



Lex Info

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(from Law Branch, South Central Railway)

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Legal Maxim

Obiter dictum –means “that which is said in passing,” an incidental statement. Specifically, in law, it refers to a passage in a judicial opinion which is not necessary for the decision of the case before the court. Such statements lack the force of precedent but may nevertheless be significant.

ABC OF ACTS**THE NATIONAL GREEN TRIBUNAL ACT, 2010
ACT NO. 19 OF 2010**

The National Green Tribunal is a specialized body set up under the National Green Tribunal Act, 2010 for the speedy disposal of civil cases that are related to environmental protection, conservation of forest and other natural resources. It consists of 38 Sections, 5 chapters and 3 schedules. The Act came into force on 2 June 2010.

Section 2(1)(a): “accident” means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance or equipment, or plant, or vehicle resulting in continuous or intermittent or repeated exposure to death, of, or injury to, any person or damage to any property or environment but does not include an accident by reason only of war or civil disturbance.

Section 2(1)(c): “environment” includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings other living creatures, plants, micro-organism and property.

Section 2(1)(f): “hazardous substance” means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991.

Section 2(1)(g): “injury” includes permanent, partial or total disablement or sickness resulting out of an accident.

Section 2(1)(m): “substantial question relating to environment” shall include an instance where there is a direct violation of a specific statutory environmental obligation by a person by which the community at large other than a individual or group of individuals is affected or likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable; the environmental consequences relate to a specific activity of a point of source of pollution.

Section 3 of the National Green Tribunal Act, 2010 deals with the establishment of the tribunal, where the central government by notification established the tribunal to exercise jurisdiction, powers and authority.

Section 4 of the Act deals with the Composition of the tribunal, It consists of, a full-time Chairperson Judicial members are not less than 10 and maximum up to 20 members or as per the Central government notification. Expert members are not less than 10 and maximum up to 20 members or as per

the Central government notification. A chairperson can invite one or two specialized people who know in that particular case. The Central Government can notify the territorial jurisdictions under the place of sitting. With the consultation with the chairperson, the Central government can make rules and regulations concerning the tribunal.

Section 5 deals with qualifications for appointment of chairperson, judicial member and expert member, The chairperson or judicial member of the tribunal- who is or has been a Judge of the Supreme Court of India or Chief Justice of the High Court. For Judicial members, they can also be judges of the High Court. Expert member- Has master of science, Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests in a reputed national level institution. The Chairperson, Judicial Member and Expert Member of the Tribunal shall not hold any other office during their tenure as such. The Chairperson will be appointed by the Central Government in consultation with the Chief justice of India and judicial and expert members will be appointed by the recommendation of the selection committee as per the prescribed guidelines.

Section 7 provides for the members of the tribunal (i.e) Chairperson, Judicial and Expert members can hold the office for a 5-year term from the date of joining and are not eligible for reappointment. In case, a Judge of the Supreme Court has been appointed as chairperson or judicial members their term period is up to attaining 70 years of age. In case, a Chief Justice of High court has been appointed as chairperson or judicial members their term period is up to attaining 60 years of age. In case, a high court judge is appointed as a judicial member his term period is up to attaining 60 years of age. Expert Members shall hold office till he attains the age of sixty-five years.

Section 10 provides for Removal and suspension of Chairperson, judicial and expert members: With the consultation of Chief Justice of India, the Central government can remove the Chairperson or judicial member of the tribunal, who, has been adjudged as insolvent has been convicted of an offence involves moral turpitude; has become physically or mentally incapable acted prejudicially in his functions abused his position to render his continuance in office prejudicial to the Public interest. The expert member can be removed from the office by the order of the Central Government on the same grounds. The expert member cannot be removed from the office unless he has been given an opportunity of being heard. (*.... to be continued in next issue...*)

V. Appa Rao, CLA, GM/O/SCR

RTI Series**.....Contd.. from last issue**

Section 2 (n) of the RTI Act 2005 defines “a person other than the citizen making a request for information and includes a public authority”. It is now well settled that even a PIO can claim himself to be a 3rd party and invoke Section 11 in appropriate cases.

Section 11 of the RTI Act, 2005 deals with Third Party information. The following are the necessary ingredients of Section 11:

1. The PIO provisionally intends to disclose any information or record to the RTI applicant;
2. The information “relates to or has been supplied by a third party and has been treated as confidential by that third party”;
3. The PIO to give written notice within 5 days of date of receipt of the RTI request to the applicant inviting the 3rd party to make an oral / written submission;
4. The PIO to keep in view the submission of the 3rd party;
5. Except in trade / commercial secrets protected by law, disclosure may be allowed if the public interest outweighs the possible harm / injury to the interests of the 3rd party;
6. The 3rd party to make his submission within 10 days;
7. The RTI request to be disposed of in 40 days’ time, when opportunity to represent was given to the 3rd party &
8. The 3rd party has a right to prefer an appeal under Section 19 against the decision of the PIO.

All the above requirements put together forms Section 11. However, it is to be borne in mind that refusal to furnish information cannot be resorted to under Section 11, but shall be based on appropriate provisions of Section 8 (1) or Section 9. Putting it simpler, objections, if any, by the 3rd party cannot be a ground for refusal. In other words, the 3rd party has no veto power to object supply of information sought for.

The appellant in a RTI request sought for information relating to the departmental inquiry against an officer (Shri X) which the CPIO treated as a third party information under section 11 of the Right to Information Act, 2005. The third party on being issued with a notice objected the request of the CPIO. Based on this objection the CPIO rejected the request for information by the applicant. The Commission went into the question whether the 3rd party has an automatic veto on disclosure of information.

The CPIO treated information sought by the appellant as third party information under Section 11 of the RTI Act and issued notice to Shri X, the third party for his willingness to disclose the information sought by the appellant. But Shri X objected to the disclosure of the information. Following the objection raised by the 3rd party, the CPIO rejected the application.

The First Appellate Authority also upheld the rejection

by the CPIO of the appellant's request. During the hearing in the appeal it turned out that the appellant was seeking information regarding the conduct and disposal of the disciplinary proceedings against Shri X (third party) because it is the appellant's apprehension that Shri X has been exonerated in a case in which the appellant has been punished, in spite of the facts, the witness and their depositions in the case being identical. Seen in this angle, the information in the disciplinary proceedings against Shri X has a bearing on the case of the appellant.

CIC noticed that the First Appellate Authority in this case had rejected the appellant's plea on two grounds. Firstly, the First Appellate Authority upheld that the information should not be disclosed since the third party had objected to it and secondly, that matters relating to inquiries and departmental proceedings could not be disclosed. The CPIO rejected the appellant's case under Section 11 (1) of the RTI Act. The appellate authority did not mention the provision of the RTI Act against which the appellant's request for information was tested. It is presumed that he was upholding the CPIO's conclusion that the appellant's request for information regarding Shri X's disciplinary case was to be examined under Section 11(1) of the Act.

Obviously, the implication of Section 8 (1) (j) for the appellant's case has been examined neither by the CPIO nor the appellate authority. It is important that the appellate authority applies his mind afresh to the circumstances of the appellant's case as well as the objection of the third party, Shri X's in terms of both Section 11(1) and Section 8 (1)(j) of the RTI Act. The appellate authority will need to form a clear opinion about whether the case attracted the “privacy” provision of Section 8 (1) (j) or/and the 'confidential entrustment' provision of Section 11(1) of the RTI Act. This should be done by properly assessing the facts and the circumstances of the case. A speaking order should thereafter be passed.

CIC emphasized that the RTI Act does not give to an individual or a third party an automatic veto on disclosure of information pertaining to him which may be held by a public authority. The PIO and the appellate authority are required to examine the individual or a third party's case in terms of the provision of Section 8 (1) (j) or Section 11(1) as the case may be and arrive at a finding. The CIC further held that the appellate authority has erred in holding that a mere objection by a third party to disclosure of an information is enough reason to embargo the disclosure of such information. The case was remitted back to the First Appellate Authority with the direction to issue fresh notices to the appellant and the third party and give a finding after examining all the aspects and circumstances of the case in terms of the two sections of the RTI Act which deal with third party information and personal information viz. Section 11 (1) and Section 8 (1) (j). [K.K. Mahajan Vs. Cantonment Board (Decision No. CIC/AT/A/2006/00014 dated 22.05.2006)]

M.K. Shaji, CLA/RWF

Whether employer will be liable for defamation of employee if departmental enquiry is conducted against him?

In the case of Hon'ble High Court of Calcutta CS No. 11 of 2006 decided on 17.02.2017 *Manik Lal Bhowmik Vs. Bharat Sanchar Nigam Limited* (Citation: MANU/WB/0098/2017), the defendant has taken the defence of privilege. The question is whether the charge-sheet issued against the plaintiff, the enquiry report and the letter of dismissal of the plaintiff can be said to be protected by absolute privilege or qualified privilege?

The plaintiff was appointed by the defendant as a Telecom Accounts Clerk on 19 October, 1973. Subsequently, he was promoted to the post of Senior Accountant with effect from 1 April, 1987. On verification of the Marks sheets and certificates in support of his educational qualification, it was found that the certificates submitted by the plaintiff are fake. Accordingly, an enquiry was held. In the enquiry, the enquiry officer found the charges to be proved and the Disciplinary Authority dismissed the plaintiff from service on 30 September, 1999. The plaintiff made various representations to the Ministry of Telecommunications and Technology, asserting his innocence and the genuineness of his educational qualifications but in vain. The plaintiff made a representation to the Hon'ble President of India. Basing on the advice tendered by the Union Public Service Commission for exoneration of Shri Manik Lal Bhowmik, the Hon'ble President ordered that punishment order, appellate order and revisionary order be quashed and Shri Manik Lal Bhowmik be re-instated with all benefits. The President has further ordered that the intervening period between the date of his dismissal from service and the date of his reinstatement in service be treated as duty for all purposed and full pay and allowances be paid to him for the period subject to the provisions of FR54(6) and (8)." By an order dated 9 December, 2003, the defendant reinstated the plaintiff in service with immediate effect. Admittedly all arrear dues to the plaintiff have been paid.

Now the grievance of the plaintiff is that by issuing the charge-sheet, the defendant has defamed the plaintiff. The charge-sheet contained libellous statements concerning the character and reputation of the plaintiff. His reputation has been tarnished wrongfully by the defendant. He has suffered immense mental pain and agony. Accordingly, he has prayed for damages and injunction. Hon'ble High Court opined that although no specific issue was framed by the Court as regards whether or not the suit is barred by limitation, since that point goes to the root of the maintainability of the suit, it is the

duty of the court to consider the point of limitation. The Hon'ble Judge is of the view that it is an established law that even if the defendant does not raise the issue of limitation, if the Court finds that the plaintiff's cause of action is time barred, it is the duty of the Court to reject the plaintiff's claim.

In the present case, the defendant has taken the defence of privilege. The question is whether the charge-sheet issued against the plaintiff, the enquiry report and the letter of dismissal of the plaintiff can be said to be protected by absolute privilege or qualified privilege? The enquiry proceeding was initiated by the defendant by issuing the charge-sheet on the basis of information received that the matriculation certificate and mark-sheet submitted by the plaintiff at the time of his appointment were not genuine. Having got such information, it was incumbent upon the management of the defendant to hold an enquiry into the matter as required under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Such enquiry was held as part of the management's duty and in larger public interest. As such, the Hon'ble High Court relying on various judgements opined that the enquiry proceedings and all publications made in connection therewith were privileged.

In the present case, no case of malice has been established by the plaintiff. Hence, at least, the defence of qualified privilege would be available to the defendant. The law is fairly clear that any step which is essentially a step in a judicial or quasi-judicial proceeding would be immune from liability for defamation as it gives rise to an occasion for privilege. It would definitely not be desirable if an employer in spite of receiving information that an employee is allegedly committing a crime or other wrongful act detrimental to the public interest, refrains from holding an enquiry into the matter for the fear of being exposed to a defamation suit. Such a position would be extremely harmful to the interest of the public at large. In the present case, the plaintiff has been unable to establish malice on the part of the defendant in conducting the enquiry proceeding against him by issuing charge-sheet which culminated in his dismissal order. The Hon'ble High Court is of the considered view that the materials complained of by the plaintiff and forming the basis of the present defamation suit are protected by qualified privilege. The fact that at a subsequent point of time due to intervention of the Hon'ble President of India, the order of dismissal was withdrawn and the plaintiff was reinstated in service, does not change the situation. In view of the aforesaid, this suit is dismissed.

V. Appa Rao, CLA, GM/O/SCR

Difference between**Res Judicata and Res Sub Judice****FAQ****Whether Writ Petition against order of Consumer Fora is maintainable ?**

Section 11 of the CPC, 1908 deals with the Res Judicata. It is applicable when the matter is already decided by the court of competent jurisdiction. It prevents the trial of a suit or issue in which the matter in issue has already been decided in a previous suit.

Conditions to be fulfilled-

1. The former suit must have been decided by the court of competent jurisdiction.
2. The matter in issue in the subsequent suit must be the same matter which was directly and substantially in issue, either actually or constructively, in the former suit.
3. Both the suits must be between the same parties,
4. The court which decided the former suit must have been a court of competent jurisdiction,
5. Both the parties **must have litigated** under the same title in the former suit. "Same title" means in the same capacity.

Section 10 of the CPC, 1908 deals with the Res Sub Judice. It relates to a matter, which is pending in the Court of competent jurisdiction. It bars the trial of a suit in which the matter is pending for decision in the previous suit.

Conditions to be fulfilled-

1. There must be two suits one previously instituted and the other subsequently instituted.
2. The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit,
3. Both the suits must be between the same parties.
4. The court in which the previous suit is instituted must have jurisdiction to try it.
5. Both parties **must be litigating** under the same title in both the suits.

K. Gopinath, CLA, GM/O/SCR

Suit

Suit is not defined in the Code of Civil Procedure, 1908. The word "suit" ordinarily means a civil proceeding instituted by the presentation of a plaint. In its comprehensive sense, the word "suit" is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law permits.

Question arises when a remedy is available under the Statute, a writ petition under Article 226 of the Constitution of India is maintainable. Clarifying the position, the Supreme Court *In Cicily Kallarackal vs. Vehicle Factory*, (2012) 8 SCC 524, the Supreme Court held that "we cannot help but to state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India".

However, in the instant case, appeal has been filed by the appellant challenging the dismissal of writ petition by the High Court against the order of State Commission. The Supreme Court observed that the High Court after having held the writ petition as Maintainable, finally dismissed the Writ Petition on merits. Supreme Court took exception observing that despite the attention of the High Court having been drawn to *Cicily Kallarackal vs. Vehicle Factory*, (2012) 8 SCC 524 without even dealing with or discussing the judgment and the reason for its inapplicability, the High Court has chosen to rely upon decision of Single Judge of Orissa High Court and the Division Bench of the High Court of Andhra Pradesh at Hyderabad to hold that the writ petition was maintainable. The Supreme Court therefore held that the writ petition itself was not maintainable in view of *Cicily* (supra) and dismissed the Special Leave Petition. [MEHRA BAL CHIKITSALAYA EVAM NAVJAT SHISHU I.C.U. VERSUS MANOJ UPADHYAY & ORS. SLP(C) No(s). 4127/2021 dated 12.3.2021].

K. Gopinath, CLA, GM/O/SCR

KNOW OUR CONSTITUTION

Article 42 - Provision for just and humane conditions of work and maternity relief. The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43. Living wage, etc, for workers The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas.

SOCIAL SECURITY CODE, 2020

Based on the recommendations of the 2nd National Commission on Labour, the Code on Social Security, 2020 has been born, amalgamating the labour laws based on subject-matter. The Code was introduced in December 2019 and the Parliamentary Standing Committee submitted its report on 31st July 2020. Thereafter, a fresh Bill was introduced, namely the present Code on Social Security, 2020.

The Code on Social Security, 2020 subsumes / amalgamates and rationalizes the provisions of the following nine Central labour laws:-

1. The Employees' Compensation Act, 1923,
2. The Employees' State Insurance Act, 1948,
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952,
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959,
5. The Maternity Benefit Act, 1961,
6. The Payment of Gratuity Act, 1972,
7. The Cine Workers Welfare Fund Act, 1961,
8. The Building and Other Construction Workers Welfare Cess Act, 1996,
9. The Unorganized Workers' Social Security Act, 2008.

Key Definitions under the Social Security Code 2020

Aggregator: “Aggregator” has been defined as a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider.

Career centre: Is any office including employment exchange, place or portal established by the Central Government for providing career services. It aims to connect persons seeking employment with those who seek to employ by providing information about vacancies and giving vocational guidance.

Employee: Any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied. The employee of definition may vary for different chapters under the SS Code based on the quantum of wages such an employee earns.

Gig Worker: A person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-

employee relationship.

Platform Work: A work arrangement outside of a traditional employer employee relationship in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment and a “platform worker” has been defined as a person engaged in or undertaking Platform Work.

Social Security: Means the measures of protection afforded to employees, unorganized workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under the SS Code.

Unorganized Sector: Means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten (10).

Unorganized Worker: Means a home-based worker, self-employed worker or a wage worker in the Unorganized Sector.

Salient Features

Under the 2019 Bill, the government could notify schemes for unorganized sector workers (such as home-based and self-employed workers), gig workers, and platform workers. The SS Code 2020 makes the following changes for such workers:

Social security funds for unorganized workers, gig workers and platform workers: The 2019 Bill empowered the central government to set up social security funds for unorganized workers, gig workers and platform workers. The SS Code 2020 states that the central government will set up such a fund. Further, state governments will also set up and administer separate social security funds for unorganized workers. The SS Code 2020 also makes provisions for registration of all three categories of workers - unorganized workers, gig workers and platform workers.

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

M.K. Shaji, CLA/RWF

YOURS LEGALLY**Inquiry in Sexual harassment case, whether to be kept pending during the pendency of criminal prosecution?**

Respondent, an Assistant Teacher in a school run by the Appellant was issued with a warning for his objectionable behaviour with adolescent girl students in the school. A memo was also issued to him when mother of a teenaged student made a complaint against him. Another student also filed an FIR against him alleging commission of offence punishable u/s 509 IPC and Police sought response from the Head Master of the school regarding the incidents mentioned in the FIR. In the aforesaid circumstances, the school Committee of the Appellant being unhappy with the conduct of Respondent passed a Resolution and thereafter, suspended him pending enquiry.

An Inquiry Committee was constituted consisting of the Convenor being Nominee of the Appellant, Nominee of Respondent and a State Awardee Teacher. The Inquiry Committee examined both the girls as well as other witnesses. After conclusion of the inquiry, the Convenor submitted a Report recommending that the service of Respondent be terminated, while, Nominee of Respondent as well as the State Awardee Teacher, refused to sign the Report on ground that the charges or allegations are pending before the Hon'ble Court of Sessions and any decision by the Committee pending the disposal of these cases would amount to contempt of the Court. The matter was then considered by the Appellant and by a Resolution the service of Respondent was terminated. On appeal by Respondent, the School tribunal remitted the matter back to the Committee for conducting disciplinary inquiry and to reinstate Respondent into service notionally for the purpose of conducting inquiry. HC dismissed the Writ Petition filed by the Management (appellant herein) and upheld the order passed by the Tribunal.

The appellant, being aggrieved, has challenged the view taken by the High Court and the Tribunal before the Supreme Court contending that the management had rightly taken the decision as it would be hazardous to have a teacher like him in the school. Since approach of two out of three members of the Inquiry Committee was completely incorrect and they had not given any conclusive findings, the management was competent to take a decision in the matter, which was not only consistent with the findings of the Convenor but was also supported by the facts on record and was arrived at in a transparent manner. On the other hand, respondent submitted that a completely dispassionate and impartial observer had concluded that the inquiry must await the conclusion of proceedings in criminal cases.

The Supreme Court observed that two FIRs filed pursuant to reporting that Respondent was

guilty of objectionable behaviour with adolescent girl students in the school. In both the FIRs, investigation was undertaken and chargesheets stand filed. Thus, prima facie, the allegations made in the FIR were found sustainable in police investigation and Respondent is presently accused of having committed said offences. The conclusion by the Convener in the report that the charges were sensitive and that the case called for strict action, was absolutely correct. On the other hand, the reports of the Nominee of Respondent and the State Awardee Teacher not only show complete lack of sensitivity but they also got bogged down unnecessarily by a question whether any action on their part would amount to contempt of court or not. It is well settled that a departmental proceeding and proceedings in a criminal court are completely different. The purpose is different, the standard of proof is different and the approach is also different. The initiation of the process in a departmental proceeding, specially on charges like in the present matter can never be said to be amounting to contempt of court even if the criminal proceedings were pending. The allegations made against Respondent were of such level and dimension that an immediate action on the departmental front was required to be undertaken and such action by its very nature had to be completely independent. Whether any criminal trial was pending or not would not be having any bearing on the pending issue before the Inquiry Committee. The approach of the Nominee of Respondent and of the State Awardee Teacher was completely wrong and unsustainable.

Further, the Management had not taken any hasty action in initiating the proceedings against Respondent. The order of suspension and initiation of inquiry was preceded by a resolution passed by the School Committee. Appropriately constituted Inquiry Committee then went into the allegations where 12 persons including five girl students were examined as witnesses. If the Nominee of Respondent and the State Awardee Teacher had not given any final decision with clarity, since in their view it would have amounted to contempt of court, the Appellant was justified in relying upon the conclusions drawn by the Convener of the Inquiry Committee and then pass an order of termination. The approach adopted by the Management was, thus, not only fair and transparent but was in keeping with what is expected of the Management where allegations of sexual harassment of adolescent girls are in issue. Hence, this appeal is allowed affirming the order of termination of the Respondent. *[THE SECRETARY, LUCY SEQUEIRA TRUST AND ANR. VS. KAILASH RAMESH TANDEL AND ORS. [CIVIL APPEAL NO. 3456 OF 2019 (@ SLP(C) NO. 28314 OF 2017, 08.04.2019]*

N. Murali Krishna, Sr.Law Officer

TREATISE ON**A & C Act, 1996****Language of Arbitral Tribunal:**

As brought out earlier that party autonomy is given paramount importance, parties are at liberty to agree on the language used in the arbitration proceedings.

Section 22 of the Act provides that if the parties failed to agree on any language to be used in the arbitration proceedings, then the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings, which includes any written statement by a party, hearing, arbitral award, decision or other communication by the arbitral tribunal. Further, the arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statements of claim and defence: A Statement of Claim is a written narrative that sets forth the facts of the dispute. Though no specific format is prescribed, the Statement of Claim shall not be vague and it should furnish the details of the dispute(s), including all relevant dates and documents in a chronological fashion and the basis and reasons for making the claims. If the Statement of Claim is based on an agreement, said agreement and terms and conditions etc. should be attached. The Statement of Claim also contain specific prayer as to the amount of money towards damages, loss, interest, etc and from any specific date. If the statement of Claim refers to documents, copies of the documents should be enclosed as exhibits.

Section 23 of the A&C Act, 1996 deals with the procedure for filing Statements of claim and defence. However, what is a claim and counter claim is not specifically defined in the Act. Section 2(9) states that where claim is referred to, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

According to the said Section, within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit. So also, the respondent, in support of his case, may also submit a counterclaim or plead

a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.

Amendment of claims, when permissible: Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Time limit for submission of statement of claim and defence: It shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.

The Supreme Court of India held that Section 23 of the Act enables the claimant to file a statement of claim stating the facts supporting his claim, the points at issue and the relief or remedy sought by him and enables the respondent to state his defence in respect of those claims. Further, the claimant is not bound to restrict his statement of claim to the claims already raised by him by notice, "unless the parties have otherwise agreed as to the required elements" of such claim statement. It is also made clear that "unless otherwise agreed by the parties" the claimant can also subsequently amend or supplement the claims in the claim statement. That is, unless the arbitration agreement requires the Arbitrator to decide only the specifically referred disputes, the claimant can while filing the statement of claim or thereafter, amend or add to the claims already made. Similarly, a respondent is entitled to raise a counter claim "unless the parties have otherwise agreed" and also add to or amend the counter claim, "unless otherwise agreed". In short, unless the arbitration agreement requires the Arbitrator to decide only the specifically referred disputes, the respondent can file counter claims and amend or add to the same, except where the arbitration agreement restricts the arbitration to only those disputes which are specifically referred to arbitration, both the claimant and respondent are entitled to make any claims or counter claims and further entitled to add to or amend such claims and counter claims provided they are arbitrable and within limitation. Once the claims and counter claims are before the arbitrator, the arbitrator will decide whether they fall within the scope of the arbitration agreement and whether he has jurisdiction to adjudicate on those disputes and if the answer is in the affirmative, proceed to adjudicate upon the same. [State Of Goa vs M/S Praveen Enterprises, 2012 (12) SCC 581]

N. Murali Krishna, Sr. Law Officer