



Lex Info

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

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October 2022

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Legal Maxim

Ubi jus ibi remedium - means there is no wrong without a remedy or where there is a legal right, there is a remedy. The maxim also says that

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

Contd... from last issue.

Section 57- Filling up of vacancies

If, for any reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of an Authority then the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Authority from the stage at which the vacancy is filled.

Section 58. Resignation and removal.

(1) The Presiding Officer of an Authority may, by notice in writing under his hand addressed to the appropriate Government, resign his office: Provided that the Presiding Officer shall, unless he is permitted by the appropriate Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier. (2) The Presiding Officer of an Authority shall not be removed from his office except by an order made by the appropriate Government on the ground of proven misbehaviour or incapacity after inquiry in the case of the Presiding Officer of an Authority made by a Judge of a High Court in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges. (3) The appropriate Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

Section 59. Orders constituting Authority to be final and not to invalidate its proceedings.

No order of the appropriate Government appointing any person as the Presiding Officer of an Authority shall be called in question in any manner, and no act or proceeding before an Authority shall be called in question in any manner on the ground merely of any defect in the constitution of an Authority.

Section 60. Powers of Authority and procedure before it.—

(1) The Authority shall, for the purposes of its functions under this Act, shall have the same powers as are vested in a civil court under the Code of Civil

Procedure, 1908 (5 of 1908) in respect of the following matters, namely:— (a) summoning and enforcing the attendance of any person and examining him on oath; (b) discovery and production of any document or other material object producible as evidence; (c) receiving evidence on affidavits; (d) requisitioning of any public record; (e) issuing commission for the examination of witnesses; (f) reviewing its decisions, directions and orders; (g) any other matter which may be prescribed. (2) The Authority shall have original jurisdiction to adjudicate upon every reference made to it under section 64. (3) The Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made thereunder, the Authority shall have the power to regulate its own procedure. (4) The Authority shall, after receiving reference under section 64 and after giving notice of such reference to all the parties concerned and after affording opportunity of hearing to all parties, dispose of such reference within a period of six months from the date of receipt of such reference and make an award accordingly. (5) The Authority shall arrange to deliver copies of the award to the parties concerned within a period of fifteen days from the date of such award.

Section 61- Proceedings before Authority to be judicial proceedings.—

All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Authority shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 62 - Members and officers of Authority to be public servants.

The Member and officers of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Section 63 - Jurisdiction of civil courts barred.—

No civil court (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter.

(to be continued....)

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

RTI Series

Contd.. from last issue

A closer look at Section 22:

In the last edition we have updated ourselves of the earlier position as well as the present position of law as settled by the Apex Court about the scope of S 22. However, there are some prominent rulings on the applicability or effectiveness of S 22 of the RTI Act, 2005. For the sake of convenience, the orders / judgments are divided into two groups viz., (I) where provisions of RTI Act shall prevail over other enactments & (II) where other enactments prevail over the RTI Act. Verdicts which held that provisions of RTI Act shall prevail over other enactments:

CIC in its decision in *R.S.Misra v. Smita Vats Sharma*, CPIO, Supreme Court of India [Appeal No. CIC/SM/A/2011/000237/SG. DOO – 11.05.2011] held: *“Therefore, this Commission respectfully disagrees with the observations of the then Chief Information Commissioner and holds that Rule 2, Order XII of the SC Rules appears to impose a restriction on access to information held by or under the control of a public authority, which is prima facie inconsistent with the RTI Act. Therefore, in accordance with S 22 of the RTI Act, the provisions of the RTI Act shall override the SC Rules.*

Further, as per the reply provided by the PIO, information can be accessed by the Appellant on the Supreme Court's website. As per Section 7(9) of the RTI Act, information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. The RTI Act mandates that information shall ordinarily be provided in the form in which it is sought or requested for. It may not be out of place to mention that more than 90% of our country's population does not have access to computers and even where they do, may not understand how to access the same. Therefore, there is a duty cast upon the PIO to ensure that information sought by an applicant is provided in hard copy or in the manner requested by the applicant. Where no specific mention is made as regards the manner in which information must be furnished, it may be presumed that the citizen is seeking information in the form of hard copy. Moreover, even where the PIO has indicated that the information may be accessed from the website, the complete link/web address at which the requisite information is available, must be furnished.

In view of the foregoing arguments, this Commission respectfully disagrees with the decision of

the then Chief Information Commissioner that the PIO, Supreme Court may choose to deny the information sought under the RTI Act and ask an applicant to apply for information under Order XII of the SC Rules.

This Bench further rules that all citizens have the right to access information under Section 3 of the RTI Act and PIOs shall provide the information sought to the citizens, subject always to the provisions of the RTI Act only.

Where there are methods of giving information by any public authority which were in existence before the advent of the RTI Act, the citizen may insist on invoking the provisions of the RTI Act to obtain the information. It is the citizen's prerogative to decide under which mechanism i.e. under the method prescribed by the public authority or the RTI Act, she would like to obtain the information.”

This order of the CIC has been overturned by the Delhi High Court (infra).

Punjab & Haryana High Court in *Shakti Singh v. State Information Commission, Haryana and Others* [Civil Writ Petition No. 12016/2016. DOO – 05.10.2018] had observed: *“8. The provisions of this Act 4 of 7 would, therefore, have precedence and would for all intents and purposes, hold the field, viz-a-viz any inconsistency with any other statute or law or instrument having effect by virtue of any law except for the riders, exceptions and exemptions from disclosure of information provided for under the RTI Act itself such as Sections 8 to 11 etc.*

10. Thus, it can be safely said that under the RTI Act, disclosure of information is a norm and refusal an exception. In other words, information cannot be denied under the RTI Act unless exempted from disclosure in accordance with Sections 8, 9 and 11 only. Section 22 as mentioned above leads the way to making the fundamental right to information a reality by enforcing it by simply invoking the provisions of the RTI Act.

13. The answers to the two questions as posed in para 6 above are;

(i) In case of any inconsistency between the provisions of RTI Act and other Act/law, the RTI Act shall prevail.

(ii) In case of an application preferred under the RTI Act where alternative procedure and conditions are prescribed under any other statute/law, the said application cannot be rejected and/or information denied on this ground. Such application shall be dealt with under the provisions of the RTI Act.”

(to be continued....)

M.K. Shaji, CLA/RWF

No Pay protection for the period spent on Deputation– Hon’ble Supreme Court

The respondent initially joined the South East Central Railway as a ‘Progress Woman’ in Railway Electrification Department, on 30.01.1989. She was regularized in Group ‘D’ on 12.07.1995. After she cleared the departmental suitability test on 22.09.1995, she was promoted as a Junior Clerk on ad hoc basis in the Construction Department. She participated in a selection examination for the post of Junior Clerk, which she cleared. Accordingly, she was given posting on a regular basis in the Commercial Department on 22.10.1998 and was absorbed in the Commercial Department at the post of Junior Clerk. However, even after the appointment and absorption in the said department, the respondent continued to work in the Construction Department. Thereafter, the respondent was promoted as senior clerk on an ad hoc basis in the Construction Department on 19th June 1999. Subsequently on 06th July 2007, the respondent was granted promotion to the post of senior clerk in her parent department viz., the Commercial Department. On 02nd January 2008, the respondent was repatriated from the Construction Department to the Commercial Department. On repatriation, she received a pay of Rs. 5,500/- which was reduced to Rs. 4,625/- from the very next month. The respondent had made a representation dated 24.06.2009, which was accepted. Her pay was restored to Rs. 5,500/- and even arrears were paid to her. The respondent was promoted to the post of Office Superintendent, Commercial Department on 22.10.2010. Her pay scale was revised on implementation of the 6th Central Pay Commission. The respondent was, thereupon, drawing a salary of Rs. 13,540/- per month. However, in November 2012, the pay was refixed and reduced to Rs. 10,560. On 13th February 2013, the respondent submitted a representation for restoration and upward revision of pay and which was rejected.

The respondent filed Original Application No. 203/00605/2014 before Central Administrative Tribunal, Jabalpur challenging the order dated 15.05.2014 whereby the representation of the respondent is rejected. This application was allowed vide order dated 17.07.2018 primarily on the ground that the respondent would be entitled to pay protection after repatriation from the Construction Department to the parent department, i.e. the Commercial Department. The writ petition filed by the appellants before the High Court, Chhattisgarh assailing the tribunal’s order has been dismissed vide the impugned order dated 28.11.2018, agreeing with the views expressed by the tribunal.

The situation in the present case is governed by Circular No. F(E)II/89/FR-1/1 dated 12.12.1991, wherein in paragraph III and IV it is stipulated:-

“III. For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities or greater importance if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the railway servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

IV. Notwithstanding anything contained in this rule, where a railway servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment.”

The respondent has not challenged the validity of the aforesaid circular. Learned counsel for the respondent has stated that the respondent may not be entitled to pay protection, but her pay fixation is not correct.

The Court direct the appellants to furnish complete details relating to pay fixation of the respondent within a period of eight weeks from today. The respondent, if aggrieved and has objection, would be entitled to make a representation to the appellants regarding pay fixation, which would be given due consideration and the decision/opinion communicated. However, the respondent is not entitled to pay protection on the basis of her pay, when she had worked in the Construction Department. Her working period in the Construction Department will be treated as a period spent on deputation and accordingly, the provisions and rules would apply. The appellants will not be entitled to recover any amount from the respondent in case any excess amount has been paid for the period before November, 2012. In fact, appellants did not make any recovery on the ground that excess payment had been made, vide the salary paid prior to November 2012. The present appeal is allowed and set aside the impugned order passed by the High Court affirming the order passed by the tribunal.

Civil Appeal No. 1053/2022 arising out of SLP (C) No. 19475/2019 (in the matter of **South East Central Railway & Ors vs. Swapna Chatterjee (DOJ: 04.02.2022)**)

M.N. Vijitha, CLA/Gaz./PCPO Office

Difference between**Sub Silentio and Per Incuriam****FAQ****What is meant by Dominus litis?****Sub Silentio**

The concept of sub silentio simply means when a rule or principle on a particular point of law in a decision is passed and applied by the court in silence without any consideration to the applicable law or any argument. The use of sub silentio as an exception to the doctrine of precedents is not an uncommon one.

The best illustration for understanding the exception of sub-silentio is the case of Lancaster Motor Co. Ltd v. Bremith Ltd, wherein the court frowned upon a decision of the lower court which was passed without proper deliberation and without argument, without reference to the crucial words of the rule and any citation of authority.

Per Incuriam

Per incuriam is a decision of the court which is mistaken. The one which ignores a contradictory statute or binding authority, and is therefore wrongly decided and of no force. A judgment that is found to have been decided per incuriam does not then have to be followed as precedent by a lower court.

A finding of per incuriam means that a previous court judgment has failed to pay attention to relevant statutory provision or precedents. The significance of a judgment having been decided per incuriam is that it need not be followed by a lower court. Ordinarily, the rationes of a judgment is binding upon lower courts in similar cases. However, a lower court is free to depart from a decision of a superior court where that earlier judgment was decided per incuriam.

The foundational basis for the exceptions of per incuriam and sub-silentio is to balance consistency and judicial discipline, with the flexibility of revising blatantly wrong decisions. The thin line difference between the two is that where a per incuriam judgment is passed in clear violation of a legislation, rule or a judgment of a superior court/larger bench; a judgment passed sub-silentio is essentially the one passed "without consideration/without discussion" on a particular legal point, which ought to have been considered/discussed for the decision.

Dominus litis is the person to whom a suit belongs. This also means master of a suit. The person i.e. Dominus litis has real interest in the decision of a case. It is this person who will be affected by the decision in a case. This person derives benefits if the judgment is in favor, or suffers the consequences of an adverse decision.

A person can be dominus litis even if his/her name does not appear in a case proceedings as a petitioner or defendant. This person will be liable for the expenses incurred if the person under cover of whom this person was litigating defaults in the payment.

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The general rule in regard to prosecution of parties is that the plaintiff in a suit, be dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. As such, a person who is not a party has no right to be prosecuted against the wishes of the of the Plaintiff. However, this general rule is subject to the Provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, 1908, which provides for dominus litis of proper or necessary parties Suit in the Name of wrong plaintiff.

In civil litigation, more often than once, relevance of this doctrine would come up for examination by legal professionals as well as the Courts. In criminal cases, the prosecutor is the dominus litis and he has the exclusive right to withdraw from prosecution, however subject to permission given by the Court. But this article is confined to application of the doctrine in civil litigation only.

The idea behind the doctrine is to give priority to the choice of the claimant in litigation but not prejudice the defence of the other party. The Court is under obligation to balance both elements in order to render fair justice. The doctrine should not be used as a tool of oppression against the opposite party.

High Court cannot act as an appellate authority in the disciplinary proceedings

Hon'ble Supreme Court in Civil Appeal No. 10386/2014 (Arising out of S.L.P. (Civil) No. 23631 of 2008] filed by Union of India Vs P. Gunasekaran (D.O.J – 19.11.2014), held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence.

In this connection, Hon'ble Supreme Court issued guidelines that the High Court can see whether Under Article 226/227 of the Constitution of India,

The High Court shall not -

(i). re-appreciate the evidence; (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii). go into the adequacy of the evidence;(iv). go into the reliability of the evidence;(v). interfere, if there be some legal evidence on which findings can be based. (vi). correct the error of fact however grave it may appear to be; (vii). go into the proportionality of punishment unless it shocks its conscience.

The High Court shall see-

a) the enquiry is held by a competent authority; b) the enquiry is held according to the procedure prescribed in that behalf; c) any violation of the principles of natural justice in conducting the proceedings; d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; g) the disciplinary authority had erroneously failed to admit the admissible and material evidence; h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding; i) the finding of fact is based on no evidence.

B.R.R.Naidu, Law Officer/Engg.

Interdiction of invocation of unconditional bank guarantees

It is sufficient, if a party seeking interdiction on the invocation of unconditional bank guarantee is able to establish any one of the three requirements viz. fraud of an egregious nature; special equities or the invocation not being in terms of the bank guarantee.

In *CRSC Research and Design Institute Group Co Ltd v. Dedicated Freight Corridor Corporation of India Ltd*, Court have carved out only two exceptions. The first exception to the general rule of non-intervention is when there is a clear fraud of which the bank has noticed and a fraud of the beneficiary from which it seeks to benefit. The fraud must be of an egregious nature as to vitiate the entire underlying transaction. The second one is when there are 'special equities' in favour of injunction, such as when 'irretrievable injury' or 'irretrievable injustice' would occur if such an injunction were not granted.

In view of the well crystallized law on the subject, any reference to the original dispute between the parties, relating to the performance of the contract, is completely *irrelevant*, insofar as the issue of stay of invocation of the bank guarantees is concerned. These bank guarantees are, however, *bilateral* contracts between the bank and the beneficiary, even if they were issued at the instance of the contract awardee; he is not a party to the bank guarantees.

In *M/s Garg Builders vs Hindustan Prefab ltd. Delhi*, HC clearly distinguished recitals in a bank guarantee which set out the purpose for issuing the bank guarantee and recitals which set out the conditions for invoking the bank guarantee. In other words purpose for providing of the bank guarantee as ensuring compliance by the contractor and condition in the bank guarantee which governs the obligation(s) of the bank there under. A bank guarantee has, therefore, to be carefully read in order to understand the exact governing condition in which the bank guarantee would become invocable, and in which the bank would be obligated to honour the bank guarantee.

Once, however, the beneficiary of the bank guarantee proceeds towards invocation of the bank guarantee by writing to the bank, the first argument, of the invocation being contrary to the terms of the parent contract between the parties, ceases to be available to the contractor. The only remedy with the contractor would be to proceed against beneficiary to recover the monies released by bank guarantees, not to interdict such invocation, which is a matter between the bank and beneficiary, and to which the contractor is a complete stranger.

M. Mohan Rao, CLA, GM/O/SCR

YOURS LEGALLY**Jurisdiction as to subject matter if can be raised for the first time in an Appeal?**

Facts in brief: Certain temporary workmen were terminated on the ground that they were appointed as work-charged and their services were terminated on completion of the work. Challenging said termination and seeking reinstatement with back wages, they filed a case before a Civil Court, which was allowed. First appeal and Second appeal were also dismissed. Before the Supreme Court, for the first time along with other pleas, department (appellant) raised the plea of jurisdiction. On the maintainability of the Suit before the Civil Court, the Supreme Court held as follows:

“The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdiction are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.”

Neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. In *Bahrein Petroleum Co. Ltd. v. P.J. Pappu* MANU/SC/0012/1965 : (1966) II LLJ144SC at para 32, it was held that:

“It is well settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing'. A decree passed by a court having no jurisdiction is *non est* and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage execution or in collateral proceedings. A decree passed by a court without jurisdiction is a *coram non judice*.”

In *Kiran Singh v. Chaman Pawan* MANU/SC/0116/1954 : [1955]1SCR117, it was held that:

“It is a fundamental principle well established that a decree passed by a court without jurisdiction is a

nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties”.

Though in the aforementioned decision these observations were made since the defendants before raising the objection to the territorial jurisdiction had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue to be a nullity.

Therefore, the Supreme Court, in the present case held that once the original decree itself has been held to be without jurisdiction and hit by the doctrine of *coram non judice*, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second Appellate stage. It must, therefore, be held that the civil court in this case had no jurisdiction to deal with the suit and resultantly the judgments of the Trial Court, First Appellate Court and the Second Appellate Court are liable to be set aside for that reason alone and the appeal is liable to be allowed. [*Chief Engineer, Hydrel Project and Ors. Vs. Ravinder Nath and Ors., Civil Appeal No. 658 of 2008, Decided On: 24.01.2008*]

Syed Amjad Ali, OS, GM Law Office

KNOW OUR CONSTITUTION**Article 77 - Conduct of business of the Government of India**

- (1) All executive action of the Government of India shall be expressed to be taken in the name of the President
- (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President

The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

TREATISE ON

The Arbitration & Conciliation Act, 1996

Section 31 - Form and contents of an arbitral award:

Statutory clarification of form and contents of an arbitral award is provided in this section in order to avoid unnecessary litigation since myriad forms of writing awards is possible.

Thus, in terms of Section 31 an arbitral award stipulated that (i) made in writing and (ii) shall be signed by the members of the arbitral tribunal. Where there are more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

Section 31(1) of the Act provides that all the members of the tribunal shall sign the award. Section 31(2) which permits an award to be rendered so long as it is signed by the majority of the members, and reasons for omission of the signature of the third arbitrator is mentioned, applies only in the case of a unanimous award. Further, Section 29(1) of the Act contemplates that the decision of the majority of members of the tribunal, is the arbitral award. While dealing with the said issue, the Supreme Court in *Dakshin Haryana Bijli Vitran Nigam Ltd. v. M/s. Navigant Technologies Pvt. Ltd.* [2021 SCC Online SC 157, DOJ: 2nd March 2021] held that the requirement of signing an arbitral award is mandatory and cannot be escaped. It is only after the award is signed that it attains the status of finality and legal effect. The Supreme Court observed as follows:

An “arbitral award” is the decision made by the majority members of an arbitral tribunal, which is final and binding on the parties. ..Section 31 (1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the arbitral tribunal. If the arbitral tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing, and is authenticated by their signatures. An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it.

“The statute makes it obligatory for each of the members of the tribunal to sign the award, to make it a valid award. The usage of the term “shall” makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.”

Minority award/Dissent award: At times, in an arbitration proceeding where more than one arbitrator is appointed, there may be disagreement amongst the arbitrators leading to majority and minority/dissenting awards. The Act does not prohibit minority members of the Arbitration Tribunal to pass dissenting opinion as each arbitrator is free to express his/her view in an arbitration, though all the members of the Arbitral Tribunal should strive to pass a unanimous award. Where the decision of the majority is not based on any evidence or is against the settled position of law, in such cases a dissenting opinion is necessary.

The term “arbitral award” is defined in Section 2(1)(c) of the Arbitration and Conciliation Act, 1996. According to Section 29(1) in arbitral proceedings where the number of arbitrators is more than one, any decision shall be made by majority of the Arbitral Tribunal members. Similarly, Section 31 of the Act states that an arbitral award shall be signed by the majority of all the members of the Arbitral Tribunal. Thus, it is clear that the Act recognises only those decisions which are made by the majority and a decision by the minority arbitrator does not satisfy the pre-requisites of Section 31 and hence, do not qualify to be an “arbitral award”.

With reference to the date on which the dissenting opinion to be rendered, the Supreme Court clarified and settled that, it must be delivered concurrently on the same date as the final award, and not on a subsequent date, as the tribunal becomes *functus officio* upon passing of the final award. The Supreme Court in the case of *Dakshin Haryana Bijli Vitran Nigam Ltd. v. M/s. Navigant Technologies Pvt. Ltd.* [2021 SCC Online SC 157, DOJ: 2nd March 2021] held as follows:

“The period of limitation for filing the objections to the award u/S. 34 commences from the date on which the party making the application has “received” a signed copy of the arbitral award, as required by Section 31(5) of the 1996 Act.”

To be continued...

N. Murali Krishna, Sr.LO