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ARTIFICIAL INTELLIGENCE AND ITS IMPACT ON THE INDIAN JUDICIARY

Artificial intelligence (AI) is rapidly transforming various sectors in India, including the judiciary. The Department of Justice is implementing the e-courts Mission Mode Project in the close collaboration with the e-committee of the Supreme Court of India with the objective of universal computerization and ICT enablement of all District & Subordinate Court complexes. The Supreme Court of India has set up the Artificial Intelligence Committee to investigate the use of AI in the judicial sector. This committee has primarily identified applications of AI technology in the translation of judicial documents, legal research assistance, and process automation. However, AI technology has not been used in the second phase of the e-courts, which is in development stage since 2015. The use of AI in the judiciary has the potential to improve efficiency, accuracy, and access to justice. However, it also raises some very important ethical and legal questions that need to be addressed. As per the draft Detailed Project Report (DPR), Artificial intelligence (AI) may be used for forecasting and prediction, increasing administrative effectiveness, automated filing, intelligent scheduling of cases, improving the case information system, and communicating with litigants through chatbots that may help with early case resolution.

One of the key roles of the judiciary in India with respect to AI is to ensure that the use of AI in the justice system is ethical and does not violate human rights or constitutional principles. The judiciary has an important role in establishing guidelines and regulations for the use of AI in the justice system, and in ensuring that these guidelines are followed.

The judiciary can also play a role in ensuring that the use of AI in the justice system does not result in discrimination or bias. AI systems are only as objective as the data and algorithms used to develop them, and there is a risk that these systems may perpetuate existing biases or discrimination. The judiciary can help ensure that AI systems are developed in a way that is fair and unbiased.

In addition, the judiciary can also play a role in educating the public and legal professionals about the use of AI in the justice system. There is a need for greater awareness and understanding of the capabilities and limitations of AI, and the potential implications of its use in the justice system.

Currently, there are no specific laws in India with regard to regulating AI. Ministry of Electronics and Information Technology (MEITY), the executive agency for AI-related strategies, recently has constituted four committees to bring in a policy framework for AI.

The Niti Aayog on February 11, 2021 has released the National Strategy for Artificial Intelligence (NSAI). It has developed a set of seven responsible AI principles, which include

1. Inclusive growth, sustainable development and wellbeing
2. Human-centered values and fairness
3. Transparency, explain ability, and accountability
4. Robustness, safety, and security
5. Privacy and data protection:
6. Ethical and responsible deployment
7. Promotion of innovation and competition

These principles are intended to guide the development and deployment of AI technologies in India, and to ensure that they are developed and used in a manner that benefits society as a whole and furthermore, to protect the public interest while also encouraging innovation through increased trust and adoption.

Recently, the Hon'ble Punjab Haryana High Court became the first court in India to have used Chat GPT technology (artificial intelligence) to decide the bail plea of an accused.

Overall, the role of the judiciary in India with respect to AI is multi-faceted, and involves framing guidelines and regulations, ensuring fairness and impartiality, and educating the public and legal professionals. It is important that the judiciary takes an active role in shaping the use of AI in the justice system to ensure that it is used ethically, fairly, and in a manner that upholds constitutional principles and human rights.

Ajay Kumar Sharda
Director (Administration)

LATEST CASES: CIVIL

"The constitutional provision to provide public employment on the basis of tenure at pleasure of the President or the Governor is based on "public policy", "public interest" and "public good". The principle of a public servant holding office at the pleasure of the President or the Governor is incorporated in Article 310 of the Constitution itself. This has direct bearing on the powers of Parliament or the legislature to make laws or the executive to make rules for specifying conditions of service provided under Article 309. When the Constitution provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should necessarily be read as subject to the "fundamentals of constitutionalism."

— P.S. Narasimha, J. in State of H.P. v. Raj Kumar, (2023) 3 SCC 773, paras 22 to 25

Shivshankara & Anr. Vs. H.P. Vedavyasa Char: 2023 SCC OnLine SC 358 - Code of Civil Procedure 1908 - Order XLI Rule 23 –HELD- "There can be no doubt with respect to the settled position that the Court to which the case is remanded has to comply with the order of remand and acting contrary to the order of remand is contrary to law. In other words, an order of remand has to be followed in its true spirit."

Code of Civil Procedure 1908 - Order VI Rule 17 –Amendment of Pleadings- HELD-"We are not oblivious of the settled position that in dealing with prayers for amendment of the pleadings the Courts should avoid hyper technical approach. But at the same time, we should keep reminded of the position that the same cannot be granted on the mere request through an application for amendment of the written statement, especially at the appellate stage, where, what is called in question is the judgment and decree passed by the trial Court and, in other words, after the adverse decree and without a genuine, sustainable reason. In short, the circumstances attending to the particular case are to be taken into account to consider whether such a prayer is allowable or not and no doubt, it is allowable only in rarest of rare circumstances."

Transfer of Property Act 1882 - Section 52- Transfer pendente lite - It is a well-nigh settled position that wherever TP Act is not applicable, such principle in the said provision of the said Act, which is based on justice, equity and good conscience is applicable in a given similar circumstance, like Court sale etc-Transfer of possession pendente lite will also be transfer of property within the meaning of Section 52 and, therefore, the import of Section 52 of the TP Act is that if there is any transfer of right in immovable property during the pendency of a suit such transfer will be non est in the eye of law if it will adversely affect the interest of the other party to the suit in the property concerned. We may hasten to add that the effect of Section 52 is that the right of the successful party in the litigation in regard to that property would not be affected by the alienation, but it does not mean that as against the transferor the transaction is invalid.

Code of Civil Procedure 1908 - Order XXII Rule 2 CPC - Suit can't be held to be abated in the event of death of one of the defendants, when the estate/interest was being fully and substantially represented in the suit jointly by the other defendants along with deceased defendant and when

they are also his legal representatives -In such cases, by reason of non-impleadment of all other legal heirs consequential to the death of the said defendant, the defendants could not be heard to contend that the suit should stand abated on account of non-substitution of all the other legal representatives of the deceased defendant

State of Gujarat & Ors. v Jayantibhai Ishwarbhai Patel: 2023 SCC OnLine SC 295 - Land Acquisition - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013-whether there shall be deemed lapse of acquisition under Section 24(2) of Act,2013? - HELD –Referring to the judgment of I*ndore Development Authority v Manoharlal and Ors., (2020) 8 SCC 129*, it was held "Once the land owner refuses to accept the amount of compensation offered by the Acquiring Body, thereafter it will not be open for the original land owner to pray for lapse of acquisition on the ground that the compensation has not been paid."

Prem Kishore & Ors. v. Brahm Prakash & Ors. : 2023 SCC OnLine SC 356 - Section 11 and order VII Rule 11(d)-Code of Civil Procedure 1908-The Principle of Res Judicata and rejection of Plaint under Order VII Rule 11(d) summarized-– Held - On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) of the CPC can be summarized as follows:- (i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to; (ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application; (iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and (iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.
(See: *Srihari Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99*)
The general principle of res judicata under Section 11 of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision,

not being on the merits, would not be res judicata in a subsequent suit.

Order XVII Rule 2 and Order XVII Rule 3- Code of Civil Procedure, 1908 – HELD- Explaining the difference the two provisions and further dwelling on the import of the term evidence necessary to decide the dispute and after referring to the impugned order of the learned civil court, the Hon'ble Apex Court Held- "The moot question is whether the eviction petition was dismissed for default which dismissal would certainly bar a fresh suit if instituted on the same cause of action. The words, which we have quoted above, certainly do not mean dismissal either on merits or on default. It was argued before us that the order should only be taken to mean what an order under Order 17 can possibly be and nothing else. We are not impressed by such submission. The order did not purport to be one of dismissal for default or on merits and it cannot be taken to mean other than what it purported to be. It is in ordinary phraseology; not legal phraseology and it cannot be divested of its ordinary meaning. Its ordinary meaning is that the proceeding was closed and the suit would not count as a pending one. The later description would be redundant if the order was one of final disposal of the suit. The order did not purport to be a final disposal of the suit. It merely stopped the proceedings. It did nothing more. This is not final decision of the suit within the meaning of Order 9 Rule 8 and Order 17 Rule 3 reply of the CPC."

Bhimashankar Sahakari Sakkare Karkhane Niyamita *vs.*Walchandnagar Industries Ltd. (WIL): 2023 SCC OnLine SC 382 - **Arbitration and Conciliation Act 1996 - Section 34- whether the benefit of secion 4 of the Limitation Act,1963 is available to party when the "prescribed period" of 3 months for filling of petition under Section 34(3) of the Arbitration Act has already expired and the discretionary period of 30 days under the proviso to Section 34(3) falls on a day when the court is closed ?- HELD-** An application under Section 34 must be filed within "prescribed period" of limitation i.e. 90 days, for seeking benefit of exclusion of period during which the Court remained closed from computation of limitation period. If the application is filed by invoking proviso to Section 34(3) of Arbitration Act, which extends the limitation period to further 30 days on the Court's discretion, then benefit of such exclusion would not be available to the applicant. Followed the judgment in *Assam Urban Water Supply and Sewerage Board v Subash Projects and Marketing Limited, (2012) 2 SCC 624.*

Whether the benefit of Section 10 of the General Clauses Act, 1897 is separately available to a party in such circumstance?-HELD- "Section 10 of the General Clauses Act, 1897 specifically excludes the applicability of Section 10 to any act or proceeding to which Indian Limitation Act, 1963 applies and in light of the definition of "period of limitation" as defined under Section 2(j) read with Section 4 of the Limitation Act and as observed and held by this Court in the case of *Assam Urban (Supra)*, benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within "prescribed period of limitation" and shall not be available in respect of period extendable by Court in exercise of its discretion."

Karuna Sharma
Faculty Member

LATEST CASES: CRIMINAL

"The courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the Judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognised as an intrinsic component of the right to life under Article 21 of the Constitution) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto."

— J.B. Pardiwala, J. in Sidram v. United India Insurance Co. Ltd., (2023) 3 SCC 439, para 113

Central Bureau of Investigation Vs. Santosh Karnani & Anr.:2023 SCC OnLine SC 427 -Grant of anticipatory bail?-HELD-Hearing a Criminal Appeal against the order allowing the anticipatory bail application in connection with FIR registered for the offence under Section 7 of the Prevention of Corruption Act, 1988, the Hon'ble Supreme Court, relying on the law on grant of anticipatory bail summed up in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694***, after due deliberation on the parameters evolved by the Constitution Bench in ***Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565*** and further in ***Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1,*** has held that the time tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion.

The Hon'ble Court has further held that arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.

State of Rajasthan Vs. Asharam @ Ashumal: 2023 SCC OnLine SC 423-Additional evidence under Sections 311 and 391 of the Cr.P.C?-HELD-Hearing a Criminal Appeal against the judgment allowing the application under Section 391 of the Code of Criminal Procedure, 1973, and directing summoning and recording of evidence, the Hon'ble Supreme Court, relying upon ***Rajeswar Prasad Misra v. State of West Bengal and Another, (1966) 1 SCR 178, Zahira Habibulla H. Sheikh and Another v. State of Gujarat and Others, (2004) 4 SCC 158, State (NCT of Delhi) v. Shiv Kumar Yadav and Another, (2016) 2 SCC 402, Girish Kumar Suneja v. Central Bureau of Investigation, (2017) 14 SCC 809, P. Ponnusamy v. State of Tamil Nadu, 2022 SCC Online SC 1543*** and ***State of West Bengal v. Amiya Kumar Biswas, (2004) 13 SCC 671*** has held that every criminal case is a voyage of discovery in which the truth is the quest. The process of

ascertaining the truth requires compliance of procedures and rules of evidence.

The Hon'ble Court has further held that in a well-designed system, judicial findings of formal legal truth should coincide with substantive truth. This happens when the facts contested are skillfully explored in accordance with the procedure prescribed by law. Further, in a criminal trial, burden of proof to establish the fact, which has to be proven beyond reasonable doubt, is on the prosecution. The power to take additional evidence in an appeal is to be exercised to prevent injustice and failure of justice, and thus, must be exercised for good and valid reasons necessitating the acceptance of the prayer.

Soundarajan Vs. State represented by the Inspector of Police, Vigilance Anti-Corruption, Dindigul- 2023 SCC OnLine SC 424-Framing a Proper Charge?-HELD- Hearing a Criminal Appeal against the judgment confirming conviction for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, the Hon'ble Supreme Court has held that the Trial Courts ought to be very meticulous when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under subsection (2) of Section 464 of CrPC. Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge.

Qamar Ghani Usmani vs. State of Gujarat: 2023 SCC OnLine SC 380-Application under Section 167(2)-HELD- Hearing a Criminal Appeal against the judgment dismissing appeals and refusing to release the accused on statutory bail (default bail) under Section 167(2) of the Cr.PC, the Hon'ble Supreme Court has held that sum and substance of law laid down in the cases of ***Sanjay Dutt Vs. State through CBI, Bombay (II) (1994) 5 SCC 410*** and ***Jigar alias Jimmy Pravinchandra Adatiya Vs. State of Gujarat 2022 SCC OnLine SC 1290*** are that while considering the application by the Investigating Agency for extension of time for completing the investigation beyond the period prescribed under Section 167(2) of the Cr.PC the accused is to be given notice and/or is to be kept present before the Court, so that, the accused had knowledge that the extension is sought and granted.

Pramod Singla Vs. Union of India & Ors.: 2023 SCC OnLine SC 374-Benefit of doubt in favour of the detenue in cases of preventive detention?-HELD- Hearing a Criminal Appeal against the judgment denying plea to quash the detention order on grounds of delay in considering representation, the Hon'ble Supreme Court has held that in cases of preventive detention, where the detenue is held in arrest not for a crime he has committed, but for a potential crime he may commit, the Courts must always give every benefit of doubt in favour of the detenue, and even the slightest of errors in procedural compliances must result in favour of the detenue.

Central Bureau of Investigation Vs. Vikas Mishra @ Vikash Mishra: 2023 SCC OnLine SC 377-Police custody beyond 15 days from the date of arrest?-HELD-Hearing a Criminal Appeal against the judgment directing release of the accused on statutory/default bail under Section 167(2) of the Code of Criminal Procedure (Cr.P.C.), the Hon'ble Supreme Court has held that the observation in the case of ***Central Bureau of Investigation v. Anupam J. Kulkarni, reported in (1992) 3 SCC 141*** that there cannot be any police

custody beyond 15 days from the date of arrest, requires re-consideration.

The Hon'ble Court has further held that no accused can be permitted to frustrate the judicial process by his conduct.

Balu Sudam Khalde and Anr. Vs. State of Maharashtra: 2023 SCC OnLine SC 355-Judicially evolved principles for appreciation of evidence?-HELD-Hearing a Criminal Appeal against the judgment dismissing the criminal appeal and affirming the order of conviction and the consequence sentence passed for the offence under Section 302 read with Section 34 of the Indian Penal Code, 1860, the Hon'ble Supreme Court has enumerated the judicially evolved principles for appreciation of ocular evidence in a criminal case and further the under-noted legal principles enunciated by the Courts required to be kept in mind when the evidence of an injured eye-witness is to be appreciated.

State of Punjab Vs. Dil Bahadur: 2023 SCC OnLine SC 348-Imposition of adequate, just, proportionate punishment?-HELD-Hearing a Criminal Appeal against the judgment upholding the conviction for the offence under Section 304A of the Indian Penal Code, however, reducing the sentence from two years to eight months, subject to a prior deposit of Rupees 25,000/- towards compensation to be paid to family/legal heir of the deceased, the Hon'ble Supreme Court has held that in a recent decision in ***State of M.P. v. Bablu [(2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1]*** , after considering and following the earlier decisions, this Court reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity, nature of crime and the manner in which the offence is committed.

The Hon'ble Court has further held that one should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, the solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers.

Narayan Chetanram Chaudhary Vs. State of Maharashtra: 2023 SCC OnLine SC 340-Casual or cavalier approach should not be taken in determining the age of the accused or convict on his plea of juvenility?-HELD-Hearing an application under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 requesting Court to hold that the applicant, who is a convict for committing offences under Sections 302, 342, 397, 449 read with 120B and 34 of the Indian Penal Code, 1860 was a juvenile on the date of commission of the offence, the Hon'ble Supreme Court agreeing with the observations made in the cases of ***State of Jammu & Kashmir (Now U.T. of Jammu and Kashmir) and Others vs Shubham Sangra [2022 SCC OnLine SC 1592]*** and ***Parag Bhati (Juvenile) through Legal Guardian Mother Rajni Bhati vs State of Uttar Pradesh and Another [(2016) 12 SCC 744]*** held that a casual or cavalier approach should not be taken in determining the age of the accused or convict on his plea of juvenility, but a decision against determination of juvenility ought not to be taken solely for the reason that offence involved is heinous or grave.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: ADMINISTRATIVE LAW

"It is true that origin of government service is contractual since there is an offer and acceptance in every case. But once appointed, the government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties."

— P.S. Narasimha, J. in State of H.P. v. Raj Kumar, (2023) 3 SCC 773, para 26

Orissa Administrative Tribunal Bar Association v Union of India: 2023 SCC OnLine SC 309-Whether the Writ Petitions instituted by the appellants before the Orissa High Court were maintainable?-HELD- The appellants are the OAT Bar Association and the Odisha Retired Police Officers' Welfare Association. Both associations are registered under the Societies Registration Act 1860 ('SRAct). Section 6 of the SR Act, 1860 authorizes registered societies to sue and be sued. Both the appellants are therefore organizations which are entitled to approach the High Court under Article 226 of the Constitution. The Court relied on *Ghulam Qadir v. Special Tribunal, (2002) 1 SCC 33*, and said that as an existing legal right of the appellants was violated, thus it is the foundation for invoking the jurisdiction of the High Court under Article 226.

Whether Article 323-A of the Constitution makes it mandatory for the Union Government to establish SATs?-HELD- The Court took note of Article 323-A and said that Clauses (1) and (2) of Article 323-A use the expression "may," indicating that Article 323-A does not compel Parliament to enact a law to give effect to it. Parliament is entrusted with the discretion to enact a law which provides for the adjudication of certain disputes by administrative tribunals. It is a permissive provision. The provision is facilitative and enabling. However, in certain cases, the power to do something may be coupled with a duty to exercise that power.

Further, the Court gave a non-exhaustive list of factors which will aid courts in interpreting whether a provision is directory or mandatory, and said that Article 323-A does not specify the conditions in which the power to enact laws providing for the adjudication of certain disputes by administrative tribunals must be exercised. It therefore cannot be said that Parliament was obligated to exercise this power upon the fulfillment of certain conditions.

Thus, the Court held that the word "may" in Article 323-A of the Constitution is not imparted with the character of the word "shall." Article 323-A is a directory, enabling provision which confers the Union Government with the discretion to establish an administrative tribunal. The corollary of this is that Article 323-A does not act as a bar to the Union Government abolishing an administrative tribunal once it is created.

Whether Section 21 of the General Clauses Act can be invoked to rescind the notification establishing the OAT, thereby abolishing the OAT?-HELD- The Court said that Section 21 of the General Clauses Act can be invoked when its application is not repugnant to the subject-matter, context, and effect of the statute and when it is in harmony with its scheme and object. Thus, it referred to the provisions of the statute in question to

determine whether Section 21 of the General Clauses Act will be applicable.

After analyzing the scheme of the Administrative Tribunals Act, the Court said that this Act does not contain a provision and a corresponding procedure for the abolition of an SAT once it is established. However, this does not mean that the abolition of an SAT, once it is set up, is impermissible. Therefore, it held that there was nothing in the Administrative Tribunals Act repugnant to the application of Section 21 of the General Clauses Act.

Whether the transfer of cases from the OAT to the Orissa High Court has the effect of enlarging the jurisdiction of the latter?-HELD- Considering the question relating to the transfer of cases from the abolished OAT to the Orissa High Court, said that Orissa High Court's jurisdiction in relation to matters pending before the OAT is not being created or enlarged by the abolition of the OAT. It previously exercised such jurisdiction and is merely resuming its jurisdiction over the same subject matter. Thus, the *A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602,* is not applicable to the facts of the present case.

Whether the abolition of the OAT is arbitrary and therefore violative of Article 14 of the Constitution?-HELD- The Court said that the State Government's decision to abolish the OAT will have to be scrutinized with a view to understanding whether any extraneous or irrelevant considerations intruded into the decision. The Court noted that the State Government was not only concerned with the additional tier of litigation at the Orissa High Court but also with the expenditure incurred to operate the OAT as well as the rate at which the OAT disposed of cases. It was persuaded to abolish the OAT due to a combination of all these factors. These reasons were not irrelevant to the decision as to whether a tribunal ought to be continued. Further, the State Government's act of consulting the Orissa High Court (upon receiving a request to this effect from the Union Government) before deciding to abolish the OAT was not irrelevant or extraneous. Thus, it held that the decision to abolish the OAT was not one which was so absurd that no reasonable person or authority would ever have taken it.

Placing reliance on *M.P. High Court Bar Assn. v. Union of India, (2004) 11 SCC 766* the Court held that the abolition of the OAT is not arbitrary or unreasonable. It does not violate Article14 of the Constitution. Further, the notification dated 2-08-2019 is not based on irrelevant or extraneous consideration.

Whether the abolition of the OAT is violative of the fundamental right of access to justice?-HELD-The Court said that the fundamental right of access to justice is no doubt a crucial and indispensable right under the Constitution of India .The High Court of Orissa has creatively utilized technology to bridge the time taken to travel from other parts of Odisha to Cuttack. Indeed, other High Courts must replicate the use of technology to ensure that access to justice is provided to widely dispersed areas.

Further, it said that the abolition of the OAT does not leave litigants without a remedy or without a forum to adjudicate the dispute in question. The litigants must approach the Orissa High Court for the resolution of disputes. It is therefore not violative of the fundamental right of access to justice.

Whether the Union and State Governments have violated the principles of natural justice by failing to provide the OAT Bar Association and the litigants before the OAT with an opportunity to be heard before arriving at a decision to abolish the OAT?-HELD-

The Court said that the absence of a right to be heard before the formulation or implementation of a policy does not mean that affected parties are precluded from challenging the policy in a court of law. What it means is that a policy decision cannot be struck down on the grounds that it was arrived at without offering the members of the public at large an opportunity to be heard. The challenge to a policy may be sustainable if it is found to vitiate constitutional rights or is otherwise in breach of a mandate of law. Thus, it was held that the principles of natural justice have not been violated

Whether the notification dated 2-08-2019 is invalid because it is not expressed in the name of the President of India?-HELD-The Court said that the notification was not issued in the name of the President. However, this does not render the notification invalid. The effect of not complying with Article 77 is that the Union Government cannot claim the benefit of the irrebuttable presumption that the notification was issued by the President. Hence, it held that the said notification is not invalid and unconstitutional.

Further, the Court noted that the notification dated 4-08-1986, by which the OAT was established was also not issued in the name of the President. Thus, if the arguments of the appellants were to be accepted, the notification dated 4 -08-1986 would be invalid.

The Court said that the notifications were published in the Gazette of India in accordance with law and there is nothing on record to support the suggestion that an authority which is not empowered to issue the notification has issued it.

Thus, the Court held that issuance of both notifications was an exercise of the Union Government's statutory power under the Administrative Tribunals Act.

Whether the State Government took advantage of its own wrong by ceasing to fill the vacancies in the OAT?-HELD- Considering the contention that the State Government tried to take advantage of its own wrong by failing to fill the vacancies in the OAT and creating the conditions for the abolition of the OAT., the Court held that the State Government did not take advantage of its own wrong as the State Government found the OAT's usual performance i.e., rate of disposal of cases to be unsatisfactory. This aspect of the OAT's functioning played a role in the State Government's decision to abolish the OAT.

Whether the failure of the Union Government to conduct a judicial impact assessment before abolishing the OAT vitiates its decision to abolish the OAT?-HELD- The Court took note of Rojer Mathew v. South Indian Bank Ltd., (2020) 6 SCC 1 and said that the direction to conduct a judicial impact assessment was of a general nature. It was not geared towards proposals to abolish specific tribunals such as the OAT.

Thus, the Court held that failure to conduct a judicial impact assessment does not vitiate its decision to abolish the OAT. Nothing in the judgment in Rojer Mathew (supra) also indicates the need for the Union Government to obtain the permission of this Court before abolishing the OAT

Whether the Union Government became functus officio after establishing the OAT-HELD-The Court said that the decision to establish the OAT was administrative and based on policy considerations. If the doctrine of functus officio were to be applied to the sphere of administrative decision-making by the state, its executive power would be crippled. The state would find itself unable to change or reverse any policy or policy-based decision and its functioning would grind to a halt. All

policies would attain finality and any change would be close to impossible to effectuate.

Further it said that the State and Union Governments' authority has not been exhausted after the establishment of an SAT. Similarly, the State and Union Governments cannot be said to have fulfilled the purpose of their creation and to be of no further virtue or effect once they have established an SAT. The state may revisit its policy decisions in accordance with law. Thus, it held that the Union Government did not become functus officio after establishing the OAT.

Deepal Ananda Patil v. State of Maharashtra And Ors: 2023 SCC OnLine SC 34:Principles of Administrative Law - HELD- The Bench noted that it is trite that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized has been appraised of the same and given an opportunity to respond to it. It refers to M.P. Jain & S.N. Jain's treatise on Principles of Administrative Law in this regard.

" If without disclosing any evidence to the party, the authority takes it into its consideration, and decides the matter against the party, then the decision is vitiated for it amounts to denial of a real and effective opportunity to the party to meet the case against him. The principle can be seen operating in several judicial pronouncements where non-disclosure of materials to the affected party has been held fatal to the validity of the hearing proceedings."

The Bench further culled out the relevant principles enumerated in *T. Takano v. SEBI 2022 LiveLaw (SC) 180* -

1. A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and
2. The actual test is whether the material that is required to be disclosed is relevant for the purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.

In the case at hand, the Bench observed that the Report of the Committee constituted to verify the allegations, contained findings regarding the eligibility of individual members. But, the report was not supplied to the individual members or the society. Moreover, given that there were otherwise no specific allegations of ineligibility, the non-disclosure of the Committee's report caused prejudice to the individuals who were sought to be disqualified.

It noted that neither the order of the adjudicating authority nor that of the appellant authority dealt with facts pertaining to the eligibility of each of the members. The affected members had also raised serious objections in the appeal and the writ petitions regarding the allegation of their ineligibility. Considering the consequence of disqualifying almost 1415 members, the Bench reckoned -

"The consequence of ousting such a large group of members from the membership of a cooperative society would result in a serious miscarriage of justice unless individual facts are considered in each case."

Mahima Tuli
Research Fellow

NOTIFICATION

1. Time limit for assessment of combinations reduced vide Competition (Amendment) Act, 2023: On 11-4-2023, the Ministry of Law and Justice notified the Competition (Amendment) Act, 2023 to amend the Competition Act, 2002.

Key Points:

1. The definition of **"party"** has been inserted. It includes "a consumer or an enterprise or a person or an information provider, or a consumer association or a trade association, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise or a person against whom any inquiry or proceeding is instituted; and any enterprise or person impleaded by the Commission to join the proceedings."
2. In Section 5 relating to **"Combination"**, clause (d) has been inserted which provides that the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises will be a combination of such enterprises and persons or enterprises, if value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds Rs. 2 thousand crores.
3. The **timeline** relating to **"Regulation of Combinations"**, for disclosing the details of the proposed combination within 30 days of approval of the proposal relating to merger/ amalgamation or execution of any agreement/ other document for acquisition has been revised **to be disclosed after any of the 2 conditions but before consummation of the combination.**
4. The revision of combination coming into effect has been revised from 210 days to **150 days** from the day on which the notice has been given to the Commission.
5. **Section 6-A** has been inserted which says that implementation of an open offer or an acquisition of shares or securities convertible into other securities from various sellers, through a series of transactions on a regulated stock exchange from coming into effect will not be affected by the provisions of Section 6 (2-A) and Section 43A.
6. Section 18 which relates to the **"Duties and Functions of Commission"** has been revised also providing that the Commission can enter into any memorandum or arrangement with any statutory authority or department of Government for discharging its duties.
7. Section 26 relating to **"Procedure for inquiry under Section 19"** has been revised and Sub-section **2-A has been inserted** which says the Commission will not inquire into agreement if the same facts and issues raised in the information received from the Central ir State Government or a statutory authority has already been decided by the Commission in previous order.
8. In Section 26 relating to **"Procedure for inquiry under Section 19", sub- section 9** has been inserted which says that upon completion of inquiry the Commission may pass an order closing the matter or pass an order under section 27, and send a copy of its

order to the Central Government or the State Government or the statutory authority or the parties concerned.

9. Section 29-A has been inserted which relates to the **"Issue of statement of objections by Commission and proposal of modifications".** It says that if upon completion of the process under section 29, where the Commission is of the opinion that the combination has an appreciable adverse effect on competition, it will issue a statement of objections to the parties identifying such appreciable adverse effect on competition and direct the parties to explain within 25 days of receipt of the statement of objections, why such combination should be allowed to take effect.

10. Section 43-A relating to **"Power to impose penalty for non-furnishing of information on combination"** has been revised determining the Sections under which the failure to give notice can be penalized. The Sections namely are 6 (2), 6(4), 6(2-A) and 20 (1).

11. The **higher limit of penalty mentioned in Section 44** for making false statements or omission to furnish material information has been **raised to Rs. 5 crores** from Rs. 1 crore.

12. In the case of **"Contravention by Companies"** mentioned in Section 48, the Commission can impose a maximum penalty of **not more than 10%** of the average of the income for the last 3 preceding financial years.

13. **Section 48-A** has been inserted which relates to **"Settlement"**. In general, it says that any enterprise, against whom any inquiry has been initiated under Section 26 (1) for contravention of Section 3 (4) can initiate settlement by applying in writing to the Commission upon payment of fees.

14. According to the insertion of Section 48-B, any enterprise applying under Section 48-A can offer **"Commitments"** in respect of alleged contraventions stated in Commissioner's order under Section 26 (1) providing there is no appeal filed under Section 53 B against the order passed by the Commission.

15. According to insertion of **Section 48-C**, in cases where the Commision finds out that applicant failed to comply with the order passed under Sections 48-A or 48-C, the same order will stand revoked and withdrawn and such an enterprise will be liable to pay legal costs incurred by the Commission which may extend to Rs. 1 crore and the Commission can also restore or initiate the inquiry in respect of which the order under section 48A or section 48B was passed.

16. Section 59-A has been inserted relating to **"Compounding of Certain Offences"**. It says that except for any offence punishable with imprisonment, with or without fine, can be compounded by the Appellate Tribunal or Court, before which such proceeding is pending.

17. Section 64 relating to the **"Commission's Powers to make Regulation"** has also been revised and various regulations have been inserted.

18. **Sections 64-A and 64-B** have been inserted laying down the Process of Issuing Regulation enabling transparency in the process and the Commission's power to publish guidelines on the provisions of this Act.[1]

[1] https://egazette.nic.in/WriteReadData/2023/245101.pdf

EVENT OF THE MONTH

- One day Refresher-cum-Orientation Course for Civil Judges from the States of Punjab, Haryana and UT Chandigarh was held on April 08, 2023. The topics for the course were **Bail-Legal Scenario** by Sh. H.S Bhangoo, Faculty Member, CJA, **Seizure and Sampling under NDPS Act** by Pradeep Mehta, Faculty Member, CJA, **Procedural Aspects under PWDV Act, 2005** by Ms.Harshali Chowdhary, ADJ-cum-Faculty Member, CJA(Course Co-ordinator), and **Fundamentals governing Expeditious Disposal of Execution Cases** by Sh. Amrinder Singh Shergill, ADJ-cum-Faculty Member, CJA.

PICTORIAL GLIMPSES

Refresher Course for Civil Judges from Punjab, Haryana & UT Chandigarh