the designation of the lowest authority competent to issue such appointment/ promotion/ confirmation orders. This subject was also high lighted as item IV of the procedural lapses generally found in the D&A cases vide P.90(D&A)instructions dated 20.10.1981.

It is once again reiterated that the appointment, confirmation as well as promotion orders should be signed under the designation of the appropriate appointing authority to a particular grade/scale and not on behalf of any higher authority i.e., for G.M., for CPO, for DRM etc. Administration approval of higher authorities obtained for empanelment and allotment to Divisions for higher grade posts controlled by Head Quarters office for seniority purposes should not be quoted while issuing the posting orders. For example CE/DRM may approve the empanelment/allotment, but actual promotion and posting orders should be issued by the lowest appropriate authority.

These instructions should be followed strictly and any deviation will be viewed seriously.

Sd/-

By M.Giri Surya Prasad, Steno– I

KNOW OUR CONSTITUTION

Article 28:
Freedom as to attendance at religious instruction or religious worship in certain educational institutions:

(1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights.

Legal Maxims:

In delicto - At fault.
In esse - In existence.
In extenso - At full length.
In futoro - In the future.
In personam - Against the person.
In rem—Against a thing.
In situ - In its place.
In terrorem - As a warning or deterrent.

Limitation of 3 months and 30 days also applies to Appeals filed under S.37 of A&C Act, 1996

S.37 of A&C Act, 1996 provides for filing an appeal against an order of the "Court" in a S.34 application challenging the arbitration Award. The Act, in S.43 (1) specifically provides that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in Court. Since in S.34(3) of A&C Act, 1996, limitation of 3 months is specifically provided for, for challenging an arbitration award, Courts held that it overrides the provision under the Limitation Act, 1963. However, in a recent case, the Supreme Court held that said limitation period of 3 months also applicable to appeals filed under S.37.

An Arbitral Award dated 19.12.2006 was challenged under Section 34 and it was rejected rejected by the District Judge on 30.05.2016 on ground of delay in filing the said application. An appeal under Section 37 of the Arbitration and Conciliation Act, 1996 was filed from this order in March, 2017, that is after a delay of 189 days from the 90 days that were given under Article 116 of the Limitation Act for filing such appeal. By the impugned judgment dated 24.06.2019, this delay was, on facts, not condoned as no sufficient cause was made out.

It was argued before the Supreme Court that unlike Section 34, Section 37 does not exclude Section 5 of the Limitation Act, as a result of which even if the 90 day period is over, if a condonation application is made under Section 5 of the Limitation Act, it should be considered on its own merits notwithstanding the length of delay.

The Supreme Court referred to the judgement dated 17.09.2018 in SLP (C) No. 23155/2013 [*Union of India* vs. *Varindera Const. Ltd.*, 2020 (2) SCC 111, wherein it was held as follows:

"we feel ***that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings*** being decided with utmost despatch.

In this view of the matter, since even the original appeal was filed with a delay period of 142 days, we are not inclined to entertain these Special Leave Petitions on the facts of this particular case."

Relying on this judgement, the Supreme Court held that "what we have done in the aforesaid judgment is to add to the period of 90 days, which is provided by statute for filing of appeals under Section 37 of the Arbitration Act, a grace period of 30 days under Section 5 of the Limitation Act by following *Lachmeshwar Prasad Shukul and Others* vs. *Keshwar Lal Chaudhuri and Others,* AIR 1941 Federal Court 5, as also having regard to the object of speedy resolution of all arbitral disputes which was uppermost in the minds of the framers of the 1996 Act, and which has been strengthened from time to time by amendments made thereto. The present delay being beyond 120 days is not liable, therefore, to be condoned". Holding so, the Supreme Court did not condone the delay in filing the petition. **[M/S N.V. International Vs The State of Assam & ors., (CA No. 9244 OF 2019, DOJ: 06.12.2019 = 2020(2) SCC 109].**

Sd Amjad Ali, OS/Law Branch

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Failure of candidate to properly fill up the application: Candidate to face the rejection

Railway Board has circulated a copy of the order of the High Court, Aurangabad which it passed in a WP challenging the rejection of candidature of an applicant for L-1 post.

The full text of the order is as follows:

" WRIT PETION No.7297 OF 2019

Sachin Dadasaheb Sable Petitioner

Versus

Union of India & others Respondents

CORAM: PRADEP NANDRAJOG, CJ &
R.G.AVACHAT, J.

DATE: 27.09.2019

PER COURT:

1. The petitioner had applied for a job to a Group D post. Unfortunately for him, he did not fill up the online form concerning details of the Indian Postal Order or Demand Draft submitted by him along with the application. This resulted in the petitioner not being considered for appointment and his application was rejected.

2. Counsel urges that being an error in not filling up the form correctly, the petitioner should not be visited with a penal consequences. Respondents urge that keeping in view the fact that for 5740 posts 9,77,613 of applicants submitted applications, technology was the only answer for the administration to manage such large number of applications.

3. In computers which are specifically programmed to process the applications without human interference, the applications are processed. In the Era of Information and Technology, people have to accept the fate of their mistakes, how so ever trivial they may be. Administrative convenience serves the public interest in such cases because the applications are processed fast.

4. This is the view taken by a Division Bench of this Court on 22.10.2018 in Writ Petition No. 1624/2018 pronounced at Principal Seat of this Court at Bombay. The decision notes that for 5740 Group D posts, 9,77,613 applications were received.

5. Writ petition is dismissed."

[RB's Lr. No. E(NG)-II/2018/RR-1/5 dated 18.02.2020]

M.V.Ramana, LO/HQ

Health Parameters of employees cannot be decided by Courts

CAT, Hyderabad Bench in a recent order has held that the parameters of health conditions cannot be decided by Courts and Tribunals and it is for the concerned administration stipulate the parameters for this purpose.

The facts of the case are as follows: The applicant Loco Pilot was medically de-categorised and was inducted into commercial cadre. Thereafter, he earned promotion to the Chief Booking Supervisor. The applicant applied for selection to the post of Assistant Commercial Manger and scored sufficient marks to be called for interview. Thereafter, he was subjected to medical examination. But, the medical board found him not suitable for the post of ACM, on the ground that he has already been de-categorised.

Challenging the action of the Railways, OA was filed. The opinion of the Medical Board and the panel were also challenged. The contention of the applicant was that the post of ACM was not safety related one, especially in view of the clarification issued by the Railway Board on 13.08.2013. It was also alleged that the duties attached to the post of ACM have nothing to do with safety work and there was no basis for his rejection.

The Railways-respondents maintained that the post of ACM was safety related post. However, the Tribunal held that a perusal of the various orders and circulars issued by the Railways clearly indicate that ACM is a safety related post. Note was taken of the order of the Principal Bench which dealt with the same issue.

The Tribunal distinguished its order dated 28.03.2007 passed by the Principal Bench in O.A No.867/2006, wherein the Bench analysed various aspects of visual disability and ultimately took the view that the applicant therein can be considered for the post of ACM. However, the said view was contrary to the judgment dated 09.07.2009 of the Supreme Court's Civil Appeal No.4668/2007. The Tribunal, while dismissing the OA, further held: "It is not for the Courts and Tribunals to decide the parameters for requirement of health conditions. It is for the concerned administration to stipulate the parameters for this purpose."

M.N.Vijitha, CLA/Gaz./Pers/HQ.

JOKE

A lawyer and a physician had a dispute over precedence. They referred it to Diogenes, who gave it in favour of the lawyer as follows: "Let the thief go first, and the executioner follow."

JOKE

An indigent client who had been injured in an accident went looking for a lawyer to represent him without cost. One lawyer told him that he would take the case on contingency. When the client asked what "contingency" was, the lawyer replied, "If I don't win your lawsuit, I don't get anything. If I do win your lawsuit, you don't get anything."

Difference Between: Tribunals & Courts

Tribunals are a part of the administrative system whereas courts in general are the creation of judiciary which is entirely a separate organ. Both the courts and tribunals operate independently of each other. Although their objectives are the same yet there are major differences that establish them as separate bodies.

Tribunals are established under a specialised law, which is an offshoot of decentralization of government authorities. Some departments are given the authority to look into their disputes independently without any interference of courts.

Many departments have their own tribunal that deals with the specific matters related to it such as Administrative Tribunal, Income Tax Tribunal, Railway Claims Tribunal, Motor Accidents Claims Tribunal, etc.

Tribunal has a permanent establishment as of a court. As compared to a court, the proceedings of a tribunal are less formal and speedy. The courts are expected to be rigid in their functions because they are directed to do so as per the rules and code of conduct. Their performance is reported to the higher courts that initiate misconduct proceedings in absence of obedience to proper conduct. In tribunals, the adjudicators are selected from the organization or the department itself. The department makes its own sets of rules and they're relatively flexible and informal.

Tribunals render faster decisions at a much lesser cost and thus are more efficient. In tribunals there will be expertise of the adjudicators in the relevant field. Hence the adjudicators will decide the case more proficiently because of their additional technical knowledge.

The tribunal decisions are binding upon the parties. However, they're appealable or challengeable in the court, provided the law under which the tribunal is established provides for the opportunity of appeal to the higher courts.

The jurisdiction of a tribunal, however, is much narrower than that of a court. Since a tribunal is concerned with only the matters related to a specific department, it makes its jurisdiction limited. On the other hand, a court has matters coming from all the areas involving disputes related to civil, criminal, family, corporate and business matters.

K.Gopi Nath, CLA/O/GM/SC

The finding of the Tribunal that deceased boarded in a wrong train and died due to his own fault/ negligence is not sustainable:-

In the High Court of Judicature at Bombay, Nagpur Bench, Nagpur -First Appeal No. 1072 of 2019- Smt. Meerabai & Ors.(Appellants) Vs. Union of India. This appeal is against the judgment of the Railway Claims Tribunal, Nagpur in Case No. OA(IIu) NGP/2013/0331.

The facts of the present appeal are that the dceased- Arjun Hiribhau Gawande purchased two Railway Tickets at Akola Railway Station to go to Murtizapur. One ticket was from Akola to Murtizapur and other ticket from Akola to Shegaon. When he was alighting the train at Railway Station Badnera, he fell down accidentally and died. Legal heirs of the deceased filed claim petition before the Tribunal. The Tribunal rejected the claim on the ground that deceased purchased tickets from Akola to Murtizapur and Akola to Shegaon. Those tickets were of general train, but deceased boarded in a Kurla - Bhubaneshwar Express. Said train was not having any stoppage at Badnera and/ or at Murtizapur. Therefore, deceased alighted at Railway Station Badnera where there was no any stoppage. He died due to his own negligence. Therefore, Railway is not liable to pay any compensation.

Hence, the present appeal. The Advocate for the Appellants has pointed out the judgments viz. Union of India Vs. Prabhakaran Vijaya Kumar & Others, 2008 (5) ALL MR 917, Jameela & Ors. Vs. Union of India 2010 AIR (SC), Union of India Vs. Rina Devi 2018 AIR (SC) 2362, Union of India Vs. Anuradha and another 2014 ACJ 856. Learned Advocate for the respondent has submitted that deceased was knowing that there was no any stoppage at Badnera and/or at Murtizapur. He intentionally purchased two tickets so that he may alight at Murtizapur or at Badnera. There was no any stoppage at Badnera even though deceased alighted at Badnera and, therefore, it was not untoward incident as defined under Section 123(c) of the Railways Act, 1989. Learned Advocate has submitted that Railway has discharged its burden as per exceptions carved out under proviso (a) to (e) of Section 124A of the Act, and, therefore, railway is not liable to pay any compensation.

There is no dispute that deceased had purchased tickets at Railway Station, Akola and he boarded in a wrong train i.e. Kurla - Bhubaneshwar Express. There is no dispute that deceased died when he was alighting from running train at Badnera. The Hon'ble Apex Court in the case of Jameela & Ors. Vs. Union of India reported in 2010 AIR (SC) 3705, has held that "When deceased died while alighting the train due to his own negligence, it is not a criminal act and, therefore, Railway cannot deny it liability." The Hon'ble Apex Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar & Others reported in 2008(5) ALL MR 917, has held that: "Section 124A of the Railways Act, 1989 casts strict liability on the Railway even the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation."

In the case of Union of India Vs. Rina Devi reported in 2018 AIR (SC) 2362, the Hon'ble Apex Court has held that: "Death or injury in course of boarding or de-boarding train will be "untoward incident". Victim will be entitled to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as contributing factor." In the case of Union of India Vs. Anuradha and another reported in 2014 ACJ 856, this Court has held that: "Even the deceased boarded in a wrong train having a valid journey ticket and died while alighting the train that does not mean that he was not a bona fide passenger and on that ground claim cannot be rejected."

In view of the cited judgment, findings recorded by the Tribunal that deceased boarded in a wrong train and died due to his own fault/negligence is not sustainable. In that view of the matter, the order is passed viz. (i) Appeal is allowed. (ii) Impugned judgment is hereby quashed and set aside. (iii) The respondent-Railway is directed to pay amount of compensation of Rs.8,00,000/- to the appellants within a period of twelve weeks. (iv) Amount of compensation be paid to the appellants in equal shares. Accordingly, appeal is disposed of with no order as to costs.

V. Apparao, CLA, GM/O/SC

FAQ: Estoppel

Estoppel means that a party is prevented by his own acts from claiming a right to the detriment of the other party who was entitled to rely on such conduct and has acted accordingly. It is a legal principle that precludes a person from alleging facts that are contrary to previous claims or actions.

Estoppel is a rule of equity. There are four types of estoppels:

(1) By record : It is trite law that once an issue or claim has been decided upon by a court of **record**, neither of the parties shall be allowed to call it in question, and have it tried over again at any time, thereafter, so long as judgment or decree stands unreversed. S 40-44 of Indian Evidence Act , 1872 deals with it.

(2) By deed: No person can be allowed to dispute his solemn deed, which is therefore conclusive against him and those claiming under him, even as to the facts recited in it.

(3) In pais: A party is prevented by his/or her own conduct from obtaining the enforcement of a right which would operate to the detriment of another who justifiably relied on such conduct. By conduct or representation, as that a tenant cannot dispute his landlord's title. S.116 of Indian Evidence Act, 1872 deals with it.

(4) By conduct: Where a person has, by his declaration, act or omission, permitted another to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed to deny its truth. S. 115 deals with this aspect.

K.Gopinath, CLA/GM/O/SC

YOURS LEGALLY

Whether State can plead perfection of title by adverse possession ?

Points to note:

1. State being a welfare State, cannot be permitted to take the plea of adverse possession
2. No period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.
3. Where immovable property was appropriated by State without legal sanction/following due process of law, cause of action is a continuing one.

Facts of the case:

Vidya Devi, the appellant was undisputed owner of land of about 3.34 in Himachal Pradesh. Respondent–State took over the land of the Appellant in 1967–68 for the construction of a major Road without taking recourse to acquisition proceedings, or following due process of law. The Appellant, being an illiterate widow, coming from a rural background, was wholly unaware of her rights and entitlement in law, and did not file any proceedings for compensation of the land compulsorily taken over by the State. In 2004, some similarly situated persons whose lands had also been taken over by the Respondent–State for the same public purpose, filed cases claiming compensation before the High Court of Himachal Pradesh wherein the High Court directed the State to acquire the lands under the Land Acquisition Act, 1894. Pursuant to the Order of the High Court the State initiated acquisition proceedings under the Land Acquisition Act, 1894 only with respect to the lands of the Petitioners.

After coming to know about these proceedings in 2010, she filed a Writ Petition before the High Court, praying that the State be directed to pay compensation for the land or in the alternative, direct the State to initiate acquisition proceedings under the Land Acquisition Act, 1894. The State pleaded that since the property was in continuous possession of the State since 1967–68, i.e., for the last 42 years, and the title got converted into "adverse possession". It was further argued that the Writ Petition was barred by laches, since the road was constructed in 1967–68 and the land was utilized by the Respondent–State after the appellant and her predecessors in interest had verbally consented to the land being taken over without any objection. The High Court holding that the matter involved disputed questions of law and fact, which could not be adjudicated in writ proceedings and hence the appellant was granted liberty to file a Civil Suit. Against which, the appellant filed the present appeal before the Supreme Court.

The Supreme Court observed that the Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution, which could not be deprived without due process of law and upon just and fair compensation. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution.

The Hon'ble Supreme Court held that the State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case. Further, the contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected since delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

In the present case, functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. The Appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. Therefore, exercising extraordinary jurisdiction under Articles 136 and 142 of the Constitution direct the State to pay compensation to the Appellant. **[Vidaya Devi vs The State Of Himachal Pradesh on 8 January, 2020,** CIVIL APPEAL NOS. 60 61 of 2020, (Arising out of SLP (Civil) Nos. 467 468/2020)]

N.Murali Krishna, Sr. LO, HQ.

KNOW THE LESSER KNOWN:

Judicially separated spouse is entitled for death gratuity [Rule 18 (7) of Railway Services (Pension) Rules, 1993]. Judicially separated spouse is entitled also for family pension, if the surviving person was not held guilty of adultery [Rule 75]. If surviving children are there, the family pension shall be paid to the guardian of such children, but not to the judicially separated spouse. After the child or children cease to be eligible for family pension, such family pension shall become payable to the surviving judicially separated spouse of the deceased railway servant till his or her death or remarriage, whichever is earlier.- (Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)

TREATISE ON ARBITRATION

Termination of the mandate of the arbitrator and appointment of substitute arbitrator in his place - Section 15

As brought out, Section 15 subsection (1) stipulates that in addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate:

(*a*) where he withdraws from office for any reason; or

(*b*) by or pursuant to agreement of the parties.

Sub section (*2*) of Section 15 states that where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Interpreting these two sub sections, the Supreme Court in **S.B.P. and Company Vs. Patel Engineering Ltd. and Anr., [**Civil Appeal No. 4168 of 2003, Decided On: 21.10.2009] held that "The legislature has repeatedly laid emphasis on the necessity of adherence to the terms of agreement between the parties in the matter of appointment of arbitrators and procedure to be followed for such appointment. Even Section 15(2), which regulates appointment of a substitute arbitrator, requires that such an appointment shall be made according to the rules which were applicable to the appointment of an original arbitrator. The term `rules' used in this Sub-section is not confined to statutory rules or the rules framed by the competent authority in exercise of the power of delegated legislation but also includes the terms of agreement entered into between the parties.

In Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd., (2006) 6 SCC 204supra), this Court was called upon to examine the scope of Section 15 of the Act in the backdrop of the fact that after resignation of the arbitrator appointed by the Managing Director of the respondent-Company, another arbitrator was appointed by him in accordance with the arbitration agreement. At that stage, the petitioner filed an application under Section 11(5) read with Section 15(2) of the Act and prayed that the Chief Justice of the High Court may appoint a substitute arbitrator to resolve the disputes between the parties. The Division Bench then observed that in terms of Section 15(2) of the Act, the Managing Director could, by relying upon the arbitration agreement, appoint another arbitrator because the original arbitrator had resigned. The Division Bench held that Section 15(2) of the Act is applicable not only to the cases of appointments under the statutory rules or rules framed under the Act but also the agreement between the parties for appointment of an arbitrator. While approving the decision of the High Court, this Court held:

...The term "rules" in Section 15(2) obviously referred to the provision for appointment contained in the arbitration agreement or any rules of any institution under which the disputes were referred to arbitration. When Section 15 (2) says that a substitute arbitrator can be appointed according to the rules that were applicable for the appointment of the arbitrator originally, it is not confined to an appointment under any statutory rule or rule framed under the Act or under the scheme. It only means that the appointment of the substitute arbitrator must be done according to the original agreement or provision applicable to the appointment of the arbitrator at the initial stage.

The Hon'ble Supreme Court further held that "… the words `refuse' and `withdraw' have not been defined in the Act. Therefore, we may usefully refer to dictionary meanings of these words. As per P. Ramanatha Aiyar's Advanced Law Lexicon (Third Edition 2005), the word `refuse' means to decline positively; to express or show a determination not to do something. As per Century Dictionary, the word `refuse' means to deny, as a request, demand or invitation; to decline to accept; to reject, as to refuse an offer. As per New Oxford Illustrated Dictionary, Volume II, p.1421, the word `refuse' means - say or convey by action that one will not accept, submit to, give, grant, gratify consent. The dictionary meanings of the word `withdraw' are as follows:

1. The Law Lexicon (Third Edition, 2005) - to take back or away something that has been given, allowed, possessed, experienced or enjoyed; to draw away.

2. Black's Law Dictionary (Eighth Edition, p.1632) - the act of taking back or away, removal; the act of retreating from a place, position or situation.

3. New Oxford Illustrated Dictionary (Volume II, p.1894) - pull aside or back, take away, remove, retract; retire from presence or place, go aside or apart.

The above extracted meanings of two words (refuse and withdraw) bring out sharp distinction between them. While the word `refuse' denotes a situation before acceptance of an invitation, offer, office, position, privilege and the like, the word `withdraw' means to retract, retire or retreat from a place, position or situation after acceptance thereof. Therefore, Section 15(2) of the Act does not per se apply to a case where an arbitrator appointed by a party to the agreement declines to accept the appointment or refuses to arbitrate in the matter. Of course in a given case, refusal to act on the arbitrator's part can be inferred after he has entered upon arbitration by giving consent to the nomination made by either party to the agreement".

N. Murali Krishna, Sr.LO, HQ.

Legal Update:

Supreme Court's directive to political parties & Election Commission to de-criminalise political arena

(1) Political parties to update in their website criminal history of the selected candidates. **(2)** This information shall also be published in: (a) One local vernacular newspaper and one national newspaper; (b) On the official social media platforms of the political party, including Facebook & Twitter. **(3)** These details shall be published within 48 hours of the selection of the candidate or not less than two weeks before the first date for filing of nominations, whichever is earlier. **(4)** The political party concerned shall then submit a report of compliance with these directions with the Election Commission within 72 hours of the selection of the said candidate. **(5)** If a political party fails to submit such compliance report with the Election Commission, the Election Commission shall bring such non-compliance by the political party concerned to the notice of the Supreme Court as being in contempt of this Court's orders/directions.

[CP (C) No. 2192 of 2018 In W.P. (C) No. 536 of 2011. Rambabu Singh Thakur Vs. Sunil Arora & Ors. DOJ– 13.2.2020]