



# South Central Railway Lex Info – e Magazine (An in-house magazine from Law Branch)

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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, some important judgments on issues viz. regarding payment of compensation in land acquisition cases; time for filing written version in consumer complaint cannot be extended beyond 45 days; sexual harassment of women at workplace, - the Hon'ble High Court/Madras held that any misuse by women cannot be allowed; Pendency of criminal appeal cannot be a bar to take disciplinary action after conviction by lower court, etc. have been discussed. In addition to the above topics, the regular and useful issues in the columns viz. 'Yours Legally'- Child Adoption benefits in Railways, 'Difference Between' - Proprietary Concern & Partnership Firm, ABC of Acts - The RCT Act, 1987 and the topic on Right to Information Act, 2005-Series are also finding place.

N.Murali Krishna  
Sr. Law Officer/HQ

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

The RCT Act is to provide for the establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents and for matters connected therewith or incidental thereto. It extends to the whole of India. The scheme of the Act shows that it made provisions for establishment of Tribunal, its Benches, officers and staff, their term, eligibility, the jurisdiction, powers and authority of Tribunal, its procedure, execution of its orders and appeals. This Act contains 30 Sections accommodated in six Chapters.

**Chapter-II (Sec.3 to 12)** discusses about the establishment of RCT and its Benches. The RCT shall consist of a Chairman, four Vice-Chairmen and such number of Member (Judicial) and Member (Technical) as required under this Act. The Bench shall consist of one Member Judicial and one Member Technical. Sec.5 explains about the qualifications for appointment as Chairman, Vice-Chairman or other Member. For appointment as Chairman in the RCT, a person must be a High Court Judge or served as Vice-Chairman for at least 2 years or has been a Member of the Indian Legal Service holding the post of Grade-I or above, for at least 5 years, or any railway officer not less than that of a rank of a Joint Secretary of Government of India, having adequate knowledge of rules and procedure of claims and commercial matters relating to Railways with at least 5 years of experience. For Member Judicial, a person qualified to be a Judge of a High Court or Member of the Indian Legal Service holding the post of Grade-I or above of that service for at least 3 years. For Technical Member, a person for at least 3 years must have held a post under the Railway Administration equivalent to rank of Joint Secretary of Government of India having adequate knowledge of rules and procedure of and experience in claims and commercial matters relating to railways.

**Term of Office (Sec.7)** - This section prescribes term of office for the Chairman, Vice-Chairman and Member. The Chairman will hold office for 5 years from the date of his appointment or upto the age of 65 years. The appointment of the Chairman shall be made in consultation with the Chief Justice of India. Whereas the Vice-Chairman/Member will hold office for five years from the date of his appointment upto the age of 62 years.

**Chapter-III (Sec.13 to 15)**- Jurisdiction, Powers and Authority of Claims Tribunal. Sec. 13 of the Act is re-

garding the Jurisdiction, Power and Authority of the Tribunal. The powers relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for (i) compensation for loss, destruction, damages, deterioration or non-delivery of animals or good entrusted to a railway administration for carriage by railway; (ii) compensation payable under Sec. 82-A of the Railways Act or the rules made there under & (iii) In respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway and the claims under Section 124 of the Railway Act Railways will be liable if such accident has caused only for loss occasioned by (i) the death of a passenger dying as a result of such accident, (ii) personal injury and (iii) loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.' Section 124 of the Railways Act deals with the conditions where railway is liable for the fault. The conditions in which railways are liable are where an accident occurs either a collision between trains of which one is a train carrying passengers or the derailment of train or other accident to a train or any part of a train carrying passengers .

**Bar of jurisdiction (Sec.15)** - It expressly bars the jurisdiction of civil courts and other courts or authorities.

**Application to Claims Tribunal (Sec.16)** —A person seeking any relief in the matters referred u/s 13 may make an application to the Claims Tribunal in the form together with relied upon documents or other evidence and by such fee as prescribed under this Act.

**Limitation (Sec.17).**—The Claims Tribunal shall not admit an application for any claim— if is not made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway; in case of accident, if it is not made within one year of occurrence of the accident; and in case of freight or fare, if it is not made within three years from the date on which the fare or freight is paid to the railway administration:

**Appeals (Sec.23).**— An appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located. No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties. Every appeal shall be preferred within a period of ninety days from the date of the order appealed against.

### Exemption from disclosure of information:

Section 8 & 9 deal with various exemptions from disclosure of information under the RTI Act, 2005.

“**Section 8:** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen -

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; Exemption from disclosure of information.

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Infor-

mation Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.”

**Section 9:** “Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.”

Intelligence and Security organisations of the Central Government listed at Second Schedule of the RTI Act, as referred to in Section 24, are kept out of the scope of the RTI Act. Similarly, the State Governments are empowered to exclude the intelligence and security organisations established by them from the purview of the RTI Act, by notifying in the official gazette.

However, information pertaining to the allegations of corruption and human rights violations shall not be excluded. Information related to allegations of violations of human right shall be furnished with the approval of the CIC or SIC, as the case may be, within 45 days of the receipt of the request.

So far there have been four Amendments to the Second Schedule and there are 25 organisations as of now included therein.

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

### JOKE

An airliner was having engine trouble, and the pilot instructed the cabin crew to have the passengers take their seats and get prepared for an emergency landing. A few minutes later, the pilot asked the flight attendants if everyone was buckled in and ready. “All set back here, Captain,” came the reply, “except one lawyer who is still going around passing out business cards.”

## Sexual harassment of women at workplace: Madras High Court quashes misuse

The petitioner in WP.No.24290 of 2019 (henceforth referred as petitioner) was the Deputy Registrar of Trade Mark & GI, in Chennai and the lady Assistant Registrar (henceforth referred as complainant) preferred a complaint dated 02.12.2013 against him to the Registrar and Controller General of Trade Marks and GI and Patents and Design. The complaint basically was on the high handedness, arrogance etc. of the petitioner. The Registrar and Controller General of Patents (2nd writ petitioner in WP.No.10689 of 2019) on his part responded vide his letter dated 16.07.2014 constituting an Internal Committee (IC, hereinafter) on sexual harassment at work place.

In another complaint dated 30.06.2015 the complainant had narrated many incidents about the petitioner. The word 'sexual harassment' was repeatedly used in this 2nd complaint, unlike the first one. Subsequently, the complainant also wrote a letter to the Tamil Nadu State Commission for Women stating her apprehension that the IC would not render justice to her and that all the members were subordinate to the petitioner, and therefore her complaint to be referred to the Local Committee (LC, hereinafter). On the date of proceedings (17.02.2016) of LC, constituted by the Social Welfare Department (Tamil Nadu State Government) the complainant appeared and gave a written complaint, while the petitioner did not present himself, though he had given reasons for his non-appearance.

In the meanwhile, the Director of Ministry of Commerce and Industry also appointed one Smt. Sunita Yadav, Director, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry as the Chairperson of the Sexual Harassment Committee vide its letter dated 22.12.2015. This was in response to the objections of the complainant on the composition of the IC. On 30.12.2015, the District Social Welfare Officer forwarded the letter of the aggrieved complainant to the Controller General of Trade Marks requesting to expedite the enquiry on her complaint, but since it was not allegedly acknowledged, the District Social Welfare Officer conducted an enquiry on 17.02.2016 after obtaining a written complaint from the complainant which was hand written and elaborate in nature. The Proceedings of the said enquiry was intimated vide letter dated 25.02.2016 and it found that prima facie case is made out under Sec 3(2)(iii)(iv)(v) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the Act 2013, hereinafter).

Hence, the LC recommended an immediate detailed departmental enquiry against the petitioner by his employer. The petitioner had replied to the District Social Welfare Officer on 28.04.2016 stating that he also ought to have been heard and also that two parallel proceedings cannot be construed as legally valid. The complainant vide her letter dated 16.11.2016 objected to the new IC also, stating that except for the Chairperson who was changed, the others remained the same. She felt that no justice could be expected from the Committee

and therefore, approached the CAT, Madras Bench in OA/310/00340/2017 to declare that the constitution of the IC is invalid. The CAT, Madras Bench concluded that LC had already conducted a preliminary enquiry and that the IC formed by the employer is against law due to the sole reason that the petitioner himself was the HOD and therefore a complaint against him can be enquired into only by the LC. The appeal against this order in RA.301/00015/ 2018 by the petitioner was dismissed by the CAT, Madras Bench.

**HC held:** (1) Order of LC is cryptic without recording statements of the complainant and others. (2) Absolutely, there is no material to show that the petitioner was actually served with a copy of the orders so as to enable him to file an appeal under Section 18 of the Act. (3) The complaint dated 30.06.2015 gives an appearance as to that instructing a woman employee to do something officially or even scolding a woman employee itself is sexual harassment. (4) The enquiry has to be a full fledged one, not a preliminary one under the Act 2013. (5) It is also mandatory for the person accused to be provided an opportunity to defend himself. (6) When the formation of the IC itself is not decided by the petitioner, terming him as the employer does not have any logic. (7) The complainant's complaint dated 17.02.2016 before the LC smacks of tutoring and lacks details of alleged incidents. This complaint is an after-thought. (8) A solitary allegation of intemperate language against a female employee does not constitute an offence under the Act 2013. (9) The defiant attitude of the complainant in not attending the IC hearing and the metamorphosis of the original complaint into a sexual harassment one before the LC expose the real intentions of the complainant. The complainant was well aware of the IC and ought to have faced it, had her complaint been true. Instead, approaching the Tamil Nadu State Commission for Women and giving a different picture there, are all perplexing. Thus, the decision of the IC in not taking cognizance of the LC order, was reasonable. (10) The CAT, Madras Bench had erred in concluding that the petitioner was the employer and therefore, the IC would not have any relevance. (11) The LC gave an erroneous decision with a non-speaking order which is also ex parte. The complainant, it appears, made a futile attempt to settle her personal score with the petitioner. (12) Every office has to maintain a certain decorum and women employees cannot be allowed to go scot free without completing their assignments. The Administrative Head or the Chief has every right to extract work and he or she has his or her own discretion and prerogatives. If a woman employee is discriminated against due to her inefficiency or for any other official reasons, the recourse for her is not the one taken by this complainant. Though the Act 2013 is intended to have an equal standing for women in the work place and to have a cordial workplace in which their dignity and self-respect are protected, it cannot be allowed to be misused by women to harass someone with an exaggerated or non-existent allegations. [Madras High Court, W.P Nos. 10689, 24290 and 4339 of 2019. DOJ - 17.2.2020]

K. Phaniraj, ACM/M&D

## Supreme Court clarifies on payment of compensation in Land Acquisition cases

*Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* came in to effect from 01.01.2014 replacing the erstwhile Land Acquisition Act, 1894. However, S.24(2) is a bone of contention as it states that if the physical possession of the land has not been taken or the compensation has not been paid, then said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the new Act.

In 2014, a three judge bench in Pune Municipal Corporation case [(2014) 3 SCC 183] held that deposit of compensation in government treasury cannot be regarded as payment as per Section 24(2) and hence land acquisition proceedings under the 1894 Act will lapse. In 2017, another bench doubted its correctness in Indore Development Authority case [2018 SCC Online SC 100]. Finally, matter was referred to a larger bench of 5 judges of the Supreme Court for clarification.

The larger bench held that proceedings under the Land Acquisition Act 1894 do not lapse if the compensation has been tendered by deposit even if in government treasury. The obligation to pay compensation is complete on government tendering the amount. There is no need to actually deposit the amount with the land owners or in the concerned Court. The Apex Court further held that land owners cannot insist that the amount should be deposited in Court so as to sustain the land acquisition proceedings under the old Act since deposit in treasury in place of deposit in court causes no prejudice to the landowner or any other stakeholder as their interest is adequately safeguarded by the provisions contained in Section 34 of the Act of 1894.

The questions referred to the Constitution Bench were answered as follows:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of 5 years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for 5 years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for 5 years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for 5 years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of 5 years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition. [Indore Development Authority Vs. Manoharlal & Ors. etc. S.L.P. (C) Nos.9036-9038 of 2016] DOJ: 06.03.2020]

N.Murali Krishna, Sr.LO/HQ/SCR

### Time for filing Written Version in consumer complaint cannot be extended beyond 45 days

Section 13 (1) (a) and S. 13 (2) (a) of the Consumer Protection Act, 1986, for complaint related to goods and services respectively, warrants filing of Written Version by Opposite Party within 30 days or such extended period not exceeding 15 days.

In this regard the law was laid down way back on 06.08.2002 in re Dr. J. J. Merchant Vs. Shrinath Chaturvedi (2002) 6 SCC 635 by a three-judges Bench of the Hon'ble Supreme Court that the Consumer Fora do not have the power to extend the time limit beyond 45 days for filing of Written Version by the Opposite Parties.

However, in a later case of Kailash Vs. Nanhku, the Hon'ble Supreme Court while dealing with an election case under the Representation of Peoples Act, 1951 and while considering the provision under Order VIII Rule 1 of the CPC, it was held the same to be directory and not mandatory, since the consequences flowing from non-extension of time were not specifically provided in the CPC.

In fact the decision in the said case had no bearing on the CP Act. However, since a reference was made thereafter to the Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. [Civil Appeal Nos.10941-10942 of 2013], it was held on 04.12.2015 that the law laid down in Dr. J.J.Merchant is the correct view.

It was also held therein that the earlier decision in Dr. J.J.Merchant was binding on the co-equal Bench which decided Kailash (supra). To arrive at the said decision, Hon'ble Apex Court has relied on its earlier order in Central Board of Dawoodi Bohra Community & Anr. Vs. State of Maharashtra & Anr. [(2005) 2 SCC 673], wherein a question had arisen whether the law laid down by a Bench of a larger strength is binding on a subsequent Bench of lesser or equal strength.

It is also noteworthy that the Hon'ble Supreme Court has further reiterated on 04.3.2020 that the law laid down in New India Assurance (supra) and J.J.Merchant (supra) shall hold the ground and no extension beyond 45 days can be granted by the Consumer Fora for filing of Written Version.

Another issue considered by the Supreme court was "What would be the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act, 1986?" The Apex Court answered that the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act would be from the date of receipt of the notice accompanied with the complaint by the opposite party, and not mere receipt of the notice of the complaint. [Civil Appeal No.10941-10942 of 2013 & other tagged CAs. New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. DOJ-04.03.2020]

D.R.V.S.S.S.N . Raju, CLA/G/BZA

### JOKES

\* A man was sent to Hell for his sins. As he was being taken to his place of eternal torment, he passed a room where a lawyer was having an intimate conversation with a beautiful young woman. "What a rip-off," the man muttered. "I have to roast for all eternity, and that lawyer gets to spend it with a beautiful woman." Jabbing the man with his pitchfork, the escorting demon snarled, "Who are you to question the woman's punishment?"

\* God decided to take the devil to court and settle their differences once and for all. When Satan heard this, he laughed and said, "And where do you think you're going to find a lawyer?"

### Legal Update:

#### Scope of court to intervene in disciplinary proceedings

In Union of India Vs. P. Gunasekaran [(2015) 2 SCC 610] Supreme Court held: "13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

The above order was reiterated by the Apex Court recently [State of Karnataka & Anr. Vs. N. Gangaraj. Civil Appeal No. 8071/2014. DOJ - 14.02.2020].

### Difference Between:

#### Proprietary Concern & Partnership Firm

A business organisation in which only one person is the owner / operator of the business is Sole Proprietorship, whereas in Partnership Firm 2 to 100 partners are associated. Proprietary Concern is not governed by any specific statute whereas Indian Partnership Act, 1932 governs Partnership Firms. The owner of Proprietary Concern is known as sole proprietor / trader whereas all individuals in partnership firm are called partners. Incorporation is not required for Proprietary Concern whereas it is voluntary for Partnership Firm. In Partnership Firm, profit / risk of business is shared by partners in the agreed ratio, whereas sole proprietor is benefitted with the whole profit and saddened with total losses.

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

### Pendency of criminal appeal not a bar to take disciplinary action after conviction by lower court

The respondent a Development Officer working in LIC. On 16 February 1996, a charge-sheet was served on the respondent alleging that certain life insurance policies were issued on non-existing persons based on his certification.

A disciplinary inquiry was convened in which the respondent participated. The inquiry officer, in his report noted that the respondent had unconditionally accepted the charges and the charges against the respondent were held to be proven. The disciplinary committee held the respondent guilty of misconduct and imposed the penalty of reducing his basic pay to the minimum of the time scale.

Meanwhile, a Criminal prosecution was instituted by the Central Bureau of Investigation against the respondent and two other employees of the appellant before the Court of the Special Judge, CBI. The respondent was prosecuted for offences under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and Section 120B read with Sections 420, 467, 468 and 471 of the Penal Code. The respondent was convicted of all the offences and sentenced to two years of rigorous imprisonment along with a fine of ₹ 5,000 per offence. The respondent preferred a criminal appeal before the High Court challenging his conviction and the High Court suspended the sentence till disposal of the appeal by the High Court.

Based on the conviction by the Special Judge, CBI, LIC issued a notice to show cause to the respondent proposing to impose the penalty of removal from service. The notice to show cause was challenged by the respondent before a Single judge of High Court, which was dismissed. However, in a Letters Patent Appeal the Division Bench restrained LIC from passing final orders on the notice to show cause pending disposal of the criminal appeal. Against which LIC preferred a Special Leave Petition before Supreme Court.

The Supreme Court observed that the respondent has been convicted and sentenced to two years of rigorous imprisonment by the Special Judge, CBI for offences under the Prevention of Corruption Act. The conviction of the respondent has not been stayed and it is only the sentence which has been suspended. The law on this point is well settled. While the court hearing a criminal appeal does have the power to suspend the conviction in appropriate cases, this is an exceptional power which can be exercised only when the attention of the court is drawn to the consequences which may ensue if the conviction is not stayed.

The apex court further considered the decision in *Dy Director of Collegiate Education (Admn) v S Nagoor Meera* [(1995) 3 SCC 377] wherein it was held that “..taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant accused has been released on bail pending the appeal”.

In *K C Sareen v CBI* [(2001) 6 SCC 584] it was held that “12. ...When a public servant who is convicted of

corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself...”

Considering the law laid down, the Supreme Court held that in the present case, following the conviction of the respondent by the Special Judge CBI, the appellant (LIC) was acting within jurisdiction in issuing a notice to show cause under the Regulations. The single judge was correct in dismissing the special civil application filed by the respondent challenging the notice to show cause issued by the appellant. The judgment of the Division Bench restraining the appellant from taking a final decision on the show cause notice pending the disposal of the criminal appeal has no valid basis in law. Holding so, the appeal filed by the LIC was allowed and the judgment and order of the Division Bench was set aside. [Life Insurance Corporation of India Versus Mukesh Poonamchand Shah, Civil Appeal No. 1804 of 2020, DOJ: 25.2.2020]

J. Srinivas, SPO/Co-ord/SCR

### KNOW OUR CONSTITUTION

#### Article 29: Protection of interests of minorities

- 1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- 2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

### KNOW THE LESSER KNOWN:

#### ORDINARY TICKET PURCHASED WOMEN AND CHILDREN TRAVELLING ALONE CANNOT BE INSISTED TO LEAVE RESERVATION COMPARTMENT AFTER DAY TIME

##### Section 139 in The Railways Act, 1989

139. Power to remove persons.—Any person failing or refusing to pay the fare and the excess charge referred to in section 138 may be removed by any railway servant authorised in this behalf who may call to his aid any other person to effect such removal: Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket: Provided further that a woman or a child if unaccompanied by a male passenger, shall not be so removed except either at the station from where she or he commences her or his journey or at a junction or terminal station or station at the headquarters of a civil district and such removal shall be made only during the day.

## YOURS LEGALLY

### Child Adoption benefits in Railways

Adoption is the practice in which an adult assumes the role of parent for a child who is not the adult's biological offspring.

**Religious contour of adoption:** In India, the only codified law available for adoption is the Hindu Adoption and Maintenance Act (HAMA), 1956 and it is applicable to Hindus, Buddhists, Jains and Sikhs. It is not applicable to Parsis, Muslims, Christians, or Jews. Under the Guardian and Ward Act, persons belonging to the Muslim, Christian, Parsi or Jewish community, if they wish to adopt, can become guardians. And the legal connection between child and parent ends when the child becomes an adult.

Islamic Law professes what is known as the "Kafala" system under which the child is placed under a 'Kafil' who provides for the well being of the child including financial support and thus is legally allowed to take care of the child though the child remains the true descendant of his biological parents and not that of the "adoptive" parents.

However, Supreme Court in Shabnam Hashmi case ruled that any person, irrespective of religion, caste and creed, was free to adopt children under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and that personal law could not prevent anyone from adopting a child.

**[Shabnam Hashmi Vs. Union of India & Ors. Writ Petition (Civil) No. 470/2005. DOJ - 19.02.2014]**

**CG Appointment:** RBE 106/1988 dated 20.05.1988 laid down the following conditions for considering adopted son/ daughter for CG appointment:

- i] There is satisfactory proof of adoption valid legally;
- ii] The adoption is legally recognized under the personal law governing the railway servant &
- iii] The legal adoption process has been completed and has become valid before the date of death / medical de-categorisation / medical incapacitation [as the case may be] of the ex-employee.

**Adoption validity:** RBE No. 91/2006 extracted Sections 10 & 11 of HAMA, 1956.

Section 10 -

Persons who may be adopted- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely :-

- i) he or she is a Hindu ;
- ii) he or she has not already been adopted ;
- iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption.
- iv) he or she has not completed the age of fifteen years unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

Section 11 - Other conditions for a valid adoption -

In every adoption, the following conditions must be complied with:

- i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son [whether by legitimate blood relationship or by adoption] living at the time of adoption ;
- ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption ;
- iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty one years older than the person to be adopted ;
- iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty one years older than the person to be adopted ;
- v) the same child may not be adopted simultaneously by two or more persons;
- vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption;

Provided that the performance of datta homam shall not be essential to the validity of an adoption.

**Paternity Leave:** With effect from 22.07.2009 PL for 15 days can be sanctioned to male employees in case of valid adoption of a child below one year. It can be availed within 6 months from the date of adoption.

**Child Adoption Leave:** 180 days for female employees with less than 2 surviving children for adoption of child of less than 1 year of age. Maybe combined with any other type of leave as in Maternity Leave.

**DCRG:** As per Rule 70 (5) of RS (Pension) Rules, 1993, adopted sons and daughters are eligible.

**Family Pension:** Family Pension Scheme for Railway Servants, 1964 (Rule 75 of RS (Pension) Rules, 1993) entitles an adoptive son/ daughter, subject to priority list.

In addition to the above, adopted children are eligible for other benefits such as inclusion in Privilege/ School Pass/PTO, medical aid, CEA/ Hostel Subsidy, other settlement dues etc.

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

### Legal Maxims

**Interest republicae ut sit finis litium** - It is in the interest of the State that there be an end to litigation.

**Interim** - Temporary, in the meanwhile.

**Jus naturale** - Natural justice.

**Mandamus** - We command.

**Nexus** - Connection

**Nisi** - Unless

*Contd.. from last issue:*

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

The legislative policy embodied in Sections 14 and 15 of the Act is to facilitate the parties to resolve the dispute by way of arbitration. The arbitration clause if clearly spells out any prohibition or debarment, the court has to keep its hands off and there is no question of persuading or pressurising the parties to resolve the dispute by a substitute arbitrator. Generally, this stands out as an exception and that should be discernible from the language of the arbitration clause and the intention of the parties. In the absence of such debarment or prohibition of appointment of a substitute arbitrator, the court's duty is to give effect to the policy of law that is to promote efficacy of arbitration. [ACC Limited Vs. Global Cements Ltd., (2012) 7 SCC 71]

### Section 16: Competence of Arbitral Tribunal to rule on its jurisdiction:

The common legal principles i.e principles of natural justice is very categorical and states that no one shall be judge for his own cause. However, arbitration law is an exception to this. Arbitral tribunal itself is empowered to rule on its jurisdiction. Party challenging the jurisdiction of arbitral tribunal has to satisfy the arbitral tribunal as to its incompetency to adjudicate the disputes brought before it. At one time, the law was that the arbitrator, being a creature of the contract, could not rule on the existence or validity of the arbitration clause contained in the contract. This, however, gave way to the Kompetenz principle which was adopted by the UNCITRAL Model Law. Article 16 of the UNCITRAL Model Law, on which Section 16 of the A&C Act is based. [IFFCO Ltd Vs. Bhadra Products, (2018) 2 SCC 534].

Section 16 of the Act lays down that the arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose; (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and (b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

This kind of having to rule over its own jurisdiction by an arbitral tribunal or court is known as the rule of *Kompetenz- Kompetenz*. In tune with UNCITRAL Model Arbitration Law, Indian Arbitration and Conciliation Act, 1996 has been promulgated and this rule also introduced in the arbitration law of the Country for the first time. The doctrine of *kompetenz-kompetenz* indicates that an arbitral tribunal is empowered and has the competence to rule on its own jurisdiction, including determining all jurisdictional issues, and the existence or validity of an arbitration agreement. The underlying object of this doctrine is to minimize judicial intervention in order to ensure that the arbitral process is not thwarted at the very

threshold, merely because a preliminary objection is raised by one of the parties.

The doctrine of *kompetenz --kompetenz* is, however, subject to the exception i.e. when the arbitration agreement itself is impeached as being procured by fraud or deception. This exception would also apply to cases where the parties in the process of negotiation, may have entered into a draft agreement as an antecedent step prior to executing the final contract. The legislative intent underlying the 1996 Act is party autonomy and minimal judicial intervention in the arbitral process. Under this regime, once the arbitrator is appointed, or the tribunal is constituted, all issues and objections are to be decided by the arbitral tribunal. [M/s. Uttarakhand Purv Sainik Kalayan Nigam Limited VS Northern Coal Field Limited, SLP (C) No. 11476 of 2018, 27.11.2019].

Section 16(1) to (4) are based on Article 16 of the UNCITRAL Model Law. The Kompetenz principle deals with the arbitral tribunal's jurisdiction in the narrow sense of ruling on objections with respect to the existence or validity of the arbitration agreement. What is important to notice in the language of Section 16(1) is the fact that the arbitral tribunal may rule on its own jurisdiction, which makes it clear that it refers to whether the arbitral tribunal may embark upon an inquiry into the issues raised by parties to the dispute. [IFFCO Ltd Vs. Bhadra Products, (2018) 2 SCC 534].

**Arbitration clause, whether part and parcel of main Agreement:** Generally, contract law stipulates that any agreement has to be read as a whole and no clause in the agreement has to be read in isolation. However, Arbitration & Conciliation Act, 1996 provides for severability of arbitration agreement from the rest of the agreement. Section 16 (1) states that the arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

N. Murali Krishna, Sr.LO, HQ.

### FAQ:

#### RECORD RETENTION SCHEDULE OF RTI FILES

- ◆ As per the "Record retention schedule in respect of records common to all Ministries/ Departments - 2012", issued by DAR&PG, RTI case files are to be retained for 3 years (C-3), excepting RTI cases attracting 2<sup>nd</sup> appeal which involves a remarkable decision.
- ◆ File pertaining to RTI cases attracting 2<sup>nd</sup> appeal which involves a remarkable decision to be retained for 5 years (C-5).
- ◆ File Register of RTI Applications i.e., records other than file are to be permanently retained, but without micro filming (B).

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