Lex Info

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(from Law Branch, South Central Railway)

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Legal Maxim

Donatio mortis causa – Gift because of death. Or a future gift given in expectation of the donor's imminent death and only delivered upon the donor's death.

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

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

Please mail them to:

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Note: This is only a news capsule. For information and understanding to cite the case, please go through the original judgement.

ABC OF ACTS

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

Contd… from last issue.

(5) The Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes. (6) In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first instalment and the rest shall be paid after taking over of the possession of the land. (7) The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity. (8) The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings. (9) Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void, and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes. 25 (10) The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects. (11) Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they shall be paid an additional twenty-five per cent. rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a onetime entitlement of fifty thousand rupees.

Section 42: Reservation and other benefits.–(1) All benefits, including the reservation benefits available to the Scheduled Tribes and the Scheduled Castes in the affected areas shall continue in the resettlement area. (2) Whenever the affected families belonging to the Scheduled Tribes who are residing in the Scheduled Areas referred to in the Fifth Schedule or the tribal areas referred to in the Sixth Schedule to the Constitution are relocated outside those areas, than, all the statutory safeguards, entitlements and benefits being enjoyed by them under this Act shall be extended to the area to which they are resettled regardless of whether the resettlment area is a Scheduled Area referred to in the said Fifth Schedule, or a tribal area referred to in the said Sixth Schedule, or not. (3) Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the same shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights.

Section 43. Appointment of Administrator.–(1) Where the appropriate Government is satisfied that there is likely to be involuntary displacement of persons due to acquisition of land, then, the State Government shall, by notification, appoint in respect of that project, an officer not below the rank of Joint Collector or Additional Collector or Deputy Collector or equivalent official of Revenue Department to be the Administrator for Rehabilitation and Resettlement. (2) The Administrator shall, with a view to enable him to function efficiently and to meet the special time-frame, be provided with such powers, duties and responsibilities as may be prescribed by the appropriate Government and provided with office infrastructure and be assisted by such officers and employees who shall be subordinate to him as the appropriate Government may decide. (3) Subject to the superintendence, directions and control of the appropriate Government and the Commissioner for Rehabilitation and Resettlement, the formulation, execution and monitoring of the Rehabilitation and Resettlement Scheme shall vest in the Administrator.

Section 44 : Commissioner for rehabilitation and resettlement.–(1) The State Government shall appoint an officer of the rank of Commissioner or Secretary of that Government for rehabilitation and resettlement of affected families under this Act, to be called the Commissioner for Rehabilitation and Resettlement. (2) The Commissioner shall be responsible for supervising the formulation of rehabilitation and resettlement schemes or plans and proper implementation of such schemes or plans. (3) The Commissioner shall be responsible for the post-implementation social audit in consultation with the Gram Sabha in rural areas and municipality in urban areas.

(to be contd…)

V. Appa Rao, CLA,GM Office

RTI Series

Contd.. from last issue

Protection of action taken in good faith:

Section 21 of the RTI Act, 2005 states: "No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder."

The RTI Act does not provide any definition for what is "good faith". However, Section 3 (22) of the General Clauses Act, 1897 defines good faith: "a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not." However, IPC defines "good faith" in the following terms: "Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention." The definition of "good faith" as appearing in Section 2 (h) of the Limitation Act, 1963 is comparable with the definition included in IPC: "Nothing shall be deemed to be done in good faith which is not done with due care and attention". Apparently, these two definitions confront each other, since negligence in doing an act is immaterial as per the General Clauses Act, whereas IPC warrants things to be done or believed with due care and attention. In other words, as per the General Clauses Act, 'honesty' is the sole yardstick to determine "good faith", whereas in accordance with IPC and Limitation Act 'due care and attention' are the criteria to determine "good faith".

Can RTI applicant claim protection under Section 21?

Generally, a casual reader gets an impression that Section 21 is meant to protect CPIOs, FAAs or ICs. But a careful reading of Section 21 will reveal that it is not the case and there is no such restriction. In other words, an RTI applicant can also seek immunity under Section 21.

In an interesting case dealt with by the High Court, Kerala [Amrutha M George v. Spices Board & 2 Ors. WP (C) No. 13528/2015. DOJ – 03.08.2015] the petitioner therein was in receipt of a charge memorandum for raising some objectionable remarks while submitting her application under RTI Act to her own department. This case also dealt with the scope of show cause notice issued to an employee and the scope of courts to intervene in a charge memorandum.

The petitioner while working as Assistant Director (Development) had applied for the post of Deputy Director (Accounts) and Deputy Director (Audit and Vigilance) to be filled by direct recruitment. However, the petitioner was not selected for the said post and therefore she preferred an application under RTI Act seeking information pertaining to the examinations conducted by the respondents in connection with the recruitment. In the said application, the petitioner sought for details of the answer papers of the petitioner as well as other candidates so as to compare the same. Her covering letter to the application indicated her reasons for preferring the application.

The respondent Board issued a memo seeking explanation of the petitioner, while taking objection to the reasons stated by the petitioner in her application under the RTI Act. The respondents contended that the contents of the covering letter were unsubstantiated statements against the respondents.

In response, the petitioner had submitted a reply. Not satisfied, the respondent Board issued a charge memorandum. The petitioner directly challenged the charge memorandum before the High Court, inter alia, on the ground that the said charge memo issued to her is virtually an act of harassment, and that the charge memo has been issued with mala fide intents and is baseless with regard to the charges alleged against her.

In the counter affidavit, the respondents submitted that what was served was on a charge memo, which marks the initiation of disciplinary proceedings, and hence the Court ought not to interfere with the said charge memo since the sustainability of the charge against the petitioner can be decided only in the enquiry that is to follow. It is stated that the reckless and defamatory statements made in the application filed by the petitioner, under the RTI Act, constitute a misconduct. The respondents denied the averment of malafide intention in the issuance of charge memo. Respondents had claimed the selection as fair and transparent.

It was also pointed out in the counter affidavit that, dissatisfied with the documents furnished to the petitioner pursuant to her application under the RTI Act, the petitioner has already preferred an appeal before the Appellate Authority, and the Appellate authority has since disposed of the appeal. It is, in particular, pointed out that, although the petitioner was given a copy of her answer sheet and the marks awarded to her, she has not alleged that the marks obtained by her were lower than what she had expected. In a reply affidavit filed by the petitioner, the averments in the counter affidavit were traversed in detail.

...Contd..in next issue

M.K. Shaji, CLA/RWF

Whether Second Wife is Eligible for Family Pension?

The writ petitioner is challenging the rejection order for grant of family pension.

The writ petitioner states that her husband Late Mr.Dhanushkotti got married one Janniammal, who is none other than the elder sister of the writ petitioner. The said Janniammal was suffering an illness and therefore, the husband of the writ petitioner married the writ petitioner as second wife. It is an admitted fact that the petitioner married the deceased employee Late Mr. Dhanushkotti on 14.09.1975, when his first wife was alive. The husband of the writ petitioner was working as Teacher in Primary School. He retired from service on 31.05.1997. After his retirement, he was receiving pension and died on 10.06.2010. Thereafter, the petitioner submitted an application for grant of family pension. The said application was rejected by the Principal Accountant General of Tamil Nadu on the ground that the second marriage of deceased employee Late Mr.Dhanushkotti with the petitioner Tmt.Santhi was solemnized on 14.09.1975, admittedly, when the first wife was alive. Therefore, the petitioner is not eligible for family pension. A Government employee, contracting a second marriage during the lifetime of the first wife is misconduct and he is liable to be prosecuted for bigamous marriage. The second marriage during the lifetime of the first wife is not a valid marriage under the Hindu Marriage Act, 1955 and therefore, the second wife cannot be construed as a widow within the meaning of Tamil Nadu Pension Rules, 1978. When the marriage became invalid, the question of granting family pension under the Tamil Nadu Pension Rules would not arise at all.

Question arises, whether a pension can be shared under Rule 49 (7) (a) (i) of the Tamil Nadu Pension Rules, 1978, when the marriage is invalid.

The language employed in Rule 49 (7) (a) (i) is that, “where family pension is 'payable' to more widows than one”. Therefore, if the family pension is payable to the more widows than one, then alone, the family pension can be shared, but not otherwise.

As per the pension scheme, the family pension is to be paid only to the spouse i.e., legally wedded spouse of an employee. Question of 'payability' would arise only if the applicant is the widow. The question of widow would arise only if the marriage is the valid marriage. Based on an invalid marriage, the second wife cannot claim the status as “widow”. When admittedly, the applicant is the second wife of the deceased employee and she is not a widow, then the family pension is not payable, and the question of invoking Rule 49 (7) (a) (i) would not arise at all.

Further question arises, why such a rule has been incorporated in the Tamil Nadu Pension Rules. It is obvious that at the time of framing the rules, the employees, who have solemnized second marriage prior to the year 1955, i.e., before the Hindu Marriage Act, was considered as a valid marriage. In those circumstances, when the second marriage was a valid marriage, the rule contemplates sharing of the family pension. Therefore, only if the second marriage is valid under the Law, then alone, the pension is payable, which can be shared between two widows, but not otherwise.

When the pension rule was enacted, there were many such cases, where, employees had two wives and the marriage with the second wife was solemnized prior to the Hindu Marriage Act before the year 1955 and thus, this Court is of the considered opinion that those circumstances cannot be taken undue advantage by the second wife, whose marriage was solemnized after the Hindu Marriage Act and became invalid. Thus, the second marriage solemnized during the lifetime of the first wife is an invalid marriage and an invalid marriage would not provide the second wife status as “widow”. When she is not holding the status as 'widow', the family pension is not payable and consequently, the family pension cannot be shared or paid.

In this regard, the Accountant General of Tamil Nadu sought for clarification from the Government and the Government also clarified that the second wife, whose marriage was solemnized during the life time of the first wife of an employee, then such second wife is not eligible for family pension under the Tamil Nadu Pension Rules.

In view of the admitted fact in the present case that the writ petitioner married the deceased employee as second wife during the lifetime of the first wife, the order of rejection passed by the respondents is in consonance with the Tamil Nadu Pension Rules in force and there is no infirmity as such.

Accordingly, the writ petition stands dismissed. No costs. (W.P.No.32556/2014 in Shanti V. Govt. Of TN and Ors, DOJ: 15.07.2022, The High Court Of Judicature At Madras)

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

Difference between Quantum Meruit & Quantum Valebant

QUANTUM MERUIT	QUANTUM VALEBANT
DIFFERENCES	
Meaning: As much as one deserves. (Black Law Dictionary).	Meaning: As much as they are worth.
Developed by the Court of Chancery in England in 17th Century.	Earliest known case is Monitor Prods. Co. v. United States Navy (27.07.1976) decided by Comptroller General of the US.
Liability to pay for the services rendered.	Liability to pay for the goods supplied.
Legal action brought to recover compensation for the work done and labour performed.	Legal action brought to recover compensation for the goods supplied.
SIMILARITIES	
Permits legal action on the basis of an implied contract or actual contract which got rescinded / breached / void.	Permits legal action on the basis of an implied contract or actual contract which got rescinded / breached / void.
Prevents unjust enrichment.	Prevents unjust enrichment.
Section 70 of the Indian Contract Act, 1872 deals with the obligation of person enjoying benefit of non-gratuitous act.	Section 70 of the Indian Contract Act, 1872 deals with the obligation of person enjoying benefit of non-gratuitous act.

K. Gopinath, LO/Genl.Admn./HQ

FAQ What is the validity of the Award of Lok Adalat?

Award of Lok Adalat Section 21 the Legal Services Authorities Act, 1987 provides that every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it.

Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

In the case of State of Punjab & Anr. Vs. Jalour Singh & Ors DOJ: 18.1.2008, the Hon'ble Supreme Court has held that

" …… Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law.

No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by principles of justice, equity, fair play.

When the LSA Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. **The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat."**

K. Gopinath, LO/Genl.Admn./HQ

Passing of an order by the department and keeping it in the file is not sufficient as it has to be issued to the employees:

The Hon'ble Supreme court in its Six Bench judgment in the case of State of Punjab Vs. Amar Singh Harika 1996 AIR (SC) 1313. In para 11 it was held as under:-

"We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published". He has also relied upon the judgment in Kunju Kesawan Vs. M.M. Philip and Others AIR 1964 SC 164 wherein the Hon'ble Apex court held that

"the dictionary meaning of the expression issued takes in the entire process of sending notice as well as service thereof. The said word used in section 34(1) of the wealth Tax Act itself was interpreted by courts to mean 'served'." Further he has relied upon the judgment of the Apex Court in the case of Commissioner of Wealth and Another Vs. Kundan Lal Behari Lal AIR 1976 SC 1150 wherein the court held that word "issued" occurring in Section 18(2A) of the Wealth Tax would meant "served". The relevant part of the said judgment reads as under:-

"2. The main question on which the High Court decided and which is the only question urged before us for admitting the petition is that the word 'issued' occurring in Sec. 18 (2A) of the Wealth-tax Act means 'served'. This decision is well supported not only by the decisions of the High Court but also of this Court. In Banarsi Debi v. Income Tax Officer, Calcutta, 53 ITR 100 = (AIR 1964 SC 1742) this Court observed that the expressions 'issued' and 'served' are used as inter-changeable terms and in the legislative practice of our country they are some times used to convey the same idea. Accordingly, it was held that the word 'issued' was not used in the narrow sense of 'sent' but that the said expression had received before the Indian Income-tax (Amendment) Act, 1959, a clear judicial interpretation. Subba Rao, J. as he then was dealing with the purpose which the word 'issue' was intended to serve, after referring to Sriniwas v. Income-tax Officer, 30 ITR 381 = (AIR 1956 All 657) cited in the judgment under attack and a Bombay decision, observed at page 108, "the intention would be effectuated if the wider meaning is given to the expression 'issued'. The dictionary meaning of the expression issued takes in the entire process of sending notices as well as service thereof. The said word used in Section 34 (1) of the Act itself was interpreted by courts to mean 'served'."

[State of Punjab Vs. Amar Singh Harika 1996 AIR (SC) 1313]

Syed Amjad Ali, OS, GM Law Branch

KNOW OUR CONSTITUTION

Article 73. Extent of executive power of the Union

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend -

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution Council of Ministers.

Article 74. Council of Ministers to aid and advise President

(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court .

YOURS LEGALLY

Once an order has been challenged before a court of law, it should not be interfered with during the pendency of the case-

A case has come to the notice of the Ministry of Railways where the disciplinary proceedings had been instituted against a Railway servant on the charge of unauthorized absence from duty. On consideration of the case, the disciplinary authority imposed a penalty which was upheld in appeal. An O.A. (No. 14/2001) was filed by the Railway servant concerned before CAT, Jabalpur. It was then noticed that while the charge sheet was issued for unauthorized absence, the penalty has been imposed on the charge of leaving Headquarters without permission. Since penalty was imposed on a charge other than that mentioned in the chargesheet, the disciplinary authority passed fresh orders in the case bringing out the correct charge. The penalty imposed vide fresh orders was later modified by the appellate authority.

The Hon'ble Tribunal vide orders dated 6.5.2003 allowed the O.A. and set aside the orders passed in the disciplinary case of the applicant with consequential benefits to him. The Hon'ble Tribunal inter alia held that : There is no evidence that the applicant was unauthorisedly absent because leave for 2 days was sanctioned to him by the Station Master and further period was covered by medical certificates issued by railway medical officer; The penalty was imposed on the basis of charges foreign to the charge sheet; The disciplinary authority was not competent to review its own orders and as such the subsequent orders of the disciplinary authority are without jurisdiction;

Revised order was passed during pendency of the O.A. and was thus not valid.

In this case, the Railway servant concerned had been sanctioned leave for two days only but he remained absent for about 3-1/2 months without intimation. At the time of joining, he produced medical certificate from railway doctor. Still the fact remains that he had not given any intimation about his illness and thus remained unauthorisedly absent. The findings of CAT to the extent that it was a case of no evidence thus were not correct. The disciplinary authority passed a cryptic order and to compound the matter also cited in the penalty order the allegations which were different from the charges. He should have been careful and should have put the case records in proper perspective while passing orders. The appellate authority's orders in the case were also vague in nature. This apparently led the Hon'ble Tribunal to conclude that it was a case of no evidence which could have easily been avoided by passing a reasoned and speaking order. Utmost care should therefore be exercised while passing final orders in the disciplinary cases. These orders should also be self-explained, reasoned and speaking as has already been emphasized on a number of occasions in the past. In any case, printed proforma should not be used by the Disciplinary/Appellate/Revisionary Authorities while passing final orders in the disciplinary case.

The observation made by CAT, Jabalpur in their orders dated 6.5.2003 in O.A. 14/2001 about passing of order when the matter is sub-judice has been considered taking into account the legal advice in the matter. **It is clarified that once an order has been challenged before a court of law it should not be interfered with during the pendency of the case. The impugned order has to be taken as it is and nothing can be reduced or added to it. In such situation, any proposed fresh order should be passed only with the leave of the court.**

As regards review of orders, it is clarified that an order, if found to be containing some patent error, can be reviewed by the same authority who had passed the original order. Some of the circumstances in which the orders can be reviewed and fresh orders passed are given below:

i) where the original order was not in conformity with the provisions of Rule 6 of RS(D&A) Rules, 1968 e.g. the penalty of withholding of increments was imposed on a Railway servant who was at the maximum of the scale and could not draw any further increments; or the penalty of withholding of promotion or reduction to a lower stage in the time scale of pay was imposed on permanent basis whereas as per rules these penalties can be imposed for a specified period only. In such cases an effective penalty may be imposed by means of a fresh order by the same authority who had originally passed those orders in the disciplinary case;

ii) where the authority who passed the order was not competent to impose the penalty. In such case the punishing authority will withdraw its orders and refer the papers to the authority which is competent to impose the proposed penalty;

iii) where there is a patent error in the original order e.g. the date or reference number or name/ designation etc. was shown incorrectly in the order. Fresh orders may be passed by the same authority to correct these inaccuracies in the original order.

In view of the above, it has been clarified that an order which has been challenged before a court of law can be reviewed only with the permission of the court.

B.R.R. Naidu, LO/Engg./SCR

TREATISE ON

The Arbitration And Conciliation Act, 1996

Section 29 A – Time limit for arbitral award – Continued from previous issue:

Extension of time for making arbitration award beyond 12 months prescribed by the statute.

The statute provides for extension of the time for making the award by the parties themselves and also by Court. In the first instance, parties on their own can extend the time for a period of six months. If award could not be made within that period, then either of the party can approach court for extension of time and the Court will grant such time as it thinks is proper only for sufficient cause and on such terms and conditions as may be imposed by the Court.

What if award is not made within the prescribed period or within the extended period? Sub section (3) specifies that if the award is not made even within the extended period, then the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period. However, where an application for extension of time is pending, the mandate of the arbitrator shall continue till the disposal of the said application.

A Division bench of the High Court of Telangana has categorically held that if the award is not made within the time prescribed in the Statute then, the mandate of arbitrators shall be terminated and they became *functus officio and* cannot pass arbitration award beyond the said period. The High Court held as follows:

13. Section 29A of the Act, 1996, as it stood when awards were passed mandates that the award should be passed within a period of twelve months from the date Arbitration Tribunal enters appearance. The explanation appended to the provision as it stood at the relevant point of time explains that arbitrator is deemed to have entered appearance when he received notice in writing of his appointment.

14. The provision as it stood was in mandatory terms and leaves no scope to infer otherwise. The intention of the Parliament is made abundantly clear from the reading of Sub-sections (3) and (4). Sub-section (3) enables parties by consent to extend the time by further period of six months. But it also makes it clear that it should not be extended beyond six months. According to sub-section (4), after the initial period of one year and extended period of six months, if extended by consent, the mandate of the arbitrator terminates. Thus, he becomes *functus-officio* after that period and, therefore, seizes to be an arbitrator. An arbitrator is a creature of the statute and has to work within the four corners of the Act.

15. Section 29A as introduced by Amendment Act notified on 01.01.2016 was substituted by way of Amendment Act dated 09.08.20196. The amendment takes care of the drawbacks in the earlier provision.

From the dates and events of these two cases, it is apparent that the concerned arbitrators passed awards after one year of entering appearance. They became *functus officio* one year after entering appearance and were wholly incompetent to deal with the disputes and pass awards.

Thus, awards passed by the arbitrators are nullity and void *ab initio*. In law there do not exist awards and therefore question of enforcement of the awards do not arise. The execution Court grossly erred in not appreciating this aspect. [Roop Singh Bhatty Vs.M/s. Shriram City Union Finance Limited, CRP Nos 1354 & 1934 of 2021, DOJ: 08.04.2022]

Sub section (6) empowers the Court for substituting all or any one the existing arbitrators. While extending the period, it shall be open to the Court to substitute one or all of the arbitrators. If one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material. In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

Any application filed for extension of time, shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

To be continued.....

N. Murali Krishna, Sr.Law Officer