CJA e-Newsletter

Chandigarh Judicial Academy for Punjab & Haryana High Court
for circulation among the stakeholders in Judicial Education

VOLUME : 09 **ISSUE : 11** **FOR THE MONTH OF NOVEMBER, 2024**

IN THIS ISSUE :

A Year-Long Celebration of India's Constitution: A Dual Tribute to Democracy

The journey of modern India is rooted in its Constitution—a document that has been the foundation of its democracy and governance. Two key dates stand out in this journey: Constitution Day on November 26 and Republic Day on January 26. These milestones are not mere markers of history; they represent the nation's collective resolve to embrace self-governance, uphold democratic ideals, and foster an inclusive society. Constitution Day commemorates the adoption of the Indian Constitution on November 26, 1949, while Republic Day celebrates its enactment on January 26, 1950, transforming India into a sovereign republic. Together, these occasions reflect the timeless values of justice, liberty, and equality that continue to shape the nation's destiny.

Constitution Day, also known as *Samvidhan Diwas*, honors the drafting of a document that is the backbone of India's democracy. Under the leadership of Dr. B.R. Ambedkar, the Constitution was crafted to secure fundamental rights, empower citizens, and define the responsibilities of the state. This year, as India marks the 75th anniversary of its adoption, the year-long celebration titled *Hamara Samvidhan, Hamara Swabhimaan* (Our Constitution, Our Pride) highlights the vision of the framers and reaffirms the enduring principles enshrined within it.

Republic Day, observed on January 26, commemorates the day the Constitution came into force, marking the culmination of India's struggle for self-rule. The date was chosen to honor the Purna Swaraj resolution of 1930, symbolizing the nation's commitment to complete independence. The day is celebrated with grand parades showcasing India's rich cultural diversity, military strength, and technological achievements, symbolizing unity and patriotism under the guiding spirit of the Constitution.

Central to the Indian Constitution are the Fundamental Rights, outlined in Articles 12 to 35, which guarantee every citizen equality, freedom, and justice. These rights include the Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and the Right to Constitutional Remedies.

These provisions ensure that every individual is protected, empowered, and has access to justice, holding the state accountable to its people.

Constitution Day and Republic Day are deeply intertwined. While the former calls for reflection on the monumental task of framing the Constitution, the latter celebrates its implementation, signifying the realization of the framers' vision. Both days underscore the democratic heritage that has guided India's progress and continue to inspire its citizens.

As India celebrated 75 years of its Constitution, these milestones are more than historical remembrances—they are reminders of a living legacy. By cherishing and upholding the principles of justice, liberty, and equality, we ensure that the Constitution remains a beacon of progress for generations to come. Let these commemorative occasions inspire us to contribute to a united, equitable, and vibrant India.

Ajay Kumar Sharda
Director (Administration)

LATEST CASES: CIVIL

"While enacting laws, the legislature can and does delineate the meaning of terms through explicit definitions. Specific meanings are assigned for precision, to distinguish words/expressions from loose or popular meanings, expand or restrict the scope of words or expressions, or to designate "terms of art", that is, words or phrases with specialised meanings. Explicit definitions are useful, but it is wrong to state that all words or expressions must be explicitly defined. Defining each word or expression that is part of normal or commercial vocabulary is neither possible nor expedient."

-Sanjiv Khanna, J., in All India Bank Officers' Confederation v. Central Bank of India, (2024) 9 SCC 664, para 13

N. Thajudeen vs Tamil Nadu Khadi and Village Industries Board - 2024 0 INSC 817-HELD-The Hon'ble SC discussed as to whether the registered gift deed was duly acted upon and duly accepted and if it is a valid document despite its revocation for absence of reserving the right to revoke. The Court discussed the importance of the contents of the deed and inferred the acceptance and the question if revocation was permissible in terms of section 126 of the Transfer of Property Act, 1882, in the following terms:

"12. No doubt, the gift validly made can be suspended or revoked under certain contingencies but ordinarily it cannot be revoked, more particularly when no such right is reserved under the gift deed. In this connection, a reference may be made to the provisions of Section 126 of the Transfer of Property Act, 18821 which provides that a gift cannot be revoked except for certain contingencies enumerated therein."

"14. Section 126 of the Act is drafted in a peculiar way in the sense that it contains the exceptions to the substantive law first and then the substantive law. The substantive law as is carved out from the simple reading of the aforesaid provision is that a gift cannot be revoked except in the cases mentioned earlier. The said exceptions are three in number; the first part provides that the donor and donee may agree for the suspension or revocation of the gift deed on the happening of any specified event which does not depend on the will of the donor. Secondly, a gift which is revocable wholly or in part with the agreement of the parties, at the mere will of the donor is void wholly or in part as the case may be. Thirdly, a gift may be revoked if it were in the nature of a contract which could be rescinded."

The SC also discussed that the limitation for a suit for declaration is governed by Articles 56-58 which provide for three years, of the Schedule to the Limitation Act, 1963. Under Articles 56 and 57, in respect to declaration regarding forgery of an instrument issued or registered and validity of the adoption deed. Article 58 prescribes the limitation for decree of declaration of any other kind and therefore, the suit for declaration of title would essentially fall under Article 58 of the Schedule to the Limitation Act and the limitation would be three years from the date when the right to sue first accrues.

It is to be noted that when in a suit for declaration of title, a further relief is claimed in addition to mere declaration, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed. The further relief claimed in the suit is for recovery of possession based upon title and thus its limitation would be 12 years

in terms of Article 65 of the Schedule to the Limitation Act.

In a suit for declaration with a further relief, the limitation would be governed by the Article governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a declaration for a right cannot be held to be barred so long as Right to Property subsist.

Sapna Negi Vs. Chaman Singh and Anr.: 2024 INSC 822 -Grant of divorce while hearing a transfer petition by the Supreme Court.-HELD-The three judge bench of the Hon'ble Supreme Court while hearing a transfer petition of a divorce case under the Hindu Marriage Act from the Family Court at Roorkee to New Delhi granted divorce to the parties.The Court in order to explore the possibility of the parties arriving at a settlement had referred the matter to the Supreme Court Mediation Centre but it failed. The Court had recorded that relationship has irretrievably broken down. The parties present before the Court also admitted that the marriage has irretrievably broken down.

While exercising the power under Article 142(1) of the Constitution of India in the facts and circumstances of the case and also to do complete justice between the parties particularly that the marriage has completely failed and there being no possibility that the parties will cohabitate in future, and after considering the age of the parties, the prospects and the future of the child, the court also granted permanent alimony and ordered that a decree of divorce of the marriage be granted by the Family court at Roorkee by allowing the said petition but only after securing the interest of the wife and his daughter as per this judgment.

The continuation of the legal relationship would be unjustified and would not subserve the interest of the parties. While relying upon the judgement **Shilpa Sailesh v. Varun Sreenivasan 2023 SCC OnLine SC 544**, in which it was held that the Supreme Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental, general and specific public policy.

Anjum Kadari & Anr.Vs. Union of India & Ors.: 2024 INSC 831-HELD- The Hon'ble SC reversed the judgement of the Hon'ble High Court of Judicature at Allahabad whereby the Uttar Pradesh Board of Madarsa Education Act, 2004 was held to be unconstitutional on the ground that it violated the principle of secularism and Articles 14 and 21A of the Constitution. The Madarsa Act established the Uttar Pradesh Board of Madarsa Education, to regulate, among other things, the standards of education, qualifications for teachers, and conduct of examinations in Madarsas in the State of Uttar Pradesh. The entirety of the Act has been struck down by the High Court. The Hon'ble SC concluded as follows:

"104. In view of the above discussion, we conclude that:

a. The Madarsa Act regulates the standard of education in Madarsas recognized by the Board for imparting Madarsa education;

b. The Madarsa Act is consistent with the positive obligation of the State to ensure that students studying in recognised Madarsas attain a level of competency which will allow them to effectively participate in society and earn a living;

c. Article 21-A and the RTE Act have to be read consistently with the right of religious and linguistic minorities to establish and administer educational institutions of their choice. The Board with

the approval of the State government can enact regulations to ensure that religious minority institutions impart secular education of a requisite standard without destroying their minority character;

d. The Madarsa Act is within the legislative competence of the State legislature and traceable to Entry 25 of List III. However, the provisions of the Madarsa Act which seek to regulate higher-education degrees, such as Fazil and Kamil are unconstitutional as they are in conflict with the UGC Act, which has been enacted under Entry 66 of List I."

M/s. Bajaj Alliance General Insurance Company Ltd. Vs. Rambha Devi &Ors.:2024 INSC 840-HELD-The 5 Judge Bench of the Hon'ble SC after it had taken note of the conflicting views in 8 different judgments of the Hon'ble SC,concerning the livelihood of a large number of drivers of transport vehicles in India besides road safetyviz a viz the scope of 'Transport Vehicle''medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'. The Hon'ble SC concluded as follows:

"131. Our conclusions following the above discussion are as under:-

(I) A driver holding a license for Light Motor Vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7,500 kg, is permitted to operate a 'Transport Vehicle' without needing additional authorization under Section 10(2)(e) of the MV Act specifically for the 'Transport Vehicle' class. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, erickshaws, and vehicles carrying hazardous goods.

(II) The second part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a 'Transport Vehicle,' does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

(III) The additional eligibility criteria specified in the MV Act and MV Rules generally for driving 'transport vehicles' would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7,500 kg i.e. 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'.

(IV) The decision in MukundDewangan (2017) is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment".

In Re Manoj Tibrewal Akash Vs. XXX: 2024 INSC 863:'Justice through bulldozers is unknown to any civilized system of jurisprudence'-HELD-The 3 Judge Bench of the Hon'ble SC after it had taken note of a letter dated 04.10.2019of Shri Manoj Tibrewal, a senior journalist, complaining of the unlawful demolition of his ancestral residential house and shop in Uttar Pradesh by the authorities of the State. A suomotu Writ Petition was registered under Article 32 of the Constitution on the basis of the said letter. He had alleged that the demolition was a reprisal for a newspaper report which contained allegations of wrongdoing in relation to the construction of the road in question. It was also observed that there is a grave danger that if high handed and unlawful behaviour is permitted by any wing or officer of the state, demolition of citizens' properties will take place as a selective reprisal for extraneous reasons. Citizens' voices cannot be throttled by a threat of destroying their properties and homesteads. The ultimate security which

a human being possesses is to the homestead. The law does not undoubtedly condone unlawful occupation of public property and encroachments.

The Hon'ble SC concluded as follows:

"30. Before acting in pursuance of a road widening project, the State or its instrumentalities must:

(i) Ascertain the existing width of the road in terms of official records/maps; (ii) Carry out a survey/demarcation to ascertain whether there is any encroachment on the existing road with reference to the existing records/maps;

(iii) If an encroachment is found, issue a proper, written notice to the encroachers to remove the encroachment;

(iv) In the event that the noticee raises an objection with regard to the correctness or the validity of the notice, decide the objection by a speaking order in due compliance with the principles of natural justice;

(v) If the objection is rejected, furnish reasonable notice to the person against whom adverse action is proposed and upon the failure of the person concerned to act, proceed in accordance with law, to remove the encroachment unless restrained by an order of the competent authority or court; and

(vi) If the existing width of road including the State land adjoining the road is not sufficient to accommodate the widening of the road, steps must be taken by the State to acquire the land in accordance with law before undertaking the road widening exercise.

31. In the present case, we conclude that the entire process which was followed by the State was high handed. We, therefore, direct as follows:

(i) The State must make payment of punitive compensation;

(ii) The Chief Secretary of the Government of Uttar Pradesh is directed to have an enquiry conducted into the entire matter pertaining to the illegal demolition, against all concerned officers of the state and the contractors who are responsible for the illegal demolition. In addition, disciplinary action must be initiated against any officer who is found to be involved in the illegal demolition, not only of the house of the petitioner but of other similarly situated properties in the area which were similarly demolished without adequate notice; and

(iii) The Chief Secretary of the Government of UP shall lodge a First Information Report as directed by the NHRC. The FIR shall be investigated by the CB-CID.

32. The State of Uttar Pradesh is directed to pay the petitioner compensation in the amount of Rs twenty-five Lakhs, as an interim measure. By way of abundant caution, we clarify that this compensation shall not come in the way of the petitioner, should he choose to pursue any other proceedings which are available in law for compensation for the demolition and for the taking over of property without the authority of law.

33. The Chief Secretary of the Government of Uttar Pradesh shall, after conducting the enquiry, take suitable action including penal measures to ensure accountability of individual officials who have acted in violation of law. The implementation of these directions shall be initiated no later than within a period of one month from the date of this order. Disciplinary proceedings shall be completed within four months of initiation.

34. The Registrar (Judicial) shall circulate a copy of this judgment to the Chief Secretaries of all the States/Union Territories to ensure compliance with the directions which have been issued in regard to the procedure to be followed for the purpose of road widening in general".

Dr. Mandeep Mittal
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: CRIMINAL

"The possibility of bias is real in situations where an arbitration clause allows a government company to unilaterally appoint a sole arbitrator or control the majority of the arbitrators. Since the government has control over the arbitral tribunal, it can chart the course of the arbitration proceedings to the prejudice of the other party. Resultantly, unilateral appointment clauses fail to provide an effective substitute for judicial proceedings in India. Further, a unilateral appointment clause is inherently exclusionary and violates the principle of equal treatment of parties and procedural equality."

-CJI Dr. DY Chandrachud in Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV), 2024 SCC OnLine SC 3219, para 162

Kamaruddin Dastagir Sanadi V. State Of Karnataka Through Sho Kakati Police : 2024 INSC 908 **-HELD-**In this case the accused had simply refused to marry the deceased and the Apex Court observed that even assuming there was love between the parties, it is only a case of broken relationship which by itself would not amount to abetment to suicide. The accused-appellant had not provoked the deceased in any manner to kill herself; rather the deceased herself carried poison in a bottle from her village while going to Kakati, Karnataka with a predetermined mind to positively get an affirmation from the accused-appellant to marry her, failing which she would commit suicide. Therefore, in such a situation simply because the accused- appellant refused to marry her, would not be a case of instigating, inciting or provoking the deceased to commit suicide. Further it is held that even assuming, though there is no evidence that the accused-appellant promised to marry the deceased, that there was such a promise, it is again a simple case of a broken relationship for which there is a different cause of action, but not prosecution or conviction for an offence under Section 306, especially in the facts and circumstances of the case where no guilty intention or mens rea on the part of the accused-appellant had been established.

Suresh Chandra Tiwari &; Anr. V. State Of Uttarakhand : 2024 INSC 907 **-HELD-** The Supreme Court has laid down the principles for considering circumstantial evidence as:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established; (ii) the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances taken cumulatively should form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused; (iv) the circumstances should be consistent only with the hypothesis regarding the guilt of the accused; and (v) they must exclude every possible hypothesis except the one which is sought to be proved. Further the recovery on the basis of disclosure statement is also doubtful as held and observed that the disclosure statement was not admissible as it did not lead to discovery. The stone, etc. were allegedly recovered even before the disclosure statement was recorded. That apart, neither Doctor's (PW-1's) statement nor forensic report could connect them with the crime.

Hetram @ Babli V. State Of Rajasthan & Anr: 2024 INSC 903-**HELD**-In the facts of the case, the occasion for considering the application under Section 319 of the CRPC arose after the cross-examination of the only eye witnesses was recorded. It is held by the Apex Court that while

deciding an application under Section 319 of the CRPC, the Court must consider the cross-examination as well. If an application under Section 319 of the CRPC is made after the cross examination of witnesses, it will be unjust to ignore the same. The power under Section 319 of the CRPC cannot be exercised when there is no case made out against the persons sought to be implicated. In view of the omissions which are material and which amount to contradiction, obviously no Court could have recorded a satisfaction which is contemplated by Section 319 of the CRPC. It is impossible to record a finding that even a prima facie case of involvement of the appellant has been made out.

Vijaya Singh & Anr. V. State Of Uttarakhand: 2024 INSC 905-HELD- While deciding the validity of statement recorded under Section 164 CrPC the Supreme Court held a statement under Section 164 CrPC cannot be discarded at the drop of a hat and on a mere statement of the witness that it was not recorded correctly. For, a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. To permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate. In the present matter, there is no reasonable ground to reject the statements recorded under Section 164 CrPC and reliance has correctly been placed upon the said statements by the courts below.

Payal Sharma V. State Of Punjab: 2024 INSC 896-HELD-While considering the issue of involvement of distant relatives in criminal matrimonial dispute, it is held by the Supreme Court that a scanning of the FIR and the subsequently filed final report would reveal that the allegation against accused No.5, who is the wife of accused No.6, are also of the same nature. It is relevant to note that she is related to the husband of complainant's daughter only through her marriage with cousin brother of the first accused viz., accused No.6.

When the subject FIR and all further proceedings pursuant there from were quashed against the said cousin brother viz., accused No.6, the same reasons must apply to the case of accused No.5 as well. It is further observed that the High Court ought to have interfered and quashed the subject FIR and all other proceedings there from in relation to accused No.5 viz., the wife of accused No.6 as well. To secure interest of justice in the circumstances obtained, Also the filing of the chargesheet cannot be a reason for interfering with impugned order in respect of accused No.6 or rejecting the prayer of accused No.5 to quash the proceedings and to make them to argue or to raise the legal and factual issues at the stage of framing of the charges. It is evident that making them to face the trial based on the allegations or accusation as referred above would be nothing but an abuse of process of court.

State of Karnataka v. Chandrasha: 2024 INSC 899-HELD- It is held by Apex Court that trial Court based on the oral and documentary evidence adduced by the parties, rightly found the respondent guilty of the offences punishable under Sections 7 and 13(1) (d) r/w Section 13(2) of the Act and sentenced him for the same. However, the High Court by placing reliance on the decision of this Court in A. Subair v. State of Kerala : Law Finder Doc Id # 197233 : 2009(6) SCC 587, held that since no work was pending with the respondent as on the date of trap, the ingredient to attract and complete the offences punishable under

Sections 7, 13(1)(d) read with Section 13(2) of the Act was not met. The view so taken by the High Court is unsustainable as the decision of this Court in A. Subair's case (supra) did not support the view. It was a case where the complainant was not even examined and there were discrepancies in the evidence of the other witnesses. In the present case, such infirmities are not available. Insofar as the reference to sub section (3) to Section 20 regarding the triviality of the gratification, the act sought or performed, and the amount demanded cannot be considered in isolation to each other. The value of gratification is to be considered in proportion to the act to be done or not done, to forbear or to not forebear, favour or dis favour sought, so as to be trivial to convince the Court, not to draw any presumption of corrupt practice. It is also not necessary that only if substantial amount is demanded, the presumption can be drawn. The overall circumstances and the evidence will also have to be looked into. Section 20 would come into operation only when there is no nexus between the demand and the action performed or sought to be performed. But, when the fact of receipt of payment or an agreement to receive the gratification stands proved, there is a clear case of nexus or corroboration and the presumption itself is irrelevant.

Section 20 gets attracted when it is proved that the public servant has accepted or agreed to accept any gratification other than legal remuneration and in that case, presumption is that it is the motive or reward for any of the acts covered under Section 7, 11 or 13(1)(b) of the Act. The presumption under Section 20 is similar to

Section 118 of the Negotiable Instruments Act, 1881, where the onus is on the accused to prove that he is not guilty of the offences charged. The first two limbs under sub- sections (1) and (2) of Section 13 make it clear that adequacy of consideration is irrelevant to draw the presumption. That apart, sub-section (3) only grants a discretion to Court to decline from drawing any presumption if the amount is so trivial so that such inference of corruption is not fairly possible in the facts of the case. Therefore, it is not a rule but an exception available to the Court to exercise its discretionary power in the facts and circumstances of the case. In the present facts of the case, the court refused to exercise such discretion. As such, the judgment of acquittal passed by the High Court is illegal, erroneous and contrary to the materials

on record.

Dr. Gopal Arora
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: ARBITRATION

"The object of the Arbitration Act is to provide an arbitral procedure that is fair, efficient, and capable of meeting the needs of specific arbitration. The object is to ensure that the arbitral proceedings and proceedings filed for challenging the award are concluded expeditiously. The proceedings have to be cost-effective. The supervisory role of the Courts is very restricted."

-Abhay S. Oka, J. in Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 32

International Seaport Dredging Pvt Ltd. v. Kamarajar Port Limited : 2024 SCC OnLine SC 3112- Arbitration Act 1996 a self-contained code which does not distinguish between government and private entities -HELD- Perusing the matter and Section 36 of Arbitration Act, 1996, the Court noted that in the instant case there is an arbitral award to the tune of approximately Rs 21 crores in favour of the appellant. The High Court, while issuing a direction for furnishing of a bank guarantee, dealt with only one of the claims which was awarded by the arbitral tribunal, namely, that which pertained to the refund of the cess under the Building and Other Construction Workers' Welfare Cess Act 1996. It was further noted that apart from discussing this claim, which was in the amount of approximately Rs 3 crores, the High Court did not address the other claims of the appellant which were allowed by the arbitral tribunal. The amount awarded in relation to the remaining claims is approximately Rs 18 crore.

Taking note of Madras High Court's reasoning to stay the operation of the award that the respondent is not a fly- by operator and is a statutory undertaking, the Court opined that law qua arbitration proceedings, cannot be any different merely because of the status of the respondent as a statutory undertaking. The Court further said that the High Court made an error in not even prima facie considering the fact that apart from the issue of cess, there was an arbitral award in favour of the appellant in regard to other claims as well. Further, the High Court ought not to have based its decision on the condition for the grant of stay on the status of the respondent as a statutory authority. Stating that Arbitration Act, 1996 does not differentiate between private and government entities, the Court said that the form of security required to be furnished should not depend on whether a party is a statutory or other governmental body or a private entity.

Governmental entities must be treated in a similar fashion to private parties insofar as proceedings under the Arbitration Act are concerned, except where otherwise indicated by law. "This is because the parties have entered into commercial transactions with full awareness of the implications of compliance and non-compliance with the concerned contracts and the consequences which will visit them in law".

Explaining that under Order XLI Rule 5 of CPC, the Court has the power to direct full or part deposit and/or the furnishing of security in respect of the decretal amount, the Court therefore, modified the High Court's order, with the following directions:

- The respondent shall deposit an amount quantified at 75% of the decretal amount, inclusive of interest, on or before 30-11-2024 before the High Court.
- Conditional on the deposit of the aforesaid amount within the period stipulated above, there shall be a stay on the enforcement of the arbitral award.

Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML, 2024 SCC OnLine SC 3219 – Whether an appointment process allowing a party having an interest in the dispute to unilaterally appoint a sole arbitrator, or curate a panel of arbitrators and mandate that the other party select their arbitrator from the panel is valid in law?

Whether the principle of equal treatment of parties applies at the stage of the appointment of arbitrators?

Whether an appointment process in a public-private contract which allows a government entity to unilaterally appoint a sole arbitrator or majority of the arbitrators of the arbitral tribunal is violative of Article 14 of the Constitution?-**HELD-**The majority opinion penned by CJI Dr. DY Chandrachud held that, the principle of equality of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators. The Court ruled that PSU's are not prohibited from empanelling potential arbitrators, however, the other party cannot be mandated to select its arbitrator from the panel curated by PSUs. "Unilateral appointment clauses in a public-private contract fail to provide the minimum level of integrity required in authorities performing quasi-judicial functions such as arbitral tribunals. Therefore, a unilateral appointment clause is against the principle of arbitration, that is, impartial resolution of disputes between parties. It also violates the nemo judex rule which constitutes the public policy of India in the context of arbitration." The Court held that a clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator.

Further, it said that, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrator. The Court added that appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties and there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The Court also rendered the process of appointing arbitrators in CORE (supra) as unequal and ruled that it was prejudiced in favour of the Railways. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution. The Court clarified that the said ruling would be applicable prospectively to arbitrator appointments to be made after the date of this judgment and is applicable to three-member tribunals.

Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd., 2024 SCC OnLine SC 3191- Under Section 11(6) A&C Act, Referral Court must limit its enquiry to the question of limitation period only-HELD- Perusing the matter, the Court had to consider whether it should decline to make a reference under Section 11(6) of A&C Act, 1996 by examining whether the substantive claims of the petitioner are ex facie and hopelessly time barred. The Court took note of Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1, wherein the Court endorsed the prima facie test and opined that Courts at the referral stage can interfere only in rare cases where it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. Such a restricted and limited review was considered necessary to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood. It was noted that in Arif Azim Company Limited v. Aptech Ltd., (2024) 5 SCC 313, the Court had observed that Section 11(6) would be covered by Article 137 of the Limitation Act, 1963 which prescribes a limitation period of 3 years from the date when the

right to apply accrues. Furthermore, on the identical issue as in the instant petition, Arif Azim (supra) stated that although, limitation is an admissibility issue, yet it is the duty of the Courts to prima facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process. Subsequently in Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1, the Court opined that the referral courts shall "examine the existence of a prima facie arbitration agreement and not other issues" at the stage of appointment of an arbitrator. These "other issues" would include the examination of any other issue which has the consequence of unnecessary judicial interference in the arbitral proceedings. The ratio of Arif Azim (supra) was reconsidered in SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754, wherein the Court clarified that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim (supra). It was further clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and to the view taken in In Re : Interplay (supra). "In a scenario where the referral court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the arbitral tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive examination of the pleadings and evidence adduced before them". Henceforth, in light of Krish Spinning (supra), the Court pointed out that the power of the referral court under Section 11 must essentially be seen in light of the fact that the parties do not have the right of appeal against any order passed by the referral court under Section 11, be it for either appointing or refusing to appoint an arbitrator. "Therefore, if the referral court delves into the domain of the arbitral tribunal at the Section 11 stage and rejects the application of the claimant, we run a serious risk of leaving the claimant remediless for the adjudication of their claims". The Court further pointed out that the Courts are vested with the power of subsequent review in which the award passed by the arbitrator may be subjected to challenge by any party to the arbitration. Therefore, the Courts may take a second look at the adjudication done by the arbitral tribunal at a later stage, if considered necessary and appropriate in the circumstances.

Arif Azim Co. Ltd. Vs. Micromax Informatics FZE: 2024 SCC OnLine SC 3212- Express designation of place in an arbitration agreement is an appropriate criterion to determine Seat of Arbitration-HELD- Perusing the facts of the instant case, the Court noted that clause 26 of the Agreement explicitly stipulated that the curial law would be the UAE Arbitration and Conciliation rules and there being no other contrary indicia let alone a significant contrary indicia. The Court opined that the Dubai, UAE has not been designated merely as a venue but rather as the juridical seat of arbitration in terms of clause 26 of the Distributorship Agreement.

Furthermore, in light of the Shashoua Principle, the Court pointed out that since the parties herein have expressly chosen the curial law of arbitration to be the UAE Arbitration and Conciliation rules, there is no second opinion that the seat of

arbitration in the underlying Distributorship Agreement is Dubai, UAE and not India.

Furthermore, the Court noted that since the Distributorship Agreement already designates Dubai, UAE as the seat of arbitration, the same would be akin to an exclusive jurisdiction clause with only the courts in Dubai, UAE having the jurisdiction over such arbitration.

Clause 27 of the Agreement in no manner can be construed to mean that there exists no 'seat' or 'situs' of arbitration and that parties merely because there is no court that has been conferred exclusive jurisdiction in respect of the said agreement. "It is the seat of arbitration which determines which court will have exclusive jurisdiction and not vice-versa".

Other Important Conclusions:

Based on the afore-stated assessment, the Court concluded that:

- Where the curial law of a particular place or supranational body of rules has been stipulated in an arbitration agreement or clause, such stipulation is a positive indicium that the place so designated is actually the 'seat', as more often than not the law governing the arbitration agreement and by extension the seat of the arbitration tends to coincide with the curial law.
- Merely because the parties have stipulated a venue without any express choice of a seat, the courts cannot sideline the specific choices made by the parties in the arbitration agreement by imputing these stipulations as inadvertence at the behest of the parties as regards the seat of arbitration. Deference has to be shown to each and every choice and stipulations made by the parties, after all the courts are only a conduit or means to arbitration, and the sum and substance of the arbitration is derived from the choices of the parties and their intentions contained in the arbitration agreement.
- The Court clarified that it does not mean that the Closest Connection Test has no application whatsoever,
- where there is no express or implied designation of a place of arbitration in the agreement either in the form of 'venue' or 'curial law', there the closest connection test may be more suitable for determining the seat of arbitration. Where two or more possible places that have been designated in the arbitration agreement either expressly or impliedly, equally appear to be the seat of arbitration, then in such cases the conflict may be resolved through recourse to the Doctrine of Forum Non Conveniens, and the seat be then determined based on which one of the possible places may be the most appropriate forum keeping in mind the nature of the agreement, the dispute at hand, the parties themselves and their intentions. The place most suited for the interests of all the parties and the ends of justice may be determined as the 'seat' of arbitration.

Dr. Mahima Tuli
Research Fellow

NOTIFICATION

1. **Govt. notifies Telecom Cyber Security Rules to enhance safety of telecommunication infrastructure:** On 21-11-2024, the Ministry of Communications notified the Telecommunications (Telecom Cyber Security) Rules, 2024 introducing stringent security measures and increased accountability for telecom entities. The provisions came into force on 21-11-2024.

Key Points:

1. The Central Government ('CG') agency authorized by Central Government can seek for traffic other data from a telecommunication entity on the Central Government portal for protecting and ensuring telecom cyber security.
2. CG can also direct the telecommunication entity to establish necessary infrastructure and equipment for collection from designated points to enable its processing and storage.
3. Obligations relating to telecom cyber security:
    - It should not be endangered by any person;
    - No one should send messages which can adversely affect it;
    - There should not be misuse of telecommunication equipment/ telecommunication identifier/ telecommunication network/ telecommunication services;
    - Telecommunication should ensure compliance with directions and standards issued by the CG.
    - Every telecommunication entity will have to furnish a detailed report relating to action taken on the portal.
4. Measures to be taken by every telecommunication entity:
    - Adopt a telecom cyber security policy and inform CG about it;
    - Identify and reduce the risks of security incidents and ensure timely responses;
    - Take appropriate action for addressing security incidents, and mitigate their impact;

- Conduct periodic telecom cyber security audits of its network to assess resilience to Threats on telecom cyber security; Report security incidents to the CG;
- Establish facilities such as Security Operations Centre.

5. Reporting of Security Incidents:
    - Telecommunication entity within 6 hours of becoming aware of a security incident affecting its telecommunication network/ services;
    - Telecommunication entity within 24 hours of becoming aware of a security incident should furnish the following information:
        - number of users affected by the security incident;
        - duration of the security incident;
        - geographical area affected by the security incident;
        - extent to which the functioning of the telecommunication network/ service is affected;
        - remedial measures taken or proposed to be taken.
    - The CG can ask the affected telecommunication entity to provide information needed to access the telecommunication network/ services including the telecom cyber security policy and carry out a security audit.[1]

[1] https://authbridge.com/blog/telecom-cyber-security-rules-2024/

EVENTS OF THE MONTH

- Chandigarh Judicial Academy had organized a webinar on the Judgment of the Hon'ble Supreme Court titled as **"Child in Conflict with Law vs. State of Karnataka"** for all the Principal Magistrates (Juvenile Justice Board) and Additional District and Sessions Judges holding Children Courts in their respective sessions Divisions on 09.11.2024.The session was taken by was Dr. Mandeep Mittal, ADJ-cum-Faculty Member, CJA.
- A Regional Conference of the State Legal Services Authorities was organized at the Chandigarh Judicial Academy on 17.11.2024. The conference was chaired by Hon'ble Mr. Justice B. R. Gavai, Judge, Hon'ble Supreme Court of India ,Hon'ble Mr. Justice Surya Kant, Judge, Hon'ble Supreme Court of India, Hon'ble Mr. Justice Rajesh Bindal, Judge, Hon'ble Supreme Court of India , Hon'ble Mr. Justice A.G.Masih, Judge, Hon'ble Supreme Court of India and Hon'ble Mr. Justice Sheel Nagu, Chief Justice, Punjab & Haryana High Court, Hon'ble Mr. Justice Gurmeet Singh Sandhawalia, Judge, Punjab & Haryana High Court, Hon'ble Mr. Justice Arun Palli, Judge, Punjab & Haryana High Court and Hon'ble Mrs. Justice Lisa Gill, Judge, Punjab & Haryana High Court.
- An Online One day Refresher-cum-Orientation Course for Additional District and Sessions judges from the States of Punjab and Haryana & U.T. Chandigarh was organized at Chandigarh Judicial Academy on 23.11.2024. The resource persons for the said course were Sh. H.S. Bhangoo, Faculty Member, CJA,(Co-ordinator) Sh. Pradeep Mehta, Faculty Member, CJA, Dr. Gopal Arora, ADJ-cum-Faculty Member, CJA and Dr. Mandeep Mittal, ADJ-cum-Faculty Member, CJA.