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GRC Bulletin

June 2023

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About

ricago is a dynamic next generation company focusing on Enterprise Governance, Risk Management and Compliance Management (GRC) solutions.

In a globalized business environment, organizations need to comply with complex and dynamic regulatory requirements as they grow and expand into different geographies and industry verticals. With the right mix of rich domain & technology expertise, and insights from both CFO & CIO worlds, Clonect helps organizations to leverage technology optimally and innovatively, addressing GRC and GST needs.

ricago focuses on niche products in the area of Enterprise Governance, Risk Management and Compliance Management (GRC). The solution suite is a mix of products and services. Compliance Management System (CMS), Audit Management System (AMS), Labour Law Services, Compliance Enablement Services that helps firms to efficiently manage end-to-end compliance requirements and address the risk of non-compliance.

ricago CLASS (Comprehensive Labour Advisory & Special Services), New age platform for end-to-end labour law related information. Our expert team constantly monitors updates & amendments and advises clients accordingly

CORPORATE LAWS

RBI - MASTER CIRCULAR - INCOME RECOGNITION, ASSET CLASSIFICATION, PROVISIONING AND OTHER RELATED MATTERS – UCBS

RBI/2023-24/26
DOR.STR.REC.14/21.04.048/2023-24

The Reserve Bank of India issued a master circular on the **8th of May, 2023** to all the **Primary (Urban) Co-operative Banks** for the income recognition, asset classification, provisioning, and other matters.

The special regulatory treatment for asset classification, in modification to the provisions in this regard stipulated, will be available to the borrowers engaged in important business activities, subject to compliance with certain conditions as enumerated in para 2.2.7.28 below. Such treatment is not extended to the following categories of advances:

(i) Consumer and personal advances including advances to individuals against the securities of shares / bonds / debentures, etc.

(ii) Advances to traders

Subject to the compliance with the undernoted conditions in addition to the adherence to the prudential framework laid down:

(i) an existing 'standard asset' will not be downgraded to the sub-standard category upon restructuring.

(ii) during the specified period, the asset classification of the sub-standard / doubtful accounts will not deteriorate upon restructuring, if satisfactory performance is demonstrated during the specified period.

Para 2.2.7.28 of the master circular states, that these benefits will be available subject to compliance with the following conditions:

(i) The dues to the bank are 'fully secured'. The condition of being fully secured by tangible security will not be applicable in the following cases:
  (a) SSI borrowers, where the outstanding is up to ₹25 lakh.
  (b) Infrastructure projects, provided the cash flows generated from these projects are adequate for repayment of the advance, the financing bank(s) have in place an appropriate mechanism to escrow the cash flows, and also have a clear and legal first claim on these cash flows.
  (c) WCTL created by conversion of the irregular portion of principal dues over the drawing power, subject to the condition that

provisions are made against the unsecured portion of the WCTL, as under :

- Standard Assets : 20%
- Substandard Assets : 20% during the first year and to be increased by 20% every year thereafter until the specified period (one year after the first payment is due under the terms of restructuring)
- If the account is not eligible for upgradation after the specified period, the unsecured portion will attract provision of 100%.

(ii) The unit becomes viable in 10 years, if it is engaged in infrastructure activities, and in 7 years in the case of other units.

(iii) The repayment period of the restructured advance including the moratorium, if any, does not exceed 15 years in the case of infrastructure advances and 10 years in the case of other advances. The Board of Directors of the banks should prescribe the maximum period not exceeding 15 years for restructured advances keeping in view the safety and soundness of advances.

(iv) Promoters' sacrifice and additional funds brought by them should be a minimum of 15% of banks' sacrifice.

(v) Personal guarantee is offered by the promoter except when the unit is affected by external factors pertaining to the economy and industry.

(vi) The restructuring under consideration is not a 'repeated restructuring'.

(g) Disclosures

Internal System for Classification of Assets as NPA

(i) Banks may adhere to the timelines for implementation of system-based asset classification.

(ii) Banks, which are not required to implement system-based asset classification in terms of the instructions, should establish appropriate internal systems to eliminate the tendency to delay or postpone the identification of NPAs, especially in respect of high value accounts. The banks may fix a minimum cut-off point to decide what would constitute a high value account depending upon their respective business levels. The cut-off point should be valid for the entire accounting year.

(iii) Responsibility and validation levels for ensuring proper asset classification may be fixed by the bank.

(iv) The system should ensure that doubts in asset classification due to any reason are settled through specified internal channels within one month

CORPORATE LAWS

from the date on which the account would have been classified as NPA as per extant guidelines.

(v) Banks should ensure scrupulous compliance with the instructions for recognition of credit impairment and view aberrations by dealing officials seriously.

(vi) RBI would continue to identify the divergences arising due to non-compliance, for fixing accountability. Where there is wilful non-compliance by the official responsible for classification and is well documented, RBI would initiate deterrent action including imposition of monetary penalties.

SOURCE : Click Here for more details

CORPORATE LAWS

SEBI - 'TESTING FRAMEWORK' FOR IT SYSTEMS OF THE MARKET INFRASTRUCTURE INSTITUTIONS

Circular No. SEBI/HO/MRD/TPD/P/CIR/2023/65
Dated: 5th May, 2023

- SEBI has established a thorough testing framework for the Information Technology (IT) systems of Market Infrastructure Institutions (MIIs). The framework is going to oversee MIIs IT systems throughout their life span and will also aid in undertaking full risk assessments prior to implementing any IT systems in the production/live environment.
- According to the framework, if new systems are built or changes are made to existing systems before deployment in the production/live environment, all MIIs are obliged to conduct extensive testing, validation, and documentation.
- Furthermore, MIIs must provide a complete methodology for system testing, functional testing, and application security testing, which must be authorized by their respective MIIs Standing Committee on Technology (SCOT).
- Business logic, system operation, security controls, and system performance under load and stress situations are all included in the scope of testing. Furthermore, any reliance on current systems must be thoroughly validated.
- To minimise disruption, testing should be done in a separate environment that replicates/mirrors the production environment. All concerns discovered during testing, including system faults or software bugs, should be carefully logged and resolved as soon as possible.
- All MIIs are directed to develop policies and processes for the usage of third- party systems/applications/software codes in order to guarantee that these systems are reviewed and tested before being connected with the MIIs' systems.
- Furthermore, MIIs are encouraged to submit the testing framework for all of their IT systems within 30 days of the date of this circular, after approval from the Standing Committee of Technology (SCOT). The circular will go into effect immediately.

SOURCE : Click Here for more details

CORPORATE LAWS

SEBI - COMPREHENSIVE GUIDELINES FOR INVESTOR PROTECTION FUND AND INVESTOR SERVICES FUND AT STOCK EXCHANGES AND DEPOSITORIES

Circular No.: SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/81
Dated: May 30,2023

The Security and Exchange Board of India (SEBI) issued a notification regarding the Comprehensive guidelines for Investor Protection Fund and Investor Services Fund at Stock Exchange and Depositories on 30th of May, 2023. This had reference to SEBI circular no. MRD/DoP/SE/Cir-38/2004 dated October 28, 2044, had issued comprehensive guidelines for Investor Protection Fund (IPF) to be maintained by Stock Exchanges, and the SEBI circular No.SE/10118 dated October 12, 1992, that advised stock exchanges to establish an Investor Services Fund (ISF).

The terms of this circular will go into effect on the 30th day after it is issued. The IPF and ISF have set the following guidelines:-

- It mandates that all stock exchanges and depositories must set up an IPF. The stock exchange and depository's IPFs shall be administered through separate trusts established for that purpose.
- The Stock Exchange and depository shall guarantee that the funds in IPF are properly divided and that their respective IPFs are exempted from the Stock Exchange and depositories obligations. The IPF trust will be in charge of monitoring the use of IPF and interest revenue.
- The Stock Exchange and Depository's contribution and utilization of IPF, as well as interest revenue from the IPF, have been mentioned.
- Annexure-1 has a comprehensive (SOP) showing the procedure and time scales for declaring a TM in default, processing investor claims out of IPF, and reviewing claims
- It states that all stock exchanges must set aside at least 20% of the listing fees received for ISF for the purpose of providing services to the investing public in order to have better management and control over the contributions and utilisation of the ISF corpus, with the Regulatory Oversight Committee overseeing the same.
- It also states that all previous communications or directions by SEBI, wire various letters or emails, etc., pertaining to the periodicity of review of IPF corpus, utilisation of IPF interest, SOP indicating timeline for processing of claims, review of claims, etc., disclosure of IPF corpus and policy of processing of investor claims and implementation of

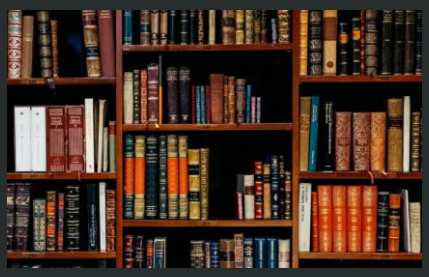
amendment of policy on the process of investor claims, will be rescinded with effect from the date of implementation of this circular.

The Stock Exchanges and Depositories are urged to execute the following functions:

i. Take the required measures and put in place the appropriate system for the aforementioned to be implemented.
ii. Make any required changes to the relevant bylaws, rules, and regulations in order to carry out the foregoing.
iii. Make the terms of this circular known to market participants (including investors) and post them on their website.

SOURCE : Click Here for more details

LABOUR LAWS



EMPLOYEES STATE INSURANCE (GENERAL) REGULATIONS, 1950 ON 17.05.2023

Chapter II lays down the collection of contributions, etc.

31C. Damages on contributions or any other amount due, but not paid in time.

If an employer fails to pay contribution within the periods specified under Regulations 31, or any other amount payable under the Act, the Corporation may recover damages, not exceeding the rates mentioned below, by way of penalty:-

Period of delay - Maximum rate of damages in % per annum of the amount due

(i) Less than 2 months - 5%
(ii) 2 months and above but less than 4 months - 10%
(iii) 4 months and above but less than 6 months - 15%
(iv) 6 months and above- 25%

Provided that the Corporation in relating to a company in respect of which a Resolution Plan has been sanctioned by the National Company Law Tribunal under the Insolvency & Bankruptcy Code, 2016 may:

1. Waive up to 50 percent of the damages levied or leviable depending upon merits of the case.
2. In exceptional hard cases, waive either totally or partially the damages levied or leviable.

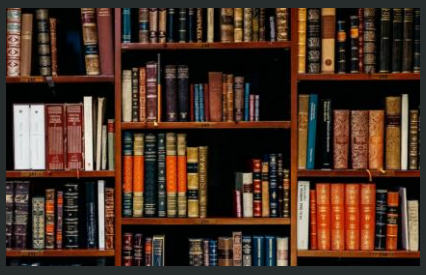
32.Register of Employees-

(1) Every employer shall maintain a register in **Form 6** in respect of every employee of his factory or establishment.

(1A) ***Register of employees engaged by immediate employer.*** — Every immediate employer shall maintain a register in Form 6 in respect of every employee engaged by him and submit the same to the principal employer before the settlement of any amount payable under sub-section (1) of section 41 of the Act.

(2) Every employer shall preserve every register maintained under this regulation after it is filled, for a period of five years from the date of last entry therein.

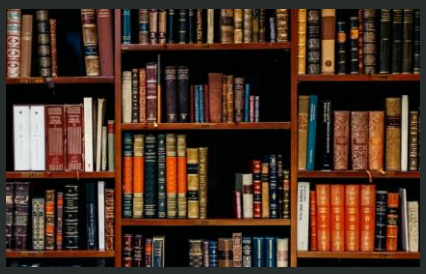
LABOUR LAWS



(3) The employer shall give a reasonable opportunity to any of his employees, if he so desires to see entries in respect of such employee in this register once a month.

SOURCE : Click Here for more details

GENERAL LAWS



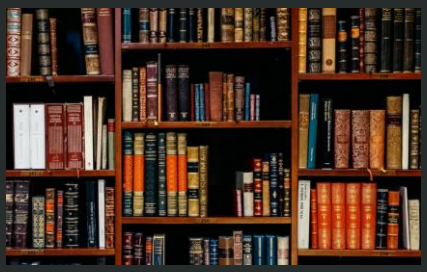
BIHAR EPIDEMIC DISEASES, COVID-19 REGULATION 2023

The Government of Bihar issued the Bihar Epidemic Diseases, COVID-19 Regulation 2023 on **11th of May, 2023**, in order to take particular precautions that the general population must follow in order to avoid the emergence or spread of the said disease.

The following has been stated:

- All hospitals (public and private) should have flu screening areas for probable COVID-19 (Corona Virus Disease 2019) patients.
- During the screening of such cases, all hospitals (private and public) must record the person's travel history if he or she has visited any nation or region where COVID-19 has been documented. Furthermore, the history of interaction with a suspected or confirmed case of COVID-19 must be documented.
- No person/institution/organization shall utilize any print, electronic, or social media for misrepresentation about COVID-19 with the malicious goal of spreading fear in society. This is to prevent the spread of rumours or unverified information about COVID-19. If such action is discovered, it will be considered a penal crime under these regulations.
- Private laboratories have also been permitted to collect or test samples for COVID-19 in the state of Bihar, in accordance with Government of India rules.
- Authorised person, authorized under this act to admit a person and isolate the person if he/she has a history of visiting an area known to be affected by COVID-19 or has come into contact with a person from that area and the concerned person is symptomatic, as defined in clause 3 of these regulations.
- If there are sufficient reasons, cause, or information to suspect or believe that any person may be infected with COVID-19 and his continued presence on premises is hazardous to public safety, it shall be lawful for Surveillance Personnel to enter any such premises, after giving the owner/occupier or reasonable opportunity; for the purpose of surveillance of instances of fever, cough, or respiratory difficulty, inquire into or undertake a physical examination.
- Penalty: Any person/institution/organization found in violation of any of these regulations shall be considered to have committed an offence punishable under Section 188 of the Indian Penal Code 45 of 1860. If any person/institution/organization is found to be in violation of the provisions of this regulation or any further orders issued by the

GENERAL LAWS

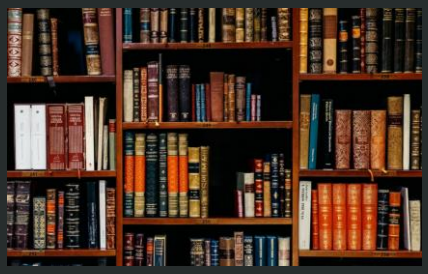


Government of Bihar under this regulation, the Additional Chief Secretary/Principal Secretary, Department of Health, or District Magistrate of our respective district may initiate legal against them.

This regulation shall come into force immediately and shall remain **valid for a period of one year.**

Source : Click Here for more details

GENERAL LAWS



MOHFW - ACCESSIBILITY STANDARDS FOR HEALTHCARE

No. T.21017/20/2021-NCD.I (NPPCD)/Part

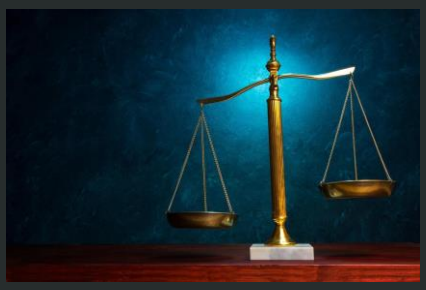
The Ministry of Health and Family Welfare (MOHFW) on **May 09, 2023**, issued the Accessibility Standards for Healthcare.

The following points has been made:

- To provide accessible health care services to people with disabilities (PwD), it is necessary for them to be able to travel to the health care institution and use the provided services without impediments, with dignity, and full independence.
- The document stipulates the following standards for accessible healthcare:
  1. Access to services.
  2. Physical accessibility and the physical design of healthcare facilities.
  3. Availability of necessary information.
  4. Accessible indoor healthcare
  5. Accessible outdoor healthcare
  6. Effortless communication.
  7. Trained employees with reasonable accommodation (sensitive to individual differences and disabilities), understanding of the special requirements of people with disabilities, and the skills to meet those needs.
  8. The service's affordability and acceptance.
  9. Availability of services.

SOURCE : Click Here for more details

JUDICIAL INSIGHT



WHETHER DOCTRINE OF LEGITIMATE EXPECTATION APPLIES TO TAX EXEMPTIONS

The issue of whether M/s. K.B. Tea Product Pvt. Ltd (appellants) were entitled to sales tax exemption despite the amendment of section 2(17) of the West Bengal Sales Tax Act, 1994 resulted in a divided verdict from the division bench of Justice M.R. Shah and Justice Krishna Murari.

The case's factual matrix was that, under the regulations of West Bengal Incentive Scheme 1999 (1999 scheme), new industrial units that satisfied the stipulated standards were free from paying sales tax for a specific period. This exemption applied to the procurement of raw materials required to carry out manufacturing operations in these units. For the last two years, the appellants had been excluded from paying sales tax under Section 2(17) and 39 of the Act of 1994. However, West Bengal Finance Act 2001 made a change to Section 2(17) of the West Bengal Sales Tax Act, 1994 which became effective on August 1, 2001. The phrase 'blending of tea' were omitted from the definition of 'manufacture' as defined in Section 2(17). As a result, the appellants' previously granted sales tax exemption has been revoked the appellant filed the current appeals in order to be excused from paying sales tax under the previous 1999 scheme.

It was argued on behalf of the appellants that because the appellants were benefiting from sales tax exemption before 01.08.2001, the set right could not have been taken away by amendment to Section 2(17) of the Act, 1994 on the grounds of legitimate expectation as well as promissory estoppel.

Justice Shah ruled that the modification to Section 2(17) of the act of 1994, which eliminated tea blending from the definition of manufacturing, meant that the appellants were no longer qualified as manufacturers. As a result, they were no longer eligible for the sales tax exemption that was previously granted solely to producer's involved in tea blending.

"There cannot be any promissory estoppel against the statute as per the settled position of law. As rightly observed and held by the High Court, this is not a case of vested right but a case of existing right, which can be varied or modified and/or withdrawn," said Justice Shah.

Furthermore, according to section 39 of the act of 1994, which applies to the exemption from payment of sales tax, the prerequisite for qualifying is that the dealer be involved in manufacturing. As a result, the definition of manufacture is critical in evaluating the application of the exemption. If a dealer seizes to be a manufacturer, they are no longer eligible for section 39 exemption.

With the above observation, Justice Shah dismissed the appeals.

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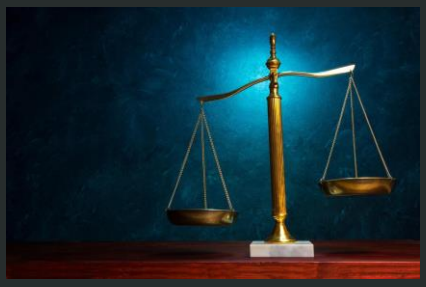

While Justice Shah and Justice Murari agreed that the appearance did not have a vested right to claim exemption from sales tax under the Act, they disagreed on the applicability of the notion of legitimate expectation. Justice Murari deferred with Justice Shah on the notion of legitimate expectation and offered his own viewpoint on the subject.

Justice Murari examined the case of MRF Ltd. Kottayam vs. Assistant Commissioner Sales Tax & Ors. LQ/SC/2006/864, where it was held that legitimate expectation, as a ground for challenge, can be done away within circumstances where it has been demonstrated by the public authority that the withdrawal of the said expectation was done on grounds of public interest.

Justice Murari remarked that, **"The doctrine of promissory estoppel and the doctrine of legitimate expectation, while they share a common route and a similar theme, by way of going through the rigours of common law, have developed into 2 distinct doctrines. The doctrine of promissory estoppel is a remedy in private law; however, the doctrine of legitimate expectation is a remedy in public law, and as stated above, is rooted in Article 14 of the Constitution of India."**

Justice Murari stated that the legitimate expectation generated by the responsible authority, guaranteeing the balance a tax break for their tea blending operations, was broken when a subsequent revision eliminated tea blending from the category of manufacture. This change nullified the appearance genuine expectation and denied them the anticipated tax benefits. The appellants were enticed to conduct certain activities based on this reasonable assumption, only to incur damages when their claim was revoked without remedy.

Justice Murari further pointed out that the government's later revision, which eliminated 'tea blending' from the concept of manufacture, lacked enough reason. The government failed to present a solid justification for implementing the modification or to take into account the impact on the affected party.

Allowing the current batch of civil appeals in favour of the appellants, **Justice Murari concluded** that the authority should be held accountable for the legitimate expectation it created, and directed the respondents to provide the appellants with the benefits of the original amendment until such benefits expired under the original amendment.

Case Name : M/s. K.B. Tea Product Pvt. Ltd. & Anr v. Commercial Tax Officer, Siliguri & Ors., Civil Appeal No. 2297 of 2011, Dated- 12.05.2023.

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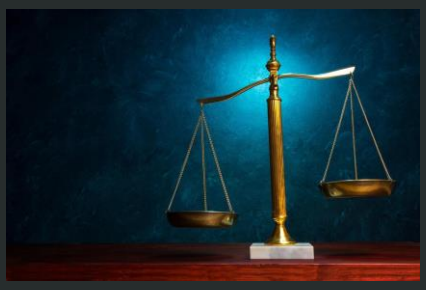


AN AWARD COULD BE SAID TO BE SUFFERING FROM "PATENT ILLEGALITY" ONLY IF IT IS AN ILLEGALITY APPARENT ON THE FACE OF THE AWARD PARTIES

Appellant- Reliance Infrastructure Ltd.
Respondent- State of Goa.

Subject:

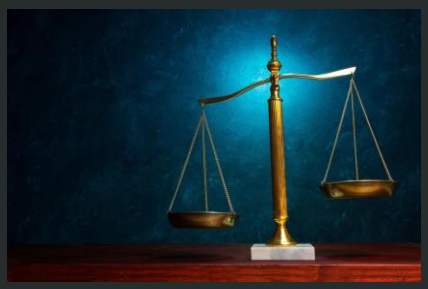
In the present case, Reliance Infrastructure won an arbitration dispute against the State of Goa over delayed payments for a power plant.

Issue Raised:

Does the impugned judgement and Order by the Commercial Court uphold the impugned Award warrant interference?

Overview:

- Reliance infrastructure entered into a power purchase agreement with the state of Goa to operate a power generation station from 14.08.1999 to 13.08.2014.
- Several more agreements were made between the parties. The three primary ones were about electrical power production and purchase.
- The government of Goa intended to halt the claimant's purchase of power. However, the claimant suggested supplying power using Regassified Liquefied Natural Gas (RLNG), which GAIL offered in Goa. On April 26, 2013, the Goa Government agreed to continue purchasing power from the claimant.
- The claimant requested an explanation from the government on the formula-based tariff payable for electricity supply, which was based on the current RLNG price and INR/USD exchange rate. The government promised to acquire it based on current fuel dollar prices until the PPA expired. This necessitated proof demonstrating the fuel price and dollars included in the claimant's invoices.
- Nonetheless, monthly invoices were not paid from May 2013, and the claimant was aggrieved. Several communications were exchanged between both the sides, yet the issue remained unresolved. The facility closed in April 2014.
- The claimant petitioned the Joint Electricity Regulatory Commission for the collection of its dues.
- The arbitral tribunal issued a judgement on February 16, 2018, directing the state to pay the claimant rupees 278.29 crore, plus interest from



October 31, 2017, common at the rate of 15% per annum. It further said that if the state paid the whole sum plus interest within 2 months of the award date, they would not have to pay the interest amount.

- The Claimant has challenged the High Court's judgement to partially set aside the award and has approached the Supreme Court of India through a special leave petition.

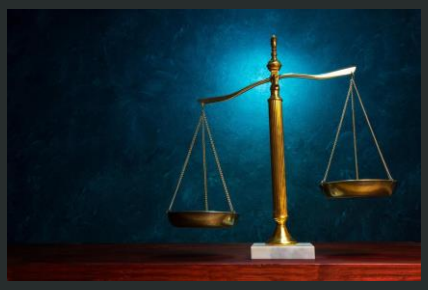
Arguments Advanced By The Appellant:

- The counsel argued that the scope of intervention under section 37 of the Act of 1996 is limited to the grounds specified in the section 34.
- It was argued that under the Act's provisions, re-application of evidence or review on merits is not permitted unless the award is in disagreement with public policy or is negated by "patent illegality appearing on the face of the award."
- To prove the aforesaid claim, the council cited cases such as Delhi Airport Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd [(2022) 1 SCC 131] and Haryana Tourism Ltd. v. Kandhari Beverages Ltd [(2022) 3 SCC 237].
- The High Court noted that the parties had agreed that the price of U.S. dollars and fuel would decide electricity sales. Furthermore, the government of Goa agreed to the methodology for calculating rates for alternative fuel. Following that, the government of Goa usurped authority from the claimant without dispute, and the alleged non-compliance with provisions was taken before the arbitral tribunal.

Arguments Advanced By The Respondent:

- The Attorney General highlighted a number of court rulings concerning the extent of interference under sections 34 and 37 of the act of 1996. Ssangyong Engineering and Construction Co. Ltd. v. NHAI [(2019) 15 SCC 131], MMTC Limited v. Vedanta Limited [(2019) 4SCC 163], and PSA SICAL Terminals (P) Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Ors [(2021) SCC Online SC 508], are amoung the instances listed.
- Council argued that the patient was illegal because of blatant ignorance of relevant contractual clauses, citing the cases of State of Chhattisgarh and Ors. V. Saludyog PVT. Ltd [Civil Appeal No. 4353 of 2010] and Associate Builders v. Delhi Development Authority [Civil Appeal No. 10531 of 2014] to support this argument.
- It was further argued that the High Court overlooked the purpose of appointing an expert under Section 26 of the Act of 1996. The State claims that the Arbitral Tribunal's refusal to accept the application for the

JUDICIAL INSIGHT



appointment of an expert breached natural justice principles by denying the state and equal chance to submit its case.

- According to Section 34(2A) of the Act of 1996, the award should be set aside for patent illegality, according to the learned Attorney General.

Judgement Analysis:

The Supreme Court of India overturned the impugned High Court ruling and reinstated the whole award. The bench of justices Dinesh Maheshwari and Sanjay Kumar concluded that the High Court made an error in determining the merits of the award. The court referenced Delhi Airport Metro Express Pvt. Ltd v. Delhi Metro Rail Corporation Ltd [(2022) 1 SCC 131], in which it was stated that courts must use caution while assessing the legality of an arbitral decision. Otherwise, the interference with the award produced by reassessing the factual features will be contrary to the purpose of the 1996 Act. The court further found that the restricted scope of "patent illegality" cannot be violated by using expressions that do not allude to "patent illegality" but rather to an "error". The bench stated that nothing connected to "patent illegality" had been revealed in the face of judgement, and the claimed faults in the case are not covered by Section 34 of the act of 1996.

Conclusion:

The arbitration and conciliation act, 1996 is an Act of the Indian parliament. It codifies and changes the legislation governing domestic arbitration, international commercial arbitration, and then forcemeat of foreign arbitral judgements, among other things. The current case dealt with numerous elements of this statute, particularly section 34. Section 34 of the legislation allows for the application to set aside arbitral awards. The respondent requested that the judgement be set aside for patent illegality under section 34(2A). The court denied this submission. The Supreme Court of India issued important rulings about "patent illegality" in the current case. The court reiterated the conclusions of the case Delhi Airport Metro Express (supra) and noted that if caution is not exercised in examining arbitral awards, countless judicial judgements would set aside and labelled as "patently illegal" without considering the limits of these statements.

***Case Name** : Reliance Infrastructure Ltd. vs State of Goa, Civil Appeal No. 3615 OF 2023, Dated: 10.05.2023.*

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