Lex Info

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(from Law Branch, South Central Railway)

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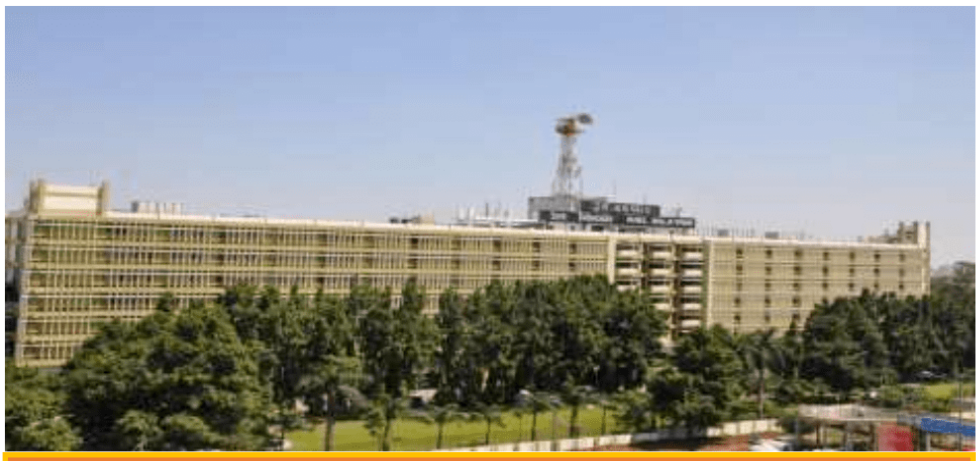
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Do you have any case law/case study to be shared with other railwaymen?

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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Vol -III **Issue - 9** **September, 2020**

Page No.	Article
2	The Legal Services Authority Act, 1987
3	Right To Information Series
4	Important RBEs issued during 2020
5	Difference Between: Contract of Service and Contract for Service FAQ: Dies-Non
6	i. Know the lesser known ii. About Termination/Discharge of contract iii. RTI Request Disposal -Time Limits at Glance
7	Yours Legally: Article on ' the Doctrine of Merger'
8	Treatise on Arbitration & Conciliation Act, 1996

Legal Maxim

The maxim Nullus commodum capere potest de injuria sua propria (No man can take advantage of his own wrong) is one of the salient tenets of equity and that in the normal course a party cannot secure the assistance of a Court of law for enjoying the fruit of his own.

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 Legal Services Authority Act,1987

An act to constitute legal services authorities to provide free and competent legal services to the weaker sections of society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to secure the operation of the legal system promotes justice on the basis of equal opportunity. This Act was enacted by the Parliament in the Thirty-Eighth year of the Republic of India . Yes this Act is applicable in whole India.

Sec.3 to 5 of Chapter-II provide for The National Legal Services Authority- Central Government constitute a Body to be called as National Legal Services Authority. It shall consist of -

1. The Chief justice Of India who shall be the Patron –in- Chief.

2. A serving or retired Judge of Supreme Court of India to be nominated by the President , in consultation with Chief Justice Of India , who shall be Executed Chairman .

3. Such members of other members possessing such experience and qualifications as may be prescribed by the Central Government to be Nominated by Government .

The Central Government shall appoint a person to be Member –Secretary of the Central Authority .

Supreme Court Legal Services Committee

The Central Authority shall constitute a Committee to be called as Supreme Court Legal Services Committee . It shall consist of :-

1. A sitting judge of Supreme Court who shall be the Chairman.

2. Such member of other members possessing such experience and qualifications as maybe prescribed by the Central Government.

3. The Chief Justice Of India shall appoint a Secretary to the Committee.

The Committee may appoint such member of officers and other employees as prescribed by the Central Government .

The functions of NALSA are- to lay down policies and principles for making Legal Services available under the provisions of the Act, to frame the most effective and economical schemes for the purpose of making the legal services available under this act, to utilize the funds at its disposal and make appropriate allocations of funds to the State authorities and District authorities, to take necessary steps by way of social justice litigation with regard to consumer protection ,environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose give special training to legal workers, to organize legal aid camps specially on rural areas ,slums or labour colonies with the dual purpose of educating weaker sections of society as to their rights as well as encouraging of settling their disputes through Lok Adalats, to encourage the settlement of Disputes by ways of negotiation, conciliation and arbitration, to undertake and promote research in the field of legal services with special references to need for such services among poor, to do all things necessary for the purpose of ensuring commitment to the fundamental duties of the citizens, to monitor and evaluate the implementation of the legal aid problems at specific periodical intervals for independent evaluation of programmes and schemes implemented, to provide grants in aid for specific schemes to various voluntary social services institutes working at grass root level specially amongst SC and ST, women and rural and urban labour, to develop programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges , etc.

Sec.6 to 11B of Chapter-III provide for State Legal Services Authority, High Court Legal Services Authority, District Legal Services Authority and Taluk Legal Services Authority - In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman. High Court State Legal Services include a Chairman who is a sitting High Court judge, members to be nominated by Chief Justice of High Court, a Secretary. The functions of State Authority are to give legal services to persons who deserve it, to conduct Lok Adalats, to undertake preventive and strategic legal aid programmes.

To be contd. in next issue.....

V. Apparao, CLA, GM/O/SCR

RTI Series

Contd. from last issue….

The competent authority of the respondent may have taken the decision keeping in view of the overall interests of the respondent. It is, therefore, not for any employee, how-so-ever he may be affected, to know as to why or how the decision was taken by the competent authority. The disclosure of such information is not in the public interest as the appellant has asked for the information for promotion of his personal interest. Therefore, the CPIO is justified in denying the information sought, u/s 8(1)(j) of the Act. The information seeker, being an employee of the respondent, is a part of the information provider. Under the RTI, the employees are not expected to question the decisions of the superior officers in the garb of seeking information. Such employees have access to internal mechanisms for redressal of their grievances. Unfortunately, a large number of the govt. employees are seeking information for promotion of their personal interest. This is done on the pretext of serving the public cause, without realizing the extent of distortions that it causes in use of public resources due to putting up frivolous applications by them for self-interest. This appeal is in no way exception. In the instant case, the information seeker and the provider being part of the same system should work together for evolving approaches to remove irritants in their mutual interaction, as a lot of public resources devoted to provide service to the entire Indian community is thus un-productively used.

More orders on Section 8(1(j): Salary details:

There is a widespread mis-concept that wages paid to employees are third party information and the details are hence personal to them. But it is crucial to note that the salary details are open to public and are required to be placed in the website of the employer u/s. 4 (1)(b)(x) of the RTI Act, 2005. S.4 is generally signified as pro-active disclosure section. In Ms Manisha Vs. Integrated Headquarter of Army, MOD [Appeal No. CIC/WB/A/2007/001636-SM dated 20.12.2007] the Appellant had requested the CPIO for information regarding the monthly salary details of Capt. Naresh Kundu. The CPIO denied the information treating it as personal information exempt from disclosure u/s 8(1) (j) of the RTI Act. Against this, the Appellant preferred the first appeal before the Appellate Authority who upheld the decision of the CPIO. She had approached the CIC in second appeal and submitted that as the wife of Capt. Kundu, she had the right to know about his salary details. The Respondents argued that the salary details of their officers could not be shared with anyone else as it would amount to invasion of that officer's privacy and, in any case, this was personal information having no bearing on public interest. The Appellant referred to a decision of the CIC in a similar case, namely, Appeal No.38 CIC/MA/A/2008/00332 dated 22.05.2008 (Vishnu Bhagwan Sharma Vs Department of Posts) in which the Appellant had sought information about the salary details of an employee.

The CIC had held as follows. As per S.4(1)(b)(x) of the Act, the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations should be put in public domain. The CPIO is, therefore, directed to examine the application for information in the light of the above provision and accordingly furnish the information. If the Public Authority concerned has not done so yet, it must immediately place such details in the public domain. We direct the CPIO and the Appellate Authority to provide the information. However, there are orders of CIC which barred revealing of deductions made from the salary as the same are savings of the employee and hence personal information, being exempted u/s. 8 (1) (j). In Raj Pal Goel Vs. PIO, EPFO [CIC/EPFOG/A/2018/101369] the CIC had brushed aside the reliance placed by the CPIO on the judgement of Supreme Court in Girish Ramchandra Deshpande Vs. Central Information Commission & others in SLP (Civil) No. 27734 of 2012 and Canara Bank Vs. C.S. Shyam and another in CA No. 22 of 2009 for declining information to the appellant since the aforesaid judgements of the Apex Court did not discuss about the salary and deputation allowances paid to the employee.

The CIC observed therein: "…the way public servant spends his salary is matter pertaining to his personal freedom and it is his private information. Deductions from salary reflects a part of expenditure and thus shall not be disclosed to any person u/s 8(1)(j). Other information like his monthly salary along with allowances shall be given….."

CIC's earlier order dated 03.10.2017 in Smt. Jyoti Yadav Vs. AAI, Bhopal [Appeal No. CIC/AAOIN/A/2017/177149/MP] and order dated 31.10.2014 in Dr Dheeraj Kapoor Vs. Directorate of Health Services, GNCTD, New Delhi [File No.CIC/SA/A/2014/000494] also had laid down that the deductions from salary are not disclosable, the same being personal information covered u/s 8 (1) (j).

M.K. Shaji, CLA/RWF

IMPORTANT RBEs OF 2020

RBE No.08/2020 dated 20.01.2020:

Dept. of Pension & Pensioners Welfare (DOP&PW) has clarified that Railway servant / family member in the case of death of Railway servant or his discharge from service on account of invalidation / disability, is entitled to pension / family pension under the old pension scheme under Railway Services (Pension) Rules, 1993.

RBE No.12/2020 dated 28.01.2020:

Based on the clarification issued by DoP&T it is clarified that a railway servant who has been transferred to lower post before getting any promotion and got his pay protected becomes eligible for promotion in the new unit to same or lower level post than the grade / post / level in which he was employed prior to transfer: No promotional increment till he reaches to the level equal to the level from which he is transferred to a lower post, since it has the potential to create double / additional pay fixation benefits. The same treatment applies to transfer effected after promotion in the earlier post.

RBE No. 16/2020 dated 04.02.2020:

Consolidated guidelines regarding MACPS for Railway Employees.

RBE No. 24/2020 dated 21.02.2020:

Passes / PTOs in electronic format is included in the kinds of Passes / PTOs in Rule 4 of RSPR 1986.

RBE No. 28/2020 dated 03.30.2020:

In all cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the RS (Pension) Rules, 1993. Option to switch over from NPS to old pension scheme to be exercised by 31.05.2020. Those who do not opt for old pension scheme will continue to be covered by NPS. The option once exercised is final. The following categories of employees are eligible to opt for old pension scheme:

Result for recruitment declared before 01.01.2004 but offer of appointment and actual joining was delayed on account of police verification, medical examination etc.;

Some of the candidates selected through the common selection process were issued offer of appointments and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 01.01.2004 due to administrative reasons / constrains including pending Court / CAT cases;
Candidates selected before 01.01.2004 through a common competitive examination were allocated to different Departments / Organizations. While recruitment process was completed by some Departments / organizations on or before 31.12.2003 in respect of one or more candidates, the offers of appointment to the candidates allocated to other Departments / organizations were issued on or after 01.01.2004;

Offers of appointment to selected candidates were made before 01.01.2004 with a direction to join on or after 01.01.2004;

Offers of appointment were issued to selected candidates before 01.012004 and many / most candidates joined service before 01.01.2004. However, some candidates were allowed extension of joining time and they joined service on or after 01.01.2004, without affecting their seniority & The result for recruitment was declared before 01.01.2004 but one or more candidates were declared disqualified on the grounds of medical fitness or verification of character and antecedents, caste or income certificate. Subsequently, on review, they were found fit for appointment and were issued offers of appointment on or after 01.01.2004.

The following categories of employees are NOT eligible to opt for old pension scheme:

The employees whose names were included in a panel of selected candidates before 01.01.2004 for recruitment against vacancies occurring on or after 01.01.2004 and were accordingly, recruited on or after 01.01.2004;

An employee whose name was included in a panel of selected candidates prepared before 01.01.2004 for vacancies arising before and after 01.01l2004 but was actually appointed after 31.12.2003 against vacancy arising on or after 01.01.2004;

Employees who were selected against the vacancies pertaining to the period prior to 01.012004 on the basis of an advertisement / notification issued before 01.01.2004 or a written examination / interview held before 01.01.2004, but results were declared on or after 01.01.2004 &

Employees who joined on or after 01.01.2004 after they were granted extension of joining time on their own request and in accordance with the instructions issued by the DoP&T, their seniority was depressed on account of such extension of joining time to a batch for which the result for recruitment was declared on or after 01.01.2004.

M.K. Shaji, CLA/RWF

Difference between

Contract of Service and Contract for Service

In a "Contract of Service" an employee-employer relationship exists, whereas a "Contract for Service" lacks such a relationship and is carried out by an independent contractor. Many protective / welfare legislations do not apply for contract for service.

The difference between the both are summarized below:

Contracts of Service:

- Employer-Employee relationship.
- Usually a continuous relationship.
- Employer owes a duty of care to employees.
- The employer is vicariously liable for acts of employees.
- Protective / welfare legislations apply to the relationship.
- Wages/Salary payment method, since employee is on the payroll of the employer.

Subject of contract is to carry on continuous work.

Contracts for Service

- Employer-Independent Contractor relationship.
- A relationship based on the completion of a once-off piece of work.
- Employer owes a duty of care arising from occupiers' liability.
- The employer is not vicariously liable for acts of independent contractors.
- Most of the protective / welfare legislations do not apply.
- Various modes of payment, including lump sum per job.

Subject of contract is once-off job.

K. Gopinath, CLA, GM/O/SCR

FAQ

Dies-Non

The term "*dies-non*" is a shortened form of "*dies non jurisdicus*" which means a period during which no legal business is transacted or which is not reckoned for any purpose. In service jurisprudence *Dies-non* is only a concession for permitting the beneficiary thereof to have subsequent service in continuation of the period of service before the beneficiary proceeded on unauthorized absence. When a period is directed to be treated as "*dies-non*" then that period does not count for any service benefit including pension, increments, experience, seniority, eligibility for departmental examinations etc.

Dies-non is ordered: (1) When the official remains absent from duty without prior information (2) When on duty in office, the official leaves the office without proper permission & (3) The official remains in office, but refuses to perform duty assigned to him. Dies non cannot be marked for late coming.

When an employee is reinstated either in Appeal/ Revision [Rule 1343 R-II (FR 54)] or through a Court [Rule 1344 R-II (FR 54A)], the intervening period between date of dismissal/ removal from service/CR to date of reinstatement to be decided by the competent authority. If any reduction in wages is mooted, a 60 days' show -cause notice to be served on the employee notifying the quantum of wages proposed before effecting any cut in the wages for the interregnum. In other words, treating the intervening period as dies-non requires adherence to the above procedure.

RBE No. 79/2011 dated 03.06.2011 which circulated DoP&T's Office Memorandum No.13026/3/2010-Estt. (Leave) dated 22.06.2010 instructed as follows: "6. Comptroller and Auditor General have issued orders that the period of absence not covered by grant of leave shall have to be treated as "dies non" for all purposes, viz., increment, leave and pension. Such absence without leave where it stands singly and not in continuation of any authorized leave of absence will constitute an interruption of service for the purpose of pension and unless the pension sanctioning authority exercises its powers under Article 421, Civil Service Regulations [now Rule 27 of the CCS (pension) Rules] to treat the period as leave without allowance, the entire past service will stand forfeited."

Suspension period shall not be treated as dies-non since the same would warrant recovery of subsistence allowance already paid, which is not permissible. Suspension period can only be treated as suspension, duty or leave due.

K. Gopinath, CLA, GM/O/SCR

Know the lesser known

Rule 17 of Railway Services (Pension) Rules, 1993: Pensionary benefits to staff declared unfit. –

If a railway servant is unfit for his post but is retained in service in an alternative appointment under the provision of the code and subsequently becomes entitled to receive retirement gratuity or pension, he shall be given the option of accepting either of following, whichever he may, prefer-

(i) the gratuity or pension which he would normally be granted with reference to his total service taken together,

(ii) The sum of- (a) gratuity or pension which he would have been granted if he had been medically invalidated out of service instead of being retained in an alternative appointment at the end of the spell of his service; and (b) the retirement gratuity or pension which he would normally have been granted for the second spell of this service rendered in the alternative appointment:

Provided that if total qualifying service of the railway servant in both the spells of service taken together exceeds 33 years, the qualifying service in the second spell shall be reduced by the number of years by which total qualifying service in both the spells taken together exceeds 33 years and ordinary gratuity or pension and death-cum-retirement gratuity for the second spells of service shall be calculated with reference to the reduced qualifying service so calculated.

Termination/Discharge of Contract — Difference between S.52 and 36 of Contract Act, 1872 - Force majeure events: In case of occurrence of an event which renders performance of contract impossible, by virtue of S. 56, Contract Act, 1872, contract in such a case becomes void and parties are exempted from further performance thereof. However, in terms of S. 32 of Contract Act, parties may instead choose consequences that would flow on happening of an uncertain future event. Further, under S. 65 of Contract Act, a limited mechanism exists to ameliorate harsh consequences of frustration of contract. Furthermore, in order to mitigate the harsh consequences of frustration and to uphold the sanctity of the contract, the parties may choose to mitigate the risk by inserting force majeure clauses, in which case the matter would be governed by the clause in question. [South East Asia Marine Engg. & constructions Ltd. (SEAMEC Ltd.) v. Oil India Ltd., (2020) 5 SCC 164]

RTI REQUEST DISPOSAL: TIME LIMITS AT A GLANCE

i. 30 days from the date of receipt of request [S.7 (1)].

ii. 48 hours if information concerns life/ liberty [S.7(1)].

iii. 5 days shall be added to the response time, in case the application for information/appeal is given to APIO [S.5 (2)].

iv. 5 days shall be added to the response time, in case the application is transferred by one public authority to another public authority [S.6 (3)]. This does not apply to calling for information by one PIO to another PIO/official within the same public authority [S.5(4)].

v. If the interest of a third party is involved, then time limit will be 40 days [S.11(3)] (maximum period of 30 days + 10 days time [S.11(2)] given to the 3rd party to make representation).

vi. If the information relates to alleged human rights violation of II Schedule Intelligence & Security Organizations, then the information shall be furnished within 45 days, with the approval of the CIC.

vii. Failure to provide information within the specified period is a deemed refusal [S.7(2)].

The period intervening between the dispatch of intimation for payment of further fees and the payment of fees shall be excluded from the 30 days' time limit [S.7 (3)(a)].

NOTE: As per RB's Lr. No.RB/RTI/2017/CIC Advisory dated 07.06.2018, RTI related correspondences shall be sent through speed post with proper acknowledgement, tracking details or through registered A/D without fail.

JOKE

Guilty as Charged

In Fort Worth, Texas, I was hauled before the judge for driving with expired licence plates. The judge listened attentively while I gave him a long, plausible explanation.
Then he said with great courtesy, "My dear sir, we are not blaming you—we're just fining you."

YOURS LEGALLY

The Doctrine of Merger

The Doctrine of Merger is not a principle of constitutional law but having pan India application judicially though it is a common law theory founded on the principles of propriety in the hierarchy of justice delivery system.

In the case of Commissioner of Income-tax, Bombay Vs. M/s Amritlal Bhogilal and Co. [AIR 1958 SC 868] Supreme Court held that there can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced.

In the case of U.J.S. Chopra Vs. State of Bombay [AIR 1955 SC 633] it was held that a judgment pronounced by a High Court in exercise of its appellate or revision jurisdiction after issue of a notice and a full hearing in the presence of both the parties would replace the judgment of the lower court, thus constituting the judgment of the High Court the only final judgment to be executed in accordance with law by the courts below.

One case one decree:

The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time.

Stages of Special Leave Petition:

Stage of SLP and post-leave stage: The appellate jurisdiction exercised by the Supreme Court is conferred by Articles 132 to 136 of the Constitution. Articles 132, 133 and 134 provide when an appeal thereunder would lie and when not. Article 136 of the Constitution is a special jurisdiction conferred on the Supreme Court which is discretionary in nature and is divisible into two stages viz., 1. Disposal of prayer for special leave to file an appeal and 2. if leave to appeal is granted and the special leave petition is converted into an appeal.

Rules of Merger:

When an appeal is preferred which is decided by a modifying, reversing or affirming then such decision remains operative and capable of enforcement.

Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger.

If the order refusing leave to appeal is a speaking order it has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto.

Post Script: On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC."

I.V.V.R.P. Prasad, Sr.LO/HQ, PCPO/O/SCR

KNOW OUR CONSTITUTION

Article-33

Power of Parliament to modify the rights conferred by this Part in their application etc. Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organization established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

TREATISE ON **A & C Act, 1996**

Power of arbitral tribunal to issue interim orders:

Arbitration and Conciliation Act, 1996 has provided for interim measures at two stages. One by the Court u/s 9 (Which was covered in earlier issues) and another by the Arbitral Tribunal. Section 17 deals with interim measures ordered by arbitral tribunal. The original section as available in 1996 has been drastically amended in 2015 and also in 2019. Prior to 30.08.2019, the said section provides for an interim direction by an arbitral tribunal during the arbitration proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36. However, under 2019 amendment Act, w.e.f 30.08.2019 words "or at any time after the making of the arbitral award but before it is enforced in accordance with section 36" have been deleted, thereby restricting the power of the arbitral tribunal to interfere in the matter once the award is passed.

Under this Section, a party may, during the arbitral proceedings apply to the arbitral tribunal for a remedy in the following aspects:

(*i*) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(*ii*) for an interim measure of protection in respect of (*a*) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; (*b*) securing the amount in dispute in the arbitration; (*c*) the detention, preservation or inspection of any property which is subject-matter of the dispute in arbitration, and authorizing any person to enter in any land or building in the possession of any party, or authorizing any samples to be taken etc, which may be necessary or expedient for the purpose of obtaining full information or evidence; (*d*) interim injunction or the appointment of a receiver; (*e*) any other interim measure of protection which is just and convenient.

It is also to be noted that any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court. Under Section 9 of the Act, a party may, (i) before or (ii) during arbitral proceedings or (iii) at any time after the making of the arbitral award; but before it is enforced in accordance with section 36, apply to a court for interim relief. However, the tribunal's powers are restricted only during the arbitration proceedings and also to the subject matter of the dispute.

In ***M.D., Army Welfare Housing ... vs Sumangal Services Pvt. Ltd on 8 October, 2003 [(2004) 9 SCC 619]***, the Supreme Court held that a bare perusal of the provisions would clearly show that under S 17 of the 1996 Act the power of the arbitrator is a limited one. It cannot issue any direction which would go beyond the reference or the arbitration agreement. Furthermore, an award of the arbitrator under the 1996 Act is not required to be made a rule of court; the same is enforceable on its own force. Even u/s 17 of 1996 Act, an interim order must relate to the protection of subject matter of dispute and the order may be addressed only to a party to the arbitration.

Non Compliance of Interim orders of AT – Contempt:

The Delhi High Court in ***Sri Krishan v. Anand, [(2009) 3 Arb LR 447 (Del) (followed in Indiabulls Financial Services v. Jubilee Plots, OMP Nos.452-453/2009 Order dated 18.08.2009)]*** held that any person failing to comply with the order of the arbitral tribunal under section 17 would be deemed to be "making any other default" or "guilty" of any contempt to the arbitral tribunal during the conduct of the proceedings" u/s 27(5) of Act. The remedy of the aggrieved party would then be to apply to the arbitral tribunal for making a representation to the Court to mete out appropriate punishment. Once such a representation is received by the Court from the arbitral tribunal, the Court would be competent to deal with such party in default as if it is in contempt of an order of the Court, i.e., either under the provisions of the Contempt of Courts Act or under the provisions of Order 39 Rule 2A Code of Civil Procedure, 1908.

This ratio has been upheld by the Apex Court holding that S 17(2) was added by the Amendment Act 2015, so that the cumbersome procedure of an Arbitral Tribunal having to apply every time to the High Court for contempt of its orders would no longer be necessary. Such orders would now be deemed to be orders of the Court for all purposes and would be enforced under the Civil Procedure Code, 1908 in the same manner as if they were orders of the Court. ***[Alka Chandewar vs Shamshul Ishrar Khan (2017) 16 SCC 119]***

N. Muralikrishna, Sr.LO/SCR