Lex Info

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



Vol -V Issue - 11 November 2022

Page No.	Article
2	ABC of Act - The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013……..Contd.
3	Right To Information Series….. Contd.
4	Every representation to the government for relief, may not be replied on merits - Supreme Court
5	Difference between: Earnest Money Deposit & Security Deposit FAQ: Who can be appointed as Power of Attorney?
6	When the claims are ex facie time-barred, reference to arbitration can be refused - Supreme Court
7	Yours Legally - Pension is continuous cause of action - Supreme Court
8	Treatise on Arbitration & Conciliation Act, 1996

Legal Maxim

Respondeat Superior - This means "let the principal be held responsible". This doctrine is based on the concept that the principal will be liable for the actions of his agent/servant.

ADVISOR
Arvind Malkhede
SDGM

Editor-in-Chief
N. Murali Krishna
Sr. Law Officer

Editors:
M.V. Ramana, LO/Claims
Sushanta Kumar Dash, LO/ Personnel
B. Raghava Ram Naidu, LO/ Engineering
G.S. Ratna Kumar, LO/BZA
K. Gopinath, LO/Genl.Admn.

Asst. Editors:
Shaji M.K., CLA
V. Appa Rao, CLA

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:

Sr. Law Officer,
Law Branch, SCR,
3rd Floor, Rail Nilayam,
Secunderabad.
PIN – 500025.
e-mail: loscrhq@gmail.com

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 64: Reference to Authority.–

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested: Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority: Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made— (a) person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector‘s award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector‘s award, whichever period shall first expire: Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.

Section 65: Collector’s statement to Authority.–

(1) In making the reference, the Collector shall state for the information of the Authority, in writing under his hand— (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon; (b) the names of the persons whom he has reason to think interested in such land; (c) the amount awarded for damages and paid or tendered under section 13, and the amount of compensation awarded under the provisions of this Act; (d) the amount paid or deposited under any other provisions of this Act; and (e) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) The statement under sub-section (1) shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the persons interested respectively.

Section 66: Service of notice by Authority.–

The Authority shall thereupon cause a notice specifying the day on which the Authority will proceed to determine the objection, and directing their appearance before the Authority on that day, to be served on the following persons, namely:— (a) the applicant; (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

Section 67: Restriction on scope of proceedings.–

The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interest of the persons affected by the objection.

Section 68. Proceeding to be in public.–

Every such proceeding shall take place in public, and all persons entitled to practice in any Civil Court in the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

Section 69: Determination of award by authority

(1) In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act. (2) In addition to the market value of the land, as above provided, the Authority shall in every case award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.—In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded. In addition to the market value of the land as above provided, the Authority shall in every case award a solatium of one hundred per cent. over the total compensation amount.

(to be continued….)

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

RTI Series

Contd… from last issue…

(c)Supreme Court in Institute of Companies Secretaries of India v. Paras Jain [CA No. 5665/2014] held: *"12. Be that as it may, Guideline no.3 of the appellant does not take away from Rule 4, The Right to Information (Regulation of Fees and Cost) Rules, 2005 which also entitles the candidates to seek inspection and certified copies of their answer scripts. In our opinion, the existence of these two avenues is not mutually exclusive and it is up to the candidate to choose either of the routes. Thus, if a candidate seeks information under the provisions of the Right to Information, then payment has to be sought under the Rules therein, however, if the information is sought under the Guidelines of the appellant, then the appellant is at liberty to charge the candidates as per its guidelines."*

Verdicts which held that provisions of other enactments shall co-exist or RTI Act cannot override other enactments:

CIC in Vijay Prakash Gupta v. CPIO / Addl. Registrar, Supreme Court of India [Appeal No. CIC/RM/A/2014/001189. DOO – 07.04.2016] held: "10. This Commission, in its decision CIC/RM/A/2014/004655 dated 09.03.2016 held that the provisions of the Right to Information 9RTI) Act cannot override the rules and orders made by the Supreme Court of India for disclosure of certified copies of judicial records mainly because there is nothing inconsistent in those rules and orders. The common objective of both the Right to Information Act and the rules and orders of the Supreme Court of India is disclosure of information. Therefore, any citizen seeking certified copies of judicial records must get such records by adopting the procedure prescribed by the Supreme Court and not under the Right to Information (RTI) Act."

Reference was also made to the order of the Delhi High Court in WP (C) 11271/2009 wherein it was held that the alternative mechanism for providing information should be preserved and operated, and not destroyed, merely because another general law has been framed.

(b)Delhi High Court in the Registrar, Supreme Court of India v. R.S.Misra [WP (C) No. 3530/2011. DOO – 21.11.2017] examined the decision of the CIC (ut supra) [Appeal No. CIC/SM/A/2011/000237/SG. DOO – 11.05.2011].

On behalf of the petitioner the following points were placed:

(i) The CIC did not consider the maintainability of the RTI application, but yet gave a general direction to answer all the queries;

(ii) The order of the CIC is contrary to prior decisions of the CIC Benches of equal strength;

(iii) There is no inconsistency between the Supreme Court Rules and the RTI Act. The Supreme Court Rules were framed under Article 145 of the Constitution of India and provide for a mechanism for inspection and search of pleadings on payment of prescribed fees under Order XII.

(iv) As there is no inconsistency between the RTI Act and the Supreme Court Rules, the RTI Act will not have an overriding effect over the Supreme Court Rules.

(v) Reliance was placed on the order of the Karnataka High Court in State Public Information Officer and Deputy Registrar, High Court of Karnataka v. N. Anbarasan (ILR 2003 KAR 3890).

(vi) The non-obstante clause in Section 22 of the RTI Act did not mean an implied repeal over all statutes. Reliance was placed on the judgment of the Supreme Court in R.S.Raghunath vs State of Karnataka (AIR 1992 SC 81) wherein it was held that *"the general rule to be followed in case of conflict between the two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:*

The two are inconsistent with each other.

There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail".

(vii) Any interference with the work of a judge in the discharge of his duties amounts to Contempt of Court. It was contended that by way of the RTI application the respondent sought to know in substance as to why his SLP had been dismissed, which is not permissible under any law.

To be contd…….

M.K. Shaji, CLA/RWF

Every representation to the government for relief, may not be replied on merits - Supreme Court

The factual aspects in this case are that the Petitioner Sri C. Jacob joined service as a Drill Helper in June, 1967, in erstwhile State Geology branch of Department of Industries and Commerce, Tamil Nadu. His services were terminated in 1982 for unauthorized absence in pursuance of a show cause notice dated 8.7.1982 and nearly after eighteen years, the petitioner gave representations dated 5.5.2000 and 21.7.2000 to the Director of Geology & Mining requesting that he may be taken back into service. As the representation was incomplete, the Petitioner was advised to submit the complete document.

Instead of complying with the same, the petitioner approached the Tamil Nadu Administrative Tribunal seeking a direction to Director of Geology & Mining to dispose of his representation. The Administrative Tribunal disposed of the said application on 19.12.2002, without notice to the respondents, directed Director of Geology & Mining, to consider petitioner's representation dated 21.7.2000 and pass an order thereon within four months.

In compliance with the said direction, Director of Geology & Mining considered and rejected the petitioner's representations by order dated 9.4.2002 stating that Sri C. Jacob absented from attending duties without proper leave application and he has taken up private employment without prior permission which is against Government Servants' Conduct Rules and he has not turned up for duty in time. Therefore, his request for permitting him to rejoin duty after a lapse of twenty years cannot be complied with.

On 10.3.2003, the petitioner filed an original application before the Tamil Nadu Administrative Tribunal with a prayer that the Hon'ble Tribunal to direct the respondents to grant service benefits to the applicant within a time framed to be fixed by this Hon'ble Tribunal. Later, the said original application was transferred from the Tribunal to the Madras High Court. Learned Single Judge of the High Court by order dated 13.4.2006 held that the termination of petitioner's service in 1982 was illegal and directed that pension be sanctioned from that date and that the entire arrears should be calculated and paid in eight weeks.

The order of the learned Single Judge was challenged by the respondents in appeal before the Division Bench and the Division Bench allowed the writ appeal by order dated 28.1.2008 stating that the petitioner had not completed 20 years of qualifying service as on 18.7.1982, and therefore, not entitled to pension. The said order is challenged before Hon'ble Supreme Court by the Petitioner by way of Special Leave Petition.

Hon'ble Supreme Court vide order dt. 03.10.2008 held that the employee who is terminated from service in 1980, did not challenge the termination. But nearly after two decades (in the year 2000), he challenged the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he submitted a representation to the department requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the petitioner filed an application/writ petition before the Tribunal/ High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

The Hon'ble Supreme Court further held that, every representation to the government for relief, may not be replied on merits. *Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.* In this case, all this happened, because of granted of a prayer to `consider' a representation relating to a stale issue.

Further, the Hon'ble Apex Court held that the applicant is also not entitled to pension as completing qualifying service of not less than 10 years, does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Stating the above findings, Hon'ble Supreme Court, dismissed the Special leave Petition. [C.Jacob vs Director Of Geology (S.L.P(C) No.25795 of 2008 D.O.J. 03.10.2008)]

K. Gopinath, LO/Genl. Admn.

Difference between Earnest Money Deposit and Security Deposit

Earnest Money Deposit:

Earnest Money Deposit (EMD) is synonymous to Bid Security. It means an amount required to be deposited by the bidder/ tenderer along with his offer as a security against his default of entering into contract.

Earnest money is an assurance or guarantee in the form of cash on the part of the contractor to keep open the offer for consideration and to confirm his intentions to take up the work accepted in his favour for execution as per terms and conditions in the tender.

In case a tender fails to commence the work awarded to him, the earnest money is forfeited to government. No interest is payable upon the earnest money to the contractors.

EMD of the lowest tenderer whose tender is normally accepted is retained by the department as a part of security deposit for due performance of contract.

Security Deposit:

A security deposit is money that is given to a landlord, lender, or seller of a home or apartment as proof of intent to move in and care for the domicile. Security deposits can be either be refundable or non -refundable, depending on the terms of the transaction. A security deposit is intended as a measure of security for the recipient, and can also be used to pay for damages or lost property.

The contractor is required to deposit with the owner a sum stated as a percentage of the cost of the work in order to safeguard the interests of the owner in the event of improper performance of the contract.

The relevant clause should specify the time limit within which the payment has to be made and the mode of payment should be specified.

However, in big projects the security is taken in the form of bank guarantees. The bank guarantee costs the contractor a small percentage, seldom exceeding two percent per annum of the amount guaranteed with small margin money.

Accepting the security in terms of the bank guarantee is thus to the advantage of the employer.

K. Gopinath, LO/Genl. Admn.

FAQ Who can be appointed as Power of Attorney ?

The term power of attorney (POA) refers to a legal authorization that gives a designated person the power to act for someone else. As such, a POA gives the agent or attorney-in-fact the authority to act on behalf of the principal. The agent may be given broad or limited authority to make decisions about the principal's property, finances, investments, or medical care. The person who grants the power to the other person to act on his behalf is termed the grantor or principal or donor and the person to whom the power is granted is termed the Attorney or Donee or Agent.

According to the Section, 184 of the Indian Contract Act, 1872, **Who may be an agent:** *As between the principal and third person any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.*

Section 3(1) of the Indian Majority Act, 1876, provides the law about the major that every person domiciled in India shall attain the age of majority on his completing the age of 18 years and not before.

According to the Section 183 of the Indian Contract Act, 1872, *Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.*

A power of attorney may be executed jointly by a number of persons as the principals. It may also be executed in favour of one person or a number of persons as the attorney or attorneys. [Sukhdeo Vs Bhanwarlal, 2000 AIHC 2461, 2467 (Raj)]. While there is no limit as to the number of persons in whose favour a power of attorney can be executed jointly, it is always to make it clear whether they are to act jointly or severally. In the absence of an express provision authorising them to act severally, they will be entitled only to act jointly.

Delegatus non potest delegare: A delegate cannot delegate. A person to whom a power, trust or authority is given to act, on behalf of or for the benefit of another cannot delegate it unless he is authorised to do so. The rule applies to persons acting under power-of-attorney, to directors of Companies, and to trustees, executors etc., because the power which they possess is not in their own right.

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

When the claims are ex facie time-barred, reference to arbitration can be refused - Supreme Court

Bharat Sanchar Nigam Ltd., awarded a tender work to Respondent M/s Nortel Networks India Pvt. Ltd and after completion of the tender work, BSNL deducted/withheld an amount of Rs.99,70,93,031/- towards liquidated damages and other levies. M/s Nortel Networks India Pvt. Ltd vide letter dated 13.05.2014 raised a claim for refund of the said amount and BSNL vide letter dated 04.08.2014 rejected that claim. After a period of over 5 ½ years, Nortel Networks India Pvt. Ltd vide letter dated 29.04.2020 invoked the arbitration clause and requested for appointment of an independent arbitrator to settle the arbitrable disputes under the agreement. BSNL vide reply dated 09.06.2020, rejected the request for appointment of an arbitrator stating that the case had already been closed on 04.08.2014, and as per Section 43 of the 1996 Act, the notice invoking arbitration was time barred.

Nortel Networks India Pvt. Ltd. filed an application under Section 11 of the 1996 Act before the Kerala High Court for appointment of an arbitrator. The High Court vide Order dated 13.10.2020 referred the disputes to arbitration. Assailing the said order, BSNL filed a review petition before the High Court and vide dt. 14.01.2021, the same was dismissed. Against the orders dated 13.10.2020 and 14.01.2021 by Kerala High Court, Civil Appeal has been filed by BSNL before Supreme Court.

The Appellant BSNL submitted that the cause of action for invoking arbitration arose on 04.08.2014 when the claim made by Nortel was rejected and that Nortel Networks India Pvt. Ltd had slept over 5 ½ years, before issuing the notice of arbitration on 29.04.2020. Hence, the notice invoking arbitration had become legally stale, non-arbitrable and unenforceable. It was further submitted that the High Court had erroneously proceeded on the premise of mere existence of a valid arbitration agreement, without considering that such an agreement was inextricably connected with the existence of a live dispute. The limitation for invoking arbitration, and seeking appointment of an arbitrator is covered by Article 137* of the Schedule to the Limitation Act, 1963 and an action taken by a claimant must within the statutory period of 3 years from the date on which the right to apply accrues. Further, Section 11(6A) uses the phrase "examination of the existence of an arbitration agreement", which would imply that the power conferred upon the Court is not a formal exercise, but requires a certain degree of examination before making the reference.

M/s Nortel Networks India Pvt. Ltd. submitted that the amendment to Section 11 by the Arbitration and Conciliation (Amendment) Act, 2015 provides for a limited scope of enquiry at the pre-reference stage which is restricted only to the "existence" of an arbitration agreement under sub-section (6A) of Section 11. In view of the doctrine of kompetenz-kompetenz, the objection with respect to the claims being allegedly time barred, could be decided by the arbitral tribunal and that the High Court rightly limited the enquiry at the pre-reference stage to the "existence" of the arbitration agreement. The cause of action was a continuing one. The High Court had rightly held that the issue of limitation must be decided by the arbitral tribunal.

On hearing, Supreme Court vide order dt. 10.03.2021 held that Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. The Court, at the reference stage, cut the deadwood, where dismissal is bare faced and pellucid, and when on the facts and law, the litigation must stop at the first stage. The present case is a case of deadwood / no subsisting dispute since the cause of action arose on 04.08.2014, when the claims made by Nortel were rejected by BSNL. The Respondent Nortel has not stated any event which would extend the period of limitation immediately after the rejection of the Final Bill by making deductions.

Based on the above findings, Supreme Court, allowed the Civil Appeals filed by BSNL and set aside the impugned orders dt.13.10.2020 and 14.01.2021 of appointment of arbitrator by the High Court. *[Bharat Sanchar Nigam Ltd. & Another Vs M/s Nortel Networks India Pvt. Ltd., Civil Appeal Nos. 843-844 of 2021(Arising out of SLP ©No. 1531-32/2021), DOJ: 10.03.2021]*

———————-

*Article 137, of Schedule to Limitation Act, 1963:

Description of suit	Period of limitation	Time from which period begins to run
When the right to apply accrues- any other application for which no period of limitation is provided elsewhere in this Division.	3 Years	When the right to apply accrues

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

YOURS LEGALLY

Pension is continuous cause of action - Supreme Court

The Respondent resigned from Rajasthan State Agro Industry Corporation to take up appointment as Assistant Director in the Department of Industries, after being selected through the RPSC. While serving as such, the respondent attained the age of superannuation and retired from the post of Additional Director of Industries. However, while counting the length of service of the Respondent for the purpose of calculating pension and other retiral benefits, the Petitioners did not count the tenure of his earlier service of about 10 years.

High Court allowed WP filed by him by granting the relief against which the State of Rajasthan filed the present SLP on the ground that the Writ Petition was filed by the Respondent after six years and that he was appointed to a higher post in the Industry Department. As such his past employment was inconsequential and there was no proof of prior permission before resignation from Rajasthan State Agro Industry Corporation.

The Supreme Court observed that there can be no doubt that resignation from service may entail forfeiture of past service. The said rule clarifies that a resignation with proper permission to take up another appointment, whether temporary or permanent, under the Government shall not entail forfeiture of past service.

In the present case, the Respondent was selected through the RPSC. He applied for the post of Assistant Director (Agro-Industries), while he was still in service of the Rajasthan State Agro Industry Corporation, which is also an entity fully controlled by the State of Rajasthan.

The Respondent having retired after working for about 26 years, the appellant - State cannot raise the question of proof of prior permission before resignation, more so when the appointment had been made through the RPSC to a Government post. It is to be deemed that there has been disclosure of past service and the application has been made through proper channel by obtaining the requisite approvals. It is to be presumed that prior permission had been taken unless the contrary could be established by the State.

In this case, the Respondent is claiming pension, which is a lifelong benefit. Denial of pension is a continuing wrong. This Court cannot also be oblivious to the difficulties of a retired employee in approaching the Court, which could include financial constraints. It is settled law that when financial rules framed by the Government such as Pension Rules are capable of more interpretations than one, the Courts should lean towards that interpretation which goes in favour of the employee. Holding so, the Supreme Court dismissed the SLP. [State of Rajasthan & Others versus O.P.Gupta SLP (Civil) No…….. of 2022 [Diary No. 27824 OF 2020 DOJ: 19.09.2022]

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

KNOW OUR CONSTITUTION

Article 78- Duties of Prime Minister as respects the furnishing of information to the President, etc

It shall be the duty of the Prime Minister
(a) to communicate to the President all decisions of the council of Ministers relating to the administration of the affairs of the union and proposals for legislation;
(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Article 79 - Constitution of Parliament

There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the council of States and the House of the People.

80. Composition of the Council of States

(1) The Council of States shall consist of (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and (b) not more than two hundred and thirty eight representatives of the States and of the Union territories. (2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the fourth Schedule. (3) The members to be nominated by the President under sub clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: Literature, science, art and social service. (4) The representatives of each State in the council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote. (5) The representatives of the Union Territories in the council of States shall be chosen in such manner as Parliament may by law prescribe.

TREATISE ON

The Arbitration & Conciliation Act, 1996

Section 31 - Form and contents of an arbitral award:
Signatures of all the arbitrators, if necessary or signatures of majority arbitrators is enough:

A question before Delhi High Court arose in M/s.Cimmco Ltd. vs Union Of India [O.M.P. (COMM) No.297/2016] decided on 15 March, 2019 that the impugned Award deserved to be set aside as only two out of three Arbitrators had signed the Award; the third Arbitrator having withdrawn from the proceedings on account of medical reasons, the remaining Co-Arbitrators could not have proceeded to render the Award.

" …legislature appears to have provided in Section 31(2) of the 1996 Act that where the Arbitral Tribunal comprises more than one Arbitrator, the signatures of the majority of all members of the Arbitral Tribunal would be sufficient for framing an Award, so long as reasons are given for any omitted signature. In other words, while Subsection (1) of Section 31 provides that the Arbitral Award should be in writing and should bear signatures of all members of Arbitral Tribunal, Subsection (2) of the very same Section envisages a situation where majority of the Arbitral Tribunal signs the award and the remaining member(s) chooses not to sign the same. The only caveat entered in Subsection (2) of Section 31 is that the majority members comprising the Arbitral Tribunal should give reasons for omission of the signature(s) of the remaining member(s)."

In Mahanagar Telephone Nigam Ltd Vs. Siemens Public Communications Ltd, the Delhi HC vide order dated 25.02.2005 held that the document referred to as majority award is not an award within the meaning of the term as the same has not been made in accordance with the provisions of Part-I, particularly S.31(2) & (4) as reasons for the omission of signature of one of the arbitrator is not available and also date of the award.

Even if the signature of one of the arbitrators' is not available, his/her participation is mandatory:

M/S. R.R. Hi-Tech Engineering ... vs Union Of India & Ors on 15 September, 2010, The Bombay High Court held that "Section 31(2) only provides that for a valid award, the signatures of a majority of the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. Section 31(2) does not dispense with the requirement of all the members of the arbitral tribunal being a party to and participating in the making of the award. The arbitrators may differ. However, it is necessary that they all participate in the making of the award. Until and unless the award is made and published, each member of the arbitral tribunal is entitled to take any view in the matter. An award cannot be made or even be said to be finalised unless all the members of the arbitral tribunal are parties thereto.

The only formality dispensed with by section 31(2) is the requirement of the signature of the minority members of the arbitral tribunal being appended to the award. However, the participation of the members of the arbitral tribunal whose signature is not appended to the award in the making of the award is mandatory. The words in section 31(2) "so long as the reason for any omitted signature is stated" do not include an omission on account of any arbitrator refusing or being unable to act. They apply to the inability of the arbitrator to append his signature on account of difficulty or inconvenience or in view of certain contingencies despite his having participated in the making of the award".

The next part of the form and contents of an arbitral award is that the arbitral award shall state the reasons upon which it is based, unless (a) the parties have agreed that no reasons are to be given, or the award is an arbitral award on agreed terms under section 30 (settlement between parties). An Arbitrator cannot be expected to write a detailed judgment as in a law Court. There is no gainsaying that arbitration proceedings are not per se comparable to judicial proceedings before the Court. However, passing of a reasoned award is not an empty formality under the Arbitration Act. [*Som Datt Builders Ltd.* v. *State of Kerala*, (2009) 4 ARB LR 13 SC]

In Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd. [(2019) 20 SCC 1], the Apex court held that "When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all".

To be continued…

N. Murali Krishna, Sr.LO