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Lex Info

An E - Magazine

(from Law Branch, South Central Railway)



Vol -IV

Issue - 04

April 2021

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Legal Maxim

Onus Probandi - It means 'the burden of proof'. It is a general rule that a party who alleges the affirmative of any proposition shall prove it. The onus probandi lies upon the party who seeks to support his case by a particular fact of which he is supposed to be cognizant. However, when law presumes the affirmative, onus probandi lies on the party who denies the fact, to prove the negative.

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

Contd. from last issue...

Jurisdiction of the Tribunal:

Section 14 provides for Jurisdiction of the Tribunal. The tribunal shall have the jurisdiction to deal with civil cases where the substantial question relating to the environment is involved and settle such disputes and pass on orders and decisions thereon. No application will be entertained by the tribunal if the same has not been made within 6 months from the date on which the cause of action for such dispute first arose. If the tribunal is satisfied with the sufficient cause for delay, it may allow the application to be filed within a further period not exceeding 60 days.

Section 16 states that if any party who is not satisfied with the orders or decision of the tribunal, can prefer to appeal to the tribunal within 30 days of the order passed. If the aggrieved party is prevented by certain cause and the tribunal is satisfied by it, then it may allow the application to be filed within the further period exceeding 60 days.

Powers and Procedure of the Tribunal:

Section 19 provides for Powers and Procedure of the Tribunal: The Tribunal shall not be bound by the Civil Procedure Code, 1908 or rules of Indian evidence Act, 1872. The tribunal has the power to regulate its own procedure. The tribunal is vested with the powers of Civil court in trying the suit as prescribed under CPC, 1908. Summoning and enforcing the attendance of any person and examining him on oath Requiring the discovery and production of documents, Receiving evidence on affidavits, Issuing commissions for the examination of witnesses or documents, Reviewing its decision, Dismissing an application for default or deciding it ex parte, Setting aside any order of dismissal of any application for default or any order passed by it ex parte; Pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act; Pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I; Any other matter which may be prescribed.

Section 20 states that the tribunal while passing any order or decision or award, has to apply principles of sustainable development, the precautionary principle and the polluter pays principle.

Provision of Appeal to Supreme Court:

Section 21 provides for Appeal to Supreme Court: If any person is aggrieved with the order or award that was given by the Tribunal, he/she may file an appeal to the Supreme Court within 90 days of the order passed or award of the tribunal. The Supreme Court shall also entertain the application after the expiration of 90 days if it satisfies with the reason that prevented the applicant to file before the Supreme Court.

Penalty Provision:

Section 26 provides for Penalty: Any person who fails to comply with the award passed or decision of the tribunal shall be punishable with the imprisonment of a term which may extend to 3 years or fine which may extend to 10 crore rupees or both. In case the failure continues, the additional fine may be imposed which may extend to Rs.25000 every day during the contravention. In the case of companies, the fine may extend to 25 crore rupees and an additional fine of 1 lakh every day if there is no compliance with the award made by the tribunal.

According to the NGT Act, an aggrieved person can file a case before the Tribunal and the it could be an individual, a company, a firm, an association of persons (like an NGO), even if not registered or incorporated, a trustee, a local authority (like a municipal corporation), or a government body (like the State Pollution Control Board). The person need not be directly affected by the project or development in question but could be any person who is interested in protecting and preserving the environment. There is a time period within which the case has to be brought before the Tribunal, which varies according to the type of case.

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

KNOW OUR CONSTITUTION

Article 44 - Uniform civil code for the citizens. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Article 45 - Provision for free and compulsory education for children. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years .

RTI Series

More orders on Section 11:

S 11 (1) covers two distinct categories of information:

Section 11 of RTI Act, 2005 categorises two sets of information- (i) Information related to a 3rd party & (ii) Information supplied by a 3rd party. It is also necessary that such information should have been treated as confidential by that 3rd party. In *Arvind Kejriwal v. CPIO, Cabinet Secretariat* it was argued on behalf of the appellant that the word “or” occurring in Section 11 (1) to be read as “and”. Turning down such an argument, the Delhi High Court had held that two distinct categories of 3rd party information have been recognised under S. 11 and it was not possible for the Court to read “or” as “and”. The Delhi High Court, while dismissing the WP filed by Shri Arvind Kejriwal restored his appeals on the file of CIC and directed the CIC to comply with the notice requirement u/s 11(1) of the RTI Act, 2005.

Proper procedure to deal with furnishing of information related to 3rd party:

Section 11 is a widely confused provision of law. Many PIOs consider that if the 3rd party objects to parting with the information related to him / supplied by him, that is the end of the RTI request and no information can be provided to the RTI applicant. This is factually incorrect as brought out in the previous edition. However, one finer aspect needs to be high lighted in this connection. Is it automatic for the PIO to give a notice to the 3rd party in all the cases related to the concerned 3rd party? The answer is “No”. If the PIO comes to a conclusion that the information sought for is covered under Section 8 or 9 of the Act, 2005, then he does not issue any notice to the 3rd party, since the PIO himself has decided not to part with the requested information. In other words, the PIO needs to give a notice u/s 11 (1) to the 3rd party only if he considers that the information sought for qualifies for revelation.

Delhi High Court expressed this stand in the following words: “7. Keeping in view the aforesaid provisions, this Court is of the view that the proper approach to be adopted in cases where personal information with regard to third parties is asked is first to determine whether information sought falls under Section 8(1)(j) of the RTI Act, and if the Court/Tribunal reaches the conclusion that aforesaid exemption is not attracted, then the third party procedure referred to in Section 11(1) of the RTI Act must be followed before releasing the information. [Union of India & Ors. v. R.Jayachandran & Ors. WP (C) No. 3406/2012 and other cases. D.O.O – 19.02.2014]

What if the 3rd party does not reply to the notice for disclosure of information?

The silence of the 3rd party to respond to the notice issued u/s 11(1) of the RTI Act shall not be construed as his opposition to such revealing of information. In *K.K.Dharman v. PIO, Min. of External Affairs, Regional Passport office, Cochin* [Decision No. CIC/SG/A/2011/001832/16442 Appeal No. CIC/SG/A/2011/001832. D.O.O – 19.12.2011] it was held that failure or silence of a 3rd party to respond shall not be substituted for the 3rd party’s resistance in furnishing the information under RTI Act.

The CIC held: “The PIO has completely misunder-

stood S-11 of the RTI Act. S-11(1) requires the PIO to give notice to third party only when he intends to disclose the Page 1 of 3 information and keep the third party’s submission in view while taking a decision about disclosure of information. The PIO has claimed that if third party did not respond the information shall not be provided is completely contrary to the provisions of S 11.”

The CIC further observed: “The respondents also states that the present whereabouts of the third parties are not maintained by the Ministry. The Commission rules that if the third party’s address is not located it does not mean the citizen’s right to information would disappear. Section-11 is a procedural requirement that gives third party an opportunity to voice and objection in releasing the information.”

Employees Educational certificates to be supplied:

In a RTI case, wherein the educational certificates and appointment details of a person selected as Branch Postmaster were sought for, the CIC through its order dated 5.6.2017 directed the same to be furnished within 15 days of receipt of the order copy. A show-cause notice was also ordered for imposition of penalty. Though the information was furnished, it was with a delay. The show-cause remained unanswered. While dealing with the complaint of the appellant in addition to the imposition of penalty, the CIC held:

“5.This information being related to process of selection and recruitment forms part of suo-moto disclosure under section 4 (1) (b) of RTI Act and DoPT O.M. dated 29.06.2015. Hence, under any circumstances, educational qualification related information of selected candidate cannot be considered as third party information.”

6. Public interest is involved in the point that only eligible candidates should be appointed and a citizen has a right to verify whether the appointed candidate is eligible or not. Therefore, even if it is assumed that the information sought is private in nature, it has to be disclosed in public interest. Thus Section 8(1)(j) cannot be involved.

7. S-11 prescribes procedure for consulting the third party. If an applicant has requested for information supplied by a third party, then such third party has to be consulted only when it has been mentioned as confidential by that third party while giving it to the Public Authority. The CPIO should initiate process under section 11 (1) when he intends to give the information. The third party does not have a veto power as the CPIO has a duty only to consult him.

8. The CPIO has a duty to examine the disclosure and if public interest is involved, then such information has to be disclosed by communicating the same to the third party involved. In this case, educational qualification of Mr. Anil Kumar who was selected and appointed as Branch Postmaster, cannot be considered third party information, hence, he need not have invoked section 11 (1) of RTI Act. The CPIO did not get the purport of section 11 and simply cited the provision to refuse the appellant’s RTI. Hence, the Commission finds it a fit case to impose penalty upon the CPIO.” [CIC/BS/A/2016/000993. *Pratap Dabar v. PIO, Department of Posts*, D.O.O – 18.01.2018]

M.K. Shaji, CLA/RWF

Frequent, Causal and Lackadaisical Summoning of High Officials by Court Cannot Be Appreciated: Supreme Court

The Hon'ble Supreme Court in a SLP(C) No.7487/2020 filed by the UP Government against a summoning order passed by the Allahabad High Court in a contempt case, has held that the frequent, causal and lackadaisical summoning of high officials by the Court cannot be appreciated".

The remarks were made by a Division Bench on being informed that the High Court decided to proceed with the contempt petition and summoned the concerned Government officers in person, even though the main order against which contempt was filed had been stayed by the Apex Court. The Division Bench opined that once the operation of the order has been stayed, the natural consequence would be that the contempt proceedings would be kept in abeyance. The impugned summoning order dated 02.03.2021 was passed by a Single Bench of Justice seeking personal appearance of the Additional Chief Secretary, Medical, Health and Family Welfare, Government of UP and Director General, Medical & Health, UP. The Apex Court noted that the summoning order dated was not passed by the High Court in ignorance of its stay order dated 22.02.2021 and that the same was brought to notice of the Judge dealing with the contempt petition. In this backdrop the Bench observed, "Once the order of which contempt was alleged was stayed, there would be no cause for calling the officers as there was no question of any non-compliance of the order which had been stayed.

This Court has even on various occasions through judicial pronouncements deprecated the practice of unnecessarily calling officers to Court. In that context, it has been observed that the trust, faith and confidence of the common man in the judiciary cannot be frittered away by unnecessary and unwarranted show or exercise of power." The Division Bench cautioned the High Court to exercise its power with responsibility and to summon the officers only in compelling situations and not merely to humiliate them. It observed that if a judicial order is not complied with, presence of officers can be directed. However, if the operation of the order is

stayed, no useful purpose would be served by calling the officers. The order stated, "The frequent, causal and lackadaisical summoning of high officials by the Court cannot be appreciated. We may add that this does not mean that in compelling situations the same cannot be done but the object cannot be to humiliate senior officials." In the instant case, the Bench wondered that since the main order in a service matter was stayed, and no specific date had been fixed by the Court post the stay having been granted, what purpose was being served by calling the officers? "This is unnecessary harassment of the officers," it remarked while imposing a stay on the contempt proceedings.

The Apex Court also made it clear that as and when, if the occasion so arises, for restarting the contempt proceedings, the matter will be placed before a Bench of another Judge at the High Court.

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

Briefly about contempt of court:

According to the Contempt of Courts Act, 1971, contempt of court can either be civil contempt or criminal contempt. Civil contempt means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court. On the other hand, criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

A contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both, provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

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

Difference between**Review & Appeal****FAQ****What is a Summons?****Review:**

The term 'Review' means a judicial re-examination of a case in certain specified and prescribed circumstances. A Review is practically rehearing of a case by the same Judge who has decided it. It is a general rule that the Judgement when one pronounced, signed and dated, it should not be altered. Review is the exception to the rule. If any mistake or error apparent on the face of the record of such other circumstances occur, then the party aggrieved by the Judgement may prefer Review to the same Judge who delivered the Judgement. The object of the Review is that 'for a fault of a court, no person should suffer.

Sec.114 and Order 47 of the CPC 1908 deal with Review. Any court which passed a decree or made order, can review the case. The Review can be made only on an application by an aggrieved party. Review can be made even when an appeal lies to the High Court. The grounds for Review are: a) discovery of new and important matter or evidence, b) mistake or error apparent on the face of the record and c) any other sufficient reason.

Appeal:

A right of Appeal is not a natural or inherent right. An Appeal is a creation of statute. The right of Appeal is a substantive right and not merely a matter of procedure. The right of Appeal occurs from the authority of Law. A right of appeal is based on the principles of natural justice. A person cannot be penalized by the mistake of the courts. An Appeal is based on the suit or proceeding and it is a continuation of suit.

Sec.96 to 112 and Orders 41 to 45 of the CPC, 1908 deal with Appeals. An Appeal lies to the superior court from inferior court. Appeal will lie from an original decree passed ex-parte, b) No appeal will lie from consent decree. c) If a decree has been passed by court of small causes where suit value does not exceed ten thousand rupees, appeal will lie only on question of law. It has been done so as to reduce appeals in petty cases. It bars appeals except on points of law. There are three types of appeals viz. a) from District Munsiff Magistrate Court/Subordinate Judge's Court to District Judges (first appeal); b) from District Judge's Court to High Court (second appeal) and c) from High Court to Supreme Court (third appeal). An Appeal can only be filed after the decree is passed or an appealable order is made. In an appeal, the appellate court: i. May reverse the order ii. May modify the order iii. May merely dismiss the appeal and thus confirm the order without modification

K. Gopinath, CLA, GM/O/SCR

In general, a summons is the beginning of a legal case. It signals the issue that needs to be adjudicated in court. A summons can be used in either a civil or a criminal case. Order 5 of the CPC provides the procedure for the issues and service of summons to Defendant. The provisions in Sec.27, 28 & 29 in Part-1 of CPC, 1908 shall apply to summons to give evidence or to produce documents or other material objects.

Specifically, a **summons** is a document that is an order by a court requiring someone to appear in court. In civil lawsuits, a summons is issued to the defendant in the lawsuit, requiring his or her presence to defend a case.

Other types of summons might be for jury duty or to your business as the defendant in a class action lawsuit.

Sometimes a summons might be called a "summons and complaint." The complaint is the specific charge, the reason the lawsuit is being filed, and the type of relief (usually money) being sought. For more serious matters, like divorces and lawsuits, the summons may be delivered by the local sheriff or another individual appointed by the court. A summons for jury duty is usually sent in the mail.

When you receive a summons, pay attention to the date by which you must reply. If the summons is for something more serious than jury duty, consider getting an attorney to help you work through the process.

A summons is an official court document. It includes: a) The name of the type of court issuing the summons. It's important to note the court that has jurisdiction, which might be in another state than your own, b) The name of the party receiving the summons. It might be you as an officer of the company, or it might be to the "agent authorized to receive service" (that's the registered agent you listed on your business registration with your state), c) The number assigned to the case by the court, d) The names of the plaintiff (person filing suit) and defendant, e) What the case is about, f) Information for the defendant on when the summons must be responded to, g) How the person who receives the summons must respond.

The party receiving the summons must sign to show that the summons has been received. For this reason, almost every summons is delivered in person, by an officer of the court which is hearing the case.

K. Gopinath, CLA, GM/O/SCR

SOCIAL SECURITY CODE, 2020

(Part – II)

National Social Security for gig workers and platform workers: The SS Code, 2020 states that in addition to unorganised workers, the National Social Security Board may also act as the Board for the purposes of welfare of gig workers and platform workers and can recommend and monitor schemes for gig workers and platform workers. In such cases, the Board will comprise of a different set of members including: (i) 05 representatives of aggregators, nominated by the Central Government, (ii) 05 representatives of gig workers and platform workers, nominated by the Central Government, (iii) Director General of the ESIC & (iv) 05 representatives of State Governments.

Role of aggregators: The SS Code, 2020 provides for funding for schemes for gig workers and platform workers be through a combination of contributions from the central government, state governments, and aggregators. The Act has a list of aggregators in Schedule 7 which includes nine categories. Any contribution from such an aggregator may be at a rate notified by the government falling between 1-2% of the annual turnover of the aggregators. However, such contribution cannot exceed 5% of the amount paid or payable by an aggregator to gig workers and platform workers.

Appeals: The SS Code 2020 provides for conduct of inquiries and decide: (i) disputes regarding the applicability of the provisions of provident fund (PF) and employee state insurance (ESI) to certain establishments, and (ii) determine amounts due from employers under these heads. Earlier, any aggrieved party could file for a review of the order. The SS Code 2020 removed the provisions for such review.

Determination of escaped amounts: After the passage of the order, the authorised officer was earlier empowered to reopen any case and pass further orders to re-determine the amounts which had escaped his notice and pass fresh orders within 5 years of the initial order. The SS Code 2020 removed this provision.

Composition of Boards for unorganized workers: The SS Code 2020 expands the representation of central government officials in the National Social Security Board for unorganized workers from 05 members to 10 members. Similarly, the number of state government officials in the state Boards for unorganized workers has been increased from 07 to 10 members.

Additional powers during an epidemic: The SS Code 2020 adds new clauses applicable in the cases of an epidemic. For example, the central government may defer or reduce the employer's or employee's contributions (under PF and ESI) for a period of up to three months in the case of a pandemic, endemic, or national disaster.

Gratuity: The SS Code 2020 reduced the gratuity period from five years to three years for working journalists. The SS Code 2020 has fixed different thresholds with respect to eligibility for gratuity of permanent and fixed term employees. Gratuity shall be payable to eligible employees by every shop or establishment in which 10 or more employees are employed, or were employed, on any day of the preceding 12 months. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years, on his superannuation; on his retirement or resignation; on his death or disablement due to accident or disease; on termination of his contract period under fixed term

employment. However, a continuous service of 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment. For every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days' wages. The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government. Gratuity under the SS Code is payable to employees hired directly or through a contractor.

If any person fails to pay any amount of gratuity to which an employee is entitled to, he shall be punishable with imprisonment for a term which may extend to 01 year or with fine which may extend to Rs. 50,000/-, or with both.

Employees' Provident Fund: The SS Code has altered the applicability of the Employees' Provident Fund Scheme which now will be applicable to every establishment in which 20 or more employees are employed. The Central Government may, establish a provident fund where the contributions paid by the employer to the fund shall be 10% of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contractor). The employee's contribution shall be equal to the contribution payable by the employer in respect of him. The Central Government, may, by notification, increase the contribution percentages to 12% for both employers and employees of certain establishments.

If any person being an employer, fails to pay any contribution under the SS Code or rules, regulations or schemes made thereunder, he shall be punishable with: (i) imprisonment for a term which may extend to 3 years, but which shall not be less than 1 year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of Rs. 1,00,000/-; or (ii) which shall not be less than 2 months but may be extended to 6 months, in any other case and shall also be liable to a fine of Rs. 5,000/-.

Maternity Benefits: No women to work or be employed 6 weeks after delivery / miscarriage / MTP. Every establishment with 10 or more employees and the woman had actually worked for not less than 80 day in 12 months are entitled for maternity benefits, which include 26 weeks paid leave. Common crèche facility may be utilized by the establishment if workers are 50 or more. Any dismissal / discharge, reduction in rank or otherwise penalizing a woman employee or failure to extend any maternity benefit attracts imprisonment up to 6 months or fine of Rs.50,000/- or both. However, first time offence is compoundable, if the maximum penalty for such an offence is fine or imprisonment up to 1 year and fine.

Offences and penalties: The SS Code 2020 changed the penalties for certain offences. E.g:- Imprisonment for obstruction of an inspector from performing his duty has been reduced from one year to 6 months. The penalty for unlawfully deducting the employer's contribution from the employee's wages has been changed from imprisonment of one year or fine of Rs 50,000/- to only fine of Rs 50,000/-. Section-137 allows employers an opportunity to correct non-compliance for any offence under the Act prior to the initiation of prosecution or proceedings. However, repeat offenders are given enhanced punishments under Section-134 and offences by companies are given stricter penalties that extend beyond the corporate veil.

M.K. Shaji, CLA/RWF

YOURS LEGALLY**Appointment of arbitrator in time barred cases – Supreme Court held, not permissible.**

Three agreements were entered into with the respondent by the appellant for certain civil works. Clause 5 of the agreements provides for submission of final bill within 08 days from the date of completion and handing over the work, along with a no claim certificate stating that there are no claims from the cantonment board on account of the work undertaken and completed by him under the contract and that no claim thereafter shall be entertainable. The agreements also contain arbitration clause in Clause 17 which provides that all disputes between the parties to this contract shall be referred to the sole arbitrator appointed by the President, Cantonment Board. The award of the Arbitrator shall be final, conclusive and binding on both parties to the contract.

Final payment was received by the Respondent in respect of the works in question on 18.02.2003 and 26.03.2003. After about six months, the Respondent started making demands towards reimbursement on account of variation in prices of material, labour and fuel. After a silence of over two years, the Respondent issued a letter dated 07.11.2006 requesting for the appointment of an arbitrator in respect of the claim of reimbursement on account of price variation in all the three contracts. Receiving no reply from the Appellant, the Respondent issued letters for appointment of an arbitrator. Then a legal notice was issued on 30.01.2010, which was replied by the Appellant on 16.02.2010, rejecting the claim for appointment of an Arbitrator since no arbitral issues are subsisting between the parties and the claim raised is hopelessly barred under law of limitation.

After a three-year delay, the Respondent filed applications under Section 11 of the Arbitration Act on 06.11.2013. Vide the impugned judgement dated 20.08.2019, a Single Judge of the High Court for the State of Telangana held that the Section 11 applications were within time as they were filed within three years from the letter dated 10.11.2010 rejecting the request to appoint an arbitrator. As a result, the Section 11 applications were allowed and a Retired District Judge was appointed as arbitrator to adjudicate the disputes between the parties arising out of the three agreements.

Challenging this judgement, the Appellant filed the instant SLP. Defending the order of the High Court, the respondent argued that that, once a dispute arose between parties, appointment of arbitrator is mandatory and the court has to see only ex-

istence of arbitration clause or not and leave all other aspects to the Arbitrator.

The Supreme Court held that the in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the tribunal. Hence, applying the ratio in the settled law to the facts of this case, the applications under Section 11 of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the letter dated 07.11.2006. This demand was reiterated by a letter dated 13.01.2007, which letter itself informed the Appellant that appointment of an arbitrator would have to be made within 30 days. At the very latest, therefore, on the facts of this case, time began to run on and from 12.02.2007. On and from 12.02.2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the Respondent and time began running from that day. Obviously, once time has started running, any final rejection by the Appellant by its letter dated 10.11.2010 would not give any fresh start to a limitation period which has already begun running, following the mandate of Section 9 of the Limitation Act.

Therefore, the Supreme Court held that the High Court was clearly in error in stating that since the applications under Section 11 of the Arbitration Act were filed on 06.11.2013, they were within the limitation period of three years starting from 10.11.2010. On this count, the applications under Section 11 of the Arbitration Act, themselves being hopelessly time barred, no arbitrator could have been appointed by the High Court. Even otherwise, the claim made by the Respondent was also ex facie time barred. It is undisputed that final payments were received latest by the end of March 2003 by the Respondent. Repeated letters were written thereafter by the Respondent, culminating in a legal notice dated 30.01.2010. Vide the reply notice dated 16.02.2010, it was made clear that such demands had been rejected. Even taking 16.02.2010 as the starting point for limitation on merits, a period of three years having elapsed by February 2013, the claim made on merits is also hopelessly time barred.

[Secunderabad Cantonment Board Vs M/S B. Ramamchandiraiah & Sons, CA NoS. 900-902 OF 2021 DOJ, March 15, 2021]

N. Murali Krishna, Sr.Law Officer

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

Hearings and written proceedings under Arbitration and Conciliation Act, 1996: The Act provides that unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. The arbitral tribunal is empowered to hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, except when the parties have agreed that no oral hearing shall be held.

The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property. All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

It is also stipulated that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.

Section 24 is relevant and is connected with Section 18 of the Act, which stipulates that The parties shall be treated with equality and each party shall be given a full opportunity to present his case. Section 24(1) and (2) make it clear that in the absence of agreement it is for the arbitrator to decide whether oral hearings should be conducted or not. But, once it is decided to hold oral hearing, parties shall be given sufficient notice of hearing and of any meeting of the tribunal for the purpose of inspection of documents, books or other property. Section 24 (3) makes it compulsory that all statements and other information supplied to the arbitral tribunal by one party shall be communicated to the other party. In this case, admittedly, rejoinder submitted by the appellant was not given to the respondent and the rejoinder submitted by the respondent was not given to the appellant. Oral hearings were granted by the tribunal at the premises of the parties without notice to the other. Inspections were conducted without notice to both parties. Notes of inspections were also not given to the parties. Hearing of one party, in the absence of other, violates the fundamental principles of natural justice, apart from violation of Section 24 (2) as notice of hearing was not given to the parties. This shows that equal opportunity was not given to

the parties. Place of arbitration was also not determined and not intimated to the parties. Parties were not treated equally. [Sulaikha Clay Mines vs Alpha Clays, AIR 2005 Ker 3 = 2005 (1) ARBLR 237]

Whether denial for cross-examination of the witnesses is violation of Section 24(1): Delhi High Court in Sukhbir Singh vs M/S Hindustan Petroleum [16 January, 2020] held as follows:

“.... oral hearings as envisaged under Section 24 of A & C Act is clearly for the presentation of evidence or for oral argument. To be noted, the expression as occurring in Section 24(1) of A & C Act is 'oral hearings for the presentation of evidence or for oral argument'. This expression makes it clear that oral hearings if any can be for two purposes. One is, for presentation of evidence and the other is, for oral arguments. It can obviously be for both also in a given case. Therefore, the expression 'oral hearings' occurring in the first proviso to section 24(1) of A & C Act should necessarily be construed to mean oral hearings for the presentation of evidence or for oral argument, i.e., two purposes set out herein. As the petitioners in the instant case have clearly sought for permission to let in oral evidence, particularly in paragraph 18 of the counter statement before Arbitral tribunal, it follows as a sequitur that if the request had been acceded to, it would have resulted in holding oral hearings. Be that as it may, proviso makes it mandatory for Arbitral tribunal to hold oral hearings if a request in this regard is made by a party and the only exception is when parties had agreed (in the arbitration agreement) that no oral hearings shall be held. As already alluded to supra, the parties in the instant case have not agreed that no oral hearings shall be held, but what is of importance is arbitration clause is silent on this aspect. When arbitration clause is silent on this aspect, I am of the considered view that it should at best be left to the discretion of the Arbitral tribunal to decide whether oral hearings are necessary”.

Having so held, a word of caution is necessary. The right granted in Section 24 does not require an Arbitral Tribunal to countenance unending cross-examination or oral arguments. It is always open to the arbitrator to determine the length and scope of oral hearings, which would necessarily depend upon the facts and circumstances of each case. If a party seeks oral evidence, for example, the Tribunal may be able, after hearing the parties, to determine the points on which evidence is to be led. Similarly, arbitrators can set appropriate time limits for oral arguments. The arbitrators can require an application to be filed by the concerned party, setting out the necessary material to enable the Tribunal to determine these matters.

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