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SUPPLEMENT
EXECUTIVE PROGRAMME

(NEW SYLLABUS)

for

June, 2022 Examination

JURISPRUDENCE, INTERPRETATION AND GENERAL LAWS

MODULE 1

PAPER 1

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Lesson 2 – Constitution of India

1. ***Skill Lotto Solutions Pvt. Ltd. v. Union of India & Ors.***

Facts of the case

The petitioner an authorized agent for sale and distribution of lotteries organized by the state of Punjab filed a writ petition before the Supreme Court impugning the definition of goods under section 2(52) of the Central Goods and Services tax, 2017 and consequential notifications to the extent it levied tax on lotteries. The petitioner sought declaration that the levy of tax on lottery is discriminatory and violative of Article 14, 19(1)(g), 301 and 304 of the Constitution of India.

The Supreme Court on 3rd December, 2020 held that the levy of Goods and Services tax on lottery is not discriminatory and violative of Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.

For more details:

https://main.sci.gov.in/supremecourt/2018/27917/27917_2018_34_1501_24918_Judgement_03-Dec-2020.pdf

Lesson 3 – Interpretation of Statutes

1. The case Municipal Corporation of Hyderabad vs. P.N. Murthy & Ors., 1987 SCR (2) 107 was decided by the Supreme Court.

Facts of the Case

Municipal Corporation of Hyderabad constructed houses under "Low Income Housing Scheme" and allotted them to the respondents on hire purchase. The agreements executed by the respondents in favour of the appellant provided as follows:

(i) that the houses would remain, till the payment of the last instalment and execution of a conveyance in favour of the respondents, as the property of the Corporation; and

(ii) that all Municipal taxes, water taxes and electricity charges would be borne by the allottees.

The appellant served demand notices on the respondents to pay house tax in respect of their houses. By that time, the instalments had not been fully paid. The respondents challenged 'the levy of tax on the ground that the Hyderabad Municipal Corporation Act prohibits the levy

of general tax in respect of the aforesaid houses, since they had not yet vested unto the allottees under the hire purchase agreement.

It was held by the Supreme Court that the scheme of the relevant sections has to be read and construed in a meaningful, purposeful and rational manner. The expression 'vest' employed in Section 202(1)(c) of the Hyderabad Municipal Corporation Act, under the circumstances must of necessity be construed as vesting both in title as well as in possession.

2. **The case *M/s New India Sugar Mills Ltd. vs. Commissioner of Sales Tax, Bihar. SC, 1963 AIR 1207* was decided by Supreme Court.**

Facts of the Case

The States intimated to the Sugar Controller of India their requirements of sugar and the factory owners sent statements of stocks of sugar held by them under the Sugar Products Control Order, 1946,. The Controller made allotments to States and addressed orders to the factory owners directing them to supply sugar to the States in question. The assesses despatched sugar to the State of Madras. The State of Bihar treated the transactions as sales and levied sales tax thereon, under the Bihar Sales Act, 1947. The assesses contended that the despatches of the sugar did not amount to sales and no sales tax was is applicable on such transactions.

The supreme court held that the transactions did not amount to sales and were not liable to sales tax. Under Entry 48, List II of Government of India Act, 1935, the Provincial Legislature had no

power to levy sales taxes on a transaction which was not of the nature of a sale of goods, as understood in the Sale of Goods act. To constitute a sale of goods, property in the goods must be transferred from the seller to the buyer under a contract of sale.

If the Bihar Legislature had under the Government of India Act, 1935 no power to legislate in respect of taxation of Transactions other than those of sale of goods as understood in the Sale of Goods Act, a transaction to be liable to pay sales-tax, had to conform to the requirements of the Sale of Goods Act, 1930. Attributing a literal meaning to the words used would amount to imputing to the Legislature an intention deliberately to transgress the restrictions imposed by the Constitution Act upon the Provincial Legislative authority. It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature.

Lesson 4 – General Clauses Act

The case Leo Roy Frey vs The Superintendent, District Jail 1958 AIR 119, 1958 SCR 822 was decided by the Supreme Court on 31st October, 1957.

Facts of the Case

The petitioner were held guilty under section 167 of the Sea Customs Act. Further complaints were made before Additional District Magistrate under section 120B of the Indian Penal Code, 1860 read with section 23/23B of the Foreign Exchange Regulations Act, 1947, and s. i67(8i) of the Sea Customs Act alongwith other sections. The petitioner filled writ petitions of certiorari and prohibition under Article 32 of the Constitution.

It was held by the Supreme Court that it is true that the Collector of Customs has used the words " punishment " and " conspiracy ", but those words were used in order to bring out that each of the two petitioners was guilty of the offence under s. 167(8) of the Sea Customs Act. The petitioners were not and could never be charged with criminal conspiracy before the Collector of Customs and therefore Art. 20(2) cannot be invoked.

Lesson 7 – Limitation Act, 1963

1. ***Noharlal Verma vs. District Cooperative Central Bank Limited, Jagdalpur, (SC), 2008***

Facts of the Case

The appellant was working as a manager in Large Area Multi-Purpose Society. He was removed from the services due to financial irregularities committed by him. An appeal was made by appellant on 30-04-1982. As there was no communication, the appellant further filled an appeal under section 55 of the Madhya Pradesh Cooperative Societies Act, 1960 before Joint Registrar Cooperative Societies, Raipur. The Joint Registrar then came to be appointed for District Bastar and an appeal was filled before him on 08-10-1985. On 19-02-1986, Joint Registrar Cooperative Societies, Bastar dismissed the application as time-barred. Joint Registrar, Raipur forwarded to Deputy Registrar, Kanker. The respondent Bank challenged the said order before State cooperative tribunal. The appellant filled an appeal before High Court, Chhattisgarh which was dismissed by High Court. Then the appeal was filled before Supreme Court.

The Supreme Court held that, if the statute stipulates a particular period of limitation, no concession or order would make an application barred by time to be within the limitation and the authority had no jurisdiction to consider such application on merits.

2. ***G. Ramegowda, Major, Etc. v. Special Land Acquisition Officer , Bangalore, AIR, 1988, SC 897***

Facts of the Case

The land of the appellants were acquired for the purpose of the 'University of Agricultural Sciences' at Bangalore. The Civil Judge in Land Acquisition reference passed common award in three land acquisition. There was substantial delay in filling the three appeals. The Government in support of its prayer for condonation of delay narrated the chronological sequence of events and the protracted correspondence between the Government-Pleader and the Government, and the difficulties faced by the administration in even ascertaining the correct state of affairs owing to the negative and evasive attitude of the Government Pleaders. The condonation of delay was given. The appellants-claimants contended that the High Court fell into a manifest error in condoning the inordinate and wholly unjustified delay and that the explanation offered before and accepted by the High Court cannot. in law. be held to constitute 'sufficient cause' for purposes and within the meaning of Section 5 of the Limitation Act. 1963

The Supreme Court held that the expression 'sufficient cause' in Section 5 of the Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

Lesson 12 – Special Courts, Tribunal under Companies Act and other legislations

1. The case M/S Kaledonia Jute and Fibres Pvt. Ltd. (Appellant) vs. M/s Axis Nirman and Industries Ltd. & Ors. (Respondents) is decided by Supreme Court of India on 19th November, 2020.

Fact of the case

A petition was filed before the High Court of Allahabad for the winding up of the 1st Respondent company on the ground that the Company was unable to pay its debts. The Appellant herein, claiming to be a creditor of the 1st Respondent, moved an application before the NCLT, Allahabad under Section 7 of the Insolvency and Bankruptcy Code, 2016. The Appellant claimed before the NCLT that the 1st Respondent was liable to pay a sum of Rs. 32 lakhs and the company failed to pay the said amount. It also moved an application before the High Court seeking a transfer of the winding up petition to the NCLT, Allahabad. This application was rejected by the High Court, on the sole ground that the requirement of Rule 24 of the Companies (Court) Rules, 1959 had already been complied with and that a winding up order had already been passed. Aggrieved by the order of the High court, the financial creditor filed and appeal before the Supreme court.

The main issues for consideration in this appeal were:

(i) what are the circumstances under which a winding up proceeding pending on the file of a High court could be transferred to the NCLT; and

(ii) At whose instance, such transfer could be ordered.

Decision

The Hon'ble Supreme Court observed that the proceedings for winding up of a company are actually proceedings *in rem* to which the entire body of creditors is a party. The proceeding might have been initiated by one or more creditors, but by a deeming fiction the petition is treated as a joint petition. The official liquidator acts for and on behalf of the entire body of creditors. Therefore, the word "party" appearing in the 5th proviso to Section 434 (1) (c) of the Companies Act, 2013 cannot be construed to mean only the single petitioning creditor or the company or the official liquidator. The words "party or parties" would take within its fold any creditor of the company in liquidation. Further, as observed in Forech India Limited (*supra*), the object of IBC will be stultified if parallel proceedings are allowed to go on in different fora. Hence, it was held that the Appellant will comes within the definition of the expression "party" appearing in the 5th proviso to Section 434(1) (c) of the Companies Act, 2013 and is entitled to seek a transfer of the pending winding up proceedings against the 1st Respondent, to the NCLT.

2. The case Union of India, Ministry of Corporate Affairs (Appellant) vs. Delhi Gymkhana Club Ltd. & Ors. (Respondents) is decided by NCLAT on 15th February, 2021.

Fact of the Case

The Club came to be incorporated on 14th July, 1913 as a Company (limited by guarantee) under Section 26 of the Companies Act, 1913 under the name and style 'Imperial Delhi Gymkhana Club Ltd.' as a non-profit company. The Club has been operating for more than a century in 27 acres of land leased out by the then Government. Respondent Nos. 2 to 17 before the Tribunal were the General Committee Members for the year 2019-2020 out of whom Respondent No.2 was acting as President of the GC while Respondent No. 18 was working as Secretary/ CEO of the Club. Respondent No. 19 - the Ministry of Housing and Urban Affairs is the lessor of 27.03 acres of land given on perpetual lease to the Club in 1928 under a lease deed executed inter se the Secretary of State for India in Council (British India) and the Imperial Gymkhana Club Limited (the erstwhile name and style of the Club), the prefix "Imperial" having been dropped in the year 1959 after lapse of paramountcy of the British Empire and adopting of Constitution of India. The Club, with its main objective, being to promote various sports and pastimes and other objectives set out in the Memorandum of Association, has a limited membership. The number of permanent members is 5600. However, the users of the Club are stated to be double the number of permanent members. Based on complaints received by the Government against the Club, Ministry of Corporate Affairs, Government of India issued order dated 16th March, 2016 directing inspection of the Club by invoking powers vested in it under Section 206 (5) of the Companies Act, 2013. The nature and content of the complaints is referred to in para 8 of the impugned order and the violations borne out from the Inspection Report have been taken note of in para 9 of the impugned order. Keeping the same in view, Ministry of Corporate Affairs directed to take penal action against the Club management, auditors of the Club besides revocation of license of the Club, removal of the existing management, appointment of Government Directors and carrying out supplementary inspection to take up issues related to allotment of membership, money received from the new applicants as registration fee for membership, accounting treatment of the amount received from new applicants, investments made by the Club from such membership fee and with regard to the processing charges received from the Applicants. As a sequel to the Inspection Report and action taken thereof, the Inspectors filed the supplementary Inspection Report dated 3rd March, 2020 which detailed numerous violations and mismanagement of the affairs of the Club disclosing that the GC had been acting in violation of Articles of Association of the Club and the provisions of the Companies Act, 1956/ 2013 which was detrimental to the public interest, such violations being gross and extreme in nature and bringing it to fore that the GC members had acted in an autocratic manner to confer benefits on chosen members of the Club in hereditary manner at the cost of general public.

In view of the allegations of mismanagement in the affairs of the Delhi Gymkhana Club, leading to filing of the Company Petition by Union of India under Section 241(2) of the Companies Act, 2013 before the Tribunal, the NCLT, in its order dated June 26, 2020, had, while refusing to suspend the entire general committee of the Delhi Gymkhana Club, asked the Centre to appoint two members in the managing committee instead. Aggrieved by the order, the Union Government had, had moved

an appeal in the NCLAT, stating that appointing two members to the general committee did not give it "effective and efficacious remedy to stem the rot" present in the Gymkhana Club.

Decision

The NCLAT observed that by restricting membership to select few and conferring benefits on chosen members is perpetrating apartheid in violation of Constitutional goals of social justice and equality and held that the interim relief, to which the Union of India is found entitled to on the strength of a prima facie case demonstrated by it, has to be effective and adequate enough to ensure that the affairs of the Club are conducted in accordance with law and the charter of the Club. The interim relief must prove to be result oriented. Accordingly modifying the interim relief, the NCLAT directed suspension of the General Committee and ordered appointment of an Administrator to be nominated by the Union of India to manage the affairs of the Club and also direct that acceptance of new membership or fee or any enhancement thereof till disposal of wait list applications be kept on hold till disposal of the Company Petition.

Lesson 13 - Arbitration and Conciliation Act, 1996

1. The Supreme Court has decided the case of the Oriental Insurance Company Limited vs. Dicitex Furnishing Limited on 13th November, 2019.

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 and Conciliation Act, 1996. Bombay High Court has allowed the application under Section 11(6) of the Arbitration and Conciliation Act, 1996. The appellant filled the appeal to the Supreme Court in present case.

Judgement: 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 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

2. The Supreme Court has decided the case of the Brahmani River Pellets Limited vs. Kamachi Industries Limited on 25th July, 2019.

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 contained 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 filled an appeal to the Supreme Court against the impugned order.

Decision

The Hon'ble Supreme Court observed that Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 defines the "Court" with reference to the term "subject-matter of the suit". As per Section 2(1)(e) the Arbitration and Conciliation Act, 1996, 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 Arbitration and Conciliation Act, 1996 is to identify the court having supervisory control over the arbitral proceedings. As per Section 20 of the Arbitration and Conciliation Act, 1996, 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 Arbitration and Conciliation Act, 1996. Since only Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, 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

Note: Students appearing in June, 2022 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 30th November, 2021.