



Lex Info

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

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Legal Maxim

Ejusdem generis: Means "of the same kind." It is used in interpretation of statutes. It refers to where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed.

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

Contd... from last issue

Section 86 - Offences by companies

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 87-Offences by Government departments

(1) Where an offence under this Act has been committed by any department of the Government, the head of the department, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render any person liable to any punishment if such person proves that the offence was committed without his knowledge or that such person exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the head of the department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 88. Cognizance of offences by court

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall be competent to try any offence punishable under this Act.

Section 89. Offences to be non-cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence under this Act shall be deemed to be non-cognizable.

Section 90 - Offences to be cognizable only on complaint filed by certain persons

No court shall take cognizance of any offence under this Act which is alleged to have been committed by a Requiring Body except on a complaint in writing made by the Collector or any other officer authorised by the appropriate Government or any member of the affected family.

Section 91 - Magistrate to enforce surrender

If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the surrender of the land to the Collector.

Section 92 - Service of notice

(1) Save as otherwise provided in section 66, the service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice, by the officer therein mentioned, and, in the case of any other notice, by order of the Collector. (2) Whenever it may be practicable, the service of the notice shall be made on the person therein named. (3) When such person cannot be found, the service may be made on any adult member of his family residing with him; and, if no such adult member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired: Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and also publish the same in at least two national daily newspapers and also on his website.

to be contd.....

V. Apparao, CLA, GM Office/SCR

RTIA Series

(Contd...from last issue)

Cases wherein disclosure of information of Schedule – II organisations were ordered :

In a decision of far reaching consequences CIC had directed the Sashastra Seema Bal to disclose to the appellant his result in respect of the recruitment for the post of constable (GD) in SSB within a period of two weeks, notwithstanding the fact that SSB is included in Second Schedule of the Act. The CIC observed: *“However, informing the appellant about his result in the exam conducted by SSB would not only promote transparency but would also enhance the credibility of the examinations conducted by SSB. In view of this, the Commission directs the CPIO, SSB to inform the appellant about his result in respect of the recruitment for the post of constable (GD) in SSB, Sapri, Himachal Pradesh within a period of two weeks from the date of receipt of a copy of this order”*. This order has in effect widened the scope for RTI applicants, though S 24 permits only two exemptions to facilitate disclosure viz., corruption and violation of human rights. [Pankaj Kumar v CPIO, Directorate General of Sashastra Seema Bal, New Delhi. CIC/SD/A/2016/000003/SSBAL. DOO – 15.03.2017]

In Shankar Kumar v. CPIO, O/o the DIG, CISF, Navi Mumbai [Decision No. CIC/VS/A/2015/000911. DOO-15.02.2017], the information sought for was denied u/S 24. The CIC though observed that “the provisions of the RTI Act are not applicable to the CISF except when the information pertains to allegations of corruption or human rights violations” drawn strength from the order of the High Court, Delhi in WP (C) 7453/2011 dated 09.10.2013 (UOI v. Adarsh Sharma) wherein it was held as follows: *“5.if an information of the nature sought by the respondent is easily available with the Intelligence Bureau, the agency would be well-advised in assisting a citizen, by providing such an information, despite the fact that it cannot be accessed as a matter of right under the provisions of Right to Information Act... It is again made clear that information of this nature cannot be sought as a matter of right and it would be well within the discretion of the Intelligence Bureau whether to supply such information or not....”*.

In view of this order of the High Court, the CIC directed the CISF to consider the request of the appellant and provide the information including report of the court of inquiry to the appellant.

Rulings which held that the immunity u/S 24 is absolute:

Though we have already seen orders which held that the immunity u/S 24 is not absolute, there

are orders which ruled otherwise. It was held by CIC that information pertaining to show cause notices issued to a company, subsequent orders and penalty, name of Spl. Director who adjudicated the matter etc. were exempted since Directorate of Enforcement was covered u/S 24 [Pratap J Shah v. Directorate of Enforcement, Appeal no. 16/IC(A)/2006. DOO – 28.03.2006].

The Directorate of Revenue Intelligence had issued notice to the appellant Rajeev Verma on the ground that he had exported goods to some fictitious consignees in Russia. The appellant had requested a copy of the letter written by the Russian Customs to the Indian Embassy in this connection. The two letters written to the Ministry of External Affairs seemed to be self-contradictory indicating possibility of corruption. Hence, notwithstanding the fact that DRI is listed in Schedule II, the CIC did not extend exemption from production of information in the case and ordered the said letters to be placed before it to take a call on furnishing them to the appellant. However, the CIC held that no case of corruption or human rights violation was established by the appellant and hence, the hence did not agree to direct the DRI to part with the information. [Rajeev Verma v. Ministry of External Affairs. CIC/AD/C/2009/00613 dated 29.09.2009]

Aggrieved by the rejection to furnish information by the PIO and FAA, the appellant approached CIC which had held that the exemption provided to the organizations listed in Second Schedule is absolute in nature. The information sought for did not pertain to any allegation relating to charges of corruption or human rights violation. [Sanjiv Kumar Jain v. S.K.Bansal, Dy. Director, IB, MHA, New Delhi & Ors. CIC/AT/A/2006/00055 & 00030. DOO – 18.06.2010].

In a case where the husband had sought for information related to the foreign travel details his wife and parents-in-law the information was declined by the CPIO of IB, MHA. The respondents claimed immunity u/S 24 (1) of the Act. The CIC upheld the decision of the CPIO and FAA. [Srinivasa Rao Devatha v. CPIO, IB, MHA, New Delhi. Appeal No. CIC/SB/A/2016/000145. DOO – 20.01.2017]

In Rashi Agawal v. CPIO, Tear Smoke Unit, BSF, UP, the appellant therein had sought information about implementation of a Gazette notification related to the tender procurement of packing material. The CPIO refused to part with information and the same was upheld by the FAA on the ground of exemption u/S 24. The CIC upheld the decision of the respondents, since no allegations of corruption and human rights violations were made by the appellant. [Decision No. CIC/BDRSF/A/2016/298252. DOO - 20.09.2017.]

M.K. Shaji, LO/RWF

Responsibility of Railways as carrier of luggage – Whether theft on train is deficiency in service by Railway – Two decisions of Supreme Court.

Section 100 of the Railways Act, 1989 speaks of responsibility of Railways as carrier of luggage. It states that “A railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage unless a railway servant has booked the luggage and given a receipt therefor and in the case of luggage which is carried by the passenger in his charge, unless it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on its part or on the part of any of its servants”.

The import of the Section is railway administration shall be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage only when 1) the luggage is booked and a receipt is given and 2) it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on its part or on the part of any of Railway servants.

In the following two cases, passengers lost their luggage but filed cases for compensation before the Consumer fora contending that the Railway is liable for the said loss of luggage. The Supreme Court held that if the passenger is not able to protect his own belongings, the Railways cannot be held responsible and 2) when passenger voluntarily placed said attaché case at another place Railways cannot be held responsible for the alleged loss of attaché case. The details of the cases are as follows:

(1) The Hon’ble Supreme Court in Civil Appeal No.7116/2014, filed by Station Superintendent & Anr Vs Surender Bhola (D.O.J – 15.06.2023), held that “ If the passenger is not able to protect his own belongings, the Railways cannot be held responsible.

The factual aspects in this case is Sri Surender Bhola, while he was travelling in a train by carrying Rs.1 lakh in cash in a belt tied around the waist, stated to be stolen and as such he claimed the said loss from Railways. The District forum allowed the same by awarding Rs.1lakh to the Claimant and on filing appeals, The State Consumer Dispute Redressal Commission and National Consumer Dispute Redressal Commission dismissed the appeals.

On assailing the dismissal orders before Hon’ble Supreme Court, Hon’ble Supreme Court held that the Hon’ble Court not understand how the theft could be attracted deficiency in service by

Railway. If the passenger is not able to protect his own belongings, the Railways cannot be held responsible.

(2) The Hon’ble Supreme Court in Special Leave Petition (CIVIL) No(s). 34738- 34739/2012 filed by Vijaya Kumar Jain Vs Union of India & Another.(D.O.J- 02.07.2013), held that Railways cannot be held responsible for the loss of attaché case by way of theft or otherwise.

The factual aspects in this case are that the Petitioner Sri Vijaya Kumar Jain on 23.01.2004, while travelling in Up Udhyan Abha express is allotted Berth no. 41 in S-2 sleeper coach, his attaché case placed at S-43 was missed. Therefore, the petitioner filed the Application before the District Consumer Forum claiming compensation for the loss of attaché case stating that the loss due to negligence of Railway.

The District Consumer Forum, State Commission and National commission dismissed the complaint made by the Petitioner. On filing appeal before Hon’ble Supreme Court by the Petitioner, Hon’ble Supreme Court confirmed the orders passed by the forums below and dismissed the Complaint vide order dt. 02.07.2013 holding that “As per the Petitioner’s own case, he had been allotted berth No.41 in sleeper coach S-2 and he had voluntarily placed attaché case on berth no.43. Therefore, Railways cannot be held responsible for the alleged loss of attaché case by way of theft or otherwise.

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

KNOW OUR CONSTITUTION

Article 84 – Qualification for membership of Parliament

A person shall not be qualified to be chosen to fill a seat in Parliament unless he

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament .

Difference between Private Law and Public Law

The primary distinction between public and private law is that while public law regulates interactions between citizens and the state, whereas private law regulates relationships between citizens.

Private Law - The body of law that regulates interactions between private individuals is known as private law. The rights and obligations of individuals and private entities in their interactions with one another are characterized by private law. It covers a number of important legal topics, including family law, contracts, property, equity, and trusts. The right of individuals to pursue their objectives freely is protected by private law. In this case, the parties' legal relationships allow them to act freely in their respective capacities as private individuals. The goal of private law is to protect the community's citizens' freedom and private interests. Any situation involving interactions between people in a legal system is subject to private law.

This kind of law controls how people and governments interact. This also goes by the name of "common law." It covers tort law, family law, contract law, commercial law, and the law of property and trust.

Public Law - The connection between the government and the people is managed by public law. It consists of regulations guiding the interactions between the several parts of government as well as those governing interactions between the government and the general public or other private entities. It consists of criminal, administrative, and constitutional law. A system of laws known as public law that regulates interactions between private parties, including people and businesses, and governmental entities (like government departments and local authorities).

Public law generally addresses problems that have an impact on society as a whole. Other statutes included in this category of public law includes: Legal administration; Governing principles; Penal code; International laws; municipal laws; etc. Example – Public agencies perform public duties. The provision of housing and social services, however, is now handled by private organizations. If a private organization is performing a public function, or something that a public entity would typically undertake, then that organization may be subject to public law.

K. Gopinath, LO/Genl. Admn.

FAQ What is Doctrine of Pleasure?

In England, the Crown is regarded as the Executive head and the civil services are part of the Executive. The doctrine of Pleasure means that the Crown has the power to terminate the services of a civil servant at any time they want without giving any notice of termination to the servant. It is also followed in India. The President of India being the Executive Head of the Union he enjoys the same position as the Crown enjoys in England i.e. the President has been vested with the power to remove a civil servant at any time under this doctrine.

In India Article 310 of the Indian Constitution describes widely the pleasure exercised by the President of India, on appointment and dis-missal of the Civil servant. According to Article 310, except for the provisions provided by the Constitution, a civil servant of the Union works at the pleasure of the President and a civil servant under a State works at the pleasure of the Governor of that State.

According to this article, the Persons who are Members of Defence Services of India, Members of Union Public Service Commission of India, Members of State Public Service Commission of India & All India Services of India, hold their offices during the Pleasure of the President of India, and in the State concerned on the whims and pleasure of the Governor of the State. However, it must actively be noted and minded that this pleasure constituted and mentioned in the Constitution is not an Absolute Pleasure as was in England, but is graced with certain restrictions on its execution.

Under the provisions of the Article 310(1) of the Indian constitution, the following are excluded from the operation of this doctrine:

Judges of the Supreme Court;
Judges of the High Courts;
Chief Election Commissioner; and
Comptroller and Auditor General of India.

This doctrine is not absolute and is subject to Constitutional provisions. The civil servants can also be excluded from the operation of this doctrine because they have been provided with some protection under Article 311 and thus this doctrine's application can be limited to civil servants as well.

Syed Amjad Ali, OS, GM Office/SCR

Disciplinary Inquiry in Service Matters and the Scope of Judicial Intervention:

In disciplinary proceedings, judicial intervention is typically limited to a review of the decision-making process, rather than the merits of the decision itself. This is to ensure fairness in treatment, not to ensure the fairness of the conclusion.

In the *Indian Oil Corporation & Ors. Vs. Ajit Kumar Singh & Anr.* in Civil Appeal No. 3663 of 2023 (Date of Judgement: 17.05.2023), the Supreme Court has provided some important clarifications regarding the scope of judicial intervention in disciplinary matters that a Constitutional Court, while exercising its power of judicial review, cannot decide the case as if it is the first stage of the case, as if inquiry is still being conducted and inquiry report being prepared. Further, evidence cannot be re-appreciated at the stage of judicial review in a disciplinary proceeding as if conviction in a criminal trial is being re-examined by the next higher court.

Case in Context: The issue had arisen over a tampered bid document while being locked inside drawer, the Price bids were tampered with by changing the bid amount of one of the bidders that contained the signature of Respondent employee, leading to disciplinary proceedings against him. Based on the inquiry report, after providing a fair opportunity for hearing, the Disciplinary Authority had imposed a major penalty of withholding five annual increments with cumulative effect. The appeal filed before the Appellate Authority was also dismissed. The Respondent filed a writ petition before the High Court, challenging the order of Disciplinary Authority as well as the Appellate Authority. The writ petition was dismissed by the Single Judge and the orders under challenge were upheld. However, in the intra-court appeal, the Division Bench of High Court reversed the order of Single Judge and set aside the punishment imposed on the Respondent.

The Appellant filed the present appeal before the Supreme Court against the order passed by Division Bench. It was contended that in disciplinary proceedings, the scope of judicial review by the High Court is confined to ascertaining whether the due process in inquiry was followed and whether fair opportunity was accorded to the employee concerned.

The Supreme Court held that the Division Bench had overstepped the limits of judicial review by re-appreciating the evidence, akin to examining a conviction in a criminal trial, which was not within its purview. The Court clarified that in disciplinary proceedings, the scope of judicial review by the High Court is confined to ascertaining whether due process was followed and whether a fair opportunity

was accorded to the employee concerned. While interpreting the scope of judicial review, reliance was placed on the *Deputy General Manager (Appellate Authority) vs. Ajai Kumar Srivastava*, (2021) 2 SCC 612, wherein it was held that:

“The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

Accordingly the Bench has set aside the judgment of Division Bench and has allowed the appeal and the order passed by the Single Judge has been restored.

Judicial Intervention in Disciplinary Matters:

Disciplinary inquiries in service matters are a crucial part of maintaining the integrity of a given organization. The principles of judicial review dictate that courts should not interfere with findings of fact arrived at in departmental enquiry proceedings except in cases of mala fides or perversity. The findings must be sustained as long as there is some evidence to support them.

The Principle of Concurrent Findings of Fact:

The principle of concurrent findings of fact refers to the idea that when two or more courts have reached the same conclusion on a matter of fact, higher courts should generally not interfere with those findings. This principle is rooted in the respect for the institutional competence of lower courts and the need for finality in litigation. The principle applies unless there is a demonstration of perversity in the findings, which means the findings are such that no reasonable person could have arrived at them.

The Supreme Court's ruling in the *Indian Oil Corporation* case underscores the limited role of the judiciary in disciplinary proceedings. It reaffirms the idea that courts should not interfere with findings of fact in such proceedings unless there is evidence of mala fides or perversity. This ruling provides important guidance for courts and disciplinary authorities alike, promoting fairness in disciplinary proceedings while also respecting the boundaries of judicial intervention. (***The Indian Oil Corporation & Ors. Vs Ajit Kumar Singh & Anr.* Civil Appeal No.3663 of 2023, DOJ: 17-05-2023**)

M. Mohan Rao, CLA, GM Office

YOURS LEGALLY**Once arbitral award is set aside, Court cannot grant further relief by modifying same: SC**

The language of the Arbitration and Conciliation Act, 1996, under Section 34 and Section 37, makes it abundantly clear that it would not be correct for a court to modify the award even if it suffers from patent illegality or erroneous interpretation of the law. The only recourse available in this matter would be either to set aside the award or to remand it back to the tribunal. Furthermore, it is important to note that the 1996 act has been modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, which provides for a minimal scope for judicial intervention, restricting the relief for dissatisfaction with the award to either set aside the award or remand the matter back to the Tribunal as per the provisions of Section 34 of the Act.

The National Highways Authority of India Vs M Hakeem judgement of the Supreme Court cements this position by terming the 'limited remedy' under Section 34 to be coterminous with the 'limited right' to have the award either set aside and/or remand the matter. Even as the court found glaring errors in the calculation of the award by the arbitrator, it found itself bound by law not to alter the award in any manner and merely set it aside.

In the instant case i.e. Indian Oil Corporation Ltd and Ors Vs M/s Sathyanarayana Service Station and Anr, in the year 2003, IOC entered into a petrol pump dealer agreement with the first Respondent-M/s. Sathyanarayana Service Station. On 25.09.2006, the first Respondent communicated his inability to continue and withdraw from Retail Outlet (RO) dealership. Accordingly, IOC took possession of the Petroleum Outlet and a new dealer came to be awarded the dealership in 2006. Later on the Respondent retracting from his earlier dealership withdrawal letter requested for restoration of dealership which was rejected. This led to matters being referred to arbitration. The Sole Arbitrator by an award dated January 15, 2009 found that "inasmuch as the IOC and its officers had communicated the acceptance of the claimant's resignation of the dealership vide their letter dated 22.11.2006, which brings the contract between both parties to an end, their rejection of the claimant's subsequent request dated 11.12.2006 for withdrawing the resignation was in accordance with law".

The Respondent challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996, which was dismissed by the District Judge. However, the High Court allowed the challenge and set aside the award. It also ordered the restoration of

the dealership to the respondent and also seeks necessary damages from IOC and its officers.

The IOC, its officers & the new dealer had approached the Top Court with the appeal in question. Referring to the judgment of the Top Court in the case of the Project Director, NHAI v. M Hakeem 2021 SCC Online SC 473, the Division Bench said, "It is beyond the pale of any doubt that the Court cannot, after setting aside the award, proceed to grant further relief by modifying the award. It must leave the parties to work out their remedies in a given case even where it justifiably interferes with the award."

The Bench referred to the notice indicating that the first respondent had clearly indicated that it gave the version that they had shifted to Bangalore for their children's education, and therefore, they were not able to look after the dealership. They wished to withdraw from the dealership and appoint new R.O. dealers before three months. The Bench noted that there was no shred of doubt that the first respondent indeed invoked clause (3) which permitted either party to bring about a premature termination of the contract. Accepting the fact that a premature termination of the agreement would need acceptance, the Bench was unable to find that the view taken by the arbitrator in the facts could be characterised as being perverse.

Terming the arbitrator's view as a plausible one and observing that the High Court erred in proceeding to order restoration of the dealership to the first Petrol Pump dealer after setting aside the award, the Supreme Court held that clause (3) of the dealership agreement expressly allowed for the premature termination of the contract by either party by giving a three-month notice without requiring any acceptance. The court also held that the High Court acted illegally by interfering with the arbitrator's finding and modifying the award, and it set aside the High Court's order.

Hon'ble Supreme Court opined that the High Court had erred in proceeding to order restoration of the dealership to the first respondent after setting aside the award and going further by leaving it open to the first respondent to claim damages. It held that the court cannot, after setting aside the award, proceed to grant further relief by modifying the award, and allowed the appeals & restored the award. **[Indian Oil Corporation Ltd and Ors Vs M/s Sathyanarayana Service Station and Anr in C.A No.3533 Of 2023 arising out of SLP (C) No.5698 OF 2021 (DOJ: 09.05.2023)]**

K. Gopinath, LO/Genl. Admn.

TREATISE ON

The Arbitration & Conciliation Act, 1996:

Interest:

31(7) (a) of the Act reads as follows:

Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

As can be seen from the words of the sub section, with the words “unless otherwise agreed by the parties” party autonomy has been given primacy with respect to the provision made under the said section. Therefore, parties can enter into an agreement between them with respect to “Interest” to be awarded by the Arbitrator.

Further, said sub section provides power to Arbitrator “for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made”. Under the section arbitrator is empowered with discretion to grant interest i) at the rate as it deems reasonable, ii) on the whole or any part of the money, and iii) for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

Accordingly, Arbitrator can grant interest pre-award, if the parties agrees so, till award is made. The power to award interest by the arbitral tribunal has been divided into two stages- firstly, from the date of cause of action to the date on which the arbitral award is made, and secondly, from the date of award to the date of payment. However, the difference between preresidence period and pendente lite period has been removed insofar as it relates to the award of interest by arbitrator and can be called as Pre-Award interest. Additionally, the usage of the words “the arbitral tribunal may include in the sum for which the award is made interest” indicates that the Act provides for inclusion of the pre-award interest in the sum awarded in the award itself.

Party autonomy- Agreement Supreme –

Clause (a) of sub- section (7) of section 31 of the Act, 1996 relates to the power of the arbitrator to

impose interest from the date of cause of action to the date of arbitral award. The said clause begins with “Unless otherwise agreed by the parties”, thereby at the onset of the sub-section itself, the legislature has provided for a restriction on the application of the said sub- section. In the event there is an agreement between the parties to the arbitration, regarding the payment of interest from the date on which the cause of action arose till the date on which the award was made, the terms of the said agreement would prevail over clause (a) of sub- section (7) of section 31 of the Act, 1996.

In *Shree Kamatchi Amman Constructions v Divisional Railway Manager (Works)*, the Supreme Court considering Clause 16(2) of the GCC governing the contract between the parties bars payment of interest and held at para 10 “37(1) of the Act by using the words “unless otherwise agreed by the parties” categorically clarifies that the arbitrator is bound by the terms of the contract insofar as the award of interest from the date of cause of action to date of award. Therefore where the parties had agreed that no interest shall be payable, arbitral tribunal cannot award interest between the date when the cause of action arose to date of award”.

The Apex court in *Chittaranjan Maity vs Union Of India* on 3 October, 2017 at para 11 held that: “When parties to the contract had agreed to the fact that interest would not be awarded on the amount payable to the contractor under the contract, in our opinion, they were bound by their understanding. Having once agreed that the contractor would not claim any interest on the amount to be paid under the contract, he could not have claimed interest either before a civil court or before an Arbitral Tribunal.” Therefore, it is clear that the appellant is not entitled for any interest on the amount awarded by the Arbitral Tribunal”.

In *Jaiprakash Associates Ltd. ... vs Tehri Hydro Development ...* on 7 February, 2019, the Supreme Court held that the grant of pendente lite interest depends upon the phraseology used in the agreement, clauses conferring power relating to arbitration, the nature of claim and dispute referred to the arbitrator, and on what items the power to award interest has been taken away and for which period. Further, Section 31(7) of the 1996 Act sanctifies agreements between the parties and states that the moment the agreement says otherwise, no interest becomes payable right from the date of the cause of action until the award is delivered.

To be continued...

N. Murali Krishna, Sr.LO/SCR