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Legal Maxim

Vincit qui se vincit - Means he conquers who conquers himself.

ABC OF ACTS**The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013**

Contd... from last issue.

(2) The Rehabilitation and Resettlement Award shall include all of the following, namely:— (a) rehabilitation and resettlement amount payable to the family; (b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred; (c) particulars of house site and house to be allotted, in case of displaced families; (d) particulars of land allotted to the displaced families; (e) particulars of one time subsistence allowance and transportation allowance in case of displaced families; (f) particulars of payment for cattle shed and petty shops; (g) particulars of one-time amount to artisans and small traders; (h) details of mandatory employment to be provided to the members of the affected families; (i) particulars of any fishing rights that may be involved; (j) particulars of annuity and other entitlements to be provided; (k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided: Provided that in case any of the matters specified under clauses (a) to (k) are not applicable to any affected family the same shall be indicated as —not applicable: Provided further that the appropriate Government may, by notification increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index.

Section 32 provides for the provision of infra-structural amenities in resettlement area.—In every resettlement area as defined under this Act, the Collector shall ensure the provision of all infrastructural facilities and basic minimum amenities specified in the Third Schedule.

Section 33 provides for - Corrections to awards by Collector.—(1) The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of this Act to make a reference to the Authority under section 64, before the making of such reference, by order, correct any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority: Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter. (2) The Collector shall give immediate notice of any correction made in the award so corrected to all the persons interested. (3) Where

any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered, as prescribed by the appropriate Government.

Section 34 provides for - Adjournment of enquiry.—The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Section 35 provides for - Power to summon and enforce attendance of witnesses and production of documents.—For the purpose of enquiries under this Act, the Collector shall have powers to summon and enforce the attendance of witnesses, including the parties interested of any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908).

Section 36 provides for - Power to call for records, etc.—The appropriate Government may at any time before the award is made by the Collector under section 30 call for any record of any proceedings (whether by way of inquiry or otherwise) for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit: Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.

Section 37 provides for - Awards of Collector when to be final.—(1) The Awards shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and market value of the land and the assets attached thereto, solatium so determined and the apportionment of the compensation among the persons interested. (2) The Collector shall give immediate notice of his awards to such of the persons interested who are not present personally or through their representatives when the awards are made. (3) The Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired under this Act on the website created for this purpose.

to be continued.....

V. Appa Rao, CLA, GM Office/SCR

Contd.. from last issue

Delay condonation in preferring appeal:-

S 19 (1) empowers the First Appellate Authority to condone the delay if the said authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal on time i.e., within 30 days. S 19 (2) provides for delay condonation by the CIC or SIC while dealing with a 2nd appeal. The CIC or SIC is authorized to condone the delay in preferring a 2nd appeal beyond the permissible period of 90 days, if the said authority is satisfied about the delay. The CIC's website viz., cic.gov.in shows that a formal request for condonation of delay is required to be placed and the failure to do so may result in the rejection of 2nd appeal. Prolonged delay without sufficient justification may result in rejection of request for delay condonation. CIC in its order dt. 01.11.2021 had declined to condone the long delay in filing the 2nd appeal by the appellant therein [CIC/IARMY/A/2020/115812. DOO – 01.11.2021].

In a case where the First Appeal was filed on 07.03.2017 and the FAA did not respond to it, the Goa SIC held that the limitation for preferring 2nd appeal started on 13.04.2017 and the 90 days' time limit expired on 14.07.2017. There was unexplained delay beyond that date, though the appellant produced a medical certificate for sickness from 05.02.2018. The Goa SIC did not condone the delay since the delay for initial portion was not justified by the appellant. [Ravindra A.L.Dias v. PIO, South Goa Planning and Development Authority & Anr. in Appeal No. 71/2018/SIC-I. DOO – 20.06.2018].

CIC in Mohit Kumar Gupta v. CPIO, Institute of Chartered Accountants of India [Decision No. CIC/ICAOI/A/2018/629505/00854 dt.10.06.2019] did not agree with the First Appellate Authority's decision to reject the short delay of 22 days, that too without granting the appellant an opportunity of hearing, when such a request was specifically made. The CIC had remanded the case back to the FAA to pass a reasoned decision after hearing both the parties.

Karnataka SIC in M. Anand v. PIO, O/o the Executive Officer, Taluk Panchayat, Madhugiri Taluk, Tumkur had dismissed a 2nd appeal since the appellant therein neither sought the delay condonation for the same which was filed after a gap of more than six and a half months nor could furnish any acceptable reason for the said delay. [KIC509PTN2013. DOO – 05.07.2013].

Onus to prove the denial of a request:-

S 19 (5) burdens the PIO with the onus to prove that a denial of a request was justified. CIC had many a time did not approve of the denial of the

information since the PIO failed to justify the denial.

"2. According to S 19(5) of RTI Act, 'the onus to prove that a denial of a request was justified shall be on the CPIO who denied the request'. The CPIO did not discharge that burden by showing that disclosure of the file notings of sanction of prosecution would impede the process of investigation." [Shri Manjit Singh Bali v. CPIO, Dept. of Posts. 2nd Appeal No. CIC/POSTS/A/2017/131334. DOO – 15.11.2018].

"S-19(5) of the RTI Act clearly places the onus to prove the denial of request is justified on the PIO and the Commission does not feel any clear justification has been given. The Commission does not uphold the contention of the PIO that the information sought is exempted u/s-8(1)(e) and (g) of the RTI Act." [A.N.Gupta v. Pradip Kumar, SP & CPIO, CBI (HQ). Decision No. CIC/SM/A/2011/000294/SG/12297 dated 06.05.2011].

CIC observed in R.K.Jain v. Under Secretary, Min. of Finance. "In the present instance, the Respondent were unable to dispose off their burden u/s 19(5) of the RTI Act, 2005 to demonstrate as to how the information sought related to Finance Bill, 2016." [MANU/CI/0660/2017. DOO – 10.10.2017]

CIC held in Neeraj Sharma v. CPIO & Director, ICHR: "The Commission observed that as per the provisions of S 19 (5) of the RTI Act, 2005, in an Appeal proceeding, the onus to prove that a denial of a request was justified shall be on the CPIO. Neither the Respondent present during the hearing nor the CPIO responding to the RTI application, could justify their position as to how the disclosure of information would be in contravention to any of the provisions enshrined u/s 8 of the RTI Act, 2005. While observing that in order to deny information under any of the exemption mentioned u/s 8 (1) of the RTI Act, 2005, the Respondent is required to provide justification or establish the reason why such exemption was claimed, the Commission referred to the decision of the Hon'ble High Court of Delhi in the matter of Dy. Commissioner of Police v. D.K. Sharma, WP (C) No. 12428 of 2009 dated 15.12.2010, wherein it was held as under: Page 3 of 3 "6. *This Court is inclined to concur with the view expressed by the CIC that in order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses u/s 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden. The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case*." [Appeal No.CIC/ICOHR/A/2018/610432 + Complaint No.CIC/ICOHR/C/2018/610968-BJ. DOO – 28.05.2018].

M.K. Shaji, CLA/RWF

Entitlement of interest on delayed payment of Retirement benefits – When available?

The appellant is a retired Associate Professor of Chemistry. He retired from the respondent No.1 w.e.f. 30.06.2011. That the institution in which he was serving is an aided college. There was a delay in paying the retirement/pensionary benefits, which was not paid despite various correspondences and the representations. Ultimately, the appellant was constrained to file a writ petition before the High Court of Madras.

At the time of hearing, it was submitted that during the pendency of the writ petition the entire terminal benefits have been settled. Therefore, it was requested on behalf of the appellant that action be taken against the erring officers for the delay caused in settling his dues and that he be paid interest on the delay in payment of retiral benefits. Single Judge of the High Court disposed of the writ petition relegating the petitioner to make a representation to the Director of Collegiate Education to take appropriate action against the erring officers who had delayed in settlement of the payment in time. However, as no order was passed in respect of the interest on the delayed payment of the retirement benefits, the petitioner preferred an appeal before the Division Bench. The Division Bench has disposed of the appeal by observing that it is ultimately for the Government to take an appropriate decision based on the enquiry report and the Division Bench of the High Court has not passed any further order.

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court in not passing any order in respect of the interest on the delayed payment of retirement benefits, the original writ petitioner has preferred the present appeal before the Supreme Court.

The Supreme Court held that “as there was a delay in making the payment of retirement benefits and settling the dues for which the appellant employee is not at all responsible, he is entitled to the interest on the delayed payment. Even the Division Bench of the High Court has also observed in the impugned judgment and order that the appellant is entitled to the interest on the delayed payment. However, there is an inter se dispute between the Secretary, Management and the Government as to who is responsible for the delay in making the payment to the appellant and therefore, he has been denied the interest on delayed payment though entitled to. It is to be noted that the Government did conduct an enquiry and fastened the liability on the college and observed that the former Secretary

was responsible for the delay in disbursement of the terminal benefits to the original writ petitioner. In that view of the matter, subject to the further final order that may be passed by the Government, the College/Management is first liable to pay the interest on the delayed payment of retirement dues subject to the final decision, which may be taken by the Government, after hearing the Management and the former Secretary. However, because of the inter se dispute between the Management, Secretary and the Government on who is responsible for the delay in making the payment and/or settling the dues, the retired employee should not be made to suffer for no fault of his”.

Holding so, the Supreme Court directed the Management of the College to pay interest on the delayed payment of retirement benefits to the Appellant from the date of retirement till the actual payment strictly within a period of six weeks and it will be open for the College Management to recover the same from the person, who, ultimately is held to be responsible for the delay. [**A. Selvaraj vs C.B.M. College on 4 March, 2022**, CA NO. 1698 OF 2022]

B.R.R. Naidu, CLA/CON/SC

KNOW OUR CONSTITUTION

Article 70: Discharge of Presidents functions in other contingencies. Parliament may make such provision as if thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter

Article 71: Matters relating to, or connected with, the election of a president or Vice President

1) All doubts and disputes arising out of or in connection with the election of a president or vice President shall be inquired into and decided by the Supreme court whose decision shall be final (2) If the election of a person as President or Vice President is declared void by the Supreme court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration (3) Subject to the provisions of this constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice President (4) The election of a person as President or Vice President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

Difference between**Question of Law and
Question of Fact****FAQ****What is Letter Patent Appeal?**

In law, a question of fact is a question to be answered by reference to facts and evidence, and inferences arising from those facts. Whereas a question of law is a question to be answered by applying relevant legal principles.

Question of Law

The question of law is related to interpretation and the judiciary does it. For example, there are many laws in every country. The judiciary decides which law to apply and which to exclude. This is question of law. When the judiciary wants to interpret a law then the question of law comes. So, question of law is related to interpretation. It is answered by fixed rules of law. It is answered by judges. It is called the Point of law. It can't be converted. It is a constant thing. Example: What is murder, dacoity, theft, etc. All these are explained in IPC. Question of law is purely related with the law. In a question of law, it is the duty of the Court to ascertain the law and decide to case accordingly.

Question of Fact:

For question of law, the court actually finds the answer with help of rules available under different laws and legislations. When the court fails to do so, it seeks help from the higher courts. Sometimes, after judgment, the victim goes to higher courts for better judgment. But not all the problems can have answered in the law itself. In that time, the court uses facts or evidence as help. Questions other than particular law is question of fact. It is answered by the parties. It can be converted into a question of law. Example: In the question of law, we saw what is murder but here in the question of law, we get to whether the person is a murderer or not in light of the evidence.

Question of fact is not related with the law. In a question of fact, it is the duty of the Court to weigh the evidence and then come to its conclusion.

Mixed Question of Law & Fact

Just like the title, it is mixed of law and fact. In this case, there are some questions jointly related to both law and fact. The following example explains this.

There is a dispute regarding a partnership matter between A and B. Here, question of fact is, what was the relation between A and B and nature of their work. Question of law is, whether the behavior between the parties would constitute as partnership between the two parties.

Letter patent appeal is an appeal by a petitioner against a decision of a single judge to another bench of the same court. This is an only remedy which is available in court to the petitioner against the decision of a single judge of a high court, otherwise, a remedy would lie with only in the supreme court.

This solution is made available in court to the petitioner to appeal against the verdict of the single judge of a High Court. Letter Patent Appeal is an option available to the petitioner before going to the Supreme Court. They have the choice to approach another bench constituted with more than one judge.

It can either be an intra-court appeal in the High Court or an inter-court appeal in the Supreme Court but both have different rules in the context of Letter Patent Appeal.

Letter patent appeal is an intra-court appeal in high court and inter-court in Supreme Court and both have different rules regarding this LPA. Normally a judgment and order passed under Art 226 of the Constitution is appealable as LPA and judgment and order passed under Art 227 is not appealable under this category.

It has been observed that an application under Section 8 of the Act is an application under Part I of the Arbitration & Conciliation Act of 1996. This means that an appeal from an order issued under Section 8 of the Act would be barred under Section 37 of the Arbitration & Conciliation Act. As a result, it was determined that the Letters Patent Appeal is not maintainable in the case of an order issued under Section 8 of the Act.

Letter Patent Appeal is not maintainable under criminal proceedings. An appeal in the High Court to the division bench is not arguable or maintainable in any order dictated by the single bench judge in the criminal proceedings.

The High Courts and the Supreme Court both give a choice of appeal to the litigant in a letter patent appeal. On the off chance that one cannot comply with the request of the courts, they can apply for this appeal. Moreover, different law provisions manage letter patent appeals differently.

Reverting the RPF constable from the post of Law Assistant was not an arbitrary or illegal - Held by SC

In SLP (C) Nos. 27773-27774 (arising out of impugned final Judgement and Orders dated 09.08.2017 in CR No.224/2017 in CWJC No. 3994/2017 and dated 18.5.2017 in CWJC No. 3994/2017 passed by the Hon'ble High Court of Patna in Alok Kumar (Petitioner) Vs. UOI & Ors. (Respondents), the Hon'ble Supreme Court vide its Order dated 12.05.2022 has dismissed the SLP holding that 'we are not inclined to interfere with impugned orders (i.e. orders reverting the Petitioner from the post of Chief Law Assistant)

Facts in brief:

Petitioner was appointed as a Constable in Railway Protection Force (RPF). The petitioner applied for selection on the post of Law Assistant, which is now known as Chief Law Assistant, since it was his opinion that he was eligible for consideration in terms of the said notification. He participated in the selection process, was declared successful and was posted as Law Assistant and started performing his duty on the new post. Then, he was issued a show cause as to why he should not be reverted to his original post of a Constable in RPF in terms of the Railway Board's Circular No.139/2003 and 222/2004 since the respondent Railway authorities were of the opinion that he was ineligible ab initio from participation as well as consideration for appointment on the post of Law Assistant from the rank of a Constable. The petitioner submitted his response where he took a plea that the Railway Board's circulars were not applicable to Law Superintendent Examination. It was only relevant for General Departmental Competitive Examination. Respondents not satisfied with the representation, reverted the petitioner to the post of Constable and that became the cause of action for filing of the O.A. One of the stand, which was taken before the Central Administrative Tribunal on behalf of the petitioner, was that the reversion order is contrary to Rule 131 and 219 of the Indian Railway Establishment Manual, 1989, Vol.1, as revised in 2009, as well as unsustainable in view of Railway Board's order No.113/2009 and 161/2009. The stand of the respondent Railway authorities in their written statement, which has been taken note of by the Central Administrative Tribunal, is as under :

"3. The respondents, through their written statements, have confirmed the selection and posting of the applicant as Law Superintendent. However, additionally the respondents have submitted as below:- [i] A complaint through Vigilance Organisation of E.C. Railway was received in the office of General Manager (P) Hajipur against the selection of Shri Alok Kumar as Law Superintendent on grounds of his being from the RPF Department. In the light of this complaint, Railway administration reviewed his case. It was observed that as per RBE-No. 139/2003 (Railway Board's letter No.E(NG) I/2002/PM2/9 dated 11.08.2003) and RBE No. 222/2004 (Railway Board's letter No. E(EG)I/2002/PM2/9 dated 13.10.2004) RPF/RPSF personnel are/were not eligible to appear in the selection for posts in department other

than RPF including the post of Chief Law Assistant/Law Superintendent. [ii] In view of the above, it was established that promotion of Shri Alok Kumar to the post of Law Superintendent from the post of Constable/RPF was ab initio wrong/illegal/void. So a show cause notice in this regard was issued to him vide memo dated 07.10.2014. [iii] Pursuant thereto, the reply to the show cause was duly considered in the context of applicable / relevant rules and the promotion order of the applicant from Constable (RPF) to Law Superintendent was cancelled vide orders dated 09.12.2014. Simultaneously he was spared and directed to join in his original cadre / department. [iv] The respondents further submit that the RPF is a separate organisation for all intents and purposes and has its own career progression channel within the department. Further that, RBEs 143 of 2009 and 161 of 2009 are normal promotional guidelines and have no relevance in this case; rather the applicant's case comes under the purview of RBEs 139 of 2004 and 222 of 2004 whereby RPF/RPSF personnel have been debarred to appear in GDCE selection, including any kind of selection to be held in other departments of the Railways. This view has been confirmed by Hon'ble High Court, Andhra Pradesh in Writ Petition No. 13376 of 2004. The above RBE No.222/2004 has been issued by RB based on this judgment.

Hon'ble High Court/Patna held that 'After a careful perusal of para 170 of IREM, we are of the considered opinion that RPF/RPSF cannot be said to be covered within the meaning "other Departmental staff". We are inclined to agree with the contention of the respondents that the applicants are part of a combatised Force created specifically to look after the security needs of the Indian Railways and the mode of their selection and training has also been conducted in that direction only. Though the decision of the Principal Bench may not be binding upon this Court, but the rational and reasoning provided by the Principal Bench for not treating Constables of RPF as employees of the railway as a concept cannot be ignored and the Court, therefore, considering the overall provisions, is in agreement with the order of the Central Administrative Tribunal, Patna that the order to revert the petitioner from the post of Law Assistant was not an arbitrary or illegal order. In fact, the petitioner has taken a chance by applying and going through the process of selection and within months of the same, the omission or error was pointed out by the vigilance department, therefore, the corrective measure was taken by the respondent railways after giving an opportunity of hearing to the petitioner. The order of the CAT, Patna Bench is not illegal so the writ application has no merit. It is dismissed.

Further when the matter was agitated before the Hon'ble Supreme Court through the SLP, upon hearing the counsels for the parties, the Hon'ble Supreme Court vide its Order dt. 12.5.2022 held that 'We are not inclined to interfere with the impugned orders'; and dismissed the Special Leave Petitions.

Syed Amjad Ali, OS, GM Office

YOURS LEGALLY**Stay against proceedings of a civil or criminal trial will come to an end on expiry of six months unless extended by a speaking order:**

Directions that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the stay will come to an end on expiry of six months unless extended by a speaking order, in *Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation*, clarified

The Supreme Court in the case of *Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation* (2018) 16 SCC 299, held that “that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised”.

However, a petition is filed before the Supreme Court for a clarification as to the above order would apply to the facts of the applicant's case also. Facts of his case are: The applicant is writ petitioner before the High Court. Single Judge has disposed of the writ petition. The said judgment is challenged before the Division Bench in a Letter Patent Appeal. In the LPA, an interim order was passed granting stay on 06.02.2015 as follows:

“One of the contentions raised is that the Respondent-Engineering College remained functional for hardly 2-3 years and is lying closed since the year 2013 and all the students who were admitted in that college have been migrated to other recognized Engineering Colleges. Let notice of motion be issued to respondent No. 1 only for 21.05.2015. Meanwhile, operation of the order passed by the learned Single Judge shall remain stayed”.

Relying upon the judgment in *Asian Resurfacing of Road Agency Private Limited and Another*, a clarification is sought that in the fact situation projected by the applicant, the principle enunciated by this Court will apply.

The Supreme Court held that “....the direc-

tion issued in *Asian Resurfacing of Road Agency Private Limited and Another* (supra) arose out of the factual and legal matrix present therein. The case revolved around the questions arising out of the pendency of civil and criminal cases, i.e., of trial being halted and the tendency towards procrastination on the strength of the orders of stay granted. The result was that cases were not being taken to their logical conclusion with the speed with which they should have been done. We may notice the following:

“36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.”

Therefore, the Supreme Court clarified that “...the attempt of the applicant to draw inspiration from the above directions as referred to above cannot succeed in view that this Court cannot be understood as having intended to apply the principle to the fact situation which is presented in this case. Accordingly, the miscellaneous application for clarification is disposed of by clarifying that the order of stay granted by the Division Bench in the High Court cannot be treated as having no force”. [*Asian Resurfacing of Road Agency P.Ltd. and Anr. Vs Central Bureau of Investigation, MA No.706 of 2022 in MA No. 1577 of 2020 in Criminal Appeal Nos.. 1375-1376 OF 2013 (Arising out of final judgment and order dated 15-10-2020 in MA No. 1577/2020 passed by the Supreme Court of India), dated 25.04.2022*]

M.V. Ramana, LO/HQ/SCR

TREATISE ON**A&C Act, 1996****Decision of the arbitral tribunal (Section 29)**
(Continued from last issue.....)**Decision of Minority member in the arbitration award – Effect:**

The Bombay High Court held that dissenting view, if any, cannot be treated as an award. Omission of the dissenter member's signature will not make the award invalid. But in a situation where the dissenter member is also permitted to give reasons and/or expressed his dissenting opinion separately, still the majority assenting opinion shall be treated as an award. [*Axios Navigation v Indian Oil Corporation Ltd*, (2012) 114 (1) BomLR 392]

The High Court of Delhi in *BSNL v Acome* [(2007) 95 DRJ 466] observed that 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 crystalized 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.

Consequently, it is immaterial whether the opinion of the minority of arbitrators, if any, is made available to the parties at the same time as the award of the majority or not. From the decisions cited above, it is evident that it has always been the law that an award which is signed by the majority of arbitrators is a valid and enforceable award.

It is further held that a minority decision of an arbitral tribunal, being in the nature of an

opinion, has no efficacy as an award and cannot be enforced. The court observed that the finding of the minority member of an arbitral tribunal *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 the award of the Tribunal, it would give a cause to the aggrieved part/parties to object to the same. Limitation would therefore begin to run from the time the majority award is communicated to the part concerned.*"

The Supreme Court in *Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs M/s Navigant Technologies (P) Ltd.* [Civil Appeal No.791 of 2021, DOJ:02.3.2021] held as follows:

Section 2 (1)(c) of the 1996 Act defines "arbitral award" to include an interim award. The phrase "arbitral award" has been used in several provisions of the 1996 Act. The statute recognizes only one arbitral award being passed by an arbitral tribunal, which may either be a unanimous award, or an award passed by a majority in the case of a panel of members. An award is a binding decision made by the arbitrator/s on all the issues referred for adjudication. The award contains the reasons assigned by the tribunal on the adjudication of the rights and obligations of the parties arising from the underlying commercial contract. The award must be one which decides all the issues referred for arbitration. The view of a dissenting arbitrator is not an award, but his opinion. However, a party aggrieved by the award, may draw support from the reasoning and findings assigned in the dissenting opinion. (ii) The phrase 'arbitral tribunal' has been defined by Section 2(1)(d) to mean a sole arbitrator, or a panel of arbitrators.

The reference to the phrase "arbitral award" in Sections 34 and 36 refers to the decision of the majority of the members of the arbitral tribunal. A party cannot file a petition u/S. 34 for setting aside, or u/S. 36 for enforcement of a dissenting opinion. What is capable of being set aside under Section 34 is the "arbitral award" i.e. the decision reached by the majority of members of the tribunal. Similarly, under Section 36 what can be enforced is the "arbitral award" passed by the majority of the members.

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