Lex Info

An E - Magazine
(from Law Branch, South Central Railway)



Vol -V Issue - 08 August 2022

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Legal Maxim

De jure - It means according to law, by right or legally. De facto means a state of affairs that is true in fact, but that is not officially sanctioned. In contrast, de jure means a state of affairs that is in accordance with law (i.e. that is officially sanctioned).

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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.

Section 45 : Rehabilitation and resettlement committee at project level.–

(1) Where land proposed to be acquired is equal to or more than one hundred acres, the appropriate Government shall constitute a Committee under the chairmanship of the Collector to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of the Rehabilitation and Resettlement scheme and to carry out post-implementation social audits in consultation with the Gram Sabha in rural areas and municipality in urban areas.

(2) The Rehabilitation and Resettlement Committee shall include, apart from officers of the appropriate Government, the following members, namely:— (a) a representative of women residing in the affected area; (b) a representative each of the Scheduled Castes and the Scheduled Tribes residing in the affected area; (c) a representative of a voluntary organisation working in the area; (d) a representative of a nationalised bank; (e) the Land Acquisition Officer of the project; (f) the Chairpersons of the panchayats or municipalities located in the affected area or their nominees; (g) the Chairperson of the District Planning Committee or his nominee; (h) the Member of Parliament and Member of the Legislative Assembly of the concerned area or their nominees; (i) a representative of the Requiring Body; and (j) Administrator for Rehabilitation and Resettlement as the Member-Convenor.

(3) The procedure regulating the discharge of the process given in this section and other matters connected thereto of the Rehabilitation and Resettlement Committee shall be such as may be prescribed by the appropriate Government.

Section 46: **Provisions relating to rehabilitation and resettlement to apply in case of certain persons other than specified persons**.—

(1)Where any person other than a specified person is purchasing land through private negotiations for an area equal to or more than such limits, as may be notified by the appropriate Government, considering the relevant State specific factors and circumstances, for which the payment of Rehabilitation and Resettlement Costs under this Act is required, he shall file an application with the District Collector notifying him of— (a) intent to purchase; (b) purpose for which such purchase is being made; (c) particulars of lands to be purchased.

(2) It shall be the duty of the Collector to refer the matter to the Commissioner for the satisfaction of all relevant provisions under this Act related to rehabilitation and resettlement.

(3) Based upon the Rehabilitation and Resettlement Scheme approved by the Commissioner as per the provisions of this Act, the Collector shall pass individual awards covering Rehabilitation and Resettlement entitlements as per the provisions of this Act.

(4) No land use change shall be permitted if rehabilitation and resettlement is not complied with in full.

(5) Any purchase of land by a person other than specified persons without complying with the provisions of Rehabilitation and Resettlement Scheme shall be void ab initio: Provided that the appropriate Government may provide for rehabilitation and resettlement provisions on sale or purchase of land in its State and shall also fix the limits or ceiling for the said purpose.

(6) If any land has been purchased through private negotiations by a person on or after the 5th day of September, 2011, which is more than such limits referred to in sub-section (1) and, if the same land is acquired within three years from the date of commencement of this Act, then, forty per cent. of the compensation paid for such land acquired shall be shared with the original land owners. Explanation. —For the purpose of this section, the expression— (a) ―original land owner‖ refers to the owner of the land as on the 5th day of September, 2011; 27 (b) ―specified persons‖ includes any person other than— (i) appropriate Government; (ii) Government company; (iii) association of persons or trust or society as registered under the Societies Registration Act, 1860 (21 of 1860), wholly or partially aided by the appropriate Government or controlled by the appropriate Government.

Section 47 : **Quantification and deposit of rehabilitation and resettlement amount**.–Where the Collector is of the view that the obligations of the Requiring Body with regard to rehabilitation and resettlement can be quantified into monetary amount, he shall allow the payment of such amount into an account in complete satisfaction of such obligations, which shall be administered by the Administrator appointed under section 43, under the supervision of the Collector.

(to be contd…)

V. Appa Rao, CLA,GM Office

RTI Series

Contd.. from last issue

The main grounds raised by the petitioner were:

The averments in the RTI application only evidenced the existence of a belief in the petitioner, of an undesirable state of affairs prevailing in the respondent board, and, therefore, that could not have formed the basis of any disciplinary proceedings initiated against the petitioner. It is petitioner's case that the averments in question are not in the nature of allegations against the respondents, but are only expressions of the belief harboured by the petitioner.

As per the provisions of S 21 of the RTI Act, there is a protection given to an applicant in respect of an application that has been preferred in good faith under the Act. In the instant case, inasmuch as the respondents were proceeding against the petitioner, based on the contents in an application preferred by the petitioner, under the Act, the petitioner would be entitled to the protection conferred under the Act, and thereby, be immune from any disciplinary proceedings initiated against her by the respondents.

The respondents already having stated that the averments raised by the petitioner were unsubstantiated, any enquiry undertaken against her would be a farce. Reliance is placed on the decision reported in Oryx Fisheries Private Limited v. UOI & Others - [(2010) 1 SCC 427]. The respondents raised the following objections:

(i) It is trite that, the Courts, in exercise of its powers of judicial review, shall not ordinarily interfere with charge memo initiating disciplinary proceedings. Many decisions were relied upon by the respondents. And (ii) The averments in the application filed by the petitioner, under the RTI Act, clearly amounted to reckless defamatory statements made against the respondents and hence actionable under disciplinary proceedings. These allegations infringe the CCS (Conduct) Rules, 1964 and (iii) S 21 of RTI Act affords a protection only to persons exercising a power under the said Act, and not to a person who merely prefers an application under the RTI Act.

While allowing the Writ Petition, the High Court held:

The statement of the petitioner made in the covering letter to the RTI application did not refer to any particular officer(s) or to any specific instructions issued by them. The RTI application was addressed only to the officer concerned in the respondent's office and there was no publication of the statement in a medium that was accessible by the general public or even other officials. The High Court placed reliance on Supreme Court's Order in Vijay Shankar Pandey v. UOI & Anr. [(2014) 10 SCC 589] wherein the Apex court frowned upon the attempt to proceed against an employee who made certain allegations in a writ petition regarding the working of an organization. Reliance was also placed on Supreme Court's order in Oryx Fisheries Pvt. Ltd. v. UOI and Others - [(2010) 1 SCC 427] wherein the Apex Court did not approve of a disciplinary proceeding which was preceded by a show cause notice in which the employee was confronted with definite conclusions of his alleged guilt and observed that *"the authority issuing the charge sheet cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony… If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi- judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence… The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."* Further reliance was placed by the High Court on the order of the Supreme Court in State of Punjab v. V.K.Khanna & Ors. [(2001) 2 SCC 330] wherein it was held: *"33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any Court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge -sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official."*

The High Court concluded: *"In the instant case, the stage at which the charge memo was issued namely, when the petitioner was collecting data to test the veracity of her apprehensions, and the tenor of the averments in the charge memo, and the memo that preceded it, that clearly indicate that the respondents have commenced the proceedings with a closed mind, lead me to believe that the petitioner cannot expect a fair treatment in the proceedings that are now initiated against her. That apart, I also find force in the contention of the learned senior counsel for the petitioner that S 21 of the RTI Act affords a protection to an applicant who prefers an application in terms of the Act. The contention of the learned senior counsel for the respondents that the said provision offers immunity from legal proceedings only to officers exercising powers under the Act does not appeal to me as convincing since the express provisions of S 21 of the RTI Act do not admit of any such restricted interpretation to be placed on the provisions."* In the result the charge memo was quashed by the High Court.

M.K. Shaji, CLA/RWF

MACP Scheme: Entitlement To Financial Upgradation Is To Immediate Next Grade Pay & Not to Next Promotional Post : Supreme Court

The Hon'ble Supreme Court in CA No.005545 arising out of SLP(C) No. 16442 of 2021 (Date of Judgement: 22/08/2022) has held that the Modified Assured Career Progression Scheme is applicable with effective from 01.09.2008 and not from 01.01.2006 (the date from which the recommendations of the 6th Central Pay Commission are effective). The Court further held that as per MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay and not to the immediate next promotional post.

Deciding a batch of appeals filed by the Union of India (Union of India Vs Ex. HC/GD Virender Singh and connected cases), the Bench set aside the judgment of the High Court which had held that MACP scheme is applicable with effect from 01.01.2006 and that under the MACP Scheme the employees are entitled to financial upgradation equivalent to the next promotional post.

However, as regards the MACP scheme for Central Armed Forces, the Court held that fulfilment of pre-promotional norms for grant of financial upgradation would not be insisted for personnel who, for administrative or other reasons, could not be sent or undergo the pre-promotional course.

The Union Government conceded before the Court to not insist upon this requirement for personnel who could not undergo the pre-promotional course for administrative reasons.

As regards the date of applicability and the scope of MACP scheme, the Bench followed the 3 -judge bench decision in Union of India and Others Vs M.V. Mohanan Nair (2020). In that particular judgment, it was explained that the MACP was introduced for the giving the benefit of financial upgradation to employees who were unable to get promotion despite putting in the requisite years of service.

However, the financial upgradation is personal, does not amount to regular or actual functional promotion, and does not require creation of a new post. It has no relevance to the seniority position and principles of reservation are not applicable. Financial upgradation is granted to only those employees who have not received actual or functional promotion even after completion of the requisite service period, though otherwise, they fulfil the prescribed conditions for promotion.

Further, the effective date of MACP was scheme was held to be 01.09.2008 in the case Union of India v. R.K. Sharma and Others. Although the employees sought reliance on a two-judge decision in Union of India and Others vs. Balbir Singh Turn and Another (2018), which held the MACP scheme to be effective 01.01.2006, the bench did not accept it on the ground that the three-judge bench in M.V. Mohanan Nair has held otherwise.

The Bench disposed of the appeals observing :

"The appeals filed by the Union of India are partly allowed and impugned judgments, to the extent they hold that the MACP Scheme applies with effect from 1.1.2006 and that under the MACP Scheme the employees are entitled to financial upgradation equivalent to the next promotional post, are set aside. MACP Scheme is applicable with effect from 1.9.2008 and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008.

The third issue, which relates to the fulfilment of pre-promotional norms for grant of financial upgradation, is decided against the appellant Union of India to the extent that this would not be insisted in the case of the Central Armed Forces personnel where, for administrative or other reasons, they could not be sent or undergo the pre-promotional course".

The Hon'ble Supreme Court held that the Modified Assured Career Progression Scheme is applicable with effective from 01.09.2008 and not from 01.01.2006 (the date from which the recommendations of the 6th Central Pay Commission are effective). [The Hon'ble Supreme Court in Union of India Vs. Ex.HC/GD Viender Singh in CA No.005545 arising out of SLP(C) No. 16442 of 2021 (Date of Judgement: 22/08/2022]

E. Satyanarayana, CLA, PCPO Office

Difference between Rule 8 and 9 of Railway Services (Pension) Rules, 1993

Rule 8 : Pension subject to future good conduct

Purpose - For future good conduct i.e., after the date of retirement.

Applies to pensioners who had already retired in normal course without any adverse issues at the time of retirement

Only pension can be withheld or withdrawn either permanently or temporarily. (since gratuity already disbursed upon retirement). Here Appointing authority and the President are competent to withhold or withdraw pension. President needs to consult UPSC before passing the order.

Appeal lies with the President against the order of the Appointing Authority.

Quantum of pension which already commenced at the time of retirement, depends on the decision of the Appointing Authority/ President on the issue of conviction in serious crime or finding guilty of grave misconduct. Here withholding of gratuity does not arise, the same having been already disbursed upon retirement.

Rule 9: Right of the President to withhold or withdraw pension

Purpose - For offences/lapses related to the period when the pensioner was in service.

Applies to pensioners, against whom departmental or judicial proceedings were pending at the time of retirement. Pension as well as gratuity can be withheld or withdrawn, either permanently or temporarily. Recovery towards pecuniary loss incurred by the pensioner while he was in service can also be made. President alone is competent to withhold or withdraw pension or to make recovery towards pecuniary loss incurred, if departmental proceedings are to be initiated after the date of retirement. If the departmental proceedings have already been initiated against the pensioner while he was in service, the same may be continued by the same authority which initiated it and send a report recording its findings to the President. Presidential sanction is required to institute departmental proceedings after the retirement of the pensioner, that too for events occurred within four years of date of retirement. President needs to consult UPSC before passing the order.

No provision for appeal, since the President is the competent authority. Provisional pension to be granted until a decision is arrived at in the pending departmental / judicial proceedings.

Gratuity is withheld until the order is passed in the departmental / judicial proceedings (except for penalties mentioned in Rule 6 (i), (ii), (iiia) & (iv) of DAR 1968) [Rule 10].

M.K. Shaji, CLA/RWF

FAQ What is a 'Bail' under Law?

Bail is the process of procuring the release of an accused charged with certain offences by ensuring his future attendance in the court for trial and compelling him to remain within the jurisdiction of the court.

The term 'Bail' has not been defined under the Cr.PC, 1973. The terms 'Bailable Offence' and 'Non-Bailable Offence' are defined u/s 2(a) of Cr. PC. For the purpose of bail, offences are classified into bailable and non-bailable offences.

Bail denotes provisional release of accused in Criminal Case in which court the trial is pending and the Court is yet to announce judgement.

Bailable Offences:

As per S 2(a) of CrPC, bailable offence means an offence that is classified as bailable in the First Schedule of the Code, or which is classified as bailable under any other law.

An accused can claim bail as a matter of right if he is accused of committing a bailable offence. The police officer or any other authority has no right to reject the bail if the accused is ready to furnish bail.

Non-bailable offences :

A non-bailable offence is defined as any offence which is not a bailable offence. A person accused of non-bailable offences can be granted bail provided the accused does not qualify the following conditions viz:

a) There are reasonable grounds to believe that he has committed an offence punishable with death penalty or life imprisonment,

b) That the accused has committed a cognizable offence and he had been previously convicted of offence punishable with death/ imprison ment for life or imprisonment of 7 years or more or if the accused is convicted on two or more instances of a cognizable and non -bailable offence.

There are 3 types of bail Regular, Interim and Anticipatory.

K. Gopinath, LO/Genl. Admn.

When efficacious alternative remedy by way of Railway Claims Tribunal is available to adjudicate disputes regarding freight, it should be availed – Held by Gujarat High Court

In Special Civil Appeal No. 14728 of 2022 in M/s. Harsh Transport Private Vs. Union of India (Date of Order: 01.08.2022), the Hon'ble High Court of Gujarat has held that Railway Claims Tribunal is competent to adjudicate disputes regarding freight for carriage of goods and any dispute with regard to the same, including imposition of punitive charges.

The Hon'ble High Court made the above observation while hearing a writ petition raising a dispute with regard to freight charge demanded by the Railways from the petitioner between two stations. It was the case of the petitioner that it has paid regular freight charges to the Railway and the same were also accepted, and later on an extra freight charge was created.

On a specific query raised by the Court with regard to the remedy available to the petitioner of approaching the Claims Tribunal by filing appropriate application under Section 13 of the Railways Claims Tribunal Act, 1987, the Petitioner had cited a Division Bench order to submit that the writ petition would be maintainable.

However, upon perusal of the Division Bench judgment, the High Court noted that the issue with regard to filing of an application under Section 13 of the Act, was neither raised nor decided.

In this connection, the High Court referred Supreme Court's decision in Shree Shyam Agency Vs. Union of India and Ors where it was held that the Railway Claims Tribunal has been established for inquiring into and determining the claims against the Railway Administration for loss, destruction, damage, deterioration or non-delivery of animals or the goods entrusted to it, or the refund of fares or freight or for compensation for death or injury to the passengers as a result of railway accidents or untoward incidents etc.

The Bench also referred to Section 36 of the Railway Claims Tribunal Act, 1987 which states that complaints may be lodged against railway administration if it is charging for the carriage of any commodity between two stations a rate which is unreasonable. In this background the High Court refused to quash the demand notices issued by the Senior Divisional Commercial Manager to the tune of Rs. 51 lacs and relegated the parties to avail alternate remedy.

In the instant case, the dispute is with regard to the freight paid by the present petitioner and determined by the Railways. The case of the petitioner falls under sub-section (b) of Section 13, which pertains to in respect of claims for refund of fairs or part thereof or for refund of any freight paid in respect of goods entrusted to Railway Administration to be carried by the Railways.

The Hon'ble High Court held that 'under the circumstances, since the writ petitioner has an efficacious alternative remedy to approach the Railways Claims Tribunal, the writ petition is rejected summarily'.

V. Appa Rao, CLA, GM/Office

KNOW OUR CONSTITUTION

Article 75 : Other provisions as to Ministers

1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister

(2) The Minister shall hold office during the pleasure of the President

(3) The Council of Ministers shall be collectively responsible to the House of the People

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule. The Attorney General for India

YOURS LEGALLY

The Human Rights Commission can only recommend but cannot give direction to the State - Hon'ble High Court of Odisha

Human Rights Commission, Odisha has directed the Chief Secretary to the Government of Odisha to pay compensation of Rs.1 lakh each to four deceased persons, who died of diarrhoea. Challenging this order, State of Odisha, filed the present Writ Petition contending that the Commission has exceeded its powers in directing Chief Secretary to Government of Odisha to pay compensation of Rs.1 lakh each to four deceased persons, who died of diarrhoea.

The Additional Government Advocate representing the State of Odisha relies on sections 13 to 18 in Protection of Human Rights Act, 1993 to submit, apart from anything else, the Chief Secretary ought to have been given opportunity of hearing. Simply issuance of show cause notice and rejection of the reply resulted in the communication.

The Additional Government Advocate representing the State of Odisha submits further, under section 18 of the Protection of Human Rights Act, 1993 the Commission can only recommend but there has been direction to pay.

Attention is drawn to reply dated 30th October, 2019 to the show cause and submits, inquiry by State revealed, the villagers had dug well. There was also a stream. They drank water from the well and stream. Examination of water collected from the well and stream revealed presence of modified virulent strain of vibro cholera. Apart from taking all steps to provide medical assistance to the villagers, the administration conducted group meeting and told the villagers not to drink from the well and stream. Also, continuation of tank and pipe water supply was directed. In the circumstances, the administration could not have been directed to pay compensation.

In spite of issuance and service of notice upon opposite Party No.1, who was complainant before the Human Rights Commission, said opposite party goes unrepresented.

Keeping apart for the moment provision in section 18 of the Protection of Human Rights Act, 1993, it appears, reason given in support of direction for payment of compensation in impugned communication is as follows.

"Since there is admitted fact of death of persons due to diarrhoea on account of negligence of the authority concerned, the State is vicariously liable to compensate the Next of Kin of the deceased. Hence, the show cause notice is hereby confirmed."

From documents disclosed in the writ petition and perusal of impugned communication, it does not appear the Commission itself launched an inquiry. There not having been inquiry, section 16 of the Protection of Human Rights Act, 1993 did not stand attracted as there was no question of the Commission considering it necessary to inquire into conduct of any person or form opinion that reputation of any person is likely to be prejudicially affected.

Simply the Commission issued show cause notice by order dated 8th July, 2019 in the proceeding, commenced by it on complaint lodged by opposite party no.1.

In said reply dated 30th October, 2019, the administration apprised the Commission of inquiry made by it to reveal, the villagers had dug well and had been drinking water from it and a stream. Water sample revealed presence of modified virulent strain of Vibro Cholera.

The administration also reported, inter alia, continuance of tank and pipe line water supply to the village. In absence of inquiry made by the Commission, this assertion of State cannot be disbelieved to effect that tank and pipe line water supply was existing, for it to be continued.

Section 18 of the Protection of Human Rights Act, 1993 provides for steps during and after inquiry. As aforesaid, there was omission by the Commission to conduct inquiry and as such section 18 could not be invoked by it for any of the steps to be taken thereunder. Having said that, the provision only empowers the Commission to recommend.

For reasons aforesaid impugned communication is found to have been issued in excess of authority. It is set aside and quashed. Nevertheless, fact remains that four persons have died. State is to consider their existing policies on compensation, whether thereunder or ex-gratia has to be paid to the next of kin. Holding so, the High Court disposed of the writ petition.

[*State of Odisha and others vs Radhakanta Tripathy and another, DOJ:*29.06.2022, W.P.(C) No.38923 of 2020, High Court of Orissa at Cuttack]

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

TREATISE ON

The Arbitration And Conciliation Act, 1996

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

Thus, the legal position is that mandate of the arbitral tribunal shall terminate if the award is not made within the period prescribed or within the period extended by the Court either prior to or after the expiry of the period so specified. An application for extension of time can be filed by any of the party and extension of time may be granted by court after satisfying itself that there exists sufficient cause, and on such terms and conditions as may be imposed by the Court. While extending the time, if the Court finds that the delay in completing the arbitration proceedings was attributable to arbitral tribunal, it may order reduction of arbitrator's fees not exceeding 5% for each month of such delay. However, arbitrator shall be given an opportunity before the fees are reduced. Courts are also empowered to impose actual or exemplary costs upon any party.

A new proviso has been inserted under amendment Act 2019, further stipulates that where an application for extension of time for making the award is pending before a Court, the mandate of the arbitrator shall continue till the disposal of the said application. This proviso has been inserted as an abundant caution to nullify the effect of termination of mandate during the pendency of an application for extension of time before a court.

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. Reconstitution of arbitration tribunal does not permit the arbitral tribunal to begin the proceedings afresh. In order to mitigate such an argument, Sub section (7) provides that the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

Fast track procedure – Section 29B:

In addition to the regular procedure for arbitrating the disputes, the Act also provides for fast track procedure, to further liberalise the procedural aspects and reduce the time lines, under S.29B. The idea of fast-track arbitration came up with the recommendations of the Report of the 246th Law Commission on 5 August 2014, and has been introduced vide amendment of 2015 w.e.f 23.10.2015. Under Fast track procedure, the arbitral tribunal shall consist of a sole arbitrator chosen by parties themselves within 6 months and based on written arguments, unless specifically agreed upon making oral arguments. An oral hearing may be held if both parties make a joint request or if, in any particular case, the arbitration tribunal deems an oral hearing necessary and the tribunal shall hear it with all measures to proceed with it promptly.

Fast track arbitration can be defined as a full arbitration process compressed into a shorter period for a quicker resolution of the dispute. For proceeding under Fast track procedure, the parties shall enter into an agreement in writing that their dispute shall be resolved by fast track procedure. Such an agreement can be made at any stage either before or at the time of appointment of arbitral tribunal.

Fast track Procedure:

The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under fast track proceedings:

(a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;
(b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;
(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

The award under fast track procedure shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

However, if the award is not made within the period specified, the provisions of sub sections (3) to (9) of section 29A (i.e extension of time by consent by the parties and then if needed by approaching court for further extension of time etc) shall apply to the proceedings. The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.

To be continued …

N. Murali Krishna, Sr. LO