



Lex Info

A Quarterly E-Magazine

(from Law Branch, South Central Railway)

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Vol -VIII

Issue - 2

Apr.- Jun. 2025

Page No.	Article
2	ABC of Acts —The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
3	D & A Rules - Series
4	Excess payment made to the employee without his fault is not recoverable: Supreme Court reiterated.
5	Diff. Between: Article 32 and 226 of the Indian Constitution FAQ : What are the Principles Relating to Compassionate Appointment?
6	When can a penalty order be modified by the same authority that issued it?
7	Yours Legally - Provisions of Limitation Act cannot be wholly excluded while calculating period under Section 34(3) of A&C Act, 1996 - It depends on case-by-case basis.
8	Treatise on Arbitration & Conciliation Act, 1996

Legal Maxim

Ex gratia : The term “ex gratia” comes from Latin, meaning “out of grace.” These payments are often provided to individuals or groups who have suffered a loss, inconvenience, or harm, even though the payer is not legally required to compensate them.

ABC OF ACTS

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

Contd....from last issue

4. An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction- (a) the cause of action, wholly or in part, arises; (b) where the secured asset is located; or (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

5 The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

6 If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

Section-18 of the Act provides for appeal to Appellate Tribunal. Any person aggrieved by an order of DRT can appeal to Appellate Tribunal within 30 days of receipt of order. The borrower has to deposit 50% of the amount claimed by secured creditors before filing an appeal. The Appellate Tribunal can reduce this to 25% of the amount claimed after recording the reason for such a concession.

Section 19 of Sarfaesi Act provides for Right of borrower to receive compensation and costs in certain cases. Under this section, if the DRT or Appellate Tribunal finds that the secured creditor's possession of secured assets was not in accordance with the SARFAESI Act and directs the return of such assets to the borrower or aggrieved person, the borrower or such person is entitled to compensation and costs as determined by the tribunal.

Section-20 of the Act provides for setting up of Central Registry. The Central Government, Ministry of Finance are notified to set up the Central Registry to prevent fraud in loan cases involving lending from banks on the same immovable property, etc. This Registry has become operational w.e.f. 31.3.2011 and its registration office is at New Delhi for the purpose of operating under the provisions of the SARFAESI Act 2002.

Section-21 of the Act provides for Central Registrar. The Central Government appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.

According to the Section-22 of the Act, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to securitisation of financial assets; reconstruction of financial assets; and creation of security interest.

Section 22 of Sarfaesi Act provides for Register of securitisation, reconstruction and security interest transactions. Under this Act, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to (a) securitisation of financial assets; (b) reconstruction of financial assets; and (c) creation of security interest. The register shall be kept under the control and management of the Central Registrar.

(to be contd...)

THE RAILWAY SERVANTS DISCIPLINE & APPEAL RULES 1968

Contd... from previous issue.

Non Payment of subsistence allowance:

Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposal in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings. [*Indra Bhanu Gaur Vs. Committee, Management of MM Degree College & Ors*; 2004 SCC (L&S) 176]

Average emoluments for pension:

When compulsory retirement is effected during suspension, subsistence allowance shall be taken as emoluments [1998 (8) SCC 110; *R.P.Kapoor Vs UOI*]

Headquarters during suspension:

Normally the headquarters of the employee under suspension is his last place of working. Therefore, he cannot leave Headquarters without permission. Absence during suspension without permission constitutes misconduct and the employee is liable for disciplinary action on this ground [2004 SCC (L&S) 53; *State of Punjab Vs Charanjit Singh*]. As the purpose of suspension is to keep the employee away from office, the employee is neither required nor allowed to attend office to mark attendance. [*Zonal Manager, FCI Vs Khaleel Ahmed, 1982 (AP) Lab IC*].

Promotion:

An employee under suspension or against whom departmental proceedings are pending cannot claim promotion as of right because the same would depend upon the result of the pending departmental inquiry [2004 (2) SLR 406 (*Kant*)].

Continuation of suspension in some other proceedings:

When the following two conditions are fulfilled, an employee shall be placed under continued suspension. a) the employee must be under suspension when the order is made b) during continuance of such suspension any other disciplinary proceed-

ings is commenced against him. [*AIR 1974 SC 1281; H.L. Mehra Vs UOI*]

Review of suspension order:

Review of the suspension order may be taken up at suitable intervals so that the cases of suspension do not get prolonged unduly [*O.P. Gupta Vs. UOI; AIR 1987 SC 2257*]. Order of suspension in contemplation of inquiry cannot be allowed to continue for years without even finalization or issuance of charge sheet [*P.L Shaw Vs UOI; (1989) 1 SCC 546*]. However, the plea that continuance of suspension for a very long period renders it invalid is not tenable.

The period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued, merely because it is for a long period that does not invalidate the suspension [*UOI Vs. Rajiv Kumar; 2004 SCC L&S 928*].

Suspension – Review within 90 days is mandatory after amendment to rules w.e.f. 24.6.2004 :

The respondent working as a Civilian Motor Driver was suspended pending inquiry on 10th August, 2002. However, since no action has been made to review his suspension, he filed OA in July 2004 for a declaration that the suspension order became invalid on the expiry of 90 days. He contended that rules of suspension have been amended w.e.f. 24.6.2004 vide Sub-rules (6) and (7) of Rule 10 of CCS (CCA) rules (Rule 5 of D&A Rules, 1968) and accordingly suspension has to be reviewed within 90 days. He claimed that the suspension order must be deemed to have lapsed since Review Committee was not constituted as per amended rules came into force to extend the suspension.

Art. 311:

Art. 311 was attracted only when a Government servant is 'dismissed' or 'removed' from service and that the provisions of that clause had no application whatsoever to a situation where a Government servant had been merely placed under suspension, since suspension does not constitute either dismissal or removal from service. [*State of Orissa vs. Shiva Prashad Dass & Ram Parshed, 1985 (2) SLR SC 1*]

(Contd.....)

Excess payment made to the employee without his fault is not recoverable: Supreme Court

The Hon'ble Supreme Court reiterated in the case of *Jogeswar Sahoo & Ors. v. The District Judge, Cuttack & Ors.* that excess payment made to the employee without his fault is not recoverable.

The appellants while working as Stenographer Grade-I and Personal Assistant in the office of District Judiciary, Cuttack, Orissa, were granted financial benefit for a sum of Rs 26,034, Rs.40713, Rs. 26539, Rs. 24683 and Rs. 21,485 by way of credit to their account vide an Office Order passed by the District Judge, Cuttack. Said amounts were towards granting promotion/appointment retrospectively w.e.f April 1, 2003 consequent upon the upgrading of the Stenographers in three grades.

In the year 2017, the appellants superannuated from their respective posts sometime in the year 2020. After three years of their retirement and six years of granting the financial benefit, the first Respondent ordered the recovery of the said amount on the ground that the extension of the benefit of Shetty Commission's recommendations to the appellants was on an erroneous interpretation of such recommendations.

Therefore, in 2023 the appellants were directed to deposit the excess drawn arrears. Since the orders were passed without affording any opportunity of hearing to the appellants, they preferred a writ petition before the High Court, which was dismissed. Against which the present appeal was filed before the Supreme Court.

The Apex Court noticed that the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It was not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. When the financial benefit was extended to the appellants by the District Judge, Cuttack, the same was subsequently not approved by the High Court, which resulted in the subsequent order of recovery.

The Hon'ble Supreme Court held that the law in this regard has been settled by this Court in catena of judgments rendered time and again; *Sahib Ram vs. State of Haryana*, *Shyam Babu Verma vs. Union of India*, *Union of India vs. M. Bhaskar and V. Gangaram vs. Regional Jt. Director* and in *Thomas Daniel vs. State of Kerala & Ors.* (2022) SCC online SC 536.

It is further held that the Apex court has consistently taken the view that if the excess amount

was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. Such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. The payment was made in the year 2017 whereas the recovery was directed in the year 2023, and the appellants had already retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of recovery. The appellants having superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by this Court in the above quoted judgment, the recovery is found unsustainable.

Thus, the Apex Court set aside the recovery orders against the appellants [*Jogeswar Sahoo & Ors. v. The District Judge, Cuttack & Ors.* (Neutral Citation: 2025 INSC 449). DOJ: 04.04.2025]

KNOW OUR CONSTITUTION

(Continued from previous issue...)

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House: Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution: Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

(to be contd..)

Difference between**Article 32 and Article 226 of the Indian Constitution**

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all its citizens. Articles 32 and 226 of the Indian Constitution are crucial for enforcing fundamental rights, with Article 32 empowers the Supreme Court to issue writs for enforcement of these rights across India, while Article 226 empowers High Courts within their territorial jurisdiction. In this context, the following are some of the key differences between Article 32 and 226:

Jurisdiction:

Article 32: Can be invoked only by the Supreme Court.

Article 226: Can be invoked by the High Courts.

Scope:

Article 32: It is for the enforcement of fundamental rights.

Article 226: It can be invoked for both the enforcement of fundamental rights as well as other legal rights.

Mandatory or discretionary:

Article 32: The Supreme Court shall act for every violation of fundamental rights.

Article 226: The High Courts have powers where they may exercise discretion either to grant relief or dismiss an application.

Kind of Remedy:

Article 32: Itself is a fundamental right.

Article 226: Not a fundamental right but a constitutional authority bestowed on the High Courts.

Writ Jurisdiction:

Article 32: The Supreme Court may issue writs including habeas corpus, mandamus, prohibition, quo warranto and certiorari.

Article 226: The High Courts have the same kinds of writs but for a much broader purpose, which includes the enforcement of legal rights.

Geographical Jurisdiction:

Article 32: The jurisdiction of the Supreme Court is throughout India.

Article 226: The jurisdiction of a High Court is limited to the state for which it has an abode.

Purpose:

Article 32: Primarily a safeguarding of fundamental rights.

Article 226: A more general provision, enables the High Courts to remedy not only cases of breach of Fundamental Rights but generally all grievances.

Direct Access:

Article 32: Persons may come directly before the Supreme Court.

Article 226: Persons must approach the concerned High Court of the State in which they reside.

Binding Nature:

Article 32: The Supreme Court can grant relief which may bind the parties once invoked.

Article 226: The High Courts can grant relief but not in all cases - they can decline.

FAQ**What are the Principles Relating to Compassionate Appointment?**

Recently, the Supreme Court, while determining a case related to compassionate appointment (Canara Bank vs. Ajithkumar G.K. on 11 February 2025), highlighted the following 26 principles based on the Apex Court's decisions regarding the contours of appointments on compassionate grounds. They are:

1. Compassionate appointments are an exception to equality in public employment rules.
2. Such appointments cannot be made without proper rules or instructions in place.
3. These appointments are typically offered in two situations: death of a breadwinner or their medical invalidation during service.
4. The appointments should be made immediately to help families in a sudden financial crisis.
5. Rules for compassionate appointments must be interpreted strictly as they allow side-door entry.
6. It's a concession, not a right, and all applicants must meet the set criteria.
7. No one can claim such appointments as inheritance.
8. Appointment based on descent goes against constitutional principles and must be strictly limited to its intended purpose.
9. These appointments aren't a vested right and require consideration of the family's financial condition.
10. Applications must be made immediately or within a reasonable time after death/incapacitation.
11. The purpose isn't to give the exact same post to a family member but to provide financial support.
12. Financial need (indigence) is the primary requirement for consideration.
13. Compassionate appointments aren't meant to provide endless support.
14. Meeting eligibility criteria is necessary, beyond just proving financial distress.
15. Vacancies cannot be reserved for minors to grow up, unless specifically provided for.
16. Family pension or terminal benefits don't replace employment assistance.
17. Appointments made years after death/incapacitation violate constitutional principles.
18. Dependents who are already employed cannot be considered.
19. Retirement benefits must be considered when determining the family's financial status.
20. The family's complete financial condition must be evaluated to prevent misuse.
21. All sources of family income should be considered when evaluating need.
22. Family Benefit Scheme payments don't disqualify someone from compassionate appointments.
23. Setting income limits helps ensure objectivity in decision-making.
24. Courts cannot grant appointments based merely on sympathy.
25. Courts must follow regulations and cannot make exceptions for hardship cases.
26. Employers cannot be forced to make appointments against their policy.

When can a penalty order be modified by the same authority that issued it?

The principle of finality in administrative decision-making is a cornerstone of legal jurisprudence, ensuring certainty and stability in governance. However, in exceptional circumstances, an administrative authority may be required to revisit its own orders to rectify procedural errors, jurisdictional defects, or substantive inconsistencies. The Railway Board, vide its Circular No. 155/2007, has provided authoritative guidance on this aspect, particularly concerning the review and modification of disciplinary orders within the framework of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'RS (D&A) Rules, 1968'). This article seeks to examine the legal principles governing the modification of orders by the same authority that originally issued them, with reference to the jurisprudence developed by the Central Administrative Tribunal (CAT) and other judicial forums.

As a general rule, an administrative authority becomes functus officio upon issuing an order, implying that it cannot review or modify its own decision unless explicitly permitted by statute or rules. However, the Railway Board Circular No. 155/2007 acknowledges specific exceptions to this principle, permitting modification of an order under circumstances where the original order suffers from legal or procedural infirmities.

The CAT, Jabalpur Bench, in a significant ruling, invalidated a modification order issued by the same disciplinary authority on the following legal grounds:

1. Violation of Principles of Natural Justice – The modified penalty was imposed on grounds not originally framed in the charge memo, thereby denying the delinquent employee a fair opportunity to defend himself.

2. Lack of Competence to Review – The disciplinary authority was found to have acted beyond its jurisdiction in reviewing its own order, as no provision in the RS (D&A) Rules, 1968, conferred such a power.

Sub-Judice Principle – The fresh order was passed while the matter was pending adjudication before the Tribunal, rendering it void ab initio in light of the principle that a pending judicial matter should not be interfered with by administrative authorities.

CIRCUMSTANCES WHERE MODIFICATION IS PERMISSIBLE:

The Railway Board, in its directive, has enumerated the following circumstances under which the same authority may review and modify an order:

1. NON-CONFORMITY WITH RS (D&A) RULES, 1968:

- Where the original order is found to be non-compliant with Rule 6 of the RS (D&A) Rules, 1968, it may be rectified to bring it in conformity with the statutory framework.
- For instance, if a penalty of withholding increments is imposed upon an employee who has reached the maximum pay scale, rendering such a penalty ineffective, the order may be modified to impose an alternative legally permissible penalty. Likewise, if a penalty of withholding promotion or reduction in rank is imposed permanently, whereas the rules mandate a fixed period for such penalties, the same may be corrected to align with the prescribed legal requirements.

2. LACK OF COMPETENCE OF THE ORIGINAL AUTHORITY:

In cases where the authority issuing the order was not competent to do so under the delegation of disciplinary powers, the order must be withdrawn, and the matter should be referred to the appropriate authority for reconsideration and fresh adjudication.

3. RECTIFICATION OF PATENT ERRORS:

If an order contains manifest errors, such as typographical mistakes, incorrect reference numbers, or clerical inaccuracies that do not alter the substantive decision, the issuing authority may correct such mistakes through an administrative corrigendum.

LIMITATIONS ON MODIFICATION DURING JUDICIAL PROCEEDINGS:

A cardinal principle reiterated in the Railway Board Circular is that once an order is under challenge before a court or tribunal, the issuing authority should refrain from reviewing or modifying the same without obtaining judicial consent. **Any alteration to an order while it is sub judice may be held void by courts on the grounds of judicial propriety and jurisdictional overreach.**

CONCLUSION:

The Railway Board's clarification delineates the limited circumstances under which an administrative authority may modify its own order while upholding the principles of legality, fairness, and natural justice. The power to modify an order should be exercised with due diligence, ensuring that such modifications are not arbitrary but are made strictly within the confines of statutory provisions and judicially established principles. It is incumbent upon disciplinary authorities to act within their jurisdiction, rectify orders only when legally permissible, and avoid actions that could invite judicial scrutiny or adverse legal consequences. This structured approach is crucial to maintaining the integrity of disciplinary proceedings and ensuring that administrative actions withstand legal scrutiny.

YOURS LEGALLY**Provisions of Limitation Act cannot be wholly excluded while calculating period under Section 34(3) of A&C Act, 1996 - It depends on case-by-case basis**

The appellants entered into a lease agreement with the respondents. In view of the disputes arose between them, the respondent invoked arbitration clause and participated in the proceedings. The arbitral tribunal passed an award in favour of the respondent on February 4, 2022. Signed copy of the award was received by the appellants on February 14, 2022.

S. 34(3) of the Act, 1996 which provides a period of 3-months for challenging the award. Accordingly, the limitation period expired on May 29, 2022. However, the appellants could not file the application within this period. The additional 30-day condonable period u/s. 34(3) expired on June 28, 2022. However, during which the High Court was in summer vacation from June 4 to July 3, 2022. The appellants filed the application on July 4, 2022, the first working day after the vacation.

Both the single judge and the division bench of the High Court dismissed the application as time-barred. The appellants appealed to the Supreme Court, arguing that they were entitled to file the application on the court's reopening under Section 4 of the Limitation Act and Section 10 of the General Clauses Act.

The issues before the Supreme Court were i) Whether Limitation Act applies to proceedings under Section 34 of the ACA? ii) Whether S 4 of the Limitation Act extends the condonable period u/s. 34(3) if it expires during court holidays? and iii) Whether S.10 of the General Clauses Act applies to extend the condonable period for filing applications under the Act of 1996?

It was contended by the appellant before the Apex Court that Section 10 of the General Clauses Act allows filing on the first working day after a court holiday, even for the 30-day condonable period. Further, the term "prescribed period" in Section 4 of Limitation Act should include the condonable period, enabling filing on the court's reopening.

Respondent argued that The respondent emphasized that the 30-day condonable period is a statutory limit u/s. 34(3), beyond which no extension is permissible. S.4 of Limitation Act applies only to the 3-month prescribed limitation period, not to the condonable period also the proviso to Section 10 of the General Clauses Act excludes its application to the instant case.

S. 43(1) of the Arbitration Act, 1996 incorporates the Limitation Act into arbitration proceedings

unless expressly excluded. Section 29(2) of the Limitation Act ensures that Sections 4–24 apply to special laws like the Arbitration Act, 1996 unless expressly excluded. *Judgement of Supreme Court in Union of India v. Popular Construction* (2001) 8 SCC 470) and *Assam Urban Water Supply & Sewerage Board v. Subhash Projects & Marketing Limited*, (2012) 2 SCC 624), confirm that the Limitation Act applies to arbitration proceedings under the Arbitration Act, 1996 but with express restrictions.

S. 4 of the Limitation Act permits filing an application on the next working day if the "prescribed period" expires on a court holiday. The Supreme Court clarified that the "prescribed period" in S. 34 (3) is the initial 3-month period, not the additional 30-day condonable period. In *Assam Urban Water Supply* (2012), the Supreme Court held that S. 4 applies only to the 3-month limitation period, not to the condonable period. This position was reaffirmed in *Bhimashankar*, (2023) 8 SCC 453.

S. 10 of the General Clauses Act allows an act or proceeding to be done on the next working day if the last day of the prescribed period falls on a holiday. The proviso to S. 10 explicitly excludes its application to proceedings governed by the Limitation Act. Since the Arbitration Act, 1996 proceedings are governed by the Limitation Act, S. 10 of the General Clauses Act does not apply.

S. 34(3) provides a specific limitation framework to ensure the finality and expediency of arbitral awards. Any further extension would conflict with the objectives of the Arbitration Act, 1996. The Court highlighted the importance of adhering to statutory timelines to uphold public policy and preserve the enforceability of arbitral awards. Therefore, the application preferred by the appellant was dismissed as it was filed beyond the condonable period of 30 days, which conclusively and absolutely expired on 28.06.2022. [*My Preferred Transformation & Hospitality Pvt Ltd versus Faridabad Implements Pvt Ltd*, CA No.336/2025, DOJ: 10.01.2025]

In another case, the Supreme Court held that the Respondents received the signed copy of the Award on 09.04.2022. So according to S. 12(1), the date is excluded and the 3-month limitation period must be reckoned from 10.04.2022 and expires on 09.07.2022 which is a Second Saturday which is a holiday. Thus, the Court held that the Respondent's Application which was filed on 11.07.2022 was filed within limitation period and no delay Application showing sufficient cause for condonation of delay be filed. Thus the Court upheld the decision of High Court. [*M/S R.K.Transport Company vs M/S Bharat Aluminium Company Ltd. (BALCO) Civil Appeal No. 4763 of 2025 arising out of SLP (C) No. 26489 of 2024*, DOJ: 03.04.2025]

TREATISE ON

Arbitration and Conciliation Act, 1996

Continued from pre issue...

Section 32. Termination of proceedings: In *Dani Wooltex Corporation and Others Vs. Shel Properties Pvt. Ltd. And Another*, Civil Appeal No.6462 of 2024 (Arising out of Special Leave Petition (C) No.19301 of 2023), Decided on : 16-05-2024], the Supreme Court observed that the power to terminate arbitral proceedings on default of claimant to file a statement of claim is the only provision available under the Arbitration Act to terminate the arbitral proceedings, apart from S 32 of the Arbitration Act. The A & C Act, 1996 has two provisions for terminating an Arbitrator's mandate. The Arbitrator is empowered to withdraw from his office, which terminates his mandate. However, the arbitral proceedings continue by the arbitrator's substitution.

On a conjoint reading of S 14 and 15, it is apparent that an Arbitrator always has the option to withdraw for any reason. Therefore, the Arbitrator can withdraw because of the parties' non-cooperation in the proceedings. But in such a case, his mandate will be terminated, not the arbitral proceedings. When a claimant files a claim and does not attend the proceedings, clause (a) of S 25 comes into operation, resulting in the Arbitrator terminating the proceedings. If, after filing a claim, the claimant fails to appear at an oral hearing or fails to produce documentary evidence, it cannot be said that the continuation of proceedings has become unnecessary. Therefore, if the party fails to appear for a hearing after filing a claim, the Arbitrator cannot say that continuing the arbitral proceedings has become unnecessary.

Further, abandonment by the claimant of his claim may be a ground for treating that the arbitral proceedings have become unnecessary. However, the abandonment must be established. Mere absence from proceedings or failure to participate does not, per se, amount to abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up his claim, can an inference of abandonment be drawn. Merely because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, it cannot be said that the claimant has abandoned his claim, as the Arbitral Tribunal has a duty to fix a date for a hearing.

Section 32 (3): Subject to s 33 and sub-section (4) of s 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings. Settled law is that once arbitrator has passed an award, he becomes *functus officio* except in the contingencies mentioned in S.33. Thus, after the award is passed, not only the mandate of arbitrator, but also the mandate of the arbitral tribunal terminates.

Section 33 of the Act deals with Correction and interpretation of award and also additional award. This section contains 7 sub sections. The Act provides for correction of any computation errors, clerical or typographical errors or any other errors of a similar nature occurring in the award.

In *Gyan Prakash Arya vs M/S Titan Industries Ltd.* on 22 November, 2021, the Supreme Court held that once an arbitration award is passed, allowing the application u/s 33 of the 1996 Act to modify the original award in exercise of powers u/s 33 of the 1996 Act is not sustainable. Only in a case of arithmetical and/or clerical error, the award can be modified and such errors can be corrected. In the present case, it cannot be said that there was any arithmetical and/or clerical error in the original award passed by the learned arbitrator. What was claimed by the original claimant in the statement of claim was awarded. Therefore, the order passed by the learned arbitrator on an application filed u/s 33 of the Act and thereafter modifying the original award cannot be sustained. The order passed by the learned arbitrator in the application u/s. 33 of the Act is beyond the scope and ambit of S 33 of the Act.

Sub section (1) provides for a time line of 30 days for making any application for such correction and interpretation of award and also additional award. It states that within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties (a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award; (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award. The arbitral tribunal shall also have suo motu powers (on its own initiative) to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award within thirty days from the date of the arbitral award. A party with notice to the other party, may request within thirty days from the receipt of the arbitral award to the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award. If the arbitral tribunal considers the said request to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award.

(To be contd.....)