Lex Info

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Legal Maxim

Qui facit per alium, facit per se – He who acts through another acts himself. It is a fundamental legal maxim of the law of agency and this maxim is often stated in discussing the liability of the employer for the act of employee in terms of vicarious (indirect, second-hand) liability.

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

Articles/write-ups on legal issues relevant to railways' working are invited from officers/ staff including from other zonal railways/ production units;

Please mail them to:
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ABC OF ACTS

The Negotiable Instruments Act, 1881

This Act is enacted to define and amend laws relating to promissory note, bills of exchange and cheque. This Act is applicable to whole of India and it came into force with effect from 1st March 1882.

There were total 142 Sections in the Negotiable Instruments Act 1881 when came into force. The act was amended and amendment Act inserts five new sections from 143 to 147 touching various limbs of the parent Act and Cheque truncation through digitally were also included and the amendment Act has been recently brought into force on Feb. 6, 2003.

Negotiable instruments recognized by Negotiable Instruments Act 1881 are (i) Promissory notes (ii) Bills of exchange (iii) Cheques. A negotiable instrument is a piece of paper which entitles a person to a sum of money and which is transferable from one person to another by mere delivery or by endorsement and delivery.

Section 4 of the Negotiable Instruments Act 1881 defines the promissory note, "A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments."

Section 5 of the Act defines the bill of exchange, "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument".

Section 6 of the Act defines the cheque "A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand".

All cheque are bill of exchange, but all bills are not cheque.

Section 6(a) defines 'a cheque in the electronic form.

Section 6(b) defines 'a truncated cheque'.

Section 7 of the Act gives definition of 'drawer' and 'drawee'. The maker of the bill of exchange or cheque is called "drawer" and the person thereby directed to pay is called the "drawee".

Section 13 of the Act states that a negotiable instrument is a promissory note, bill of exchange or a cheque payable either to order or to bearer..

Section 18. Where amount is stated differently in figures and words: If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Section 19. Instruments payable on demand: A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Section 22. "Maturity". The maturity of a promissory note or bill of exchange is the date at which it falls due. The section also defines days of grace.

Section 25. When day of maturity is a holiday: When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Section 45. Holder's right to duplicate of lost bill.

Section 58. A promissory note, bill of exchange or cheque payable to bearer is negotiable by indorsement and delivery thereof.

Section 78. To whom payment should be made: Payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

As per Section 90, when the acceptor of bill of exchange or maker of promissory note becomes holder on or after maturity, the instrument is discharged.

Section 91 provides for Dishonour by non-acceptance.

Section 92 provides for Dishonour by non-payment- An instrument is dishonoured by non- payment when the party primarily liable, makes default in payment.

Section 93 & 94 provide for Notice of dishonour- By whom notice to be given: When an instrument is dishonoured either by non-acceptance or by non-payment, the holder thereof or some party thereto who remains liable thereon must give notice of dishonour to such parties whom the holder proposes to charge with liability severally or jointly, e.g., the drawer and the endorsers.

To be contd...in next issue

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

RTI Series

Contd… from last issue

14. (1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

(4) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

CHAPTER IV
The State Information Commission

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

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

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

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister Term of office and conditions of service.

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

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

(5) The State Chief Information Commissioner and the State 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 State Chief Information Commissioner or a State 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 State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

M.K. Shaji, CLA/RWF

Notional extension of Employment - Employees Compensation Act, 1923

In Manju Sarkar & Ors Vs Mabish Miah & Ors in Criminal Appeal No.5847 of 2014 (Arising out of SLP (Crl) No.27614 of 2011 DOJ:30.6.2014, Hon'ble Supreme Court held that there is notional extension of employment in the instant case.

Section 3(1) of E.C. Act, 1923 deals with Notional extension of employment. The term 'Employment' is wider than the term 'Work'. Work is limited to work spot only. But, the term 'Employment' is very exhaustive. It is not limited to the work spot to the premises of the employers. It extends to the public places also. Therefore, the phrases 'arising out of and in the course of employment' is not limited to the accident which may occur in the employer's premises, but may also extends to the outer sphere of his area and makes the employer liable to pay compensation. The Doctrine of Notional extension of employment helps dependents of the employee to get compensation by connecting the relationship between accident and employment, even though the employee sustained injuries elsewhere.

Briefly the facts of the case: The deceased was driver of a truck under the employment of Respondents 1 & 2. On 14.5.2005 the deceased drove a truck from Agartala to Dharmanagar. He noticed that some mechanical problem in the truck and he got down from the truck to arrange repairs and on the intervening night he met with an accident and died. The helper of the truck lodged a FIR. The wife of the deceased filed a case before Commission under E.C. Act and the same was rejected by the Commission and Hon'ble High Court also dismissed the appeal. Aggrieved by this, the appellant filed SLP contending that the deceased met with an accident in the course of employment on the principle of notional extension of employment.

The Respondents pleaded that the deceased parked the truck in the godown. Due to delay in loading goods he left the place for his personal reasons saying to the cleaner that he could return in the night and the appellants have failed to prove that there was mechanical trouble in the truck on the way to Churaibari FCI godown as pleaded by them and the deceased did not suffer the injuries in the course of employment and they are not liable to pay compensation.

After carefully going through the rival contentions and the records, Hon'ble Supreme Court held that there is notional extension of employment and the deceased met with accident in the course of his employment and respondents are liable to pay compensation [2014 STPL (Web) 419 SC].

K. Gopinath, CLA, GM/O/SCR

Suspension of family pension to a person charged with the offence of murdering or abetting in the murder of the government servant – Allowance family pension to other eligible family member– (RBE 48/2021 and SC No. 71/2021)

In accordance with sub Rule (11-C) of Rule 54 of the CCS (Pension) Rules, 1972, if a person, who is eligible to receive family pension on the death of a Government Servant or a Pensioner, is charged with the offence of murdering the Government Servant/ Pensioner or for abetting in the commission of such an offence, the payment of family pension remains suspended till the conclusion of the criminal proceedings instituted in this regard. In that case, family pension is neither paid to the person who is charged with the offence nor any other eligible family members till the conclusion of the said criminal proceedings.

Now, Railway Board reviewed the above provision and decided that in cases where a person eligible to receive family pension is charged with the offence of murdering the Government Servant or for abetting in the commission of such an offence and the payment of family pension to him/her remains suspended under Rule 54(11-C) of the CCS (Pension) Rules, 1972, family pension may be allowed to other eligible members of the family till the conclusion of the criminal proceedings in this regard. If the spouse of the Government Servant is charged with the offence of murdering the Government Servant or for abetting in the commission of such an offence and other eligible family member is a minor child of the deceased Government Servant, the family pension to such minor child shall be payable through a duly appointed guardian, and the mother or father of the minor child (who is charged with the offence) shall not act as guardian for the purpose of drawal of family pension. If the concerned person is subsequently of the charge, the family pension shall become payable to that person from the date of acquittal and the family pension to other members of the family shall be discontinued from that date.

K. Gopinath, CLA, GM/O/SCR

Joke

Thought Punishment

I was a brand-new attorney in practice alone, and I had a likewise inexperienced secretary fresh out of high school. The importance of proofreading the results of my dictation was highlighted one day when a reminder to a client's tenant to pay her rent or suffer eviction was transcribed as follows: "You are hereby notified that if payment is not received within five business days, I will have no choice but to commence execution proceedings."

Difference between Voluntary Retirement & Premature Retirement

Master Circular No. 35 deals with various types of retirements. Voluntary Retirement was a scheme introduced w.e.f 09.11.1977 based on the recommendations of the Administrative Reforms Commission, for those employees who have rendered 20 years of qualifying service. The initiative lies with the Railway servant and the Government does not have the reciprocal right to order retirement on its own [RB's Lr. No. E(P&A)I-77/RT-46 dated 09.11.1977]. The notice period required is 3 months, which may be reduced/ignored by the Govt. Acceptance of VR by the Govt. is mandatory. Rule 67 of Railway Services (Pension) Rules 1993 deals with VR.

Premature retirement can either be initiated by the Government or the employee. As per Rule 1802 (a) the Govt. can, with a notice of not less than 3 months, prematurely retire a Group A or B officer who has completed 50 years of age, if he entered service prior to attaining 35 years of age. In all other cases (viz., Group A & B officers who entered service after 35 years of age and all Group C & D employees) the age criterion is attainment of 55 years. Rule 1802 (b) empowers an employee to prematurely retire after giving not less than 3 months' notice. The curtailment of notice period may be considered in suitable cases, upon the written application of the employee. In the case of Govt. is opting to prematurely retire an employee prior to 3 months' notice period, the wages in lieu of the notice period has to be paid. Rule . Rule 1803 envisages premature retirement upon completion of 30 years of service at the instance of the Government or the employee. Premature retirement sought by employees under Rule 1802 & 1803 does not require any approval of the Government and cannot be declined except on the ground of suspension. The Railway servant will be deemed to have retired automatically at the end of the notice period of 3 months. Notice period may be permitted to be curtailed by the Govt. Failure to communicate to the Railway servant about withholding of permission (on the ground of suspension) will lead to their automatic retirement on expiry of the notice period. Rule 66 of Railway Services (Pension) Rules 1993 also deals with premature retirement upon completion of 30 years of service.

Withdrawal of notice for Voluntary Retirement and Premature Retirement can be made with the specific approval of the appointing authority [RBE 196/1990]. Courts have held that the employee has a right to withdraw the notice for voluntary / premature retirement, exercising locus poenitentiae (an opportunity to repent), unless alternate arrangements have been made. Notice for VR can be withdrawn even after communicating its acceptance to the employee, but before the expiry of the notice period. DRM, HOD and GM may accept the retirement for Group C & D staff working under his/her control. Group B Officers require the acceptance by the GM.

The power should be exercised by these authorities personally i.e., no further delegation is permissible. DAR and Vigilance clearance are required for VR.

K. Gopinath, CLA, GM/O/SCR

FAQ What is Arbitration?

Arbitration is a mode of Alternate Dispute Resolution (ADR). In India ADR consists of negotiation, mediation or conciliation or arbitration or a combination of these. Negotiation is carried out between the disputing parties without the assistance of any 3rd party. Mediation is conducted by a mediator who assists the parties to arrive at a consensus. Conciliation is governed by Part -III (Sections 61 to 81) of the Arbitration & Conciliation Act, 1996.

Arbitration is governed by Part – I (S 2 to 43M) of the Arbitration & Conciliation Act, 1996. Arbitration offers speedy redressal, less cost, procedural flexibility, party autonomy, parties choice of forum, confidentiality, less confrontational, expert arbitrators for technical disputes, finality of awards and enforceability of awards. Due to party autonomy principle, parties have the greater control over the procedure, applicable law, place and language of the proceedings, appointment of arbitrators, qualifications of arbitrators, arbitrability, control over fees / cost etc. Neutrality is another advantage of arbitration, by which the parties may opt a neutral venue and country for conduct of arbitral proceedings and challenges to the award. The confidentiality assured through Section 42A introduced through 2019 Amendment is another feature which helps corporates to keep their trade related commercial aspects under wrap, which cannot be secured through court litigation. Separability of arbitral clause is another advantage with arbitration proceedings. The arbitration clause survives even if the contract is declared null and void and hence the arbitration clause which forms part of a contract is treated as an independent agreement. Kompetenz-Kompetenz is another principle by which the arbitral tribunal is empowered to rule on its own jurisdiction, including ruling on any objections w.r.t the existence or validity of the arbitration agreement.

Arbitration proceedings are time bound and hence offers faster resolution. Award has to be made within 12 months from the date of completion of pleadings. Extension by six months is permissible if all the parties agree for such an extension. The failure to adhere to the time line for grant of award results in termination of the mandate of the arbitrator(s) [S.29A]. Fast Track Procedure (S.29B) provides for grant of Award within six months from the date the arbitral tribunal enters upon the reference.

S 35 states that an Award is final binding on the parties and persons claiming under them respectively. Section 36 provides that an award shall be enforced under CPC provisions, as if it were a decree of the Court. Unlike court decisions, the scope to challenge an Award is very narrow as laid down in Section 34, and the said provision is not a substitute for a regular appeal. Appeal under S 37 is limited to grounds such as refusal to refer the parties to arbitration u/s 8, granting or refusing to grand interim measure by Court u/s 9 or 17, setting aside or refusing to set aside an arbitral Award u/s 34 and challenge against arbitrator's order accepting lack of jurisdiction / exceeding the scope of its authority.

K. Gopinath, CLA, GM/O/SCR

Suspension of sentence, pending an appeal, doesn't imply a suspension of order of conviction – Hon'ble High Court/New Delhi

In the Hon'ble High Court of Delhi at New Delhi W.P.(C) 10100/2017 & CM No.41286/2017 Santhosh Kumar Delhi Jal Board Date of Decision:- 15.10.2019.

Hon'ble igh Court has reiterated that suspension of sentence, pending an appeal, doesn't imply a suspension of order of conviction.

It is held by the Hon'ble Court that in a criminal trial, if a convict has been granted bail or suspension of his sentence pending his appeal, that doesn't mean that his conviction ceases to operate.

In the present case, The petitioner, who was working as an Assistant Pump Driver in the respondent/Delhi Jal Board was involved in an incident leading to registration of a FIR No.51/2010 against him under Section 363, 366, 368 and 376 of the Indian Penal Code, 1860 (IPC) at Police Station Kotwali Dehat, Bulandsahar, U.P and the petitioner was convicted of offences under sections 363, 366, 368 and 376 of IPC, however upon filing of an appeal, the appellate court suspended his sentence and granted him bail pending his appeal.

Meanwhile, Delhi Jal Board relieved the appellant of his services. Aggrieved by his termination, he raised an industrial dispute which came to be rejected after the Labour Court found that the disciplinary authority had, after considering the relevant factors, rightly reached its conclusion. Hence, the present writ was filed. Petitioner's counsel argued that even though the petitioner's appeal is still pending adjudication before the High Court, once his sentence stands suspended and he has been released on bail, the respondent is duty-bound to take him back in service as the effect of the said suspension, would tantamount to the order of conviction and sentence being treated as non est.

Respondent argued that in view of the settled position that mere suspension of sentence does not imply that the order of conviction has been stayed or that the employer should ignore the fact and effect of such conviction.

The Court rejected the claim of the petitioner by relying upon the rule laid down by the Supreme Court in Union of India & Ors. v. Ramesh Kumar AIR 1997 SC 3531 which says that:

'If the Disciplinary Authority comes to the conclusion that the offence for which the public servant has been convicted was such as to retention in the public service prima facie undesirable, it can impose upon him under Rule 19(1) of CCS (CCA) Rules, 1965, the penalty of dismissal or removal..'While rejecting the writ petition, the court opined that the Delhi Jal Board was justified in coming to the conclusion that further retention of the petitioner in service was undesirable. A cost of Rs. 10000 has also been imposed upon the petitioner.

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

Know Our Constitution

Article-52. There shall be a President of India.

Article-53. (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. (2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law. (3) Nothing in this article shall— (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or (b) prevent Parliament from conferring by law functions on authorities other than the President.

Article-54. The President shall be elected by the members of an electoral college consisting of— (a) the elected members of both Houses of Parliament; and (b) the elected members of the Legislative Assemblies of the States.

Article 55 - Manner of election of President :

(1) As far as practicable, there shall be uniformity in the scale of representation of the d different States at the election of the President

(2) For the purpose of securing such uniformity among the States inter se as well as parity b between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner: (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly; (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub clause (a) shall be further increased by one; (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub clause (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one half being counted as one and other fractions being disregarded

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot Explanation n this article, the expression population means the population ascertained at the last preceding census of which the relevant figures have been published: Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

YOURS LEGALLY

COMPILATION OF TIME LINES OF ACA 1996

Sl. No.	ISSUE	SECTION NUMBER / AUTHORITY	TIME LINE
1	Receipt of communication	S. 3 (1) (2)	Day of delivery.
2	Waiver of right to object	S. 4	To be objected without undue delay or within the time limit prescribed.
3	Reference to arbitration by Court	S. 8 (1)	To apply not later than the date of submitting the first statement on the substance of the dispute.
4	Commencement of AT proceedings after grant of interim measure of protection	S. 9 (2)	Within 90 days of date of interim order or extended time.
5	Appointment of arbitrator by a party: (i) In case of no agreed procedure, but with 3 arbitrators -	S. 11 (4) (a)	When a party fails: Within 30 days from the date of receipt of request from other party.
		S. 11 (4) (b)	When two appointed arbitrators fail to agree on the 3rd arbitrator: Within 30 days from the date of appointment of arbitrators.
	(ii) In case of no agreed procedure, but with sole arbitrator -	S. 11 (5)	Within 30 days from the date of receipt of request from other party.
	(iii) In case of agreed procedure -	S. 11 (6)	No time limit. But right expires upon a party approaching HC or SCI.
6	Disposal of application by the arbitral institution for appointment of AT	S. 11 (13)	Within 30 days from the date of service of notice on the opposite party.
7	Application to HC / SCI for appointment of arbitrator u/s 11	Article 137 of Limitation Act applies as per the SCI's order in BSNL v. Nortel Networks India Pvt. Ltd. CA No. 843-844/2021.	3 Years.

To contd.. in next issue……

M.K. Shaji, CLA/RWF

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

Section 25 envisages three eventualities as per the table below:

Section No.	EVENTUALITY (Without sufficient cause being shown)	ACTION BY ARBITRATOR
25 (a)	Claimant fails to communicate his statement of claim.	Arbitral Tribunal shall terminate the proceedings.
25 (b)	Respondent fails to communicate his statement of defence.	Arbitral Tribunal to continue the proceedings, without treating such absence as admission of the allegations by the claimant and the AT may forfeit the right to file statement of defence.
25 (c)	Either party fails to appear at an oral hearing or to produce documentary evidence.	Arbitral Tribunal may continue the proceedings and make the arbitral award on the evidence adduced.

Difference between termination order under S25 (a) and an Award:-

It has been held that a decision under clause (a) is an order for termination of proceedings. The court distinguished an order of termination from an award. An order under Section 25 (a) is a termination of proceedings without any decision on merits. An award is a termination after considering merits of the matter under dispute. [Anuptech Equipments (P) Ltd. v. Ganpati Coop Housing Society Ltd. AIR 1999 Bom 219].

Recall of termination order made under Section 25 (a):-

An arbitral tribunal terminated its proceedings when the contractor failed to submit the claim statement on the ground that his request for appointment of an independent arbitrator was pending in the court. It was held that failure to submit claim statement on the part of the contractor could not be attributed to negligence, inaction or want of bona fide. It was further held that petitioner-contractor had shown sufficient cause within the meaning of Section 25 (a) for not communicating the claim statement and in such like cases the arbitral tribunal can recall its earlier order terminating the proceedings. [Senbo Engg. Ltd. v. State of Bihar. AIR 2004 Pat 33].

Writ amenability against termination under S 25 (a):-

Where an arbitral tribunal terminates the proceedings under Section 25 (a) on account of failure of the claimant to submit claim statement within the time agreed upon between the parties or as determined by the arbitral tribunal, the only remedy available to the aggrieved party is to file a writ petition. [Senbo Engg. Ltd. v. State of Bihar. AIR 2004 Pat 33].

In a case the arbitrator who was appointed was not qualified in accordance with the agreement of the parties. The claimant repeatedly pointed it out to the arbitrator about his being not qualified and asked for time for filing his claim papers. Thus, the claimant had not waived his right to file objections. The arbitrator terminated the proceedings because of the default on the part of the claimant in filing his statement of claim. This decision was held to be null and void. It was a decision by a tribunal which was constituted contrary to the requirements of the agreement. The decision was liable to be set aside by means of a writ petition, no other remedy being available under the Act. The arbitrator would be covered by the words "other persons" in Article 226 of the Constitution. The High Court where the writ was filed had jurisdiction because the place specified for notice was within that jurisdiction and also the correspondence between the parties had also taken place within the territorial jurisdiction of that court. [Anuptech Equipments (P) Ltd. v. Ganpati Coop Housing Society Ltd. AIR 1999 Bom 219].

Improper termination of proceedings could be challenged under writ jurisdiction of Art. 226. In this case also the claim was not presented before the Chief Justice for appointment under Section 11 was pending. [Senko Engg. Ltd. v. State of Bihar. AIR 2004 Pat 33].

Failure to submit statement of defence:-

In a case, the respondent indicated to the arbitrator that he intended to lodge a counter-claim. The arbitrator allowed him a fixed period of time for the purpose and told him that no further extension would be allowed. The party could not keep the time and sought an adjournment of the hearing for getting the grant of extended period. The arbitrator refused it. The party walked out in protest. The arbitrator made an award in his sense. The award was in favour of the claimant. The respondent attacked the award on the ground of the arbitrator acted unreasonably. The court upheld the award. The arbitrator had the power to set a reasonable time-limit for filing the claim and had jurisdiction to continue the proceedings even in the absence of the respondent [Grangeford Structures v. S.H. (1990) 2 IR 251].

Ex Parte proceedings:-

The principles regarding the arbitrator's right to proceed ex parte are:

1. If a party to an arbitration agreement fails to appear at one of the sittings, the arbitrator cannot or, at least, ought not proceed ex parte against him at that sitting;

2. Where non-appearance was accidental or casual, the arbitrator should ordinarily proceed in the ordinary way, fixing another date of hearing and awaiting the future behaviour of the defaulting party;

3. If, on the other hand, it appears that the defaulting party had absented himself for defeating the object of the reference, the arbitrator should issue a notice that he intended at specified time and place to proceed with his reference and that if the party concerned did not attend he would proceed in his absence;

4. But if after making such peremptory appointment issuing such a notice the arbitrator did not in fact proceed ex parte on the day fixed, but fixed another subsequent date, he could not proceed ex parte on such subsequent date, unless he issued a similar notice in respect of that date as well &

5. If he issued a similar notice and the party concerned did not appear, an award made ex parte would be in order. [Kailash Rani Dang v. Rakesh Bala Aneja. (2009) 1 SCC 732].

N. Murali Krishna, Sr. Law Officer