



Lex Info

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(from Law Branch, South Central Railway)

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Legal Maxim

Sine qua non – “without which nothing”. An essential condition. A thing that is absolutely necessary. Basically a component of an argument that, if debunked, causes the entire argument to crumble.

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

Contd... from last issue.

Section 70 - Form of award:

(1) Every award under this Chapter shall be in writing, signed by the Presiding Officer of the Authority, and shall specify the amount awarded under clause first of Section 28, and also the amounts (if any) respectively awarded under each of the other clauses of the same subsection, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of clause (2), and clause (9) of respectively, of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).

Section 71 - Costs:

(1) Every such award shall also state the amount of costs incurred in the proceeding under this Chapter, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the cost shall ordinarily be paid by the Collector, unless the Authority concerned is of the opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

Section 72- Collector may be directed to pay interest on excess compensation:

If the sum, which in the opinion of the Authority concerned, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Authority concerned may direct that the Collector shall pay interest on such excess at the rate of nine per cent. per annum from the date on which he took possession of the land to the date of payment of such excess into Authority: Provided that the award of the Authority concerned may also direct that where such excess or any part thereof is paid to the Authority after the date or expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent. per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Authority

before the date of such expiry.

Section 73 - Re-determination of amount of compensation on the basis of the award of the Authority:

(1) Where in an award under this Chapter, the Authority concerned allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 23, the persons interested in all the other land covered by the same preliminary notification under section 11, and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector, by written application to the Collector within three months from the date of the award of the Authority concerned require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Authority: Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority concerned.

Section 74 - Appeal to High Court:

(1) The Requiring Body or any person aggrieved by the Award passed by an Authority under section 69 may file an appeal to the High Court within sixty days from the date of Award: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

(2) Every appeal referred to under sub-section (1) shall be heard as expeditiously as possible and endeavour shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court.

(to be continued...)

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

RTI Series

Contd... from last issue...

On behalf of the respondent the following points were, inter alia, placed:

As the Supreme Court Rules and the RTI Act co-exist, it is the citizens' prerogative to choose under which mechanism he would like to obtain information. Two examples were cited: In a dispute between a workman and management, a workman had a right to proceed either under the Labour Law (Labour Court) or under the Service Law (CAT). It was further stated that similarly in a dispute pertaining to consumers, a person could proceed under the Civil Law or the Consumer Protection Act. Applying the same analogy, respondent stated that the applicant is free to choose a particular forum to pursue his/her remedies.

Rule 2, Order XII of the Supreme Court 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. U/S 6 (2) of the RTI Act an applicant is not to give reason for seeking information and only nominal fee has to be paid. But the same is not so under Rule 2, Order XII of the Supreme Court Rules, as good cause has to be shown.

The RTI Act provides for a specific time period in which information is to be provided. Procedures for preferring appeal and penalty have been prescribed in RTI Act. Information can be denied only U/S 8 or 9 of the RTI Act. Denial of information in this case was without taking recourse to S 8 or 9. In view of S 22 which has a non-obstante clause, the RTI Act shall override the Supreme Court Rules.

On behalf of the Amicus Curiae the following points were, inter alia, placed:

The access to the information under SCR 1966 / SCR 2013, which includes right to inspection, search and copy is not the information covered/contemplated under the RTI Act, as S 2(j) of the RTI Act is concerned with only that information which is under the exclusive control of the „public authority“. It was submitted that this Court in Registrar of Companies Vs. Dharmendra Kumar Garg (supra) has interpreted S 2(j) of the RTI Act in the said fashion.

S 22 of the RTI Act contemplates harmonious existence with the enactments which, like the RTI Act, also provide for dissemination of information. It was further submitted that S 22 comes into operation only in case of inconsistency between any other law and the provisions of the RTI Act.

A Division Bench of this Court in Eliamma Se-

bastian Vs. Ministry of Home Affairs and Ors., MANU/DE/0650/2016 dealt with the interplay of S 22 of the RTI Act vis-a-vis S 139 of the Delhi Co-operative Societies Act, the latter provision dealing with "Right to Information" under the said Co-operative Societies Act, and has held "that it does not necessarily mean that any other legislation, which aims to ensure access to information with respect to a private body, is overridden by S 22 of the RTI Act". Cases in which S 22 of the RTI Act had been invoked to direct access to information are those where the other statutes completely bar access to information. It was stated that in CBSE Vs. Aditya Bandopadhyay, [(2011) 8 SCC 497] the bye laws provided for a complete bar as to "disclosure or inspection of the answer books or other documents". Further, in Reserve Bank of India Vs. Jayantilal N. Mistry, [(2016) 3 SCC 525] the basic question formulated was "whether the RTI Act 2005 overrides various provisions of the special statute which confer confidentiality in the information obtained by the RBI". When there is no inconsistency between the enactments/provisions and the RTI Act, the information is to be accessed only through the mechanism provided in the said enactments/ provisions. It was further stated that as under Supreme Court Rules, dispensation of information is a part of the judicial function, exercise of which cannot be taken away by any statute. S 28 of the RTI Act provides for the competent authority to make rules to carry out the provisions of this Act.

Delhi High Court, while allowing the Writ Petition, held:

CIC should not have directed revealing of information since a judge is not bound to give reasons other than those enumerated in the judgment or order.

There is no inherent inconsistency between the Supreme Court Rules and the RTI Act.

The non-obstante clause in S 22 does not mean an implied repeal over all other statutes, but only an overriding provision in case of an inherent inconsistency.

If any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to.

RTI Act cannot be resorted to if the information relates to judicial functions, which can be challenged by way of an appeal or revision or review or by any other legal proceeding.

The CIC could not have overruled an earlier decision of coordinate Bench having equal strength.

(to be contd...)

M.K. Shaji, CLA/RWF

Appointment on Compassionate Grounds is a concession not a right - SC

In CA No. 6958 of 2022 in Fertilizers and Chemicals Travancore Ltd. & Ors. Vs. Anusree K.B., the Hon'ble Supreme Court India observed that the appointment of a person on compassionate grounds is a concession not a right.

Brief facts of the case:

The father of the respondent was employed as a loading helper with the Appellant No.1 and expired while on duty on 19.04.1995. At that time, the wife of the deceased employee was serving, therefore, was not eligible for appointment on compassionate ground. After 14 years, the Respondent (Daughter of the deceased employee) made a representation seeking appointment on compassionate grounds but the application was rejected since her name was not figured in the list of dependents and the policy was to extend employment to widow or son or unmarried daughter of the deceased employee.

The Respondent filed a writ petition before the learned Single Judge and the appellants were directed to reconsider the application in accordance with the provisions of the scheme. But on 12.12.2019, again the application was rejected by the appellants on the grounds that deceased employee was not only the "sole bread winner of his family", since his wife was employed with the Kerala State Health Services Department and 24 years have lapsed since the date of his death.

Aggrieved by this, again an appeal was filed before the Division Bench of the High Court which got dismissed giving rise to the present appeal.

It was argued by the counsel for the appellants that when the application for appointment on compassionate ground was made by the Respondent-Daughter of the deceased employee after a period of 14 years from the death of the deceased employee, the Hon'ble High Court ought not to have directed the appellants to reconsider the case of the respondent for appointment on compassionate ground. While relying on the cases, Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree and N.C. Santhosh Vs. State of Karnataka, he further submitted that the appointment on compassionate ground after a period of 24 years would be against its object and purpose that is to meet out the difficulties created on account of sudden death of the sole bread earner.

It was contended by the counsel for the Respondent that when the deceased employee died, the Respondent was a minor and on attaining the age of majority, the respondent made an application for appointment on compassionate ground. Initially when the application of the respondent for appointment was rejected, the same was not on the ground subsequently mentioned while passing the order dated 13.11.2019 namely delay. In 2018, the respondent was called for the interview, however, at that time, the appointment was denied on the ground that in the dependent's list, the name of the respondent is not mentioned, which was found to be factually incorrect.

The Hon'ble Court while referring to the cases State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653, Govind Prakash Verma Vs. LIC, observed that compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis.

The Hon'ble Court observed that while considering the object of the appointment on compassionate ground, the Respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

The present appeal succeeds and the judgement and order passed by the Hon'ble High Court were quashed and set aside by the Hon'ble Supreme Court. [*In CA No. 6958 of 2022 in Fertilizers and Chemicals Travancore Ltd. & Ors. Vs. Anusree K.B. (DOJ: 30.09.2022)*]

A. Bhagwat Prasad, CLA/G/SC

Difference between**Temporary Injunction & Permanent Injunction****FAQ****What is Colourable Legislation?**

An injunction is a command that the court considers as essential to justice or it prohibits an act that is deemed to be contrary to good conscience. It is an extraordinary solution, reserved for special circumstances i.e. when temporary preservation of the status quo becomes necessary. An injunction is ordinarily and properly elicited from other proceedings. The injunction is a supplementary remedy in the action against the tenant. An injunction rarely survives as an independent legal entity. In most circumstances, it comes as an addition to another remedy. There are primarily two kinds of injunctions. They are: (a) Temporary Injunction and (b) Permanent Injunction.

Temporary Injunction:

A temporary injunction is granted for a specified period of time, or as adjudged by the court. It may be granted at any point during the suit. Order 39 (Rules 1 to 5) of the Civil Procedure Code, 1908, governs temporary injunctions. A temporary injunction is non-conclusive. Basically, it is a temporary order, rather than a permanent solution. A temporary injunction may only focus on the Plaintiff's side of the case and therefore may be one-sided. However, it is important to understand, that this is not always so. A temporary injunction is simply an order by the court. A temporary injunction, being temporary in nature, may be revoked by the court that passes the injunction order.

Permanent or Perpetual Injunction:

A permanent injunction, on the other hand, is granted by the decree of the court, and upon the examination of the facts and merits of the case. Permanent injunctions are governed by sections 38 to 42 of the Specific Relief Act, 1963. A permanent injunction deals with the finality of a judgement, thereby providing a conclusive and long term solution to the dispute at hand. A permanent injunction, on the other hand, focuses on the Plaintiff as well as the Defendant. It hears both parties, and then provides a solution. A permanent injunction is non-revocable by the court that decides to pass such order. It may be revoked by an appellate or higher court. A lack of immediate response or request by the Plaintiff may lead to a dis-approval of the grant of an injunction order. On the other hand, a permanent injunction order allows the parties to explain, elaborate and provide for details at a later and more relaxed pace, provided there are sufficient and valid grounds for the same. A permanent injunction is a decree i.e., an official order by a court of law.

Doctrine of Colourable Legislation means that when a legislature does not have the power to make laws on a particular subject directly, it cannot make laws on it indirectly. The doctrine checks if a law has been enacted on a subject indirectly when it is barred to legislate on that topic directly. The Doctrine of Colourable Legislation is derived from a latin maxim "Quando aliquid prohibetur ex directo, prohibetur et per obliquum" that means 'What cannot be done directly, should also not be done indirectly'.

The doctrine of colourable legislation strictly prohibits doing indirect things when it is not allowed to do so directly. It tests whether the legislature has enacted a law as per its authorised competency or not. If any law is made out of any guise, then the colourable exercise would be imposed on legislative authority.

The doctrine does not apply to subordinate legislation. It is based only on the question of competency of a particular legislative body to enact a particular law. The presumption is always in favour of the constitutionality of the law and the burden is on the person who wants to show that there has been a clear violation of constitutional principles.

In the case of *M.R. Balaji vs. The state of Mysore*, an order of the Mysore Government was challenged under Article 15(4) for reserving seats for admission to the State medical and engineering colleges. The state issued an order that all the communities except the Brahmin community, fell within the classes of educationally and socially backward classes and scheduled castes and scheduled tribes and 75% seats were reserved for them. On July 31, 1962 the State of Mysore passed another order which superseded all the previous orders and left only 32% seats for the merit pool. The petitioner said that the classification made by the state was irrational and reservation of 68% was a fraud on the Article 15(4) of the Constitution. The question was whether Article 15(4) gives constitutional power to the States to pass such reservation power or not. The court held that the reservation is a fraud on the constitutional power conferred on the state by Article 15(4).

So, wherever there is a restriction to make laws, the legislature has to follow the same otherwise it would be declared as ultra vires of legislative power. If any law is made out of any guise, then the colourable exercise would be imposed on legislative authority.

K. Gopinath, LO/Genl. Admn.

Syed Amjad Ali, OS, GM/O/SC

Employee's Performance Is "*Personal Information*" Exempted U/S 8(1) (j) RTI Act: J & K and Ladakh High Court

Smt. Pushpa Devi filed two applications before the Public Information Officer, Kendriya Vidyalaya Sangathan, Jammu under the Right to Information Act seeking to provide copies of 'all the complaints lodged against one Mr. Vijay Kumar, Principal, Kendriya Vidyalaya, Chamba since the date of his joining'. However, the PIO declined to provide the said information on the ground that the information sought for qualifies as personal information within the meaning of provisions of Section 8(1)(j) of the Act.

Feeling aggrieved, Pushpa Devi filed an appeal before the Central Information Commission, which was allowed with a direction to the PIO to furnish the complete information as sought by her under the RTI Act. Aggrieved, Kendriya Vidyalaya Sangathan had filed Writ Petition before the High Court. The Hon'ble High Court held that: "Though the information so sought for by the respondent Pushpa Devi falls under the expression personal information and the disclosure of which has no relationship to any public activity or public interest, rather it would cause unwarranted invasion of privacy of that individual".

The preamble to the RTI Act appropriately summarises the object of right of citizen harmonising the various conflicts with other public interests in revelation of information in actual practice. An attempt to resolve conflict and disharmony between these aspects is evident in the exceptions and conditions on access to information set out in Sections 8 to 11 of the RTI Act. In Section 8 (1), Clauses (d), (e) and (j) states that the prohibition specified would not apply or operate when the competent authority in clauses (d) and (e) and the PIO in clause (j) is satisfied that larger public interest warrants disclosure of such information. Therefore, clauses (d), (e) and (j) of the Act incorporate qualified prohibitions and are conditional and not absolute exemptions.

A similar question had arisen before the Supreme Court in *Girish Ramchandra Deshpande vs Central Information Commr.*, 2013 (1) SCC 212, The Hon'ble court held that: "The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family mem-

bers and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the abovementioned information sought for qualifies to be 'personal information' as defined in clause (j) of Section 8(1) of the RTI Act.

The details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

Therefore, if an information which has been sought for relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual, the Public Authority, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

In the present case, the information sought for by Smt. Pushpa Devi falls under the expression personal information and the disclosure of which has no relationship to any public activity or public interest, rather it would cause unwarranted invasion of privacy of that individual.

Thus, the scope of the expressions 'information' and 'right to information' which can be accessed by a citizen under the RTI Act have to be understood in light of the Section 8(1) (j) that such disclosure is warranted in "larger public interest". [*Kendriya Vidyalaya Sangathan & others Vs. Central Information Commission & another (OWP No.849/2017 IA No.1/2017; 03.11.2022)*]

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

YOURS LEGALLY**Once application under S.11 of A&C Act is rejected on merits, it cannot be reopened by way of review petition**

The appellant filed the present Review Petition seeking a review of the order dated 12.10.2022 passed by the High Court of Delhi dismissing an application for appointment of an arbitrator under Section 11 of Arbitration & Conciliation Act, 1996 observing that the Court had no territorial jurisdiction to entertain the application even though the arbitration clause provided that the place of Arbitration would be New Delhi yet it specified that the exclusive jurisdiction would be vested with the Courts at Gurgaon/ High Court at Chandigarh. Therefore, the cause of action arose essentially in Gurgaon where the suit property is located and hence the Courts at Gurgaon has been held to be having the exclusive jurisdiction.

The Petitioner contended that as the arbitration clause between the parties stipulated that the place of Arbitration is New Delhi, High Court of Delhi has exclusive jurisdiction. It was argued that the Court had reached the finding of lack of territorial jurisdiction to appoint an Arbitrator, without considering the submissions made by the Petitioner. It was asserted that the Court had not considered the cases relied upon by the Petitioner.

While dismissing the review Petition, the High Court relied on the judgment of Apex Court in *M/s Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee* 2022 SCC OnLine SC 568 wherein similar question arose in regard to the jurisdiction of the Court to entertain the petition under Section 11(6) of the Act, 1996. Referring to the definition of "Court" in Section 2(1)(e) of the Act, the Apex Court held that it could never have been the intention of Section 11(6) of the Act, 1996 that arbitration proceedings could be initiated in any Court in India irrespective of whether the respondent resided or carried on business within the jurisdiction of the High Court and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, as this would put the opponent at a disadvantage and steal the march over the opponent.

In *Mankastu Impex Pvt. Ltd. vs. Airsual Ltd.* (2020) 5 SCC 399 the Supreme Court held that the Seat of arbitration and Venue of arbitration cannot be used interchangeably. Mere expression "place of arbitration" cannot be the basis to determine the intention of the parties that they have intended that place as the "Seat of Arbitration". The intention of

the parties as to "Seat" should be determined from other clauses in the Agreement and the conduct of the parties.

It was further explained that "Seat of arbitration" is a vital aspect of any arbitration proceedings and it determines the law applicable when deciding the arbitration proceedings and the arbitration procedure as well as judicial review over the arbitration Award. Seat of arbitration is not just about where an institution is placed or where the hearings shall be held, but it is about which Court would have supervisory power over such proceedings. It was thus held that an agreement between the parties choosing Hong Kong as place of arbitration would not lead to the conclusion that Hong Kong would also be the Seat of arbitration.

The High Court further relying on *Jain Studios Ltd.* [(2006) 65 SCC 501], observed that that once a case has been decided on merits, on the ground of review cannot be permitted to argue the main matter afresh. Once the prayer has been refused, no review petition would lie which would amount to re-hearing of the original matter. The power of review cannot be confused with appellate powers which enable a superior Court to correct all errors committed by the subordinate court. When a prayer to appoint an Arbitrator has been heard and rejected, the same relief cannot be sought by an indirect method, by filing a review petition. Such a petition is in the name of second innings which is impermissible and unwarranted and cannot be granted.

On facts, the High Court observed that even though the Arbitration Clause specifically stated the place of Arbitration was New Delhi, it was also specified that the Courts at Gurgaon/High Court of Chandigarh had the exclusive jurisdiction. By way of the present review petition, the petitioner is seeking review of the Order vide which an application under Section 11 of the Act, 1996 was dismissed on the ground of lack of territorial jurisdiction. Since the Order made under Section 11 of the Act, 1996 is in exercise of the statutory powers as defined under the Act, 1996, any review of the same can be only within the parameters of the Statute. Since, there is no provision of review in the Act, 1996, the High Court finds itself without any jurisdiction to review the present Order. [*Kush Raj Bhatia v. M/S DLF Power & Services Ltd.*, [ARB.P. 869/2022 dated 06.12.2022]]

K. Phani Raj, ACM/M&D

TREATISE ON

The Arbitration & Conciliation Act, 1996

S 31(4): Date and place of arbitration:

S 31(4) of The Act provides that the arbitral award shall state its date and place of arbitration as determined in accordance with S 20¹, that defines “Place of Arbitration. S 31(4) mandates that the arbitral award shall state its date and place of arbitration as determined in accordance with S 20 and the Award shall be deemed to have been made at that place. A document purported to be a majority award cannot be termed as an award within the meaning of the term or the Act if it is violative of S 31(2) and S 31(4) of the Act (where date of the award was not available) and is hit by the provisions of S 34(2)(a) (v) of the Act [Mahanagar Telephone Nigam Ltd. vs Siemens Public Communication, 2005 (1) ARBLR 369 Delhi].

Generally in a civil dispute, the jurisdiction of a court is ascertained u/S 16 to 20 of the CPC, 1908. As per S 20 of CPC, a court can assume jurisdiction over a particular dispute, if the defendant resides or carries on business within its territorial limits or if the cause of action whole or in part thereof arises within its territorial limits. This principle often leads to situations where different courts have concurrent jurisdiction over a particular dispute. However, the parties, by their choice, cannot confer jurisdiction upon a court, which otherwise does not have jurisdiction. This legal position has been conclusively settled by the Supreme Court in *A.B.C. Laminart Pvt. Ltd. & Anr. v A.P. Agencies, Salem*. However, for an arbitration proceeding, the principles of CPC governing jurisdiction of courts are not applicable. An arbitration proceeding can be seated even at a neutral venue which in the classical sense of the term may not have the jurisdiction to entertain a dispute i.e. the cause of action may not have arisen at that place. This would not invalidate the seat of arbitration and the courts exercising supervisory jurisdiction over such “seat” would have jurisdiction to exercise powers vested under the Act. In *BGS SGS SOMA JV v. NHPC Ltd.* (2020) 4 SCC 234, where the Supreme Court has followed and explained the decision in *BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552, and held that a choice of a city in India as a seat confers exclusive supervisory jurisdiction on the courts of that city over the arbitration proceeding.

Delivery of Signed Copy of arbitration award - Mandatory:

Sub-section (5) stipulates that after the arbitral award is made, a signed copy shall be delivered to each party. Delivery of a signed copy to the party is not a mere formality as the delivery of a signed copy is not only mandatory but it has to be delivered to a

responsible officer representing the party. Hon’ble Supreme Court in *UOI v Tecco Trichy Engineers and Contractors*, (2005) 4 SCC 239 held that:

“The delivery of an arbitral award under sub-section (5) of S 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage u/S 31 has passed that the stage of termination of arbitral proceedings within the meaning of S 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be “received” by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days u/S 33(1), an application for making an additional award u/S 33(4) and an application for setting aside an award u/S 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

Section 20¹: Place of arbitration.-

- (1) The parties are free to agree on the place of arbitration.
- (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) Notwithstanding sub-section (1) or sub-section (2), the Arbitral Tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witness, experts or the parties, or for inspection of documents, goods or other property.

To be continued...

N. Murali Krishna, Sr.Law Officer

KNOW OUR CONSTITUTION

Art 81: Composition of the House of the People

(1) Subject to the provisions of Article 331 the House of the People shall consist of (a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and (b) not more than twenty members to represent the Union territories, chosen in such manner as parliament may by law provide.

(2) For the purposes of sub clause (a) of clause (1) (a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and (b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State: Provided that the provisions of sub clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.