



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,
Sr.Law Officer/ Hqrs.

M.V.Ramana,
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Asst. Editors:

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

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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

Quantum meruit : A reasonable sum of money to be paid for services rendered or work done when the amount due is not stipulated in a legally enforceable contract.

ABC OF ACTS**The Copyright Act, 1957
(No. 14 of 1957)****Contd.. from last issue...**

Term of Copyright: Literary, dramatic, musical or artistic works enjoy protection for the life time of the author plus 60 years beyond i.e. 60 years after his death. In case of joint authorship which implies collaboration of two or more authors in the production of work, the term of copyright is to be construed as a reference to the author who dies at last. In case of copyright of posthumous, anonymous and pseudonymous works, cinematograph films, sound recordings, works of Government, public undertakings and international organization, the term of protection is 60 years from the beginning of the calendar year next following the year in the work has been first published. The act has given broadcasting reproduction right to every broadcaster which is valid for 25 years from the beginning of the calendar year next following the year in the broadcast has been done.

S-11 of the act provides for the establishment of the Copyright Board and empowers Central Government to constitute the same consisting of Chairman and 2 other members. It has many important functions, such as Settlement of disputes and Granting of licenses, etc

Chapter VI containing Sections 30-32B deals with Licenses: S- 30 of the act empowers the owner of the copyright in any existing work or the prospective owner of the copyright in any future work to grant any interest in the right by license in writing by him or by his duly authorized agent.

S-31 provides that at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work has refused to republish or allow the reproduction of the work or has refused to allow the performance in public of the work and by reason of such refusal the work is withheld from the public or has refused to allow communication to the public by broadcast of such work or recording, on terms which the complainant considers reasonable, the Copyright Board, gives the owner of the copyright a reasonable opportunity of being heard and after holding such inquiry may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyright to grant to the complainant the license to republish the work.

S-31D provides that any broadcasting organization desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has al-

ready been published may do so subject to the fulfillment of prescribed conditions.

S-32B of the act deals with termination of licenses and provides that if any time after the granting of a license, the owner of the copyright in the work or any authorized person publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the license so granted shall be terminated. Copyright in a work is deemed to be infringed: i) When any person without a license from the owner of the copyright, or the Registrar of Copyright (in certain situations) or in contravention of the conditions of a license, does anything the exclusive right to do which belongs to the copyright owner, or Knowingly permits for profit any place to be used for the performance of the work in public which continues an infringement of the work, or ii). When any person, makes for sale or hire, or sells or lets for hire, or offers for sale or hire, or exhibits in public for trade or import (except two copies other than cinematography film or record for personal use) any infringing copies of the work. In general it is the commercial exploitation of the work in any form by a person without authority that constitutes infringement.

The Act provides certain exceptions to infringement. The object of these provisions is to enable the encouragement of private study and research and promotion of education. They provide defenses in an action for infringement. Copyright law does not prevent a person from taking what is useful from an original work and create a new work with additions and improvements. There are three kinds of remedies against infringement of copyright, namely: i) Civil remedies such as Injunction damages or account of profit, delivery of infringing copy and damages for conversion, ii) Criminal remedies such as: imprisonment of the accused or imposition of fine or both. Seizure of infringing copies, iii) Administrative remedies- consist of moving the Registrar of copyrights to ban the import of infringing copies into India when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright & seeking the delivery.

Jurisdiction of courts: A suit or other civil proceedings relating to infringement of copyright is filed in the District Court or High Court within whose jurisdiction the plaintiff resides or carries on business or where the cause of action arose irrespective of the place of residence or place of business of the defendant.

Limitation: The period of limitation for filing the suit is three years from the date of infringement.

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

RTI Series

Chapter III has S 12 to 14 and Chapter IV has S 15 to 17. From an applicant's stand point or from those dealing with RTI Act applications / appeals, these chapters are not of any practical importance. However, in order to familiarise with the constitution of CIC and SIC, procedure for appointment of Information Commissioners, eligibility for appointment in the capacity of Information Commissioners, their tenure, removal from the post, salaries and allowances etc. it is necessary to glance through them. Hence, these Sections are extracted below:

CHAPTER III -The Central Information Commission

12. (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Central Information Commission shall consist of—

(a) the Chief Information Commissioner; and
(b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

(i) the Prime Minister, who shall be the Chairperson of the committee;
(ii) the Leader of Opposition in the Lok Sabha; and
(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation — For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

13. (1) The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

(5) The salaries and allowances payable to and other terms and conditions of service of—

(a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;
(b) an Information Commissioner shall be the same as that of an Election Commissioner:

Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits: Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

M.K. Shaji, CLA/RWF

Dispute about issue of chargesheet and conducting simultaneous disciplinary proceedings when the criminal proceedings are being adjudicated in the criminal court:

M. Prasad Vs. Union of India (OA/020/00014/2020)
CAT/HYN (DOP: 19.02.2021)

Brief facts of the case are that the applicant while working as Sr. Divisional Mechanical Engineer was involved in a trap case of the CBI on 3.5.2018, resulting in filing the Criminal Case vide CC No.16/2019, under PC Act, 1988 for alleged demand and acceptance of illegal gratification of Rs.20,000. Applicant claims that the Charge memo was issued on 11.12.2018 by the respondents with the same charges as have been set out in the criminal case. Applicant earlier filed OA 333/2019 before this Tribunal regarding supply of documents and the said OA was dismissed on 12.04.2019 by considering the subsequent correspondence of the respondents and an endorsement to the effect that the applicant perused the documents. The applicant was shown Xerox copies and not the original documents. The Inquiry officer has observed that the copies attested by the DSP, CBI would do and even in the CBI office only the photo copies were shown. Therefore, applicant represented on 15.11.2019 to defer the disciplinary inquiry, which was rejected on 29.11.2019. Applicant attended the inquiry without knowing that the charge sheet has been filed in the CBI Court on 2.12.2019. Summons were issued to attend the trial court on 30.12.2019. Aggrieved over the rejection of the request to defer the disciplinary inquiry and charge sheet was issued without the approval of the Hon'ble President, the present OA is filed.

I. The dispute is about the issue of the charge sheet by the GM and conducting simultaneous disciplinary proceedings when the criminal proceedings are being adjudicated in the criminal court.

The claim of the applicant is that the facts, circumstances, witnesses etc. are one and the same in both the cases. However, on verification the Tribunal found the following difference:

	No. of Documents	No. of witnesses
Departmental proceedings	29	11
Criminal case	21	15

Therefore, there is an essential difference between the two and it cannot be claimed that they are one and the same.

II. Applicant has initially filed OA 333/2019 pleading for supply of documents, The issue of supply of documents has already been decided in OA

333/2019 and in particular, there is an observation that the applicant has made an endorsement on 10.4.2019 indicating that he has perused the records in the presence of the DSP/CBI. After the OA was dismissed on 12.4.2019 applicant has submitted a representation to the GM, on 16.4.2019 informing that he was shown the Xerox copies and not the original documents. The provisions of the Evidence Act make it clear that certified copies are presumed to be genuine. The copies have been attested by the DSP, CBI in the present case. The applicant has endorsed on 10.4.2019 that he has seen the records in the presence of the DSP/CBI which is sufficient evidence under the said Act. In OA 333/2019 the issue was dealt and the plea of the applicant in regard to supply of the documents in the manner applicant wanted to be furnished has not been entertained.

III. The other contention of the applicant is that the GM is not the competent authority to issue the charge sheet.

A reading of the rules, in particular Rules 2 (1) c (ii) read with 8(2), with reference to the case on hand would make it clear that the GM is competent to issue the charge sheet. The case is still at the stage of inquiry and therefore the question of any discussion of imposition of any penalty at this stage by invoking Rule 10 (3) would be hypothetical. Nevertheless, it provides the room to forward to the appropriate disciplinary authority for imposing penalties, other than those that can be imposed by the GM. Schedule III of RS (D&A) Rules, 1968 empowers the GM to impose penalties prescribed at clauses (i) to (iv) of Rule 6.

Therefore it is for the GM to take a view on receipt of the Inquiry Report and the defence of the applicant, as to whether the case requires imposition of penalties other than what he is empowered and thereafter refer the issue to the competent authority under Rule 10 (3) for imposing the appropriate penalty. Thus the respondents have gone by the rule book in issuing the charge sheet.

Now, we come to the aspect of simultaneous conduct of disciplinary and criminal proceedings. Legally, the two proceedings are in different planes. Their objectives and operations are different. Disciplinary proceedings, focus on the aspect of misconduct for imposing the appropriate penalty and in criminal proceedings the offences under PC act are weighed in order to impose the apt sentence. There is a difference between the standard of proof, mode of inquiry and the rules relating to inquiry and trial, as observed by the Hon'ble Apex Court in Karnataka Power Transmission Corporation Ltd vs. Sri C Nagaraju & Anr. in Civil Appeal No. 7279 of 2019. OA is dismissed.

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

Once the Order of the Contempt was stayed then there would be no cause for calling the Officers as there was no question of any non-compliance of the stay order:

In the case of the State of Uttarpradesh & Ors. Vs. Dr. Manoj Kumar Sharma in Civil Appeal No. 2320 of 2021 arising out of SLP(C) No. 7487 of 2020, the Hon'ble Supreme Court observed that once the Order of the Contempt alleged was stayed then 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.

Apex Court on various occasions through judicial pronouncements deprecated the practice of unnecessarily calling officers to Court. 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. No doubt if the order is not complied with, presence can be directed unless exempted.

It was also observed that in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.

The public officers of the Executive are also performing their duties as the third limb of the governance. The actions or decisions by the officers are not to benefit them, but as a custodian of public funds and in the interest of administration, some decisions are bound to be taken. It is always open to the High Court to set aside the decision which does not meet the test of judicial review but summoning of officers frequently is not appreciable at all.

The Hon'ble Apex Court opined that, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the Court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance.

Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him gets delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion.

If any particular issue arises for consideration before the Court and the Advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond.

I.V.V.R.P. Prasad, Sr.Law Officer/HQ

Difference between

Res Judicata and Stare Decisis

Res judicata means a case that has already been decided or a matter adjudicated by a decision or judgment. Res judicata and stare decisis both are related to matters of adjudication (arbitration). Stare decisis is based on legal principles whereas res judicata is based on the conclusiveness of judgment. Res judicata binds the parties while stare decisis operates between strangers and binds the courts to take a contrary view on the law already decided. Stare decisis is a legal doctrine that obligates courts to follow historical cases when making a ruling on a similar case. Stare decisis ensures that cases with similar scenarios and facts are approached in the same way. Simply put, it binds courts to follow legal precedents set by previous decisions.

FAQ

What is sub-delegation?

The transfer of authority by one person to another is termed as delegation of power. The person in whose favour the said authority is transferred is known as Delegate. When this Delegate transfers the authority to someone it is termed as Sub-delegation.

The legal maxim 'Delegatus Non-Potest Delegare' does not lay down a rule of law. It merely states a rule of construction of a statute. Generally, sub-delegation of legislative power is impermissible, yet it can be permitted either when such power is expressly conferred under the statute or can be inferred by necessary implication. This is so because there is a well-established principle that a sub-delegate cannot act beyond the scope of power delegated to him. The Maxim 'delegatus non potest delegare' indicates that sub-delegation of power is normally not allowable, though the legislature can always provide for it. If the authority further delegates its law-making power to some other authority and retains a general control of a substantial nature over it, there is no delegation as to attract the doctrine of 'delegatus non potest delegare.'

Sub-delegation is possible, provided the express provision for the same has been made in the Power of Attorney itself. If the express provision is made then Delegate can sub-delegate its power in consonance with the Power of Attorney through authorization letter. But in any case this power is limited to the power which has been delegated to him and the part of which he has been empowered to sub-delegate. He is not authorized to sub-delegate the power which is not vested in him at all.

K. Gopinath, CLA, GM/O/SCR

CODE ON OCCUPATIONAL SAFETY, HEALTH & WORKING CONDITIONS 2020

Contd... from last issue

Constitution of Advisory Boards:

The Code provides for the constitution of a National Occupational Safety and Health Advisory Board ("National Advisory Board") by the Central Government, which shall be empowered to advise the Central Government on matters relating to (i) standards, rules and regulations to be declared under the Code; (ii) implementation of provisions of the Code; and (iii) issue of policy relating to occupational safety and health; and any other matters referred to it [Section 16 of the Code]. Additionally, the Code also envisages the formation of a similar Board at the state level ("State Advisory Board"), to advise the respective State Governments on such matters as may arise from the administration of the Code in the respective State [S 17 of the Code].

Employment of Contract Labour and Inter-State Migrant Workers:

The Code has modified the number of minimum contract labour to fifty (50) from twenty (20) for the Code to apply [S 45 of the Code]. Welfare facilities as specified under the Code are to be provided by the principal employer of the establishment to the contract labour employed in such establishment [S 53 of the Code].

In a step that should prove beneficial, the Code provides for a common license in respect of a factory, industrial premises for beedi and cigar work and engaging contract labour [S 119 of the Code]. It has further been clarified that no contractor is permitted to engage any contract labour if it does not procure a license under and in accordance with the Code. The Code also safeguards the rights of the Inter-State Migrant Workers by ensuring that the contractor extends all benefits as are available to a worker under the various labour laws to inter-state migrant workers as well. The employer of every applicable establishment is required to pay to every inter-state migrant worker, a lump sum fare for to and fro journey to his native place from the place of his employment [S 61 of the Code].

The enactment of the Code comes at a crucial juncture wherein the rights of the workers have been debated heatedly on every fora and their plight has captured the spotlight during the pandemic. There is a clear impetus in the Code to address the issues that have come to the fore, including that of the inter-state migrant workers. There is an obvious shift towards the simplification of the compliance regime by the introduction of the single license.

Monetary penalties:

Up to 50% of the monetary penalty may be granted to the worker /legal heirs who has become a victim of an accident. The Central Government has been assigned overriding powers to regulate the safety and health of persons during an epidemic / pandemic / disaster.

M.K. Shaji, CLA/RWF

Know Our Constitution

Article-50: Separation of judiciary from executive: The State shall take steps to separate the judiciary from the executive in the public services of the State.

Article- 51: Promotion of international peace and security: The State shall endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration.

PART IVA FUNDAMENTAL DUTIES

Article-51A: Fundamental duties It shall be the duty of every citizen of India

(a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

YOURS LEGALLY**Delay Condonation for Review Petition by Administrative Tribunals– To be or Not to be:**

The Supreme Court had on 21.01.2020 [Standard Chartered Bank v. MSTC Ltd. CA No. 501/2020] considered the power of the Debt Recovery Tribunal to condone delay as per Rule 5A of the Debt Recovery Tribunal (Procedure) Rules, 1993, which stipulates a limitation of 30 days for filing a review petition. In the said dispute, reliance was placed by the Debt Recovery Tribunal on the order of the Apex Court in *International Asset Reconstruction Company of India Ltd. v. Official Liquidator of Aldrich Pharmaceuticals Ltd. & Ors.* [(2017) 16 SCC 137] wherein it was held that Section 5 of the Limitation Act, 1963 would not apply to review petitions that were filed under Rule 5A of the Debt Recovery Tribunal (Procedure) Rules, 1993.

The Supreme Court observed that an application for review cannot be said to be an application filed under Section 19. Section 19 of the RDB Act refers to applications for recovery of any debt from any person by a bank or financial institution. Section 24 of the RDB Act states that “the provisions of the Limitation Act 1963 shall, as far as may be, apply to application made to a Tribunal”. The Apex Court further taken note of the amendment made to Rule 5A by which the limitation for review application was reduced from 60 days to 30 days and ruled against delay condonation beyond 30 days by the Tribunal.

The Principal Bench of the Central Administrative Tribunal in *R.A No. 216/2014 & M.A No.3594/2014 [R.S.Sehrawat v. Union of India]* referred to the order of the Andhra Pradesh High Court in *G.Narasimha Rao v. Regional Director of School Education & Ors* [2005 (4) SLR 720], Allahabad Bench of the CAT in *Union of India v. Phool Chandra & Ors.* in *R.A No. 19/2011* and Apex Court’s order in *K.Ajit Babu v. Union of India & Ors* (1997) 6 SCC 473 and held that delay condonation for review application was not possible.

However, the above stated settled legal position got unsettled by the order dated 08.09.2020 of the Kerala High Court in *ZIA 210/2018 in O.P (KAT) No. 87/2018 [Haris.K.M & Ors. v. Jahfar.K & Ors]*.

S 22 (3) (f) of the Administrative Tribunals Act, 1985 states that a Tribunal shall have the same power as a civil court under the CPC while trying a suit in respect of reviewing its decisions. Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 prescribes 30 days’ time limit for preferring a review petition from the date of order of which the review is sought. Section 21 deals with limitation for approaching the Tribunal and Section 21 (3) empowers the Tribunal for delay condonation

in making the application.

The Kerala High Court while holding that Section 21 has to be read along with Section 29 of the Limitation Act, which provides for applicability of special or local law for determining the applicability of limitation concluded that the Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, for reviewing its decisions. There is no exclusion in the statute; of Section 5 of the Limitation Act, and the powers being that under the CPC, there can be inferred an application of the Limitation Act.

The Kerala High Court further held that the limitation of 30 days is from the Rules, and the rule making powers under Section 35 of the AT Act was analysed. It held that clause (f) of sub-section (3) of Section 22, providing for power of review has not been included within the purview of Section 35. Section 36 of the AT Act empowers appropriate Governments to make rules which also does not take in power to make rules to regulate a review application, the reason being, as observed by the High Court, the power granted is the power to review under the CPC. However, since the provisions of the Limitation Act are applicable, Section 5 of the Limitation Act is also applicable and a Review Petition can be filed beyond the period of 30 days, if the petitioner is able to show sufficient cause for the delay.

Attention of the Kerala High Court was drawn to the order of the Supreme Court in *Union of India & Ors. v. Chitra Lekha Chakraborty* [CA No. 6213/2008] wherein the Apex Court held that since there is a specific provision in Rule 17 of the AT Rules for filing of Review applications before the CAT, Section 5 of the Limitation Act was not applicable to a petition under Rule 17.

However, the Kerala High Court declared the above order of the Supreme Court as per incuriam and sub silentio and held to be not binding since the Apex Court “was no apprised of the statutory provisions, which relate to the power of review available with the Tribunal. In fact the application for review is not one filed under Rule 17 but under Section 22 (3) (f) of the Administrative Tribunals Act. Section 22 of the Act which says that the Tribunal shall have the same powers as that of a civil court for reviewing its decisions was not considered. The provisions of the Civil Procedure Code and that of the Limitation Act, which governs the power of review were also not considered. Even if Rule 21 is to be treated as the specific provision prescribing limitation, the fact that the said prescription is subject to Section 29 of the Limitation Act was also not considered.”

Now we need to wait with fingers crossed as to what will the Supreme Court decide, as and when this ruling of the Kerala High Court gets into its attention.

M.K. Shaji, CLA/RWF

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

It will be useful to have a glance through the following table to compare various occasions which result in the termination of mandate of an arbitral tribunal as well as termination of arbitral proceedings:-

**TERMINATION OF MANDATE OF ARBITRATOR
VIS-A-VIS
TERMINATION OF ARBITRAL PROCEEDINGS**

Sl. No.	Section Number	Cause for Termination of Mandate	Remarks
1	S. 14 (1) (a)	Arbitrator becomes de jure or de facto unable to perform his functions / Fails to act without undue delay for other reasons.	Mandate gets terminated and substitute arbitrator(s) is / are appointed. AT may repeat the hearings, if any, held [S.15(3)].
2	S. 14 (1) (b) & S. 15 (1) (a) & (b)	Arbitrator withdraws from his office / Parties agree to the termination of his mandate.	Mandate gets terminated and substitute arbitrator(s) is / are appointed. AT may repeat the hearings, if any, held [S.15(3)].
3	S. 29A (3)	Award is not made within 12 months from the date of completion of pleadings u/s 29A (1) [which is extendable by 6 months with consent of all parties].	Court may or may not extend the mandate before or after the expiry of the specified period and may or may not substitute one or all arbitrators [S. 29A (4) & (6)]. AT may resume from the stage where the proceedings were stopped [S. 29A (6)].
Sl. No.	Section Number	Cause for Termination of Arbitral Proceedings	Remarks
1	S. 25 (a)	By an order of the AT when claimant fails to communicate his statement of claim within the agreed upon time / time determined by the AT.	Show-cause before termination is mandatory [CA 15036/2017]. Termination u/s 25 (a) can be recalled [SREI Infrastructure Finance Ltd. v. Tuff Drilling Pvt. Ltd.].
2	S. 30 (2)	Parties settle the dispute	AT may draw up award on agreed terms.
3	S. 32 (1) r/w S. 34 (4)	By grant of Award.	Mandate of the AT shall terminate with the termination of the arbitral proceedings.
4	S. 32 (2) (a) r/w S. 34 (4)	By an order of the AT when claimant withdraws his claim and the respondent does not object.	Mandate of the AT shall terminate with the termination of the arbitral proceedings.
5	S. 32 (2) (b) r/w S. 34 (4)	By an order of the AT when parties agree on the termination of the proceedings.	Mandate of the AT shall terminate with the termination of the arbitral proceedings.
6	S. 32 (2) (c) r/w S. 34 (4)	By an order of the AT when the AT finds that the continuation of the proceedings has become unnecessary or impossible due to any reason.	Mandate of the AT shall terminate with the termination of the arbitral proceedings. Termination order cannot be recalled [Sai Babu v. Clariya Steels Pvt. Ltd. CA No. 4956/2019. DOJ – 01.05.19].
7	S. 38 (2)	By an order of the AT when both parties do not pay the deposit. The proceedings may either be suspended or terminated.	--