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SUPPLEMENT
EXECUTIVE PROGRAMME

(This supplement covers Amendments/Developments from August, 2021 to May, 2023)

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

MODULE 1

PAPER 1

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Lesson 2 – Constitution of India

Case Laws

1. Skill Lotto Solutions v. Union of India, 2020 SCC OnLine SC 990

In present case, the constitutional validity of levying of taxes on lottery, betting and gambling was challenged in the Court. The Supreme Court held that the taxation of lottery tickets and prize money as constitutionally lawful. The SC ruled that gaming and lotteries fall under the Goods and Services Tax's purview and are therefore legitimate under the law. It was stated as follows:

"The value of taxable supply is a matter of statutory Regulation and when the value is to be transaction value which is to be determined as per Section 15 of Central Goods And Services Tax Act, 2017, it is not permissible to compute the value of taxable supply by excluding prize which has been contemplated in the statutory scheme. When prize paid by the distributor/agent is not contemplated to be excluded from the value of taxable supply, we are not persuaded to accept the submission of the Petitioner that prize money should be excluded for computing the taxable value of supply the prize money should be excluded. We, thus, conclude that while determining the taxable value of supply the prize money is not to be excluded for the purpose of levy of GST."

2. Swapnil Tripathi and Ors. vs. Supreme Court of India and Ors. (26.09.2018 - SC) : AIR 2018 SC 4806

In this case, Petitioners have sought a declaration that Supreme Court case proceedings of "constitutional importance having an impact on the public at large or a large number of people" should be live streamed in a manner that is easily accessible for public viewing. The three judge bench held that live-streaming of court proceedings are important so as to enable administration of justice especially owing to the effect it has on public at large. It is important to re-emphasise the significance of live-streaming as an extension of the principle of open justice and open courts. it was stated in this case as follows:

"*Live-streaming of proceedings is crucial to the dissemination of knowledge about judicial proceedings and granting full access to justice to the litigant. Access to justice can never be complete without the litigant being able to see, hear and understand the course of proceedings first hand. Apart from this, live-streaming is an important facet of a responsive judiciary which accepts and acknowledges that it is accountable to the concerns of those who seek justice.*"

3. Municipal Corporation of Gr. Mumbai vs. Ankita Sinha (25.10.2021 - SC) 2021 SCC OnLine SC 897

In this case, the principal issue as to whether the National Green Tribunal (in short "the Tribunal") can exercise *suomotu* jurisdiction or initiate *suomotu* action. It was decided that the Tribunal may initiate *suo moto* action. However, same is subject to opportunities of being heard. The Court in the Judgement stated that:

"the judgment rendered by this Court predicates that even if the Tribunal intends to initiate suomotu action, must give opportunity to the parties likely to be affected before passing any adverse order against them. Viewed thus, the ex parte preemptory order(s) passed by the Tribunal without giving opportunity to the person(s) likely to be affected by such order(s), be treated as effaced from the record."

4. ***Satender Kumar Antil vs. Central Bureau of Investigation and Ors. (11.07.2022 - SC)***

In this case, taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure ("the Code"), an endeavour was made by Supreme Court to categorize the types of offenses to be used as guidelines for the future.

The Supreme Court *inter alia* said that "The principle that bail is the Rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India."

Further, in this case, the Supreme Court issued certain directions, however they may be subject to State Amendments. These directions are meant for the investigating agencies and also for the courts. The directions are as under:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in *Arnesh Kumar (supra)*. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts.

The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

Lesson 3: Interpretation of Statutes

The Authority for clarification and Advance Ruling & Anr. v. M/s. Aakavi Spinning Mills (P) Ltd. (Order dated 12.01.2022)

The Supreme Court in its order dated 22.01.2022 has *inter alia* said that when the Entry in question specifically provides for exemption to the goods described as "Hank Yarn" without any ambiguity or qualification, its import cannot be restricted by describing it as being available only for the hank form of one raw material like cotton nor could it be restricted with reference to its user industry.

The court in para 11 of the Order has mentioned that as noticed, the Entry in question, as inserted into the Fourth Schedule to the Act, is clear and specific that is, "Hank Yarn"; it carries neither any ambiguity nor any confusion. Undoubtably, the yarn in the hank form (which is a unit of measure), has come for exemption under the said Entry 44; and obviously, that exemption enures to the benefit of the handloom industry too. However, for that matter, if the benefit of this broad and unambiguous entry also goes to any other industry, there is absolutely no reason to deny such benefit. In other words, we find no reason to restrict the Entry in its operation to the handloom industry alone or to any particular class of hank yarn like "Cotton Hank Yarn" only. The exemption Entry being clear and unambiguous, no external aid for interpretation is called for, whether in the form of Budget speech or any other notification under any other enactment.

Lesson 5: Administrative Laws

1. Rule of Law

Rule of Law was developed by British Jurist A.V. Dicey. He derived this term from French Principle '*La principle de legalite*' which means the principle of legality. It states that the government should be governed by Rule of Law instead of Rule of Individual. Any dictator, monarch or one particular person should not govern the functioning of any nation. Each country should follow legality of law.

Dicey was highly influenced by the French concept of administrative law' (*droit administratif*) or the 'administrative tribunals' (*tribunaux administratifs*). According to this, a citizen's lawsuit against a public servant for a wrongdoing done in that capacity will be handled by a special court rather than a regular court of law. Droit administratif contains a regulation that was created by the judges of the administrative court rather than laws and rules created by the French parliament.

Three major principles given by Dicey in his book "Rule of Law" are –

1. Supremacy of law: It means that ordinary or regular laws shall remain supreme. Supremacy here means absolute and pre-dominance of regular laws as against arbitrary or wide discretionary powers.

2. Equality before the law: According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. He states that there should be equality between people. According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. It provides that all are equal before law and everyone will be subjected to the same law.

3. The predominance of a legal spirit: Legal Spirit refers to the judicial precedents upon any dispute raised by any individual. The judgment given in any case will be the legal spirit of that particular case. It basically refers to the law as set by the precedents that have evolved over time.

Few jurists have criticized his rule of law theory being not clear between administrative discretion with arbitrary discretion, emphasising on equality before law and feels that specific tribunals should not exist, opposition between ordinary courts and special courts, failed to recognise the need of specific laws and bodies etc.

Rule of Law in India

The evolution of Rule of Law in India can be traced to British concept but the modern concept of Rule of Law was introduced, only after the drafting of Constitution of India. Constitution of India laid the very foundation of rule of law in India and is the essence of it. Rule of Law is embedded in Constitution under multiple parts, important aspects are as under:

1. Preamble – the Preamble to the Constitution of India upholds the basic structure of the Constitution. It talks about the justice, equality, liberty and dignity to all individuals. All of these aspects ensure Rule of Law in the country.

2. Part III- Fundamental Rights – These are the rights and fundamental or core of the Constitution of India. They imply a duty on the state towards ensuring the welfare of its citizens. It helps to keep a check on the actions of administrative authorities and legislature.

3. Part IV- Directive Principles of State Policy (DPSP) – These are the basic guidelines to be followed by all especially the government of India to ensure smooth functioning of the country. They are not enforceable by court of law. Few examples of Laws made under DPSP includes law relating to wages, labor laws etc.

Case Laws

2. Airport Authority of India vs. Centre for Aviation Policy, Safety and Research and Ors. (30.09.2022 - SC) : CIVIL APPEAL NOS. 6615-6616 OF 2022

In this case, the Supreme Court observed that the Court has erred in interfering with the administration/policy decision of the tender making authority in exercise of powers Under Article 226 of the Constitution of India even deciding it on merits. The Court observed that –

"as per the settled position of law, setting of terms and conditions of invitation to tender are within the ambit of the administration/policy decision of the tender making authority and as such are not open to judicial scrutiny unless they are arbitrary, discriminatory or mala fide. In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted"

Lesson 7: Limitation Act, 1963

Case Law

1. S.M. Ghogbhai vs. Schedulers Logistics India Pvt. Ltd. (23.05.2022 - NCLAT) :2022 SCC OnLine NCLAT 216

In this case, the Appeal was filed against the Order dated 16th November, 2021 passed by National Company Law Tribunal, Mumbai Bench, Court-III by which the Application C.P. No. 3857/I & B/2019 filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 was rejected as barred by time.

Tribunal dismissed the appeal stating - "We are satisfied that for the limitation for filing Section 9 application it is Article 137 of the Limitation Act, 1963 which is attracted. Under Article 137, time from which period begins to run is "when the right to apply accrues" the right to apply accrues when invoices issued by the Appellant to the Corporate Debtor were not paid. Invoices on the basis of which payment is claimed are more than three years earlier from the date of filing of Section 9 Application which is the basis for rejection of the Application of the Appellant by the Adjudicating Authority."

2. ***Ajay Dabra vs. Pyare Ram and Ors. (31.01.2023 - SC)***

In this case the impugned order of High Court of Himachal Pradesh dismissed the delay condonation applications filed Under Section 5 of the Limitation Act, 1963, declining to condone a delay of 254 days, because the reasons assigned for the condonation were not sufficient reasons for condonation of the delay. This was not found to be a sufficient reason for the condonation of delay as the Appellant was an affluent businessman and a hotelier.

The Supreme Court has said that we do not have a case at hand where the Appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the Appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the Appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the Appellant filed an appeal in terms of Section 149 Code of Civil Procedure and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

Lesson 8: Civil Procedure Code, 1908

Case Laws

1. Jitendra Kumar Khan and Ors. vs. The Peerless General Finance and Investment Company Limited and Ors. (07.08.2013 - SC) : 2013 ALL SCR 3259

The court stated that equitable set-off is different from legal set-off. Equitable set-off is based on principle of justice, equity and good conscience.

It was stated in the judgement: *"that equitable set-off is different than the legal set-off; that it is independent of the provisions of the Code of Civil Procedure; that the mutual debts and credits or cross-demands must have arisen out of the same transaction or to be connected in the nature and circumstances; that such a plea is raised not as a matter of right; and that it is the discretion of the court to entertain and allow such a plea or not."*

2. Dalpat Kumar and Ors. vs. Prahlad Singh and Ors. (16.12.1991 - SC) : AIR 1993 SC 276

The Court held that three main requirements are to be satisfied while granting temporary injunction

1. There should be Prima facie case
2. If injunction not granted, it would lead to irreparable loss and,
3. Balance of convenience

It was stated by the Court in the Judgement that:
"satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury. The third condition also is that "the balance of convenience" must be in favor of granting injunction."

3. B.L. Kashyap and Sons Ltd. vs. JMS Steels and Power Corporation and Ors. (18.01.2022 - SC) : (2022) 3 SCC 294

Supreme Court held that leave to defend (In case of summary suits) should only be granted in exceptional cases. The leave to defend shall be denied only on the grounds that there is no fair or reasonable defence. It was stated in the Judgement that:

"application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the Rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the Defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave."

Lesson 10: Criminal Procedure Code, 1973

Case Law

Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273

The Supreme Court observed that:

"the need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive".

".....we believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so....."

Lesson 12 - Special Courts, Tribunals under Companies Act & other Legislations

1. Section 58 of the Companies (Amendment) Act, 2020 has amended Section 410 of the Companies Act, 2013 w.r.t. "Constitution of Appellate Tribunal"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

(i) in the opening portion, the words "not exceeding eleven" is omitted;

Details of Changes:

The restriction on the appointment of the number of judicial and technical members in the Appellate Tribunal by the Central Government has been removed.

(ii) in clause (b), for the word, figures and letter "section 53N", the word, figures and letter "section 53A" is substituted.

Details of Changes:

The NCLAT constituted under Section 410 of the Companies Act, 2013 is empowered to hear appeals against any direction, decision or order referred to in Section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open

2. Benches of Appellate Tribunal (inserted by The Companies Amendment Act 2020 Amendment Effective from 22nd January 2021)

The Companies Amendment Act 2020 inserted section 418A in the Companies Act, 2013. It provides as under:

The powers of the NCLAT may be exercised by the Benches thereof to be constituted by the Chairperson. Further, it has been provided that a Bench of the NCLAT shall have at least one Judicial Member and one Technical Member.

The Benches of the NCLAT shall ordinarily sit at New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify. Provided that the Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the NCLAT, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016.

Impact

The said amendment inserted the provisions related to constitution, powers, sitting place, jurisdiction etc. of National Company Law Appellate Tribunal (NCLAT).

For more details visit:
https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTQxODk=&docCategory=NotificationandCirculars&type=open

3. The Companies (Amendment) Act, 2020 amends the provision of section 435 of the Companies Act, 2013 related to establishment of Special Courts (effective from 22nd January 2021)

Section 435 (1)

Old Provision

The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification establish or designate as many Special Courts as may be necessary.

New provision

The Central Government may, for the purpose of providing speedy trial of offences under this Act, except under section 452, by notification establish or designate as many Special Courts as may be necessary.

Impact

The new provision has exempted the offence under section 452 i.e. Punishment for wrongful withholding of property out of the jurisdiction of Special Courts.

For more details visit:
https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTQxODk=&docCategory=NotificationandCirculars&type=open

Lesson 13 - Arbitration and Conciliation Act, 1996

1. The Arbitration and Conciliation (Amendment) Act, 2021 amends the Arbitration and Conciliation (Amendment) Act, 2021

Hon'ble President of India promulgated 'The Arbitration and Conciliation (Amendment) Ordinance, 2020' on November 04, 2020 with an objective to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award are induced by fraud or corruption.

Amendments in the ordinance *inter-alia* include amendments to Section 43J of **Arbitration and Conciliation Act, 1996**, which prescribes qualification, experience and norms for accreditation of arbitrators, is substituted with the following section.

43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the Regulations.

Accordingly, the qualifications for appointment as arbitrators, which were earlier prescribed in the principal Act, will now be through Regulations.

Impact

The provisions of the Arbitration and Conciliation (Amendment) Ordinance, 2020 were adopted in the principal Act by virtue of the Arbitration and Conciliation (Amendment) Act, 2021.

For more details visit:
https://egazette.nic.in/WriteReadData/2021/225832.pdf

Case Laws

2. The Oriental Insurance Company Limited vs. Dicitex Furnishing Limited

The Supreme Court has decided the case of the Oriental Insurance Company Limited vs. Dicitex Furnishing Limited on 13th November, 2019. The details of the case are as follows:

For deciding the application under Section 11(6) of Arbitration Act, 1996, the court is required to ensure that an arbitrable dispute exists and has to be prima facie convinced about the genuineness or credibility of the plea and not be too particular about the nature of the plea, which necessarily has to be made and established in the substantive proceeding

Facts of the Case:

Dicitex (Respondent) obtained a Standard Fire and Special Peril Policy from the Oriental Insurance Company Limited (Appellants). A fire broke out which spread to the first floor of the building and completely engulfed all of the appellant's three godowns. Respondent informed the appellant about the fire and the consequential loss. The appellant appointed M/s. C.P. Mehta & Co. as Surveyors and Assessors to survey the loss suffered. The Surveyor appointed by the insurer filed a FinalSurvey Report recommending that the clai m be settled for a net amount of `12,28,60,369/ be paid over to Respondent. Respondent addressed various letters to the appellant's chairman, informing him of the financial distress that it was facing, requesting for settlement of the claim on priority basis. Apparently, the appellant appointed a Chartered Accountant (M/s Naveen Jhand & Associates) to carry out a resurvey of the claim made by Respondent. Respondent received an email from the appellant stating that a discharge voucher for the balance amount of the claim payable as described was being enclosed. Respondent placed on record that its total claim was approximately `15 crores and the surveyor had assessed the same at approximately `12.93 crores. Respondent stated that the basis for arriving at the figure of `7.16 crores was not explained by the appellant. Respondent submitted along with the discharge voucher for a full and final settlement of their claim due to urgent need of funds to meet its mounting liabilities. Respondent placed on record their objection that the same was signed due to pressure of the respondents and applied to Bombay High Court under Section 11(6) of Arbitration Act, 1996. Bombay High Court has allowed the application under Section 11(6) of said act. The appellant filled the appeal to the Supreme Court in present case.

Decision:

The Hon'ble Supreme Court held that an overall reading of respondent's application under Section 11(6) of Arbitration Act, 1996 clearly shows that its grievance with respect to the involuntary nature of the discharge voucher was articulated. The court is conscious of the fact that an application under Section 11(6)is in the form of a pleading which merely seeks an order of the court, for appointment of an arbitrator. The high court- which is required to ensure that an arbitrable dispute exists, has to be prima facie convinced about the genuineness or credibility of the plea of coercion; it cannot be too particular about the nature of the plea, which necessarily has to be made and established in the substantive proceeding. The Supreme Court opinioned that the reasoning in the impugned judgment cannot be faulted. The appeal was held to be dismissed without order as to costs.

For more details:

https://main.sci.gov.in/supremecourt/2015/39792/39792_2015_4_1501_18110_Judgement_13-Nov-2019.pdf

3. Brahmani River Pellets Limited vs. Kamachi Industries Limited

The Supreme Court has decided the case of the Brahmani River Pellets Limited vs. Kamachi Industries Limited on 25th July, 2019. The details of the case are as follows:

Parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction

Facts of the Case:

The appellant entered into an agreement with the respondent for sale of 40,000 WMT (Wet Metric Tonne) of Iron Ore Pellets. Dispute arose between the parties regarding the price and payment terms and the appellant did not deliver the goods to the respondent. The respondent claimed for damages and the appellant denied any liability. Clause 18 of the agreement between the parties contains an arbitration clause. The respondent invoked arbitration clause and the appellant did not

agree for the appointment of arbitrator. Hence, the respondent filed petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Madras High Court. The appellant contested the petition challenging the jurisdiction of the Madras High Court on the ground that the parties have agreed that Seat of arbitration be Bhubaneswar. The Madras High Court vide impugned order appointed a former judge of the Madras High Court as the sole arbitrator. The appellant preferred the appeal to the Supreme Court.

Decision:

The Hon'ble supreme court observed that Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 (the Act) defines the "Court" with reference to the term "subject-matter of the suit". As per Section 2(1)(e) of the Act, if the "subject-matter of the suit" is situated within the arbitral jurisdiction of two or more courts, the parties can agree to confine the jurisdiction in one of the competent courts. In para (96) of BALCO, the Supreme Court held that the term "subjectmatter" in Section 2(1)(e) of the Act is to identify the court having supervisory control over the arbitral proceedings. As per Section 20 of the Act, parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction. The Supreme Court observed that when the parties have agreed to have the "venue" of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act. The impugned order was liable to be set aside.

For more details:

https://main.sci.gov.in/supremecourt/2019/9962/9962_2019_7_1501_15263_Judgement_25-Jul-2019.pdf

4. Oil and Natural Gas Corpn. Ltd v. Saw Pipes Ltd AIR 2003 SC 262

In this case the court decided how "Public Policy" should be interpreted for the purpose of section 34 of the Arbitration and Conciliation Act, 1996 which deals with Application for setting aside arbitral award. It was decided in this case that 'public policy' should not be interpreted in narrow terms with respect to just the Indian Laws, it should be interpreted in a way that aims at broadening public interest and fairness. It was stated by court that:

"Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. It must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to

(i) fundamental policy of Indian law; or
(ii) the interests of India; or
(iii) justice or morality.

If the arbitral tribunal does not dispense justice, a Court would be well within its right in upholding the challenge to the award on the ground that it is in conflict with the public policy of India."

5. Union of India v. Om Vajrakaya Construction Company (dated 20.12.2021) in OMP (COMM) 299/2021

In this case, the High Court of Delhi held unlike the tribunal's ability to award interest, the court's ability to award costs within the meaning of section 31A of the Arbitration and Conciliation Act, 1996 is unrestricted, and any agreement between the parties that forbids the awarding of costs would be irrelevant unless they do so after a dispute has already arisen.

6. BCC Developers & Promoters Ltd v. DMRC (dated 28.10.2021 in ARB.P 813/2021)

In this case, it was observed that just because the appointed arbitrators happen to be ex-employees of one of the parties, it shall not make them ineligible for such appointment.

"the plea urged by petitioner seeking appointment of sole Arbitrator and disqualification of panel of proposed/nominated Arbitrators by the respondent being hit by provision of Section12 of the Act, is not maintainable."

7. Chloro Controls (I) P. Ltd v. Severn Trent Water Purification Inc and Ors 2012(9) N SCALE 595

In this case, court observed on the rule of kompetenz kompetenz.

Court held that "challenge to the existence or validity of the arbitration agreement will not prevent the arbitral tribunal from proceeding with hearing and ruling upon its jurisdiction. The negative effect of the kompetenz kompetenz principle is that arbitrators are entitled to be the first to determine their jurisdiction which is later reviewable by the court, when there is action to enforce or set aside the arbitral award. Where the dispute is not before an arbitral tribunal, the Court must also decline jurisdiction unless the arbitration agreement is patently void, inoperative or incapable of being performed."

8. Cholamandalam Investment and Finance Company Ltd. vs. Amrapali Enterprises and Ors. (14.03.2023 - CALHC)

This case has given a clarification on unilateral appointment of Arbitrator.

Calcutta High Court decided that in light of the aforementioned judicial precedents(mentioned in the Judgement), it can be said with unambiguous certainty that the unilateral appointment of Arbitrator by the award holder is illegal and void. However, what still remains to be determined is the impact of the aforesaid illegality on the arbitral award and the present execution petition.

The Court further stated that ……. It is a settled principle of law that compliance with Section 12(5) read with Schedule VII is *sine qua non* for any arbitral reference to gain recognition and

validity before the Courts. In the present facts in hand, an arbitral reference which itself began with an illegal act has vitiated the entire arbitral proceedings from its inception and the same cannot be validated at any later stage. Thus, it would be a logical inference to consider the aforesaid arbitral proceedings as void ab initio.

9. Can court exercising power under Section 37 of the Act modify the orders of the arbitral tribunal to protect the subject matter of the arbitration?

Asian Hotels (North) Ltd. vs. Sital Dass Sons and Ors. (22.12.2022 - DELHC)

The High Court of Delhi has said in the Judgment of this case that this Court is aware of the limited scope of interference in appeal against orders passed by Arbitrators on applications under Section 17 of the Act. However, in appropriate cases, Court can exercise its jurisdiction under Section 37 of the Act to protect the legitimate interest of the appellant, which includes modifying the order of the learned Arbitral Tribunal. It may be noted that jurisdiction of this Court under Section 37 of the Act is substantially different from the scope of jurisdiction under Section 34 of the Act, which does not include the authority to modify the award passed by the Arbitral Tribunal.

10. Application of Fundamental Rights while passing of Awards by Arbitrators

The Chairman Board of Trustees for Shyama Prasad Mookherjee Port Kolkata vs. Universal Sea Port Private Ltd. (03.11.2022 - CALHC)

In this case, the Calcutta High Court has said in my understanding, the respondent seems to have had found favour with the arbitrator's sympathies, but unfortunately, they do not find favour with my sympathies and most unfortunately, they do not find favour with the law. It is evident that considerations of discrimination and want of state functionaries to act in due conformance to Article 14 of the Constitution swayed the arbitrator's contractual interpretation. The aforesaid inference can be gauged from paragraph 5(e) of this judgement. Firstly, arbitrators cannot apply the rights envisaged under the fundamental rights of the Constitution of India or equity while granting arbitral awards, and if they do, such awards must be set aside as being patently illegal

under Section 34(2A) of the Act. The arbitrator is a creature of contract and must act within the powers granted by it…..

Other concepts

11. Types of Arbitration

1. Ad hoc Arbitration - This is a type of arbitration that is not handled by a formal organisation rather the number of arbitrators, mode of selection, and how the arbitration will be conducted, may be decided by the parties. The procedural aspects should also be decided by the parties.

2. Domestic Arbitration - The arbitration in which the disputes are subject to Indian laws and the cause of action is entirely based in India are called Domestic arbitration.

3. International Arbitration - It is an arbitration relating to disputes where at least one of the parties is:

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country.

4. Institutional arbitration - In Institutional arbitration, the matter is to be administered by established arbitration institutions.

9. Essentials of Arbitral Process

1. Seat of Arbitration – The parties are free to select any location as the arbitration's seat.

2. Venue of Arbitration – The Venue or location, for the sessions of the arbitral proceedings may be decided by the parties.

3. Arbitral Institution – The parties may select the arbitral institution for conducting the proceedings. The rules of such arbitration institution will apply to proceedings.

4. Law – The parties may by agreement choose any law .

5. Language – The parties may also agree on the language of the arbitration proceedings.

6. Number of arbitrators – The parties are free to determine the number of arbitrators, provided that such number shall not be an even number. However, failing the determination, the arbitral tribunal shall consist of a sole arbitrator.

7. Cost – The Court or arbitral tribunal have the discretion to determine the cost which includes the decision as to:

(a) whether costs are payable by one party to another;

(b) the amount of such costs; and

(c) when such costs are to be paid

Lesson 14 - Indian Stamp Act, 1899

1. Finance Act, 2019 amends Indian Stamp Act, 1899

Implementation of Amendments in the Indian Stamp Act, 1899 and Rules made from 1st July, 2020 for Rationalized Collection Mechanism of Stamp Duty across India with respect to Securities Market Instruments

The Amendments in the Indian Stamp Act, 1899 brought through the Finance Act 2019 and Rules made thereunder have come into effect from 1st July, 2020 vide notifications dated 30th March, 2020.

Impact

This system will help develop equity markets and equity culture across the length and breadth of the country, ushering in balanced regional development.

To achieve the rationalization of stamp duty structures, the amendments, *inter-alia*, provide for the following structural reforms —

i. The stamp-duty on sale, transfer and issue of securities shall be collected on behalf of the State Government by the collecting agents who then shall transfer the collected stamp-duty in the account of the concerned State Government.
ii. In order to prevent multiple incidences of taxation, no stamp duty shall be collected by the States on any secondary record of transaction associated with a transaction on which the depository / stock exchange has been authorised to collect the stamp duty.
iii. In the extant scenario, stamp duty was payable by both seller and buyer whereas in the new system it is levied only on one side (payable either by the buyer or by the seller but not by both, except in case of certain instrument of exchange where the stamp duty shall be borne by both parties in equal proportion).
iv. The collecting agents shall be the Stock Exchanges or authorized Clearing Corporations and the Depositories.
v. For all exchange based secondary market transactions in securities, Stock Exchanges shall collect the stamp duty; and for off-market transactions (which are made for a consideration

as disclosed by trading parties) and initial issue of securities happening in demat form, Depositories shall collect the stamp duty.

vi. The Central Government has also notified the Clearing Corporation of India Limited (CCIL) under the jurisdiction of RBI and the Registrars to an Issue and/or Share Transfer Agents (RTI/STAs) to act as a collecting agent. The objective is to bring OTC derivative transactions reported to CCIL and physical space (non-demat) transactions in mutual funds handled through RTI/STAs under the ambit of stamp duty regime so as to avoid any tax arbitrage.

vii. The collecting agents shall within three weeks of the end of each month transfer the stamp-duty collected to the State Government where the residence of the buyer is located and in case the buyer is located outside India, to the State Government having the registered office of the trading member or broker of such buyer and in case where there is no such trading member of the buyer, to the State Government having the registered office of the participant.

viii. The collecting agent shall transfer the collected stamp-duty in the account of concerned State Government with the Reserve Bank of India or any scheduled commercial bank, as informed to the collecting agent by the Reserve Bank of India or the concerned State Government.

ix. The collecting agent may deduct 0.2 per cent of the stamp-duty collected on behalf of the State Government towards facilitation charges before transferring the same to such State Government.

x. For many segments, there is reduction in duty. For example, the rate prescribed is lower for issue of equity/debentures and for transfer of debentures (including re-issue) to aid capital formation and to promote corporate bond market.

xi. For equity cash segment trading (both delivery and non-delivery-based transactions) and options, since rates are to be charged only on one side in line with the new scheme, it can be stated that there is an overall reduction in tax burden.

xii. Secondary market transfer of instruments which are traded with differences in a few basis points, like interest rate / currency derivatives or corporate bonds are being charged at a very lower rate from the existing rates. For the newly introduced ‘repo on corporate bonds’,

a far lower rate is specified, since similarly positioned repo on Government Securities is not subject to duty.

xiii. No stamp duty shall be chargeable in respect of the Instruments of transaction in stock exchanges and depositories established in any International Financial Services Centre set up under section 18 of the Special Economic Zones Act, 2005.

xiv. Tax arbitrage is avoided by providing the same rate of stamp duty for issue or re-issue or sale or transfer of securities happening outside stock exchanges and depositories.

xv. Mutual funds, being delivery-based transactions in securities, were supposed to have been paying the duty as per various State Acts. All mutual fund transactions are thus liable for stamp duty and the new system has only standardized the charges across states and the manner of collection of stamp duty.

The Regulators (RBI & SEBI) have been authorized by the Central Government under the Indian Stamp Act, 1899 to issue clarificatory circulars/ operational guidelines on specific issues so as to ensure smooth implementation from 1st July, 2020.

For more details visit:

https://pib.gov.in/PressReleasePage.aspx?PRID=1635399

http://egazette.nic.in/WriteReadData/2019/209695.pdf

Lesson 16: Right to Information Act, 2005

Case Laws

1. HN Malviya vs. CPIO, Department of Personnel and Training on 31st October, 2022 (Central Information Commission)

The Appellant filed an RTI application dated 27.01.2021 seeking the information related to seniority of employees.

The Chief Information Commission in Second Appeal decided that the Commission based on a perusal of the facts on record observes that the information sought for in the RTI Application is in the form of mere conjecture and even futuristic query, neither of which conforms to Section 2(f) of the RTI Act, yet the CPIO & FAA have tried to facilitate the Appellant adequately in keeping with the spirit of the RTI Act. The Appellant shall note that outstretching the interpretation of Section 2(f) of the RTI Act to include deductions and inferences to be drawn by the CPIO is unwarranted as it casts immense pressure on the CPIOs to ensure that they provide the correct deduction/inference to avoid being subject to penal provisions under the RTI Act.

2. Mr. Raj Kumar vs. CPIO Guru Teg Bahadur Hospital dated 31st October, 2022 (Central Information Commission)

The Complainant vide his RTI application sought information relating to salary records and DA implementation.

The CPIO furnished a pointwise reply to the Complainant. Dissatisfied with the reply received from the PIO, the Complainant filed a First Appeal, which was not adjudicated by the First Appellate Authority. Thereafter, the Complainant filed a Complaint before the Commission.

The Complainant remained absent during the hearing despite notice. The Respondent present during the hearing submitted that a suitable response in accordance with the provisions of the RTI Act,

2005, had already been furnished to the Complainant. The respondent further stated that the information sought in respect of point no. 01 will be furnished in due course.

The Central Information Commission decided that Keeping in view the facts of the case and the submissions made by the respondent and after perusal of the documents available on record, the Commission directs the Respondent to furnish complete and correct information to the Complainant, in accordance with the spirit of transparency and accountability as enshrined in the RTI Act, 2005 within a period of 21 days from the date of receipt of this order under the intimation to the Commission. The Commission cautions the then CPIO to be more careful in the future while dealing with the RTI application so that no such lapse would recur and the provisions of the RTI Act are complied with in letter and spirit.

Lesson 17 - Information Technology Act, 2000

1. Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

Data privacy and protection in today's world has become a matter of Individual rights. The right to privacy is recognized as a fundamental right under Article 21 of the Indian constitution which was held in the historic verdict by the Supreme Court in the case of Justice *KS Puttaswamy v. Union of India*. India's digital transformation requires the law to transform as well. Information Technology Act, 2000 ('the IT Act') and Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, commonly known as SPDI Rules, is one of the key legislations in this area.

Under Section 87(2) read with Section 43 – A of the IT Act, "SPDI Rules" were issued on 13th of April 2011 which govern the Sensitive Personal Data or information and apply to body corporate or any person located in India.

The rules define sensitive personal data under the Rule 3 that the following types of data or information shall be considered as personal and sensitive:

- o Passwords,
- o Bank Account details,
- o Credit/debit card details,
- o Present and past health records,
- o Sexual orientation,
- o Biometric data.

An information provider is a person who provides information to the body corporate and under these rules, he has certain rights over the sensitive personal information, this information cannot be collected without the providers' consent and he or she has the right to abstain from giving consent and can withdraw the consent by writing to the body corporate.

i. Privacy Policy

Rule 4 requires a body corporate to provide a privacy policy on their website, which is easily accessible, provides for the type and purpose of personal, sensitive personal information collected and used, and Reasonable security practices and procedures.

ii. Consent

Rule 5 requires that prior to the collection of sensitive personal data, the body corporate must obtain consent, either in writing or through fax regarding the purpose of usage before collection of such information.

iii. Collection Limitation

Rule 5 (2) requires that a body corporate should only collect sensitive personal data if it is connected to a lawful purpose and is considered necessary for that purpose.

iv. Notice

Rule 5(3) requires that while collecting information directly from an individual, the body corporate must provide the following information:

- The fact that information is being collected
- The purpose for which the information is being collected
- The intended recipients of the information
- The name and address of the agency that is collecting the information
- The name and address of the agency that will retain the information.

v. Retention Limitation

Rule 5(4) requires that body corporate must retain sensitive personal data only for as long as it takes to fulfil the stated purpose or otherwise required under law.

vi. Purpose Limitation

Rule 5(5) requires that information must be used for the purpose that it was collected for.

vii. Right to Access and Correct:

Rule 5(6) requires a body corporate to provide individuals with the ability to review the information they have provided and access and correct their personal or sensitive personal information.

viii. Right to 'Opt Out' and Withdraw Consent

Rule 5(7) requires that the individual must be provided with the option of 'opting out' of providing data or information sought by the body corporate. Also, they must have the right to withdraw consent at any point of time.

ix. Grievance Officer

Rule 5(9) requires that body corporate must designate a grievance officer for redressal of grievances, details of which must be posted on the body corporate's website and grievances must be addressed within a month of receipt.

x. Disclosure with Consent, Prohibition on Publishing and Further Disclosure

Rule 6 requires that body corporate must have consent before disclosing sensitive personal data to any third person or party, except in the case with Government agencies for the purpose of verification of identity, prevention, detection, investigation, on receipt of a written request. Also, the body corporate or any person on its behalf shall not publish the sensitive personal information and the third party receiving the sensitive personal information from body corporate or any person on its behalf shall not disclose it further.

xi. Requirements for Transfer of Sensitive Personal Data

Rule 7 requires that body corporate may transfer sensitive personal data into another jurisdiction only if the country ensures the same level of protection and may be allowed only if it is necessary for the performance of the lawful contract between the body corporate or any person on its behalf and provider of information or where such person has consented to data transfer.

xii. Security of Information

Rule 8 requires that the body corporate must secure information in accordance with the ISO 27001 standard or any other best practices notified by Central Government, which must be audited annually or when the body corporate undertakes a significant up gradation of its process and computer resource.

2. Development & Law of Data Protection

In year 2022, the Central Government has formulated a draft Bill, titled 'The Digital Personal Data Protection Bill, 2022'. The purpose of the Bill is to provide for the procedure for processing of personal data. This Bill will establish the legal framework on protection of personal data. The Bill aims to protect personal data in a manner that recognizes the right of individuals.

Case Law

3. Syed Asifuddin and Ors. vs. The State of Andhra Pradesh and Ors. Andhra Pradesh High Court, 2006 (1) ALD Cri 96, 2005 Cri. LJ 4314

In this case it was contended that Insofar as the offence under Section 65 of Information Technology Act is concerned, a telephone handset is not a computer nor a computer system containing a computer programme. Alternatively, in the absence of any law which is in force requiring the maintenance of "computer source code", the allegation that the petitioners concealed, destroyed or altered any computer source code, is devoid of any substance and therefore the offence of hacking is absent.

It was observed by the court that the essential functions in the use of cell phone, which are performed by the MTSO, is the central antenna/central transmitter and other transmitters in other areas well coordinated with the cell phone functions in a fraction of a second. All this is made possible only by a computer, which simultaneously receives, analyses and distributes data by way of sending and receiving radio/electrical signals.

4. *Google India Private Limited vs. Visakha Industries and Ors. (10.12.2019 - SC)*

In this case the Supreme Court decided that Section 79 of Information Technology Act, 2000 as originally enacted, did not deal with the effect of other laws.

The Supreme Court *inter alia* decided that the finding by the High Court that in the case on hand, in spite of the complainant issuing notice, bringing it to the notice of the Appellant about the dissemination of defamatory matter on the part of the first Accused through the medium of Appellant, Appellant did not move its little finger to block the said material to stop dissemination and, therefore, cannot claim exemption Under Section 79 of the Act, as it originally stood, is afflicted with two flaws. In the first place, the High Court itself has found that Section 79, as it originally was enacted, had nothing to do with offences with laws other than the Act. We have also found that Section 79, as originally enacted, did not deal with the effect of other laws. In short, since defamation is an offence Under Section 499 of the Indian Penal Code, Section 79, as it stood before substitution, had nothing to do with freeing of the Appellant from liability under the said provision…..

Note: Students appearing in December, 2023 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 31st May, 2023.