



Lex Info

An E - Magazine
(from Law Branch, South Central Railway)

ADVISOR:

Chandrima Roy
SDGM

Editor-in-Chief

N.Murali Krishna,
Sr.Law Officer

Editors:

IVVRP Prasad,
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M.V.Ramana,
Law Officer/BZA Divn.

Asst. Editors:

K.Gopinath, CLA.
Shaji.M.K, CLA.
V.Appa Rao, CLA.

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;

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



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Legal Maxim

Nemo moriturus praesumitur mentire – A man will not meet his maker (God) with a lie in his mouth or in other words 'No man at the point of death is presumed to lie.' (This maxim is related to dying declaration).

ABC OF ACTS**The Legal Services Authority Act, 1987**

(Contd. from last issue...)

The District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman. Its functions are to co-ordinate the activities of Taluk Legal Services Committee and other legal services in the district, to conduct Lok Adalats in the district. The Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organize Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman having functions to coordinate the activities of legal services in the taluk, to organize Lok Adalats with taluk etc.

Sec.12 & 13 of Chapter-IV provide for entitlement to legal services. The criteria for giving legal services to persons who are entitled under this act are :-

1. To a member of Scheduled Tribe or Scheduled Cast
2. To a victim of trafficking in human beings or beggars
3. To women and children
4. To a person with disability
5. To a person being victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster.
6. To a person in custody, including custody in protective homes like juvenile home etc.
7. To a person whose annual income is less than 9 thousand rupees as prescribed by State Government and 12 thousand rupees as prescribed by Central Government.

Sec.19 to 22 of Chapter-VI provide for Lok Adalat - Lok Adalat is one of the Alternative dispute resolution mechanisms in India, it is a forum where cases pending or at pre litigation stage in a court of law are settled. They have been given statutory status under the Legal Services Authorities Act, 1987. Under this Act, the award (decision) made by the Lok Adalat is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law. If the parties are not satisfied with the award of the Lok Adalat (though there is no provision for an ap-

peal against such an award), they are free to initiate litigation by approaching the court of appropriate jurisdiction.

The composition of Lok Adalat- Central, State, District and Taluk Legal Services Authority has been created who are responsible for organizing Lok Adalats at such intervals and place.

Lok Adalat consists of :- A serving or judicial officers Or other persons as prescribed by Central Authority or State Authority or District Authority

The nature of cases brought in Lok Adalat are :- Any pending case, any matter which is falling within the jurisdiction of, and is not brought before any court in which Lok Adalat is being organized

The reference of cases by Lok Adalat-

By consent of both the parties to the disputes. One of the parties makes an application for reference. Where the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat. Compromise settlement shall be guided by the principles of justice, equity, fair play and other legal principles. Where no compromise has been arrived at through conciliation, the matter shall be returned to the concerned court for disposal in accordance with Law.

Award in Lok Adalat - After the agreement is arrived by the consent of the parties, award is passed by the conciliators. The matter need not be referred to the concerned Court for consent decree. Every award of Lok Adalat shall be deemed as decree of Civil Court. Every award made by the Lok Adalat shall be final and binding on all the parties to the dispute.

No appeal shall lie from the award of the Lok Adalat.

Permanent Lok Adalats - The basic features of a permanent Lok Adalat are identical to a Lok Adalat. There are, however, certain modifications made. The key difference is that a typical Lok Adalat can only be summoned occasionally and not on a daily basis, a permanent Lok Adalat is an established system which is operational throughout just like any other court or tribunal. The Legal services Authorities Act, 1987, which had established Lok Adalats, did not, at first, establish permanent Lok Adalat. It was the Amendment Act of 2002 that enabled the establishment of the first permanent Lok Adalat.

(to be contd..... in next issue)

V. Apparao, CLA, GM/O/SCR

RTI Series*Contd. from last issue....***More orders on S.8 (1) (j):****Copies of documents filed before authorities as per statute are disclosable:**

In the case of Rakesh Kumar Sharma Vs. Deputy Commissioner (VAT), Department of Trade and Taxes (F.No. CIC /SG /A 2009 /001563/ 4440 Adjunct, Appeal No. CIC /SG /A /2009 /001563, dated 13.08.2009), the applicant had sought certified copies of document filed at the time of registration including requests, letters and other related documents to the Trade and Taxes Department, NCT of Delhi.

The CIC directed to give the information to the appellant. The CIC had gone through the submission made by the PIO and the third party who contended that the information was exempted under Section 8(1)(a), 8(1)(d), 8(1)(e), 8(1)(g), 8(1)(h) and 8(1)(j) as it relates to commercial confidence and trade secret which can harm the third party and is personal in nature. The CPIO and the third party also raised the issue of information being provided to the department under fiduciary relationship. CIC held that none of the exemptions being claimed is applicable to the information being sought and therefore there is no justification for denying the information. The CIC ordered that the information sought may be provided.

Copies of own Confidential Reports (now APARs) to be provided:

In the case of N. Krishnamoorthy Vs. MTNL, Mumbai (F.No. CIC/AD/A/X/2009/000154, dated 24.3.2009), the applicant had sought for the copies of his own CRs (reporting and reviewing parts) for the 10 years spanning from 1998 to 2008 along with the copies of the certificates regarding completion of CR work and forwarding letters of the applicant's CR.

The CIC ordered for disclosure of information sought. The CIC referred to its full bench decision passed vide Order dated 19.02.2009 in appeal No. CIC/WB/A/2007/00422 concerning disclosure of ACRs and also referred to the Supreme Court's decision in Devdutt Vs. Union of India [Ors (2008)8 SCC 723] and decided that the complete information sought by the appellant, meaning certified copies of ACRs shall be provided.

Tour details, vehicle log books, purpose of visit, over-time payments in respect of officers involved in vigilance functions – Exempted rarely:

In the case of Nihar Ranjan Banerjee, CVO and B.N. Mishra, DGM (Vig.)/ Tech. Secretary to CVO, Coal India Limited Vs. M.N. Ghosh, the applicant had sought details regarding copies of the

hired car bills and over time bills for company owned cars being used by CVO and copy of the TA bills of DGM(Vig.) for his tours to Delhi and Nagpur.

CIC observed that ordinarily such information could not be withheld from disclosure as it related to a charge made on the budget of the public authority. However, keeping in view the specific set of circumstances, as it involved the functioning of Vigilance officers of the company, the exemption of the documents asked was allowed.

The matter came before the Commission as a review petition against Commission's order dated 25.05.2009 and it was argued by the petitioner that the disclosure of the information may endanger the physical safety of the concerned person revealing his locations and movement for which the state has arranged him security cover on advice of State Police and CBI. Moreover, an investigation in the matter is also going on besides this relates to personal information disclosure of which could cause unwarranted invasion in the privacy of the concerned person. Accordingly, exemption under Section 8(1)(g), 8(1)(h) and 8(1)(j) of the RTI Act were invoked.

It was also submitted by the petitioner that the information sought for by the appellant was intended to intimidate and cause embarrassment to the CVO, CIL and Dy.GM (Vigilance), CIL who investigated a complaint against the appellant leading to establishing submission of fraudulent documents for seeking public appointment. The tours undertaken by the officers are for the purpose of vigilance investigation and in relation to enforcement of law, disclosing all details would impede the process of investigation. Review petition also submitted that the information sought in so far as it is related to officers of the vigilance department has been treated as confidential under Section 124 of the Indian Evidence Act, as the officers perform sensitive duties and had to engage on a regular basis with their sources and witnesses sometimes at odd hours.

CIC held that there is ample consistency between Section 124 of the Indian Evidence Act and Section 11(1) of the RTI Act, read with Section 2(n) of the same. CIC agreed with the review petition that given the specific circumstances and conditions surrounding the set of information requested by the appellant, there is a distinct possibility that disclosure of the said information will compromise the functioning of the vigilance officers and may expose them to physical risk and intimidation and impairing their ability to carry out sensitive assignments. Disclosure may compromise the sources of information or assistance given in confidence for discharging of their law enforcement functions of the vigilance officers.

M.K. Shaji, CLA/RWF

Breach of Principles of Natural Justice: Is it always fatal?

Supreme Court very recently had an occasion to examine the effect of violation of Principles of Natural Justice. The termination of a contract by the U.P State Warehousing Corporation after successful completion of over one year of a two-year term was challenged by the contractor (Petitioner in the WP / Respondent No.1 in the CA) before the Allahabad High Court, praying for setting aside the Corporation's cancellation order.

The High Court, while allowing the WP, concluded that since the entire proceedings were conducted behind the back of Respondent No.1, and considering that the tender notice had never been challenged by anybody in a court of law, an *ex parte* appraisal of the complaints received was done in a hurry by the Managing Director of the Corporation and the learned Commissioner, and was liable to be set aside on several grounds, the single most important one – insofar as Respondent No.1 is concerned – being the breach of natural justice.

Thus, the challenge reached the Apex Court at the instance of the State. While usefully relying on many of its earlier orders, the Supreme Court quoted from the case of *State Bank of Patiala & Ors. Vs. S.K.Sharma [1996 (3) SCC 364]* which listed the following parameters w.r.t disciplinary inquiries / orders of punishment imposed on an employee:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the

prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar [(1993) 4 SCC 727]*. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between “no opportunity” and no adequate opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it ‘void’ or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query.

(to be continued in next issue.....)

M.K. Shaji, CLA/RWF

Difference between**FAQ****Gifts****Terms and Conditions**

Many think that the phrase “terms and conditions” as a legal doublet, and use the words interchangeably. But in reality, it is not so and the two are distinct words joined together to have different implications.

Conditions are those that must be satisfied before any transaction concludes between two parties, i.e the employer and the contractor. A condition is a clause that needs to be fulfilled in order for the transaction to be concluded. For example, in works contracts, inspection of site and satisfaction of the tenderer is a condition for submitting the tender. Qualifications, credentials, Submission of EMD, Performance Guarantee etc are conditions for tendering/entering into an agreement. Due diligence by the tenderer to verify is also another condition. Thus, a condition is an act or event that affects a party's contractual duty and conditions determine the parties' obligations. If a condition is not fulfilled, it will result in rejection of the tender/frustrate the contract.

On the other hand, terms are things that a party agree to do or not to do. Terms can be said to be the standards/specifications which the employer expects/wants the contractor to do. A term is something that must be fulfilled or carried out or else the two parties may pursue all remedies on each other. For example, GCC provides that the Railway reserves the right to carry out a post-payment audit and or technical examination of the works and the final bill including all supporting vouchers, abstracts etc. Also no payment of interest on retained/withheld amount of the Contractor is a term. A term gives rise to a contractual obligation, breach of which may give rise to litigation.

Hence, a condition is a clause that needs to be fulfilled in order for the transaction to be concluded, while a term is used to clarify what the other party expects to be done or included with the property.

K. Gopinath, CLA, GM/O/SCR

Joke

A new client had just come in to see a famous lawyer.

"Can you tell me how much you charge?", said the client.

"Of course", the lawyer replied, "I charge \$200 to answer three questions!"

"Well that's a bit steep, isn't it?"

"Yes it is", said the lawyer, "And what's your third question?"

Under Section 122 of the Transfer of Property Act, 1882, gift is defined as the transfer of any movable or immovable property which has been made by one person voluntarily and without any consideration to another person.

Gifts up to Rs 50,000 in a financial year are exempt from tax. However, if gifts higher than this amount are received, then the entire gift becomes taxable. If any property (movable or immovable) is received for inadequate consideration, the difference between the consideration and the stamp duty value would be considered as a taxable gift.

Tax on gifts from specified relatives is exempted, regardless of amount. These relatives are spouse, father, mother, brother and sister. They also include any lineal ascendant or descendant of the individual or his spouse as well as brother/sister of the spouse. Even though tax on the gift itself is exempt in the hands of the recipient, the income generated from the gift may be taxable under the clubbing of income provisions of the Income Tax Act. For example, if a person gifts Rs 10 lakh to his wife, the same would not be added to the income of his wife. However, if his wife creates an FD from the same and earns interest, the interest would be added to the income of the husband. All kinds of gifts including cash, gold, real estate, paintings or any other valuable item are taxable if the cash amount or value of the gift in kind is more than Rs 50,000/-. Normally, the donor is not liable to pay any tax on the property he has given up. However, in some cases, recipients are taxed under the head 'Income from other sources' under the Income Tax Act, 1961. Gifts are not taxed if they are received from relatives on the occasion of marriage, by way of will or inheritance, or from any local authority, fund or foundation registered under Section 12AA.

With reference to gift of immovable property, the same is liable to be registered u/s.17(a) of the Registration Act, 1908. Further, any gift once accepted by the recipient the same cannot be revoked by the donor. However, under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007, if any property is transferred by a senior citizen subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence.

K. Gopinath, CLA, GM/O/SCR

Know the Labour Law Reforms:

The Code on Wages, 2019

The Code on Wages, 2019 was introduced in Lok Sabha by the Minister of Labour, Mr. Santosh Gangwar on 23rd July, 2019. The Bill was passed by Lok Sabha on 30th July, 2019 and by Rajya Sabha on 02nd August 2019. The President's assent was received on 08.08.2019. It seeks to regulate wage and bonus payments in all employments where any industry, trade, business, or manufacture is carried out. The Code replaced the following four laws: (i) The Payment of Wages Act, 1936, (ii) The Minimum Wages Act, 1948, (iii) The Payment of Bonus Act, 1965, and (iv) The Equal Remuneration Act, 1976.

- **Coverage:** The Code will apply to all employees. The central government will make wage-related decisions for employments such as railways, mines, and oil fields, among others. State governments will make decisions for all other employments. The Code on Wages universalises the provisions of minimum wages and timely payment of wages to all employees irrespective of the sector and wage ceiling. In other words, the earlier application covering Scheduled Employments no longer applies and 100% workforce is covered from the existing about 40%.

- **Wages:** Include salary, allowances or any other component expressed in monetary terms including basic pay, dearness allowance, retaining allowance, if any. Wages exclude bonus, value of house accommodation, supply of light, water, medical attendance, contribution of the employer towards any pension / PF, conveyance / travelling allowance, HRA, Overtime allowance, any commission payable to the employee, terminal gratuity, retrenchment compensation / retiral benefit / ex-gratia payable at the time of termination etc. The definition of wages has been simplified in comparison with earlier 12 definitions in different labour laws, resulting in litigation and difficulty in implementation. Number of registers, returns, forms etc. which are to be maintained got reduced.

- **Floor wage:** Central Govt. will fix a floor wage taking into account living standard of workers. For different geographical areas different floor wages may be fixed, duly taking the advice of Central Advisory Board and State Governments.

- **Minimum wages:** To be higher than the floor wage. If the existing minimum wages fixed by the Central or State Governments are higher than the floor wage, then the minimum wages should not be reduced. Number of minimum wages will substan-

tially reduce from more than 2000 rates of minimum wages as was in existence.

- **Fixing minimum wage:** Paying wages less than the minimum wages is prohibited. Minimum wages will be notified by the Central or State Governments, based on time or production and will be reviewed at least once in less than 5 years. Skill of workers and difficulty of work are to be taken into account while fixing the minimum wages.

- **Overtime:** Normal working hours to be fixed by the Central or State Government and in excess of it will entitle for overtime wage, which must be at least twice the normal rate of wages.

- **Payment of wages:** Wages will be paid in (i) coins, (ii) currency notes, (iii) by cheque, (iv) by crediting to the bank account, or (v) through electronic mode.

- **Wage period:** Will be fixed by the employer as either: (i) daily, (ii) weekly, (iii) fortnightly, or (iv) monthly. For daily wages: The same to be paid at the end of the shift. For weekly basis: On the last working day of the week. For fortnightly basis: Before the end of the 2nd day after the end of the fortnight. For monthly basis: Before the expiry of the 7th day of the succeeding month. An employee who has been removed / dismissed / retrenched / resigned / unemployed due to closure of the establishment, should be paid the wages within two working days of his removal, dismissal, retrenchment, resignation or closure of establishment.

- **Deductions:** Under the Code, an employee's wages may be deducted on certain grounds including: (i) fines (ii) absence from duty (iii) accommodation given by the employer (iv) deductions for damages to or loss of goods entrusted or losses sustained (v) towards amenities provided (vi) recovery of advances/ loans given to the employee (vii) towards IT (viii) towards co-operative societies (ix) towards membership of any Trade Union etc. These deductions should not exceed 50% of the employee's total wage.

- **Determination of bonus:** All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus. The bonus will be at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. In addition, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20% of his annual wages.

(to be contd... in next issue)

M.K.Shaji,CLA/RWF

YOURS LEGALLY**Delay in filing appeals by Government –
Not accepted by the Apex Court**

An SLP was filed before the Supreme Court with a delay of 663 days. The Apex Court, while dismissing the said SLP observed as follows:

“It appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statutes prescribed. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 where the Court observed as under:

“12) *It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of*

limitation undoubtedly binds everybody including the Government. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years. Due to considerable degree of procedural redtape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.” Eight years hence the judgment is still unheeded!

A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.”

The special leave petition is dismissed as time barred in terms aforesaid. The Court made it clear that if the aforesaid order is not complied within time, the Court will be constrained to initiate contempt proceedings against the Chief Secretary. **[SLP (C) Diary No.9217/2020. The State of Madhya Pradesh & Ors. Vs. Bherulal].**

M.N. Vijitha, CLA/Gaz., PCPO/O/SCR

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

Section 18 - Equal treatment of parties: Chapter V of the Arbitration and Conciliation Act, 1996 deals with Conduct of arbitral proceedings containing Sections 18 to 27.

Though principles of natural justice is not formulated in a rule book, it is a well known judicial principle in our country that PNJ has ingrained in Indian jurisprudence. Commensurate with the said principle, Section 18 has been incorporated in the A&C Act, 1996. It states that the parties shall be treated with equality and each party shall be given a full opportunity to present his/her case. The Supreme Court equated "equal treatment to parties" as "fundamental policy of Indian law" u/s.34.

In *Associate Builders v. Delhi Development Authority* (2015) 3 SCC 49, the Supreme Court has dealt what would constitute the "fundamental policy of Indian law" under Section 34. At para 38, the apex court observed that "Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. The Audi Alteram Partem principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in Sections 18 and 34 (2) (a) (iii) of the Arbitration and Conciliation Act, 1996.

In *Satpal P. Malhotra and Others Vs. Puneet Malhotra and Others*, Mumbai High Court, Jun-14-2013, one of the parties challenged Arbitration award on the ground that he was not permitted to appoint advocate by the arbitrator. The High Court held that:

"Under section 18 of the Arbitration and Conciliation Act, 1996, it is provided that the parties shall be treated with equality and each party shall be given full opportunity to present his case. The record would indicate that the learned arbitrator did not allow either party to engage any advocate to represent them before him. If the learned arbitrator would have allowed the appellants to engage an advocate to represent them and would have rejected the application of the respondents to engage advocate, section 18 of the Act would have attracted in that situation. In my view, refusing to permit a party to engage an advocate in the arbitration proceedings by the arbitrator would not violate section 18 of the Arbitration and Conciliation Act, 1996. There was no violation of any equal treatment being given to both the parties by the learned arbitrator. Both the parties were given full opportunity to present their respective case including filing of written arguments. The learned arbitrator being family friend for 35 years and the dispute being family dispute and to avoid any further delay in the matter, in my view the learned arbitrator was right in exercising his discretion not to allow any of the parties to engage an advocate".

In *Pam Developments (P) Ltd Vs State of West Bengal*, CIVIL APPEAL NO. 5432 of 2019 [SLP [C] NO. 7383 of 2019], July 12, 2019, the Supreme Court while declining grant of stay to the Government, held that Section 18 since providing for equal treatment of parties, it would, make it clear that there is no exceptional treatment to be given to the Government while considering the application for stay under Section 36 filed by the Government in proceedings under Section 34 of the Arbitration Act. As such, under the scheme of the Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act.

N. Murali Krishna, Sr.LO/SCR

KNOW OUR CONSTITUTION**Article-34:**

Restriction on rights conferred by this Part while martial law is in force in any area notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.