



ADVISOR:

Chandrima Roy
SDGM

Editor-in-Chief

N.Murali Krishna,
Sr.Law Officer

Editors:

M.V.Ramana,
Law Officer/

Asst. Editors:

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

Lex Info

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Legal Maxim

Sine qua non means "without which nothing". An essential condition. A thing that is absolutely necessary. Basically a component of an argument that, if debunked, causes the entire argument to crumble.

ABC OF ACTS

The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 (30 of 2013)

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is a legislation that regulates land acquisition and provides laid down rules for granting compensation, rehabilitation and resettlement to the affected persons in India. The Act has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected. This Act extends to the whole of India and it has come into force w.e.f. 01.01.2014. The Act replaces the Land Acquisition Act, 1894. This Act has a total of 114 Sections explained in 13 Chapters and 4 schedules.

The main objectives of the Act to ensure, in consultation with institutions of local self-government and Gram Sabhas a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families, to provide just and fair compensation to the affected families whose land has been acquired or are affected by such acquisition, to make adequate provisions for such affected persons for their rehabilitation and resettlement. The Act aims to establish the law on land acquisition, as well as the rehabilitation and resettlement of those directly affected by the land acquisition in India.

The Act is applicable when Government acquires land for its own use, hold and control, including land for Public sector undertakings, Government acquires land with the purpose to transfer it for the use of private companies for stated public purpose. The purpose of LARR 2013 includes public-private-partnership projects, but excludes land acquired for state or national highway projects. This Act is applicable when Government acquires land for immediate and declared use by private companies for public purpose.

However, the provisions of the Act do not apply to acquisitions under the existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

The process of acquisition begins with the issuance of preliminary notification, as envisaged

under Section 11 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a preliminary notification under Section 11 in rural or urban areas shall be published. The Preliminary Notification shall be published in the manner viz. (a) in the Official Gazette, (b) in two daily newspapers circulating in the locality of required area of which one shall be in the regional language; (c) in the local language in the Panchayat, Municipality or Municipal Corporation, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil; (d) uploaded on the website of the appropriate Government;

Immediately after issuance of the notification, the concerned Gram Sabha or municipalities shall be informed of the contents of the notification issued in all cases of land acquisition at a meeting called especially for this purpose. The notification to be issued shall contain details of the land to be acquired, a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement.

No person shall make any transaction or cause any transaction of land specified in the preliminary notification from the date of publication of such notification till such time as the proceedings of acquisition are completed. Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this restriction. But any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector.

Section 14 provides that where a preliminary notification under section 11 is not issued within 12 months from the date of appraisal of the Social Impact Assessment report submitted by the Expert Group under Section 7, then, such report shall be deemed to have lapsed and a fresh Social Impact Assessment shall be required to be undertaken prior to acquisition proceedings. The appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same but such decision shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

(To be continued)

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

RTI Series

Contd... from last issue

Difference between Sections 18 & 19:-

“30. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

35. The procedure for hearing the appeals have been framed in exercise of power under clauses (e) and (f) of sub-section (2) of Section 27 of the Act..

They are called the Central Information Commission (Appeal Procedure) Rules, 2005. The procedure of deciding the appeals is laid down in Rule 5 of the said Rules.

Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. It is well known when a procedure is laid down statutorily and

there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876) 1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.

37. We are of the view that Sections 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies. One cannot be a substitute for the other.”

Comparison of key features of Section 18 and 19:

Aspect	Section 18 (Complaint)	Section 19 (2 nd Appeal)
Scope	Narrow	Broad
Nature of proceeding	Supervisory	Appellate
Eligibility for compensation	No	Yes
Access to information sought	No	Yes
Requirement to file First Appeal	Not required	Required
Time limit for filing	Nothing specified	Within 90 days

M.K. Shaji, CLA/RWF

Group administrator of Whatsapp cannot be held vicariously liable for an act of a member of the group, who posts objectionable content, unless it is shown that there was common intention or pre-arranged plan acting in concert

Social media is flooded with many posts on the liability of administrator of a Whatsapp group as to any objectionable posts by any of the members of the group resulting in deletion of many groups by the administrators fearing threat of criminal cases against them. However, these social media posts are without any basis. Let us see the legal position from the case law decided by Madras High Court following a Bombay High Court judgement.

A criminal original petition has been filed to quash the impugned First Information Report as far as the petitioner is concerned. The petitioner had formed a Whatsapp group in the name and style of "Karur Lawyers". He was the group administrator. In the said Whatsapp group, certain highly offensive messages were posted by one Pachaiyappan. It is alleged that a reading of the said messages would clearly cause ill-feeling between two communities. Therefore, the second respondent who is also a practising lawyer lodged information before the first respondent. That led to registration of the First Information Report for the offences under Sections 153A and 294(b) of I.P.C. Contending that the petitioner was only a group administrator and he is no way responsible and he cannot be implicated as an accused, this criminal original petition has been filed.

The court observed that forensic report is still awaited, it would be pre-mature to entertain this petition. However, while going through the petition the court held that the first respondent shall bear in mind the decision of the Hon'ble Bombay High Court in the case of Kishore V. State Maharashtra [Criminal Application (Apl) No. 573/2016 decided on 01.03.2021] reported in (2021) 2 AIR Bom R (Cri) 574. In the aforesaid decision it was held as follows:-

“The crux of the issue involved is whether an administrator of Whatsapp group can be held criminally liable for objectionable post of its member for committing offences punishable under sections 354-A(1)(iv), 509 and 107 of the Penal Code, 1860 and section 67 of the Information Technology Act, 2000. To adjudicate the said issue, it is necessary to understand functioning of Whatsapp messaging service. Whatsapp is an instant messaging platform

which can be used for mass-communication by opting to create a chat group. A chat group is a feature on Whatsapp which allows joint participation of members of the chat group. Group Administrators, as they are generally called, are the ones, who create the group by adding or deleting the members to the same. Every chat group has one or more group administrators, who control participation of members of the group by deleting or adding members of the group. A group administrator has limited power of removing a member of the group or adding other members of the group. Once the group is created, the functioning of the administrator and that of the members is at par with each other, except the power of adding or deleting members to the group. The Administrator of a Whatsapp group does not have power to regulate, moderate or censor the content before it is posted on the group. But, if a member of the Whatsapp group posts any content, which is actionable under law, such person can be held liable under relevant provisions of law.

In the absence of specific penal provision creating vicarious liability, an administrator of a Whatsapp group cannot be held liable for objectionable content posted by a member of a group. A group administrator cannot be held vicariously liable for an act of member of the group, who posts objectionable content, unless it is shown that there was common intention or pre-arranged plan acting in concert pursuant to such plan by such member of a Whatsapp group and the administrator. Common intention cannot be established in a case of Whatsapp service user merely acting as a group administrator. When a person creates a Whatsapp group, he cannot be expected to presume or to have advance knowledge of the criminal acts of the member of the group. We are not examining the issue of liability of an administrator if he is a creator of objectionable content, as it is not arising in the facts of the present case”.

While following the ratio in the above case, the High Court held that if the petitioner had played the role of a group administrator alone and nothing else, then while filing final report, the petitioner's name shall be deleted. If some other material is also gathered by the first respondent so as to implicate the petitioner, then of course the petitioner will have to challenge the case only on merits. *[R. Rajendran Wrongly mentioned as Tamil R.Rajendran)Vs.The Inspector of Police, Cri.OP (MD) No.8010/2021 and 4123/2021 filed before the Madurai Bench of Madras High Court [D.O.J:15.12.2021]*

Syed Amjad Ali, OS, GM Law Section

Difference between**Equality and Equity****FAQ****What is 'Review' under CPC 1908 and under what grounds it is filed?**

'Equality' means sameness whereas 'Equity' means fairness and justice

Equality is providing everyone with the same resources, support and opportunities across the board. Equality means there would be no difference in treatment despite gender, race, economic background, etc.

On the other hand, equity promotes fairness by taking into account circumstances instead of a one-size-fits-all approach. An equitable solution is based on providing the appropriate resources, support and/or opportunities based on a person's needs.

Example of gender equality: Giving equal quantity of food to all the family members including pregnant and lactating (breastfeeding) women, and adolescent girls, irrespective of their nutritional requirement and need.

Example of gender equity: Giving more nutritious and additional quantity of food to the pregnant and lactating (breastfeeding) women and adolescent girls, based on their dietary requirement.

The differences between equity and equality can be drawn clearly on the following grounds

1. Justness and fairness in the manner of treating individuals are called equity. Equality is what we call, the state where everyone is at the same level.
2. Equity is a process while equality is the outcome, i.e. equity is the necessary condition to be fulfilled to achieve latter.
3. While equity represents impartiality, i.e. the distribution is made in such a way to even opportunities for all the people. Conversely equality indicates uniformity, where everything is evenly distributed among people.
4. In equity, the differences are recognized and efforts are made to counteract the manner in which individual opportunities are not equal. On the contrary, equality recognizes sameness and so it aims at treating everyone as equal.

In equity, all the people can have access to what they need. The equality, in contrast, all the people get the same thing, i.e. rights, resources and opportunities.

Equity cannot be achieved, through treating all the people equally rather it can be achieved through treating all the people in an equitable manner, i.e. as per their circumstances. Moreover, equality works, only if the starting point of every individual is same.

K. Gopinath, CLA, GM/O/SCR

Review is a judicial re-examination of the case by same court. Section 114 of Code of Civil Procedure gives a substantive right of review and order 47 provides the procedure. If any person is aggrieved (a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred; (b) by decree or order from which no appeal is allowed; (c) by a decision on reference by court of small cause, may apply for Review of Judgement to court which passed the decree or made the order and the Court may make such order thereon as it think fit.

Order 47 Rule 1 of Code says that Application for Review of Judgement may be made on any of the following grounds:-

- i) Discovery of new and important matter or evidence: The party seeking review must show that he exercised greatest care in adducing all possible evidence and that the new evidence is such as is relevant and that had it been given in the suit it might possibly have altered the judgment. It is not only the discovery of new and important evidence which entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was passed or order made.
- ii) Mistake or error apparent on the face of the record: It is not limited to a mistake of fact. It may be of law. It should be an error which can be seen by a mere perusal of the record without reference to any other matter.
- iii) Any other sufficient grounds as provided by the Code, wherein the misconception of the court can be considered as sufficient ground. It might be added that a review application should be filled before the appeal is lodged. An appeal may be filed after an application for review, but once the appeal is heard, the review cannot proceed. On the other hand, if the application for review is granted and a new decree is passed, the appeal cannot be heard and it must be dismissed for the decree appealed from is superseded by a new decree.

The application for review shall be filed within 30 days from the date of order/decreed. The order or decree passed after such review shall be final and in force. The review petition is discretionary of a court, meaning, it can either choose to entertain or reject the application. The Supreme court can also review its own decisions under Article 137 of the Constitution of India. As per Supreme Court Rules, 1966, the review petition should be filed within thirty days from the date of judgment.

K. Gopinath, CLA, GM/O/SCR

Employee who Makes false declaration or suppressed involvement in Criminal Case is not entitled to appointment and continue in service as a matter of right:

In Civil Appeal Nos. 5743-5744 of 2021 (arising out of SLP (C) Nos. 7386-7387 of 2020) in Rajasthan Rajya Vidyut Prasaran Nigam Limited and another (Appellants) Vs. Anil Kanwariya (Respondent)- decided on 17.09.2021, the Hon'ble Supreme Court held that an employee, who once made false declaration or suppressed fact regarding pending criminal case against him, shall not be entitled to appointment as a "matter of right".

The Hon'ble Supreme Court while setting aside the judgement of the Rajasthan High Court which had quashed the order terminating the services of an employee who was terminated due to non-disclosure of pending criminal case against him at the time when he had submitted the application for appointment.

The bench said that the question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not, but it is about "trust".

The bench said in its verdict "As observed hereinabove, even in case of subsequent acquittal, the employee once made a false declaration and/or suppressed the material fact of pending criminal case shall not be entitled to an appointment as a matter of right".

The judgement was delivered on a plea filed by employer, Rajasthan Rajya Vidyut Prasaran Nigam Limited, challenging the high court verdict which had quashed the termination order.

The Apex Court said that the question is about credibility and trustworthiness of such an employee who at the initial stage of employment, while applying for a post, has made false declaration or suppressed fact of having involved in a criminal case.

The Apex Court said that "Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee". Referring to several judgements delivered

by the apex court earlier on related issue, the bench noted that such an employee cannot claim the appointment or continue to be in service as a matter of right.

The apex court, while setting aside the high court verdict, said the order of reinstatement was "wholly untenable and unjustified". The bench noted in its verdict that the employer had invited applications for the post of technical helper by issuing advertisement in October 2013 after which the man had applied for it.

It noted that the man was appointed to the post as probationer trainee for a period of two years in May 2015 and as per the terms and conditions of appointment order, it was subject to production of a character certification/verification report issued by Superintendent of Police of the concerned district from where he belonged.

The Superintendent of Police, through a June 2015 report, informed the employer that a criminal case against the employee was filed in 2011 and the trial court had convicted him in August 2013.

It said that he was given the benefit under the Probation of Offenders Act, 1958 and was ordered to be released on probation for good conduct.

The bench noted that subsequently the conviction was confirmed and the sessions court, in its judgement passed in September 2015, granted the benefit of section 12 of the Probation of Offenders Act, 1958 Act which provides that a person shall not suffer disqualification attaching to the conviction.

It noted the employer had issued a show cause notice to the employee in August 2015 after finding that he had suppressed fact of conviction not only at the time of applying for the post but also in April 2015 when he submitted a declaration during documents verification that neither any criminal case is pending against him nor he has suffered any conviction.

Later, in May 2016, his service was terminated after which he had approached the high court.

The apex court said in its verdict that getting the benefit of section 12 of the Probation of Offenders Act, 1958 Act shall not be helpful to the man as the question is about filing a false declaration in April 2015 which was much prior to the order passed by the sessions court granting the benefit of the provision.

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

YOURS LEGALLY

Once an order passed by the Government on the basis of directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum – No contempt Petition arises

Land admeasuring 29.38 acres belonging to the petitioner was acquired under provisions of the Land Acquisition Act, 1894 and notification under Section 4(1) of the Act was issued at the first instance on 25.03.1981. As no award was passed pursuant to the notification issued under S. 4(1) of the Act, a fresh notification was issued on 24.05.1995 and again on 17.08.1996. This subsequent notification was challenged before the High Court while the petitions were pending an award was passed in 2006. After hearing, the High Court held that notwithstanding the delay in passing the award, possession of the land as well as title vested in the respondent- State. Against which SLP has been filed. By order dated 17.08.2015, the Supreme Court held that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, will apply and the land acquisition proceedings were declared as lapsed and the respondent - State was directed to initiate fresh acquisition proceedings or to take any other action available under law within six weeks from the date of passing of the order.

Alleging wilful and deliberate violation of the directions issued in the aforesaid order, contempt petitions were filed. The contempt petitions were disposed of in 2016 directing the respondent State to pay the petitioner the amount of compensation in accordance with law i.e. as per the provisions of Section 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Against which, contending that the respondents have violated the directions issued by the Supreme Court stating that at first instance land was acquired by invoking urgency clause, and inspite of directions for payment of compensation by following the provisions under Section 40 of the 2013 Act, respondents have passed the award without adhering to Section 40 of the 2013 Act treating the land as agricultural forest land, the present contempt petitions have been filed. It is the case of the petitioner that land acquired was used for construction of office and residential buildings, and inspite of the same, contrary to various directions issued by the Supreme Court, land is treated as agricultural forest land, a concept unknown to law.

While denying the allegations respondents submitted that in compliance of the directions issued by the Supreme Court in the order dated 17.08.2015, a fresh notification was issued on 14.02.2020 under the 2013 Act and after following the necessary procedure award was passed on 12.11.2020 and as

such there was no violation of any directions issued by the Court much less any wilful violation as alleged by the petitioner. It is the case of the respondents that if the petitioner is aggrieved by the determination of compensation, it is always open for the petitioner to avail remedy under Section 64 of the 2013 Act. Without availing such remedy under guise of contempt, petitioner is trying to enlarge the scope of directions issued by this Court.

The Supreme Court observed that consequent upon the order dated 10.02.2020 passed by the Supreme Court the fresh notification dated 14.02.2020 was issued and the award made on 12.11.2020. The Supreme Court in J.S. Parihar v. Ganpat Duggar & Ors. [(1996) 6 SCC 291], wherein it was held that once an order passed by the Government on the basis of directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. In R.N. Dey & Ors. v. Bhagyabati Pramanik & Ors. [(2000) 4 SCC 400] it is held that a decree obtained under Land Acquisition Act, is an executable decree and no contempt can be maintained for non- compliance of such decree. Section 64 of the 2013 Act, makes it clear that any person interested, who has not accepted the award, by written application to the Collector may seek reference to the competent authority constituted under Section 66 of the 2013 Act. Even after adjudication made by such authority on reference, there is a further remedy available under Section 74 to the High Court. In that view of the matter while it is open for the petitioner to pursue remedies available in law. In view of this, the Supreme Court held that it cannot be said that respondents have deliberately and intentionally violated any directions issued by this Court, attracting the provisions of Contempt of Courts Act, 1971. [M/s. Soorajmull Nagarmull vs. Sri Brijesh Mehrotra & Ors. C.P(C).Nos.726-728 of 2017 D.O.J: 14.12.2021]

N. Murali Krishna, Sr.Law Officer

KNOW OUR CONSTITUTION

Article 62: Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.

(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of Article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

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

(Contd.....from previous issue)

Chapter VI of Arbitration and Conciliation Act, 1996 contains 6 sections from Section 28 to 33 under the head : **Making of arbitral award and termination of proceedings.**

Section 28 defines the Rules that are applicable to the substance of dispute. Accordingly, where the place of arbitration is situate in India, in case of domestic arbitration the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India; and in international commercial arbitration, the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

The Section further states that the arbitral tribunal shall decide *ex aequo et bono or as amiable compositeur* only if the parties have expressly authorised it to do so. Sub Section (3) has been modified with effect from 23.10.2015 as to “While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction”.

Section 28 distinguishes between domestic arbitration situate in India and International commercial arbitration. In case of domestic arbitration is concerned, arbitral tribunal is bound by the substantive laws of the Country for the time being in force. However, in case of international arbitration, the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.

The Supreme Court in *Thirumalai Chemicals Limited Vs. Union of India*, [(2011) 6 SCC 739] held that Substantive law refers to a body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Whereas Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. Substantive Law is a Statutory Law that defines and determines the rights and obligations of the citizens to be protected by law. The Substantive Law, defines the ‘remedy’ and the right; includes all categories of Public and Private Law. In

short, it can be said that Substantive Law is a Statutory Law that deals with the relationship between the people and the State. Therefore, Substantive Law defines the rights and the duties of the people. Therefore, substantive law would include the Indian Contract Act, the Transfer of Property Act and other such laws in force.

Under Section 28 (1)(a) there is a mandate to the arbitral tribunal to decide the dispute in accordance with the substantive law for the time being in force in India. If the award passed by the arbitral tribunal is in contravention of provisions of the Act or any other substantive law governing the parties or is against the terms of the contract. [*Oil & Natural Gas Corporation Ltd vs Saw Pipes Ltd on 17 April, 2003*]

In *Pasl Wind Solutions (P) Ltd Versus GE Power Conversion India (P) Ltd* (April 20, 2021), the Supreme Court held that section 28(1)(a) of the Arbitration Act, when read with section 2(2), section 2(6) and section 4, only makes it clear that where the place of arbitration is situated in India, in an arbitration other than an international commercial arbitration (i.e. an arbitration where none of the parties, inter alia, happens to be a national of a foreign country or habitually resident in a foreign country), the arbitral tribunal shall decide the dispute in accordance with the substantive law for the time being in force in India. 52. It can be seen that section 28(1)(a) of the Arbitration Act makes no reference to an arbitration being conducted between two Indian parties in a country other than India, and cannot be held, by some tortuous process of reasoning, to interdict two Indian parties from resolving their disputes at a neutral forum in a country other than India.

The Apex court further held that section 28(1)(a) of the Arbitration Act will not apply where the seat is outside India as, in that event, the conflict of law 83 rules of the country in which the arbitration takes place would have to be applied. Take the case of an Indian national who is habitually resident in a country outside India. Any dispute between such Indian national and an Indian national who is habitually resident in India would attract the provisions of section 2(1)(f)(i) and, consequently, section 28(1)(b) of the Arbitration Act, in which case two Indian nationals would be entitled to have their dispute decided in India in accordance with the rules of law designated by the parties as applicable to the substance of the dispute, which need not be Indian law.

(to be contd...)

N. Murali Krishna, Sr.Law Officer