



Lex Info

A Quarterly E-Magazine

(from Law Branch, South Central Railway)

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Vol -VI

Issue - 4

Oct - Dec. 2023

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

Articles/write-ups on legal issues relevant to railway's working are invited from officers/staff including from other railways / production units:

Please mail them to:

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Legal Maxim - Noscitur a sociis - It is a Latin term that means "it is known by its associates." It is a rule of construction that suggests that the meaning of an unclear word or phrase should be determined by the words immediately surrounding it.

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

According to Section 93, Completion of acquisition not compulsory but compensation to be awarded when not completed. Whenever, the appropriate Government withdraws from acquisition of any land, then the Collector shall determine and pay the amount of compensation due for the damage suffered by the owner in consequence of the notice, etc.

According to Section 94, this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired.”

According to Section 95, civil courts do not have jurisdiction to hear matters related to the determination of compensation or any other issue under this Act. Instead, the Appellate Authority or the Tribunal under the Act has the power to decide on such matters.

According to Section 96, income tax shall not be levied on any award agreement made Under that Act except as provided u/s 46 of that act. This award/agreement is not u/s 46 of that act.

According to Section 97, a certified copy of a document registered under the Registration Act including a copy given under Section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

According to Section 98, one month's notice is mandatory in case of suits for anything done in pursuance of the Act.

According to Section 99, no change of purpose for which the land is originally sought to be acquired shall be allowed except in case the land acquired is rendered unusable for the purpose for which it was acquired due to any unforeseen circumstances.

According to Section 100, no change of ownership without specific permission from the appropriate Government shall be allowed.

According to Section 101, when any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be pre-

scribed by the appropriate Government.

According to Section 102, whenever the ownership of any land acquired under this Act is transferred to any person for a consideration, without any development having taken place on such land, forty per cent of the appreciated land value shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired within a period of five years from the date of acquisition: Provided that benefit shall accrue only on the first sale or transfer that occurs after the conclusion of the acquisition proceedings.

According to Section 103, the provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force.

According to Section 104, the appropriate Government is free to exercise the option of taking the land on lease, instead of acquisition, for any public purpose referred to in sub-section (1) of section 2.

According to Section 105, the Provisions of this Act not to apply in certain cases or to apply with certain modifications. –

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule. (2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule. (3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be. (4) A copy of every notification to be issued under sub-section (3), shall be laid in draft before House of Parliament, in turn both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

To be contd....

V. Appa Rao, CLA, GM/O/Law Branch

RTIA Series

(Contd...from last issue)

S 25 of the RTI Act, 2005 deals with monitoring and reporting. CIC/SIC is required to prepare an annual report about the implementation of the provisions of the Act and forward to the appropriate Government. Each Ministry or Department is required to provide necessary information to the CIC/SIC in this regard. The report shall include the number of requests, denials, information furnished, number of times the exemption provisions of the Act were invoked, number of appeals, disciplinary action taken against any officer, amount of charges collected, recommendations for reform etc. The report of the CIC or SIC shall be laid before the Parliament or the State Legislature, as the case may be. CIC / SIC may make a suitable recommendation indicating the steps to be taken by a public authority for promoting conformity with the provisions of the Act.

S 26 requires the appropriate Govt. to prepare various educational programmes, promote timely and effective dissemination of accurate information, conduct training programmes for officers etc. It further requires preparation of a guide by the appropriate Govt. within 18 months from the commencement of the RTI Act to help those who wish to exercise any right specified in the Act. These guidelines to be updated by the appropriate Govt. at regular intervals and shall include the objects of the Act, details of CPIO/SPIO, manner of applying to CPIO/SPIO, assistance available from CPIO/SPIO and CIC/SIC, remedies under law, voluntary disclosure provisions, fees, additional regulations / circulars etc.

S 27 provides for rule making power of appropriate Government by notifying in the Official Gazette. These rules may provide for matters about cost, fee payable, salaries and allowances payable to officers / employees, the procedure to be adopted by the CIC/SIC in deciding appeals and any other matter as prescribed. The RTI (Amendment) Act, 2019 (w.e.f 01.08.2019) has inserted “ca” and “cb” after Section 27 (2) (c). Section 27 (2) (ca) refers to the term of office of CIC, IC, SCIC and SIC. S 27 (2) (cb) refers to the salaries and allowances and conditions of service of CIC, IC, SCIC and SIC. Based on Section 27 (2) (ca) & (cb) the RTI Rules 2019 was framed on 24.10.2019. RTI Rules 2019 provides for term of office, pay, DA, leave, leave encashment, medical facilities, accommodation, LTC, TA, Daily Allowance etc. for CIC, IC, SCIC and SIC. Rule 21 of the RTI Rules 2019 empowers the Central Government to decide on conditions of service of CIC/IC/SCIC/SIC for which no express provision has been made in the said Rules. The decision of the Central Govt. shall be binding not only

on the CIC/IC but also on the SCIC/SIC.

Rule 22 of the RTI Rules 2019 authorizes the Central Government to relax the provisions of the said Rules. Rule 23 of the RTI Rules 2019 empowers the Central Government to interpret any of the provisions of the said Rules.

S 28 of the RTI Act authorizes the Competent Authority to make rules to carry out the provisions of the Act. The definition of “Competent Authority” as in S 2 (e) denotes Speaker of House of People or State Legislature or Chairman of the Council of States, CJI for Supreme Court, Chief Justice for High Court, President or the Governor for authorities established or constituted under the Constitution and administrator appointed under Article 239 of the Constitution of India. The Rules framed by the Competent Authority may cover matters such as cost, fee payable or any other matter as may be prescribed.

S 29 of the RTI Act requires laying of rules made by the Central Govt. before each House of Parliament by the Central Govt. Similarly, the rules framed by the State Govt. shall be laid before the State Legislature. Section 30 authorizes the Central Govt. to remove difficulties by making necessary notifications in the Official Gazette, subject to the condition that such provisions shall not be inconsistent with the provisions of the RTI Act. However, this Section has no practical relevance or application since such orders were permissible only for the first two years from the date of commencement the Act (which got over on 12.10.2007). S 31 has repealed the Freedom of Information Act, 2002.

RTI Act 2005	RTI (Amendment) Act 2019
Term of CIC, IC, SCIC & SIC : 5 Years or 65 years of age, whichever is earlier. [S. 13 & 16 of 2005 Act]	Term of CIC & IC: As may be prescribed by the CG. [S.2 & 3 of 2019 Act]. <u>Rule 3 of RTI Rules 2019:</u> CIC & IC → 3 Years. <u>Rule 12 of RTI Rules 2019:</u> SCIC & SIC → 3 Years.
Salaries & Allowances: CIC → Equivalent to CEC. IC → Equivalent to EC. [S.13 of 2005 Act] SCIC → Equivalent to EC. SIC → Equivalent to Chief Secretary. [S.16 of 2005 Act]	Salaries & Allowances: CIC, IC, SCIC & SIC → As prescribed by the CG. [S.2 & 3 of 2019 Act] <u>Rule 5 of RTI Rules 2019:</u> CIC → Rs.2.5 Lakhs. IC → Rs.2.25 Lakhs. <u>Rule 6 of RTI Rules 2019:</u> DA → Of equivalent officer of CG. <u>Rule 14 of RTI Rules 2019:</u> SCIC & IC → Rs.2.25 Lakhs. <u>Rule 15 of RTI Rules 2019:</u> DA → Of equivalent officer of SG.

(The “RTI Act Series” which we have started publishing from June 2019 ends here.)

M.K. Shaji, LO/RWF

Service of orders, notices etc. under the Railway (Discipline and Appeal) Rules, 1968

Rule 26 of Railway (Disciplinary and Appeal) Rules 1968 deals with Service of orders, notices etc. It stipulates that every order, notice and other process made or issued under these rules, shall be served i) in person on the Railway servant concerned or ii) communicated to him by registered post.

Further, rules 26-A provides for Service of orders, notices etc. on behalf of the Railway Board or President. Accordingly, the following officers in the Ministry of Railways shall be competent to sign on behalf of the Railway Board or President any notice, process, order, etc. made or issued under these rules:-

- (i) Secretary, Railway Board/Joint Secretary/Deputy Secretary.
- (ii) Executive Director/Director/Joint Director.

However, sometimes it so happens that the charged employee refuses to receive the charge memorandum or other documents. A doubt arises that what if, if the charged employee “refuses to receive the communication” or the communication “returned as unclaimed”. In a recent case, the Supreme Court had an occasion to consider the issue and held as:

In *K.Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, [(1999) 7 SCC 510], the SC held that when notice is returned as ‘unclaimed’, it shall be deemed to be duly served upon the addressee and it is a proper service of notice. Further, in *Ajeet Seeds Limited Vs. K. Gopala Krishnaiah* [(2014)12 SCC 685], while interpreting Section 27 of General Clauses Act 1897 and also Section 114 of Evidence Act 1872 it was held as under: “Section 114 of the Evidence Act, 1872 enables the court to presume that in the common course of natural events, the communication sent by post would have been delivered at the address of the addressee. Further, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.”

The Supreme Court, thus, held that “the word ‘refusal’ can be interpreted in synonymous to the word ‘unclaimed’”. When a notice is served to the proper address of the addressee, it shall be deemed to be served unless contrary is proved. Thus, when the notice is returned as unclaimed, it shall be deemed to be served and it is proper service. Therefore, service of notice to the sole respondent which has returned as unclaimed is considered as deemed to be served but none has entered appearance. [*PRIYANKA KUMARI Vs SHAILENDRA KUMAR*, Transfer Petition(s)(Civil) No(s). 2090/2019, decided on 13-10-2023]

M. Mohan Rao, CLA,GM/O/Law Branch

Neglect of family by Railway servant - Whether Misconduct?

In this regard, Railway Board has issued RBE No.62/2005, under Board’s letter No. E(D&A) 2005/GS 1-1 dated 12.4.05. The letter is provided here under:

Sub: Conduct of a Railway servant in relation to the proper maintenance of his family.

Instances of failure of Railway servant to look after the proper maintenance of their families have come to notice of the Board. It has been noticed that in most cases, Railway avoid to investigate these instances/complaints and to take suitable action thereon on the ground that these are private/personal affairs of the Railway servant and railway administration cannot interfere as such.

2. In this connection it is clarified that it is the responsibility of the railway employees to look after their families, failing which they can be taken up for violating RS(Conduct) Rules,1966 for such conduct as ‘unbecoming of a railway servant’. Neglect by a railway employee of his wife and family in a manner unbecoming of railway servant should be regarded as a good and sufficient reason to justify action being taken against him under Rule 6 of RS (D&A) Rules,1968.

3. Instances/complaints of the failure of Railway employees to look after their families may, therefore, be investigated invariably and suitable action be taken in all those cases where the complaints are prima facie established during the investigation.

J.Srinivas, SPO/CON

KNOW OUR CONSTITUTION

Article 85 - Sessions of Parliament, prorogation and dissolution

(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session

(2) The President may from time to time

(a) prorogue the Houses or either House;

(b) dissolve the House of the People

Difference between Tort and Crime

A tort is a civil wrong i.e. wrongful act that is done towards someone which causes damage to someone which gives him the right to seek a legal remedy from a court of law. In tortious cases, the court can provide someone with unliquidated damages.

A crime is an offense punishable by the State as it is not a harmful act done to one individual but the community/state/society in general. These acts are forbidden by the law of the State.

There are no statutes or regulations from where Tort law can be sourced. Instead, it is precedents that regulate Tort law in India.

The precedents in criminal law are extremely important but there are proper statutes present for Criminal law like the Indian Penal Code and Code of Criminal Procedure.

In tort law, the aggrieved party can seek unliquidated damages which means the court decides the amount of compensation as there is no pre-determined compensation for the injury caused.

In a criminal case usually, the convict is punished, and additionally, they may be forced to pay fines that are pre-determined and enumerated in the Indian Penal Code. The kind of punishment and amount of compensation differs from case to case but there is a fair idea of it mentioned in the IPC.

In tort law, the aggrieved party has to just prove that the other party had owed them a duty of care and they have clearly breached that. However, in a criminal case, the prosecution has to prove not only the mens rea and actus reus but also satisfy the court that such a crime was committed beyond a reasonable doubt. This is very crucial and can make or break a case. If there is a single shred of evidence that raises the doubt of the intention and the act was ever committed then the defendant cannot be convicted of the crime. This is done because the punishment of a crime is not just compensation but can be imprisonment or capital punishment.

Examples of torts include negligence, defamation, and breach of contract, while examples of crimes include theft, assault, and murder.

FAQ

What is the doctrine of Volenti non-fit injuria?

“Volenti non fit injuria” is a Latin legal term that means “to a willing person, no injury is done”. The Doctrine of Volenti non-fit injuria means if a person willingly consents to the infliction of harm upon itself he/she is not entitled to get any remedy under the Law of torts. Any harm suffered voluntarily by anyone does not amount to legal injury and the same is not actionable by the law of torts. In cases where the plaintiff gives his consent to suffer some harm upon himself in such cases, he is not entitled to remedies and his consent acts as a good defense for the defendants.

The doctrine of volenti non fit injuria is an important legal principle in tort law that limits a plaintiff's ability to recover damages for the harm they voluntarily assumed. The doctrine applies where the plaintiff knowingly and voluntarily undertakes an activity that carries a risk of harm, and the harm suffered is a result of that activity.

For example, if a person participates in a dangerous sport like skydiving or bungee jumping, and they sign a waiver acknowledging the risks involved, then they may not be able to sue for damages if they are injured during the activity. This is because they have voluntarily assumed the risk and waived their right to seek compensation.

The defense of Volenti non-fit injuria was successfully pleaded in the case of Padmavati v. Dugganaika. In this case the plaintiffs had requested a ride in the defendants' jeep. While travelling in the vehicle, one of the wheel screws came loose, causing the jeep to crash and resulting in the death of one of the plaintiffs. The court held that the defence of volenti non fit injuria would apply, and thus, the defendants were not liable, as the plaintiffs had assumed the risk of potential injury by riding in the jeep.

Volenti non fit injuria is a very good defence in law of tort. In this defence, the defendant who have committed the tort is completely exempted from the liability because the plaintiff or victim already gave his consent to the commission of such an act. And there is a one condition consent must be free without any kind of pressure or undue influence. There is one more important thing in this condition the consent which is given by plaintiff may be expressed and implied.

Acquittal in criminal proceedings does not entitle the delinquent employee for any benefit in the latter or automatic discharge in departmental proceedings : Supreme Court

The Hon'ble Supreme Court recently ruled in the case of *SBI & Ors. Vs. P. Zadenga* in CA No. 2518 of 2012 that an acquittal in connected criminal proceedings does not entail any benefit in the surviving proceedings and thus does not automatically result in a corresponding discharge in disciplinary proceedings pending against an employee.

It clarified that the two proceedings are different from one another and had distinct objectives. "The nature of proceedings being wholly separate and distinct, acquittal in criminal proceedings does not entitle the delinquent employee for any benefit in the latter or automatic discharge in departmental proceedings." The Court was also tasked with answering whether Clause 4 of the Memorandum of Settlement (MoS) dated April 10, 2002, creates a bar on departmental proceedings continuing when the person subjected to them is being tried before a criminal court for offences of the same origin.

It reaffirmed that clause 4 does not prohibit departmental proceedings during the pendency of criminal cases, and such cases should be considered individually. "It may be desirable or, in certain circumstances, advisable for disciplinary proceedings to be stayed when criminal proceedings are ongoing; however, stay is not "a matter of course" and is only to be given after consideration of all factors, for and against."

This appeal was filed against the final judgment and order passed in a writ petition by the Gauhati High Court.

In this case, a bank employee who faced disciplinary proceedings related to allegations of financial irregularities. Disciplinary proceedings were initiated against the employee after a complaint was made by government retailers regarding financial discrepancies at the bank branch where he worked. In the proceedings it was alleged that the employee had not deposited certain funds into the respective accounts. Three different FIRs were registered against the employee, and he was arrested but later released on bail. He contended that the disciplinary proceedings should be dropped or stayed because criminal cases arising from the same transactions were pending. Despite these objections, the bank conducted inquiry and three out of four charges against the employee were established. The employee was eventually dismissed from the bank's ser-

vices. The employee filed a writ petition challenging the dismissal, arguing that the disciplinary proceedings should have been stayed based on clause 4 of the MoS. The High Court had allowed the writ petition.

The Hon'ble Supreme Court examined the clause 4 of the MoS, which deals with the time period for disciplinary proceedings in relation to criminal cases. It clarified that clause 4 did not create an automatic stay of disciplinary proceedings but allowed them to proceed if certain conditions were met. It emphasized that the completion of the trial within a reasonable time frame was essential for the application of clause 4. The mere pendency of criminal proceedings would not warrant an automatic stay of disciplinary proceedings, especially if they had been initiated after the prescribed one-year period.

The Hon'ble Apex Court relying on precedents culled out the following essentialities for the operation of clause 4:

- a. At least one year ought to have passed since attempts to get the delinquent employee prosecuted;
- b. If, after the passage of such time, no prosecution is initiated, then the department may proceed in accordance with its procedure for disciplinary action;
- c. If the prosecution commences later in point of time to the disciplinary proceedings, the latter shall be stayed, but not indefinitely. Such proceedings are to be stayed only for a reasonable period of time, which is a matter of determination per the circumstances of each case.

Furthermore, it was also highlighted that an acquittal in criminal proceedings did not automatically result in a corresponding discharge in disciplinary proceedings. In the instant case, the disciplinary proceedings against the employee were initiated well after the one-year period mentioned in clause 4. Additionally, the employee had not raised objections based on clause 4 at the outset, and there was no indication of prejudice caused by simultaneous proceedings.

Accordingly, the Hon'ble Apex Court set aside the High Court's judgment and restored the employee's dismissal from service based on the disciplinary proceedings [**Civil Appeal No. 2518 of 2012 SBI & Ors. Vs. P. Zadenga (DOJ: 03.10.2023)]**

A. Bhagwat Prasad, CLA/SC Divn.

YOURS LEGALLY

Whether a woman employee of one department of Government who is sexually harassed by an employee of another department, is entitled to invoke Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (SHW Act) ?

The present case emanated from a complaint by an officer in the Department of Food and Public Distribution, Ministry of Consumer and Public Distribution, alleging that the petitioner, who is a 2010 Batch officer of the Indian Revenue Service (IRS), had sexually harassed her. The complaint was presented by the complainant before the Internal Complaints Committee (ICC) - constituted under Section 9 of the SHW Act of her department/workplace i.e. the Department of Food and Public Distribution.

On receipt of notice from the said ICC calling on the petitioner to appear therein, the petitioner, instead of appearing in the hearing, moved the CAT/NDLS by way of OA questioning the jurisdiction of the ICC to examine the complaint of the complainant which was rejected and accordingly dismissed the OA. Aggrieved thereby, the petitioner has moved High Court by means of present writ petition.

Main contentions of the appellant before the High Court were:

1. ICC of one department cannot conduct an inquiry under the SHW Act, even if it is on a complaint by an officer in the said department, against an employee who belongs to another department and is not, therefore, within the disciplinary control of the department where the complainant is working. The Complainant, as an All India Service Officer is governed by the All India Service (Discipline & Appeal) Rules, 1969, while the petitioner is governed by Central Civil Services (Classification, Control and Appeal) Rules, 1965 [CCS (CCA) Rules].
2. If the ICC of the complainant's department is permitted to inquire into the allegations made by the complainant against the petitioner, a peculiar situation would result as, under Section 13 of the SHW Act, the report of the ICC is required to be forwarded to the "employer" in order to take consequent action, if necessary by way of disciplinary proceedings. "Employer" under Section 2(g) would be the Head of the Department of the complainant, who exercises no disciplinary control over the petitioner. As such, the report of the ICC would be unenforceable, as no action could be taken on the basis thereof.

After going through the arguments, the High Court held as follows:

"If the submissions were to be accepted, the position that would emerge is that, while a lady officer in a department who is subjected to sexual harassment by an officer of the same department, would have no such remedy if the harassment is perpetrated by an officer of another department, solely because he works under another "employer", and is not subject to the disciplinary control of the department where the complainant is working.

Such an interpretation strikes at the very root of the SHW Act, and its ethos and philosophy. Any interpretation which would frustrate its objects and purposes or which would result in a manifestly arbitrary or unjust result, or which would result in underplaying any of its avowed objectives, shall be rejected. Thus, the SHW Act does not insulate, from action thereunder, men who sexually harass women in offices other than those in which they are themselves working.

Further, there is nothing in Section 11(1), which would restrict its application only to cases where the respondent i.e., the officer against whom sexual harassment is being alleged, is the employee of the department where the complainant is working. Hence, the use of the words "in accordance with the service rules applicable to the respondent" itself indicates that the statute has kept in mind a possibility where the respondent may be governed by service rules which are not those which apply to the complainant or to the department where the complainant is working. It merely states that the respondent should be an employee and, in the present case, there is no doubt that the petitioner, i.e. the respondent before the ICC, is in fact an employee, albeit of another department of the Government. Further, Section 13(1) merely states that, on completion of inquiry, the ICC "shall provide a report of its findings to the employer".

Further, under Section 13(1), if the employer who has to take action on the basis of the findings of the ICC is the head of a department other than that in which the complainant-employee is working, there is no embargo under the SHW Act on the findings of the ICC being forwarded to that employer, who has disciplinary control over the alleged perpetrator of sexual harassment, to take action on the basis thereof. There is absolutely nothing, in the SHW Act, which limits its scope only to the cases where a woman employee is sexually harassed by another employee working in her own office, and excepts its application where the delinquent employee is employed elsewhere. **[Dr Sohail Malik vs Union Of India & Anr. on 30 June, 2023, W.P.(C) 8624/2023, DOJ: 30.06.2023, HIGH COURT OF DELHI]**

K. Gopinath, LO/Genl.Admn.

TREATISE ON

The Arbitration & Conciliation Act, 1996:

31(7) (a) of The Arbitration & Conciliation Act, 1996: Interest –Continued from previous issue:

Clause 64.(5) of GCC for works stipulates that “Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made”. Further, Clause 16.(3), Part II of GCC stipulates that “No interest shall be payable upon the Bid Security and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of Sub-Clause 16.(4)(b) of this clause will be payable with interest accrued thereon”.

Great amount of litigation has been made on the two clauses and finality has arisen with respect to the two clauses in the following two judgements of the Hon’ble Supreme Court. One of the questions put forth before the Hon’ble Supreme Court in *Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works), Palghat*, (2010) 8 SCC 767, was that “whether the arbitral tribunal was justified in refusing interest for the period between the date of cause of action to date of award?”

In this case, the Apex court while referring to the decision in *Union of India v. Saraswat Trading Agency* [2009 (16) SCC 504], the Supreme Court held that if there is a bar against payment of interest in the contract, the arbitrator cannot award any interest for the pre-reference period or pendente lite. In view of the specific bar under Clause 16(2) of GCC, the arbitral tribunal was justified in refusing interest from the date of cause of action to date of awards.

However, the other question before the Apex Court is that whether arbitrator is empowered to grant even future interest on the “amounts payable to the Contractor under the contract.”? The Supreme Court considered the issue in *Union of India Versus Manraj Enterprises*, CA No. 6592 of 2021, on 18.11.2021. It was held that:

1. *Sri Chittaranjan Maity v. Union of India*, (2017) 9 SCC 611, it was categorically held that if a contract prohibits award of interest for pre-award period, the arbitrator cannot award interest for the said period.

2. *Bright Power Projects (India) (P) Ltd.* while considering *pari materia* clause with clause 16(2) of the GCC, a three Judge Bench of the Supreme Court held that when the parties to the contract agree to the

fact that interest would not be awarded on the amount payable to the contractor under the contract, 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.

3. Section 31(7) of 15th 1996 Act, by using the words “unless otherwise agreed by the parties” categorically specifies that the arbitrator is bound by the terms of the contract insofar as award of interest from the date of cause of action to date of the award is concerned.

4. It is further observed and held that where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest. Therefore, the contention that *de hors* the bar under clause 16(2), the Arbitral Tribunal independently and on equitable ground and/or to do justice can award interest pendente lite or future interest has no substance and cannot be accepted.

5. Once the contractor agrees that he shall not be entitled to interest on the amounts payable under the contract, including the interest upon the earnest money and the security deposit as mentioned in clause 16(2) of the agreement/contract between the parties herein, the arbitrator in the arbitration proceedings being the creature of the contract has no power to award interest, contrary to the terms of the agreement/contract between the parties and contrary to clause 16(2) of the agreement/contract in question in this case.

6. Clause 16 has to be read as a whole and on doing so, it can be said that clause 16 pertains specifically to earnest money and security deposit and that the same can in no way be read in a manner to imply a bar on pendente lite interest. It is required to be noted that clause 16(1) is with respect to earnest money/security deposit. However, clause 16(2) is specifically with respect to interest payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract. The words used in clause 16(2) is “or”. Therefore, the expression “amounts payable to the contractor under the contract” cannot be read in conjunction with “earnest money deposit” or “security deposit” by applying the principle of *eiusdem generis*.

In view of specific bar contained in clause 16(2) of the GCC, the contractor shall not be entitled to any interest pendente lite or future interest on the amounts due and payable to it under the contract.

(... to be contd..)

N. Murali Krishna, Sr.LO/SCR