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Page No.	Article
2	ABC of Act - The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013.
3	Right To Information Series..... Contd.
4	Mere issuance of No Claim Certificate (NCC) by the Claimant shall not extinguish the dispute : Delhi High Court
5	Difference between: Will and Gift FAQ: What is a Force Majeure Clause in contracts?
6	Request for appointment of Arbitrator after 30 years is barred by limitation - SC
7	Yours Legally- Unilateral correction of DOB by employer at the fag end of service of employee is impermissible
8	Treatise on Arbitration & Conciliation Act, 1996

Legal Maxim

Ut sit finis litium (means "so there might be an end of litigation") - The full form is *Interest reipublicae ut sit finis litium*, "it is in the government's interest that there be an end to litigation." Often quoted in the context of statutes of limitation.

ABC OF ACTS

The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013

Contd... from last issue.

The market value would be multiplied by a factor of, at least one to two times the market value for land acquired in rural areas and at least one times the market value for land acquired in urban areas.

The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, under **Section 29** will use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him. The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him. The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition may use the services of experienced persons in the field of agriculture as may be considered necessary by him.

The Collector having determined the market value of the land to be acquired shall under **Section 27** calculate the total amount of compensation to be paid to the land owner whose land has been acquired by including all assets attached to the land.

In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall under **Section 28** take into consideration—

- the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;
- the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;
- the damage sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

- the damage sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

- in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses incidental to such change;

- the damage bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land: and

- any other ground which may be in the interest of equity, justice and beneficial to the affected families.

• Award of Solatium:

The Collector after having determined the total compensation to be paid shall, to arrive at the final award, under **Section 30** impose a "**Solatium**" which is the amount equivalent to 100% of the compensation amount. This solatium amount shall be in **addition to the compensation** payable to any person whose land has been acquired. The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

In addition to the market value of the land provided under section 26, the Collector shall, award an amount calculated at the rate of 12% per annum on such market value for the period commencing from the date of the publication of the notification of the Social Impact Assessment study under section 4(2), till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Sec.31 provides for Rehabilitation and Resettlement Award for affected families by Collector.

(1) The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.

to be continued.....

V. Appa Rao, CLA, GM Office/SCR

RTI Series

Is it mandatory that penalty to be always imposed at Rs.250 for each day of delay?

It is now well settled that the CIC is not under compulsion to impose penalty at the flat rate of Rs. 250 per day for each day of delay. In other words, the CIC is competent enough to impose a token penalty as well. Delhi High Court in *Anand Bhushan v. R.A.Haritash* [LPA 777/2010. DOJ – 29.03.2012] had, inter alia, considered the correctness of reduction by the Single Judge of the High Court in the original penalty which was imposed by the CIC. While upholding the said decision the Division Bench held : “The very fact that imposition of penalty is made dependent on such variables is indicative of the discretion vested in the authority imposing the punishment.”

The Division Bench of the Delhi High Court placed reliance on the Supreme Court’s order: “15.... *The Supreme Court in Carpenter Classic Exim P. Ltd. V. Commnr. of Customs (Imports)* (2009) 11 SCC 293 was concerned with Section 114 A, Customs Act, 1962 which also used the word “shall” in conjunction with expression “willful misstatement or suppression of facts”; it was held that provision of penalty was not mandatory since discretion had been vested in the penalty imposing authority. Similarly in *Superintendent and Remembrancer of Legal Affairs to Government of West Bengal V. Abani Maity* (1979) 4 SCC 85, the words “shall be liable for confiscation” in section 63 (1) of Bengal Excise Act, 1909, were held to be not conveying an absolute imperative but merely a possibility of attracting such penalty in spite of use of the word “shall”. It was held that discretion is vested in the court in that case, to impose or not to impose the penalty.

16. Once it is held that the quantum of fine is discretionary, there can be no challenge to the judicial review under Article 226 of the Constitution, of exercise of such discretion, of course within the well recognized limits. If this Court finds discretion to have been not appropriately exercised by the CIC, this Court can in exercise of its powers vary the penalty. In the facts of the present case, we find the learned Single Judge to have for valid reasons with which we have no reason to differ, reduced the penalty. We, therefore do not find any merits in this appeal and dismiss the same. No order as to costs.”

CIC in *Dr. V.P.Singh v. CGHS* [F.No. CIC/LS/A/2013/000562. DOO - 18.04.2013] held that it was “not a case where full penalty of Rs. 25,000/- should be imposed on Shri Kalippan. The ends of justice would be met if a token penalty of Rs 500 (five hundred) only is imposed on Shri N Kalippan, Director (Adm), CGHS.”

Payment of compensation to the appellant:

S 19 (8)(b) of the RTI Act provides for awarding of compensation for any loss or other detriment suffered. To enable awarding of the compensation it is essential for the appellant before the CIC to claim and prove his loss/detriment suffered. Grant of compensation is possible only if a 2nd appeal is preferred under Section 19, but not under a complaint lodged under S 18 of the RTI Act.

In *Rajesh Kumar v. Railway Board* [F. No. CIC/CC/C/2016/000049+051-AB.DOO-08.08.2017] it was held by the CIC that no compensation could be ordered since it was complaint proceeding before it. In *Union of India v. P.K. Srivastava* (LPA 195/2011. DOJ – 09.04.2013) the Delhi High Court set aside the order of the CIC for grant of compensation of Rs. 43,240/- and held that “....while deciding a complaint received from the respondent, the Commission could only have imposed penalty prescribed in sub section (1) of Section 20 of the Act, but could not have awarded any compensation to him in exercise of the powers conferred upon it by Section 19 (8)(b) of the Act. The order passed by the Commission, therefore, was clearly without jurisdiction and is therefore liable to be set aside.”

In *L.G.Dass v. Govt. of NCT, Delhi* [Appeal No. CIC/SG/A/000897] the CIC had ordered payment of Rs. 2000/- as compensation to the appellant therein. The Jharkhand High Court in *State of Jharkhand & Anr. v. State Information Commission & 2 Ors.* [WP (C) No. 5519/2013. DOJ – 03.02.2022] has upheld the order dated 13.04.2010 of the SIC wherein compensation of Rs. 60,000/- ordered by the Jharkhand State Information Commission to the appellant therein.

In *Subash Chandra Agrawal v. CPIO, MOEF and Climate Change* [CIC/MOENF/C/2017/178184. DOO–30.07.2018] the CIC ordered payment of Rs. 1000/- as token compensation under S.19 (8) (b). In *Mahesh Kumar Gupta v. CPIO & Dy. GM, BSNL* [CIC/BS/A/2016/000116. DOO–30.03.2017] CIC ordered token compensation of Rs. 2500/- to the appellant. In *Sumit Kumar Das v. Dept. of Posts* [CIC/BS/A/2015/901664/11873. DOO– 08.12.2016] the CIC ordered compensation of Rs. 2500. CIC ordered compensation of Rs. 5,000 to the appellant in *Satish Kumar Jha v. LIC of India* [CIC/MP/A/2016/000413. DOO – 30.06.2016]. In *Puspanjali Padhy v. IOB* the CIC ordered compensation of Rs. 2000 to the appellant [CIC/SH/A/2015/000235. DOO–30.03.2016]. CIC ordered compensation of Rs. 10,000 in *Dr. Avinash Kumar v. Aruna Asaf Ali Hospital* [CIC/SA/A/2015/000371.DOO 1.02.2016]. CBSE was directed by the CIC to pay compensation of Rs. 25,000 in *Vijay Kumar Mishra v. CBSE* [CIC/RM/A/2014/000014-SA.DOO–03.12.2015].

M.K. Shaji, CLA/RWF

Mere issuance of No Claim Certificate (NCC) by the Claimant shall not extinguish the claims : Delhi High Court

The High Court of Delhi vide its Judgement dated 25.03.2022 in OMP (Comm) No.273/2021 and IA Nos. 11808/2021 & 11810/2021 between IRCON International Ltd (Petitioner) and GPT-Rahee JV (Respondent), has observed that a No Claim Certificate (NCC) shall be examined along with the covering letter in which it is sent and that mere issuance of the NCC by the Claimant shall not ipso facto entail the extinguishment of all the claims.

The Single Bench held that while adjudicating an application under Section 34 of the Arbitration & Conciliation Act, the Court must be mindful of the fact the Indian Evidence Act, 1872 and strict rules of evidence are not applicable in arbitration and the tribunal enjoys considerable discretion to take a view on the quality and sufficiency of the evidence.

Facts in brief:

The Ministry of Railway had awarded a Contract to the petitioner. The petitioner in turn awarded a part of the contract to the respondent. The contract was to be completed within a specified period, however, there was a delay in its completion. This gave rise to a dispute between the parties.

The respondent issued a No Claim Certificate in favour of the petitioner, however, it subsequently raised certain additional claims in respect of losses suffered by it due to the delays on part of the petitioner and sought a response from the petitioner. On receiving no response from the petitioner, it invoked the dispute resolution clause in the agreement and sought reference to arbitration.

The arbitrator partially allowed the claims of the respondent, aggrieved by the award, the petitioner challenged it under S. 34 of the Arbitration & Conciliation Act as being patently illegal.

The petitioner challenged the award on the following grounds:

That the arbitrator failed to appreciate the fact that the NCC was issued at a time when only less than 1% of the total payment was pending, therefore, there was no economic duress. Consequently, the award suffers from patent illegality.

That the arbitrator wrongly allowed the claim of the respondent for prolongation of work based on

a Chartered Accountant Certificate contents of which were neither proved nor the said CA Certificate was examined before the Tribunal, therefore, the finding of the Tribunal was without any evidence falling under the rubric of patent illegality.

That the Tribunal wrongly allowed the delay claims of the respondent when it held that the delay was attributable to both the parties.

The respondent countered the contention of the petitioner on the following grounds:

That the NCC was issued under duress as is evidenced by the covering letter in which it was sent.

That the CA certificates were supported by various documents including bills and vouchers establishing quantification of the amounts as reflected in the Certificates issued by the CA.

That the Tribunal had employed the principle of apportionment while allowing the delay claims of the respondent.

The Hon'ble High Court has observed that while dealing with the issue of NCC, the arbitral had referred to a letter that was sent four days before the issuance of NCC, it also referred to the covering letter under which the NCC was sent and held that both the documents clearly indicate that NCC was issued under economic duress and that certain claims were under preparation and the respondent had clearly indicated that it would be preferring those claims.

D.R.V.S.S.S.N. Raju, CLA/Genl./BZA

KNOW OUR CONSTITUTION

Article 68. Time of holding election to fill vacancy in the office of Vice President and the term of office of person elected to fill casual vacancy.

Article 69. Oath or affirmation by the Vice President. Every Vice President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say swear in the name of God I, A B, do that solemnly affirm will bear true faith, and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.

Difference between**Will and Gift****FAQ****What is Force Majeure Clause in Contracts?****Will**

A will is a document in the court of law for declaration of the intention of the person making the will. The primary purpose of this procedure is property distribution. This legal document will come in effect only after the death of the person who is responsible for writing the will. There are some legal rules to be followed while making a will viz.

It can be documented or physically written. There should be a will executor appointed to administer the proceeding after his/her death. This enables the smooth process of implementation of will. The document should include all the assets of the legator mentioned correctly. The distribution of immovable and movable assets needs to be indicated to the people on the receiving end. If there is any change of thought, one can make complete fresh will or codicil (this legal loophole helps the testator to make minor changes without changing the whole content of will)

Gift

A gift draft is an impulsive action. This deed is done out of a person's own choice. The documentation specifies the transaction between a person giving and receiving the gift. Validation is necessary for executing a gift deed. The financial status of the donor is significant in making a gift deed. The assets of the donor need to be accessed before drafting the gift. Registration and stamp duty are payable for the operation of the gift.

Main Differences Between Will and Gift

1) A will is active only after the death of a person who is responsible for the duration of the will, whereas the gift is in action, while the person who initiated the deal is alive. 2) Registration and stamp duty are not required for the will. For a gift deed, stamp duty as prescribed by the state concerned is to be paid for movable properties. 3) The presence of executor and witness is essential when drafting a will. Whereas, while writing a gift witness and registrar is necessary. 4) The gift deed is an impulsive action, mostly done without any consideration. The acceptance by the person to whom the gift is gifted is vital. In a will, the beneficiary can contest and claim the terms in a court of law. The decision of what goes into the will depends solely on the testator.

K. Gopinath, CLA, GM Office

'Force Majeure' is an event that can neither be anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impractical, especially as a result of an event that the parties could not have anticipated or controlled. From the perspective of contracts, the 'Force Majeure' clause pardons a party from performing its obligations under a contract upon the occurrence of a force majeure event.

The term 'Force Majeure' is not defined anywhere but derives its reference from the Indian Contract Act, 1872 which contemplates that if the contract contingent on the happening of an event which becomes impossible, then the contract becomes null and void. The Indian Contract Act 1872 regulates "Force majeure." Where there is an explicit or implied clause in a contract stipulating 'Force Majeure' occurrences, it shall be regulated by Chapter III dealing with the contingent contracts and, more precisely, Section 32 of the Indian Contract Act, 1872 — that is, a term or condition enforceable upon the occurrence of an uncertain future event (contingent) and provides for its consequences.

A force majeure clause in a contract would include an exhaustive list of events such as acts of God, war, terrorism, earthquakes, hurricanes, acts of government, explosions, fire, plagues or epidemics or a non-exhaustive list wherein the parties simply narrate what generally constitute force majeure events and thereafter add "and such other acts or events that are beyond the control of parties". Thus, it would also include conditions which would have to be fulfilled for such force majeure clause to apply to the contract and the consequences of occurrence of such force majeure event.

Consequences would include the suspension of obligations of the parties upon occurrence of a force majeure event. If a contract does not include a force majeure clause, the parties would have to ascertain in light of factors such as the nature of the contract, the nature of event and so forth, as to whether Section 56 of the Contract Act (which deals with agreements between the parties to do an impossible act) and which has been briefly discussed below, can be applied to such contract so as to discharge the parties from their contractual obligations. This clause is incorporated in General Conditions of Contract 2020 which is applicable to Works Contracts over Indian Railway, under Clause-17 (in Part -II) of the Standard General Conditions of Contract.

K. Gopinath, CLA, GM Office

Request for appointment of Arbitrator after 30 years is barred by limitation - Supreme Court

That the appellant was issued work order in the year 1982 and the work was executed in the year 1986. According to the appellant, he executed excess quantity of work beyond the schedule quantity of work to be done and was entitled to the additional amount for the excess quantity of work done to an extent of Rs. 1,19,46,297/-. It is the case on behalf of the appellant that a lot of correspondence was made by the appellant, however, the amount due and payable with respect to the excess quantity of work done was not paid. Finally, the appellant through letter dated 31.05.2018 requested the General Manager of the Railway to release the amount due or refer the dispute to the arbitrator under clauses 63 & 64 of General Conditions of Contract (GCC), however, no action was taken on the said letter. Thereafter, the appellant sent a legal notice through his advocate on 31.07.2019 invoking the arbitration clause and seeking appointment of an arbitrator by the office of the General Manager. However, the arbitrator was not appointed as per clauses 63 & 64 of GCC.

Therefore, the appellant filed an Arbitration Petition before the High Court under Section 11(6) of the 1996 Act for appointment of an arbitrator to resolve the dispute between the parties. By the impugned order, the High Court dismissed the said application on the ground that the arbitration petition in 2019 is hopelessly barred by limitation. Feeling aggrieved, the original applicant has preferred the present appeal before the Supreme Court.

It is submitted by the appellant that from the date of issuing the legal notice invoking the arbitration clause and after waiting for 30 days and thereafter when the application under Section 11(6) of the 1996 Act was made, the same cannot be said to be barred by limitation.

It is further submitted that in the present case, right to apply under Section 11(6) of the 1996 Act can be said to have accrued when the legal notice invoking arbitration clause and the request to appoint the arbitrator was made and the period of limitation would commence after 30 days of serving the legal notice invoking the arbitration clause and making a request to appoint arbitrator.

The Supreme Court held that at the outset, in the present case, work order was issued on 7.4.1982 and the work/excess work was completed in the year 1986. Even as per the statement of claim, the amount due and payable was under work order dated

7.4.1982, which was executed up to 11.05.1986 and work order dated 15.01.1984 which was executed up to 26.8.1985. Therefore, right to claim the amount, due and payable, if any, can be said to have accrued in the year 1985/1986. Thereafter, the correspondences under the RTI Act had taken from the year 2012 onwards. Thereafter, for the first time, the appellant served a legal notice upon the General Manager, South Eastern Railway on 22.10.2018 requesting either to release the amount which was overdue or to refer the dispute to the arbitrator under clauses 63 & 64 of GCC under the 1996 Act. Merely because for the claim/alleged dues of 1985/1986, the legal notice calling upon the respondent to pay the amount due and payable or to refer the dispute to the arbitrator is made after a period of approximately thirty-two years, the appellant cannot be permitted to say that the cause of action to file the application under Section 11(6) of the 1996 Act had accrued in the year 2018/2019.

In the present case, the legal notice has been served and the arbitration clause is invoked and request to appoint the arbitrator was made after a period of approximately thirty-two years from the date of completion of work.

Therefore, the appellant, who served the legal notice invoking the arbitration clause and requesting for appointment of an arbitrator after a period of approximately thirty-two years, cannot contend that still his application under Section 11(6) of the 1996 Act be considered as the limitation would start from the date of serving the legal notice and after completion of 30 days from the date of service of the legal notice and invoking arbitration clause.

Reliance placed upon the decision of this Court in the case of *Bharat Sanchar Nigam Limited v. Nortel Networks India Private Limited*, (2021) 5 SCC 738 (paragraphs 14 & 15) is concerned, the said decision shall not be applicable to the facts of the case on hand since the Court has not stated and/or observed and/or held that despite the fact that the legal notice invoking the arbitration clause and/or request for referring the dispute to the arbitrator is made after 20/30 years, still the application under Section 11(6) of the 1996 Act can be entertained.

In the facts and circumstances of the case, the case is hopelessly barred by limitation and is a stale claim. [Vishram Varu & Co. Vs. Union of India, represented by the General Manager, South Eastern Railway, Kolkata, Civil Appeal No.2964 of 2022, DOJ: April 21, 2022]

Syed Amjad Ali, OS/Law Branch

YOURS LEGALLY**Unilateral correction of Date of Birth by employer at the fag end of the service of employee is impermissible**

The appellant questioning the validity of an order of the employer treating his date of birth as 21st September 1945 instead of 21st September 1949. If the latter date, i.e. 21st September, 1949 was accepted by the employer to be his date of birth, his financial benefits from the scheme (VRS) would have been higher, as he would have had longer service tenure left.

Admitted position is that 21st September 1949 was recorded as his date of birth in his service book which was opened in 1975. At the time of his voluntary retirement, appellant came to learn for the first time that his date of birth was being changed to 21st September 1945. Writ petition filed by him before the High Court was dismissed. The appellant stakes his claim primarily on his service book maintained by the employer, where his date of birth is shown as 21st September 1949 and the same date of birth has been shown in many other documents maintained by the employer.

On facts, different documents emanating from or maintained by the employer themselves where his date of birth was shown to be 21st September 1949. In the computation sheet of his estimated "VR benefit" also the same date of birth was reflected. The appellant's case is that he came to know that his date of birth was being altered only after he was relieved from service from a form issued by the employer in 2003. The top portion of this form carries an endorsement made by the first respondent: - "Date of birth: 21.09.1945 as per 'B' Form". Immediately below this sentence there is recordal that "D.O.B: 21.09.1949 as per H.O. Application." Rest of the said form contains other particulars of the appellant, which also includes his date of birth, filled in as 20th September 1949.

The Supreme Court held that the authorities proceeded in this matter in a rather mechanical manner and embarked on a unilateral exercise of correcting the age entry in the service book on their perception that an error was being corrected. This exercise was conducted without giving any opportunity of hearing to the appellant and at the fag end of his service tenure. Otherwise, various documents including the L.I.C. policy consistently reflect 21st September 1949 to be the appellant's birthdate.

This is not a case where a workman is seeking to change his date of birth to his benefit at the end of his career. This is a case where the employer is altering the records at the end of the career of the workman to his detriment on taking unilateral decision that the date of birth specified in the appellant's service book was erroneous, relying on a date disclosed in a statutory form.

The stand of employer that the date of birth recorded of the appellant in the service book was an act by mistake cannot be accepted because several subsequent steps were taken by the employer in relation to the appellant's employment on the basis of the entry in his service book. The employer is the custodian of these records. They acted all along on the basis of the service entries till the appellant took VRS. The employer, a public sector unit in this case, was expected to act with a certain element of responsibility in maintaining the service records of their workmen and ensure that there is uniformity in particulars concerning individual employees. There is no explanation as to how this mistake occurred and how pay slips continued to be issued carrying the mistaken date of birth for such a long time.

At the time of quantifying the VRS benefit after accepting an employee's application for voluntary retirement, if the employer takes any step that would reduce benefit in monetary terms, such step shall have to be taken under the authority of law. The action of the employer lacking in authority of law in this case for not adhering to the principles of natural justice. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e., 21st September 1949 was the birthdate of the appellant and this was a long established position.

Supreme Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth. The very reasoning on which an employee is not permitted to raise age-correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. Holding so, the Supreme Court allowed the appeal directing the respondents to extend the benefits of VRS benefits treating his date of birth as 21st September 1949. **[Shankar Lal Vs Hindustan Copper Ltd & Ors. CA No.2858 of 2022, DOJ: 20th April, 2022]**

B.R.R. Naidu, CLA/Con./SCR

TREATISE ON**A&C Act, 1996****Decision of the arbitral tribunal (Section 29)**

Section 29 of the A&C Act deals with the decision making by a panel of arbitrators. It states that unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. It further states that the questions of procedure may be decided by the presiding arbitrator if authorised by the parties or all the members of the arbitral tribunal.

While going through this section, it is also important to refer to Section 31 of the Act. Accordingly, an arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

Therefore, an arbitration award means award made by majority of the members of the Arbitral tribunal. Delhi High Court in *BSNL v Acome* [(2007) 95 DRJ 466] held that under the scheme of the Act, it is:

- (i) The award of the majority which is the award of the Tribunal;
- (ii) The arbitrators in minority may not sign the majority award.
- (iii) When the reasons for the omission to sign the majority award are recorded in the award itself, the decision of the minority arbitrators gets embedded in it. Unlike Order 41 Rule 34 CPC, there is no obligation cast on the arbitrator (s) who may be dissenting and is/are in minority to communicate his/their decision. However, even a dissenting judge is not obliged to give his reasons.
- (iv) The minority arbitrator (s) do not necessarily have to sign the majority award and it is still valid and enforceable. The scheme under the Act in relation to the aspect being discussed herein, is, therefore, similar with the scheme under the CPC.

The Court further held as follows:

31. Where the Tribunal is a multi member body (it can only be an odd number under Section 10) and there is unanimous award by all the members of the Tribunal, it does not raise any difficulty of the kind presented in this case. However, there is a possibility that a majority of the arbitrators agree on a particular form of award, and a minority does not. In that situation the minority is not obliged to sign an

award prepared by the majority of arbitrators. It is open to the minority of arbitrators to prepare their own opinion and communicate it to the parties. This may happen either before, simultaneously with, or after the award of the majority is made and communicated to the parties. It is also open to the minority of arbitrators not to pen down their opinion at all. Where the minority gives its opinion even before the majority award is made and communicated, since it is only an opinion and not an arbitral award, it has no efficacy as an award and it cannot be enforced. It has no bearing on the rights and obligations of the parties as determined by the majority of arbitrators. Consequently, it is incapable of, and not required to be challenged or objected to as an award under Section 34 of the Act. Only when the award of the majority of arbitrators is received, which is the award of the Tribunal, it would give a cause to the aggrieved party/parties to object to the same. Limitation would therefore begin to run from the time the majority award is communicated to the party concerned.

32. In a case where the minority of arbitrators choose not to give their opinion unless agreed to by the parties, in my view should not prevent the making of a majority award by the Tribunal. By preferring not to sign the majority award, or by failing or refusing to give its opinion altogether, the minority of arbitrators cannot defeat or frustrate an arbitral proceeding. This appears to be the reason why the law states that it "shall be sufficient" for the majority of the Arbitral Tribunal to sign the award, so long as they disclose the reasons for the omission of signatures of the minority of arbitrators.

Once the award is signed and communicated by the majority of arbitrators, (since the decision of the panel of arbitrators is to be governed by majority under Section 29, unless otherwise agreed) the parties are put to notice, and are aware of the determination made by the Arbitral Tribunal. Each party knows his rights and obligations as crystallised in the award of the majority and the consequences flowing there from. If a party is aggrieved by the majority award, he can and must challenge the same within the time provided for the purpose. His grounds of challenge have to be gathered from the majority award and the arbitral proceedings. They are not dependent upon the giving of the minority opinion by the minority of arbitrators. If and when it is given, such a minority opinion(s) may be used by a party challenging the award to bolster his challenge. However, the aggrieved party cannot await the giving of the minority opinion to challenge the majority award, which binds him and affects his rights.

To be continued in next issue....

N. Murali Krishna, Sr.Law Officer