



Lex Info

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Legal Maxim

Ignorantia juris non excusat – Ignorance of the law excuses no one. A person who is unaware of a law may not escape liability for violating that law merely because he was unaware of its content.

ABC OF ACTS

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Section 10 of the Act provides for the other functions of asset reconstruction company.

(1) Any asset reconstruction company registered under section 3 may- (a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties; (b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties; (c) act as receiver if appointed by any court or tribunal: Provided that no asset reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.

(2) Save as otherwise provided in sub-section (1), no asset reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction.

Section 11 of the Act provides for the resolution of disputes.

In case of any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, or asset reconstruction company or qualified buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996.

Section 12 of the Act provides for the Power of Reserve Bank to determine policy and issue directions.

If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any asset reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such asset reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any asset reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk

weights for assets and also relating to deployment of funds by the [asset reconstruction company], as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

Section-13 provides for enforcement of security.

If any borrower fails to discharge his liability in repayment of any secured debt within 60 days of notice, then the secured creditors have the power under this Act to-

- ⇒ Take possession of or sell or auction or seize the secured assets of the borrower.
- ⇒ Take over of the management of business of borrower.
- ⇒ Appoint any person to manage the secured assets.

Section 14 of the Act provides for the Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.

Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him-

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

- (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;
- (ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(.....to be contd..)

THE RAILWAY SERVANTS DISCIPLINE & APPEAL RULES 1968

In Apr - June 2024 issue we have discussed about 'what is misconduct' and 'what is not a misconduct'. Once, it appears that misconduct is committed by an employee, the next question is what is the gravity of the misconduct. This is very important step because, based on the gravity only, what type of charge sheet (whether a major penalty charge sheet or a minor penalty charge sheet) is to be issued and also who will be the disciplinary authority can be decided. If there is a grave charge of misconduct on the part of the employee which requires that the employee be out of the office premises so that he/she shall not tamper the evidence, the authorities as specified in Schedules I, II & III may place the railway servant under suspension.

What is 'Suspension'?

Suspension can be defined as temporary deprivation of one's office or position. It does not put an end to the relationship of master and servant but simply keeps away the employee from the employment during the pendency of the departmental or criminal proceedings. Suspension is not a punishment. It does not reduce rank or status of the employee, but forbids him from work. In case of suspension, reduction in rank or reversion, the relationship of employer and employee does not cease but continue. [Public Service Tribunal, Bar Association Vs State of UP; 2003 SCC (L&S) 400].

Suspension is not a punishment but is only of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity or perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to he delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge [State of Orissa Vs Bimal Kumar Mohanthy; AIR 1994 SC 2296].

When an employee is said to be suspended?

Suspension shall be resorted to in exceptional cases only. Suspension order may be issued in public interest in the one or more of following circumstances:

1. His continuance in work might endanger the public safety;
2. His continuance in work might cause serious damage or loss of railway property;
3. continuance in work might prejudice the inquiry

into the charge or might lead to loss of the relevant record;

4. the offence for which the employee is charged involves serious moral turpitude;
 5. where a disciplinary proceeding is contemplated or is pending against him;
 6. where in the opinion of the employer, the employee has engaged himself in activities prejudicial to the interest of the security of State;
- where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

This list is not exhaustive. An authority competent to place an employee under suspension may suspend him for good and sufficient reasons.

Who can suspend:

The power of suspension unless delegated under rules, vests in appointing authority by virtue of S.16 of General Clauses Act, 1897 even where no express provision exists. Even otherwise, employer inherits power to suspend an employee, as the power is part of disciplinary control exercised by the employer or disciplinary authority [Hotel Imperial Vs Workers Union AIR 1959 SC 1342]. Article 311(1) of Constitution does not apply to orders of suspension and an authority lower than appointing authority can pass such orders provided the powers are conferred on the authority [State of Orissa Vs Shiva Prasad 1985 SCC (L&S) 397].

Who can revoke Suspension?

Suspension order can be revoked by the authority who issued the order or next higher authority, since it is an appealable order.

Speaking order is not necessary:

An order of suspension is not a quasi-judicial order but an administrative action. Hence it is not necessary to make speaking order containing detailed reasons leading to suspension. The very fact that the disciplinary authority has proceeded to pass the order of suspension is ample proof that he is satisfied that the circumstances warrant it. [T. Sivashankar Vs State of Karnataka; 1985 Lab. I.C. Kar 60]. However, an order of suspension must be based on an objective assessment of the situation by the competent authority himself, but not as a result of dictation or direction by extraneous authority. [C.E. Eraninos Vs State of Kerala; AIR 1970 SC 520]. In as much as the order is appealable, it should indicate reasons briefly.

Suspension when effective:

Suspension order becomes effective when it is issued and not from the date of receipt by the employee. Once an order is issued and it is sent out to the Government servant concerned, it must be held to have been communicated to him, no matter when he actually received it. It is difficult to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. [State of Punjab Vs Khemiram; AIR 1970 SC 214].

(.... to be Contd.)

Burden of proof of acceptance of resignation prior to its withdrawal lies on the department.

The question that arises in the present case was “whether the employee has withdrawn his resignation before its acceptance by the employer or not”.

The appellant tendered his resignation on 05.12.2013 stating that it may be considered as coming into effect on expiry of one month. The respondent (KRCL) states that the letter of resignation was accepted on 15.04.2014 w.e.f from 07.04.2014. KRCL further states that the appellant sought to withdraw his resignation dated 05.12.2013 only on 26.05.2014, which could not be accepted and therefore, they have rejected the request on 23.06.2014 and relieved the appellant w.e.f. 01.07.2014.

On the other hand, the appellant had submitted that the letter dated 15.04.2014 was never issued to him and it was only an internal communication of the respondent. He further submits that the said communication dated 15.04.2014 was not even marked to him and it has no reference to appellant's resignation letter dated 05.12.2013. Importantly, the appellant fortifies his case by stating that he continued in service and had in fact reported on 19.05.2014.

Questioning the letter dated 23.06.2014, formally rejecting his withdrawal, the appellant filed a Writ Petition before the High Court of Karnataka. The Single Judge allowed the Writ Petition and directed reinstatement of the appellant with all benefits. Questioning the correctness of the decision of the High Court the appellant filed the present appeal. At the outset, even assuming that the appellant withdrew resignation letter dated 05.12.2013 on 26.05.2014, it is just about five months in a long service of 24 years. Question is whether the resignation is either withdrawn or not withdrawn before its acceptance.

The respondent-employer strongly relies on the letter of acceptance of resignation dated 15.04.2014 and submits that it has come into effect from 07.04.2014. However, the letter dated 15.04.2014 is an internal communication since there is no clear evidence about the service of such letter on the appellant. There is no reason as to why the respondent-Corporation would write a letter on 10.05.2014 requesting the appellant to report to duty for considering his unauthorised absence from 28.04.2014 to 18.05.2014, when his resignation was accepted w.e.f 15.04.2014.

It is an admitted fact that the appellant has in fact reported to duty on 19.05.2014. As stated earlier, there is the letter dated 10.05.2014 of the respondent asking the appellant to report on duty for considering his unauthorised absence from

28.04.2014 to 18.05.2014 which gives an indication that there was no finality to the letter of resignation dated 05.12.2013. Hence, the resignation was withdrawn before its acceptance.

In view of the above, and in the facts and the circumstances of the case, the appeal is allowed and the judgment of the Division Bench of the High Court of Karnataka is set aside and the appellant shall be reinstated into service within thirty days from the date of the order.

[S.D. Manohara Vs. Konkan Railway Corporation Limited & ORS., SLP (C) No. 15788 of 2021 DOJ: September 13, 2024]

KNOW OUR CONSTITUTION

Article 91 - Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

(1) While the office of Chairman is vacant, or during any period when the vice President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the council, shall act as Chairman.

Article 92 - The Chairman or the Deputy chairman not to preside while a resolution for his removal from office is under consideration

(1) At any sitting of the Council of States, while any resolution for the removal of the Vice President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of Article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the chairman, or, as the case may be, the Deputy Chairman, is absent

(2) The Chairman shall have the right to speak in, and otherwise to take part in proceedings of, the Council of States while any resolution for the removal of the Vice President from his office is under consideration in the Council, but, notwithstanding anything in Article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

Difference between**Judicial and Non-Judicial Stamp Paper**

Judicial papers and stamps are associated with the administration of justice. Non-judicial stamp papers are utilized for commercial agreements, powers of attorney, and property transfers. The Indian Stamp Act of 1899 governs the payment of stamp duty on non-judicial stamp paper, whereas the Court Fees Act of 1870 governs the payment of stamp duty on judicial stamp paper.

The main difference between these two types of stamp papers is in their purpose, usage, and the transactions they are associated with. The differences between them are:

Judicial stamp paper is used for various legal documents and agreements. These stamp papers are used for documents that have legal significance, such as affidavits, agreements, contracts, powers of attorney, and court-related documents.

Whereas non-judicial stamp paper is used for a wide range of transactions that do not involve legal proceedings or court matters. These stamp papers are used for financial transactions, agreements, contracts, deeds, leases, conveyances, and various other non-legal documents.

Judicial Stamp Papers are used for legal documents and court-related matters whereas non-Judicial Stamp Papers are used for non-legal financial and commercial transactions.

Judicial Stamp Papers are related to legal agreements, affidavits, court documents, and similar matters whereas non-Judicial Stamp Papers are related to deeds, contracts, leases, agreements, and various non-legal transactions.

The stamp duty for judicial stamp papers is generally higher, as these papers are used for legal documents whereas the stamp duty for non-judicial stamp papers varies based on the type of transaction and the state's stamp duty rates.

Judicial Stamp Paper has legal validity and weight to the documents it is affixed to whereas Non-Judicial Stamp Paper denotes payment of stamp duty but does not have legal validity.

Thus, Judicial stamp paper is the type of stamp used in courts to pay court costs, etc. Non-judicial stamp papers are those that would be used to execute documents.

FAQ**What is Judicial Activism ?**

Judicial activism is a judicial philosophy that involves judges making rulings that go beyond the law to consider the broader societal implications of their decisions. It's often contrasted with judicial restraint, which is when judges focus on stare decisis and are reluctant to reinterpret the law.

Judicial activism refers to a proactive approach taken by judges to interpret the law broadly, enforce constitutional principles rigorously, and intervene in matters of public policy and governance. It involves judges playing an active role in shaping legal and societal norms beyond merely interpreting existing laws. Judicial activism often involves decisions that are progressive, expansive, and sometimes controversial. Activist judges may prioritize individual rights, social justice, and the public interest over deference to legislative or executive decisions.

It is an effective tool for upholding citizens' rights and implementing constitutional principles when the executive and legislature fails to do so. Citizens have the judiciary as the last hope for protecting their rights when all other doors are closed. The Indian judiciary has been considered as the guardian and protector of the Indian Constitution. There are provisions in the constitution itself for the judiciary to adopt a proactive role. Article 13 read with Articles 32 and 226 of the Constitution provides the power of judicial review to the higher judiciary to declare any executive, legislative or administrative action void if it is in contravention with the Constitution. According to experts, the shift from locus standi to public interest litigation made the judicial process more participatory and democratic.

Landmark cases associated with judicial activism include decisions expanding civil rights, protecting minority rights, and addressing social issues such as environmental protection, healthcare, and education. For instance, in India, judicial activism has been evident in cases like Vishaka v. State of Rajasthan (1997) regarding sexual harassment in the workplace and S. R. Bommai v. Union of India (1994) concerning issues of federalism and government stability.

Thus, the judiciary plays significant role in upholding and promoting the rights of citizens in a country. Judicial Activism upholds the rights of citizens and preserving the constitutional and legal system of the country.

Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine but not Courts.

The Kerala Public Service Commission (KPSC) invited applications for the posts of High School Assistant (Physical Science). One of the qualifying criteria in the said advertisement was that the Applicant should have taken Physics/Chemistry/Home Science as main Subject for graduation. The appellant, who holds a graduation degree in B.Sc (Polymer Chemistry) and a B.Ed (Physical Science), appeared in the written test and cleared the exam. The KPSC invited the appellant for the interview requiring her to produce the equivalency certificate evidencing that B.Sc (Polymer Chemistry) is equivalent to B.Sc (Chemistry). The appellant claims that the University of Calicut had issued a certificate verifying that B.Sc (Polymer Chemistry) offered by the said University is recognised as equivalent to its B.Sc (Chemistry) course for the purpose of employment and higher studies.

The KPSC released the final merit list. However, the appellant's name did not figure therein. Assailing the decision, the Applicant filed OA before the Tribunal and then in High Court. Having failed in both the for a below, the Appellant filed SLP before the Hon'ble Supreme Court. The Supreme Court observed that:

The qualifying criteria prescribed for the post advertised was a degree in B.Sc (Chemistry). Admittedly, the appellant does not hold such a degree. It is the case of the appellant that B.Sc(Polymer Chemistry) degree acquired by her is required to be treated as equivalent to a degree in B.Sc(Chemistry). However, the said argument does not hold water and is misconceived. The Supreme Court in the case of *Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad* [(2019) 2 SCC 404] held that judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Therefore, the equivalence of a qualification is not a matter that can be determined in the exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine.

Further in *In Unnikrishnan CV v. Union of India* [2023 SCC Online SC 343], a three Judge Bench of this Court, held that equivalence is a technical academic matter, it cannot be implied or assumed. Any decision of the academic body of the University relating to equivalence should be by specific order or resolution, duly published.

The fervent plea advanced on behalf of the appellant that the University of Calicut had issued a certificate verifying that B.Sc (Polymer Chemistry)

course of the said University is recognised as equivalent to its B.Sc (Chemistry) course is also not tenable in light of the observations made by the Supreme Court in the case of *Unnikrishnan CV* (supra). In view of the settled principles of law flowing from the above precedents, the Supreme Court held that the appellant herein was not qualified for the post advertised. **[Shifana P.S. Vs. State of Kerala and Others [Civil Appeal No(s). 4468 of 2013, decided on August 6, 2024]**

Services by Advocates do not fall under Consumer Protection Act : Supreme Court

The Hon'ble Apex Court in the matter of *Bar of Indian Lawyers Vs. National Institute of Communicable Diseases*, (2024) 8 SCC 430, (DOJ: 14-05-2024) overruled a 2007 judgement of the National Consumer Disputes Redressal Commission which held that the services rendered by Lawyers/ Advocates are covered under section 2 (o) of the Consumer Protection Act, 1986.

BRIEF FACTS

The Respondent had sought services of the Appellant for filing proceedings u/s 138 of the Negotiable Instruments Act. During the hearing of the said proceedings, certain differences arose between the Respondent and the Appellant, Advocate leading to the Respondent being discontent by the quality of services rendered by the Appellant. Subsequently, the Respondent approached the District Consumer Disputes Redressal Forum, New Delhi but the complaint was dismissed. The Respondent challenging the dismissal order appealed before the State Commission which upheld the decision of the District Consumer Disputes Redressal Forum, New Delhi. The State Commission order was also assailed by the Respondent in a Revision Application filed before the National Consumer Disputes Redressal Commission which allowed the Revision Application and held that services of Lawyers/ Advocates fell under the ambit of the Consumer Protection Act, 1986. The Appellant along with various Bar Associations in the country were aggrieved by the said order of the National Consumer Disputes Redressal Commission and challenged it before the Hon'ble Apex Court.

The Hon'ble Apex Court has placed reliance on the precedents including *R. Muthukrishnan vs. Registrar General, High Court of Judicature at Madras & State of U.P and Others vs. U.P. State Law Officers Association and Others* amongst other and reaffirmed that the legal profession is a noble profession and it cannot be equated with other traditional professions and/or commercial activities. The legislative intent of the Consumer Protection Act was never to bring professionals such as Lawyers/ Advocates within the ambit of the Consumer Protection Act, 1986.

YOURS LEGALLY***Non-disclosure of criminal case (in which the candidate is acquitted) in the verification form is fatal for the candidate's employment?***

Ravindra Kumar (the appellant), on 12.02.2004, applied for the post of Constable. Five days after submitting the application, i.e. on 17.02.2004, he was involved in a criminal case for offences punishable u/s 324, 352 and 504 IPC1860. He cleared the physical efficiency test, written exam and the interview. In the meantime, he was acquitted. The Appellant, after being selected, was required to submit an Affidavit disclosing criminal antecedents, if any. The Appellant submitted the affidavit, wherein, he inter alia, stated that no criminal case, cognizable or non-cognizable, has ever been registered against him. However, his selection was cancelled on the ground that he had concealed the offence and filed false affidavit.

Aggrieved, he filed a Writ Petition before the High Court. The Single Judge, vide judgement dt. 16.05.2005, dismissed the Writ Petition holding that the petitioner has suppressed material information with regard to his involvement in criminal case at the time of filling up the form and the subsequent acquittal of his involvement in the criminal case will not absolve him from the fact that he had suppressed material information. Writ Appeal filed by the appellant was also dismissed by the Division Bench. Aggrieved by this, the appellant filed appeal before the Apex Court. Reiterating the law on the issue settled by a three-Judge Bench of the Supreme Court in Avtar Singh ((2016) 8 SCC 471), the Apex Court summarised the law on the issue as follows:

1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.
2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.
3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.
4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

10. For determining suppression or false information attestation/verification form has to be specific, not vague.

In Pawan Kumar vs. Union of India and Another, (2022) SCC OnLine SC 532, after noticing Avtar Singh, the Supreme Court held that the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service.

Observing so, the Apex Court held that on the facts of the present case and in the backdrop of the special circumstances, non-disclosure cannot be deemed fatal for the appellant and directed the respondents to appoint the appellant on the post of Constable for which he was selected. [**Ravindra Kumar vs State Of U.P. on 22 February, 2024, Civil Appeal No. 5902 of 2012, 2024 INSC 131**]

TREATISE ON**Arbitration and Conciliation Act, 1996****Termination of arbitration Proceedings:**

A&C Act, 1996 provides for termination of arbitration proceedings u/S.32. Accordingly, the arbitral proceedings shall be terminated by the final arbitral award. In addition to that, arbitration proceedings may also be terminated by an order of the arbitral tribunal u/S.32(2) of the Act as follows:

The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where:

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute, (b) the parties agree on the termination of the proceedings, or (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

An order of arbitrators terminating arbitral proceedings u/S. 32(2)(c) is NOT an “award”. Therefore, a challenge to such order u/S. 14(1)(a) is maintainable....

In PCL Suncon v. NHAI, dated 12-1-2020, the case before the High Court of Delhi was that the arbitral proceedings were terminated because one arbitrator had resigned and the petitioner had not taken steps to nominate another arbitrator in his place. Consequently, the arbitral proceedings could not proceed and the remaining two arbitrators constituting the Arbitral Tribunal concluded that it was impossible to continue the proceedings and, accordingly, terminated the same.

The High Court analysed that the term “award” and noted that “... an award constitutes a final determination of a particular issue or a claim in arbitration”. In terms of S. 32(1) of the A&C Act, arbitral proceedings stand terminated by a final award or by such orders as are specified under S.32(2) of the Act. Relying on the Supreme Court decision in IFFCO Ltd. v. Bhadra Products, (2018) 2 SCC 534, the High Court noted that in order for a decision of the Arbitral Tribunal to qualify as an award, the same must finally decide a point at which the parties are at issue. The Court thus concluded: “It is clear that an order, which terminates the arbitral proceedings as the Arbitral Tribunal finds it impossible or unnecessary to continue the arbitral proceedings, would not be an award. This is so because it does not answer any issue in dispute in arbitration between the parties; but is an expression of the decision of the Arbitral Tribunal not to proceed with the proceedings. The Court also stated that an order terminating the proceedings on failure of the claimant to file its Statement of Claims within the stipulated time, is also in the nature of an order u/S. 32(2) of the A&C Act and not an arbitral award because such an order does not decide any of the points on which

the parties are in issue in the arbitration....

An order u/S. 32(2)(c) is also not subject to proceedings under S.34 of the Arbitration Act, which permits a challenge to an award on the grounds listed therein, as is otherwise the case with an arbitral award to the same effect. *Future Coupons Private Limited v com NV Investment Holdings* (2022) SCC Online Del 3890.

Future Group filed a petition before the Delhi High Court under article 227 of the Constitution of India, which grants supervisory jurisdiction to the high courts over all lower courts and tribunals in India. The jurisdiction of the High courts envisaged in article 227 is required to be exercised in exceptional circumstances (eg, the order passed suffers from a fundamental lack of inherent jurisdiction, one party is left remediless under the statute or clear bad faith is shown by one of the parties). In light of this position, the Delhi High Court dismissed the petition filed by Future Group as being impossible to maintain and clarified the manner in which orders u/S. 32(2)(c) of the Act can be challenged under Indian law.

The Delhi High Court highlighted a distinction between the two kinds of orders that may be passed u/S. 32(2) of the Arbitration Act, which are:

- when the arbitral tribunal allows an application u/S. 32(2) and terminates the arbitration proceedings; and
- when the arbitral tribunal rejects and dismisses an application u/S. 32(2), resulting in continuation of the arbitration proceedings.

In the first scenario, the High Court held that the party may be left remediless as there is no provision under the Arbitration Act that would permit the party to raise a challenge against such an order because it would neither be an award amenable to challenge u/S. 34 or an interim order amenable to challenge u/S. 37. In such situations, the Delhi High Court has opined that a petition under article 227 of the Constitution of India may be held to be maintainable against an order passed u/S. 32 of the Act.

In the second scenario the right to challenge the final award u/S. 34 of the Act would subsist and is merely deferred until the final award is passed. Accordingly, if the arbitration proceedings deserved to be terminated, the option for the party to urge the same grounds (if the occasion arose) in a challenge to an award u/S. 34 would always be available. In such situations, it has been held that a petition under article 227 of the Constitution of India would not be maintainable against an order passed u/S. 32 of the Arbitration Act. In light of this, the petition filed by Future Group seeking termination of its arbitration with Amazon was dismissed as being impossible to maintain.

(...to be Cond.)