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LEGAL WORLD

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Corporate Laws

Landmark Judgement

LMJ 12:12:2023

IRIDIUM INDIA TELECOM LTD v. MOTOROLA INCORPORATED & ORS[SC]

Criminal Appeal No.688 of 2005

B. Sudarshan Reddy & Surinder Singh Nijjar, JJ. [Decoded on 20/10/2010]

Equivalent citations: (2010) 160 Comp Cas 147.

Investment in company- misleading statements withholding vital facts- section 415 of IPC- whether complaint by investor can be quashed-Held,No.

Brief facts:

The appellant filed a criminal complaint in the year 2001 against the Respondent alleging cheating under Section 420 read with Section 120B of the Indian Penal Code. The crux of the complaint was that the appellant was induced to part with huge investment by the Respondent and its representatives who made false assurances and warranties. The complaint was quashed by the High Court, against which the present appeal has been filed.

Decision: Appeal allowed.

Reason:

According to the High Court, the respondent no. 1 did not keep the investors in dark about the Iridium System and gave them all necessary information in respect of various aspects of the system. In coming to the aforesaid conclusion, the High Court observed that "a bare perusal of the complaint shows that there is no reference to the Stock Purchase Agreements of 1993 and 1994. In fact, these two important documents contain acknowledgments of the investors about their capability of evaluating the merits and risks of the purchase of the shares and their relying upon their own advisors."

The High Court, therefore, negated the submission that there has not been a complete and candid disclosure of the entire material which has resulted in the deception / inducement of the appellant to make huge investment in the Iridium. This conclusion reached by the High Court did not take notice of the explanation to Section 415. The aforesaid explanation gives a statutory recognition to the legal principles established through various judicial pronouncements that misleading statements which withhold the vital facts for intentionally inducing a person to do or to omit to do something would amount to deception. Further, in case it is found that misleading statement has wrongfully caused damage to the person deceived it would amount to cheating.

The aforesaid observations leave no manner of doubt that the appellants were entitled to an opportunity to prove the averments made in the complaint. They were entitled to establish that they have been deliberately induced into making huge investments on the basis of representations made by respondent no. 1 and its representatives, which representations subsequently turned out to be completely false and fraudulent. The appellants were entitled to an opportunity to establish that respondent no. 1 and its representatives were aware of the falsity of the representations at the time when they were made.

The appellants have given elaborate details of the positive assertions made by respondent no. 1 which were allegedly false to its knowledge. It is also claimed by the appellants that the respondent no. 1 and its representatives wilfully concealed facts which were material and ought to have been disclosed, but were intentionally withheld so as to deceive the appellant into advancing and expending a sum of Rs.500 Crores. As noticed earlier, both the appellants and the respondents have much to say in support of their respective viewpoints. Which of the views is ultimately to be accepted, could only be decided when the parties have had the opportunities to place the entire materials before the Court. This Court has repeatedly held that power to quash proceedings at the initial stage have to be exercised sparingly with circumspection and in the rarest of the rare cases. The power is to be exercised *ex debito justitiae*. Such power can be exercised where a criminal proceeding is manifestly attended with mala fide and have been instituted maliciously with ulterior motive. This inherent power ought not to be exercised to stifle a legitimate prosecution. In the present case, the parties are yet to place on the record the entire material in support of their claims. The issues involved are of considerable importance to the parties in particular, and the world of trade and commerce in general.

In such circumstances, in our opinion, the High Court ought to have refrained from indulging in detailed analysis of very complicated commercial documents and reaching any definite conclusions. In our opinion, the High Court clearly exceeded its jurisdiction in quashing the criminal proceeding in the peculiar facts and circumstances of this case.

LW 84:12:2023

GRI TOWERS INDIA PVT LTD v. INOX WIND LTD [NCLAT]

Company Appeal (AT) (Insolvency) No. 1106 of 2023

Ashok Bhushan, Barun Mitra & Arun Baroka. [Decided on 20/10/2023]

Section 9 of the Insolvency and Bankruptcy Code, 2016 read with section 14 Limitation Act,1963 - time barred application-dismissed by NCLT-whether correct-Held, Yes.

Brief facts:

The Operational Creditor supplied goods to the Corporate debtor, on various dates in pursuance to 3 purchase orders placed by the Corporate Debtor. In response to Purchase Orders 1 and 2 (stage 1) Operational Creditor issued 65 invoices on different dates from 31.10.2013 to 29.03.2014 out of which unpaid amount was Rs.72,55,402/-. In response to 3rd Purchase Order, Operational Creditor issued three invoices amounting to Rs. 21,91,122/- (Stage 2). Operational Creditor issued demand notice dated 27.07.2022 claiming amount of Rs.1,78,78,390/- total amount of which included principal amount under Stage 1 and Stage 2 and interest. It is pertinent that the Operational Creditor had first filed a civil suit against the outstanding dues pertaining to stage 1 and thereafter withdrawn the civil suit and filed the section 9 application before the NCLT.

The date of default as per Part-IV of Section 9 Application was 30.04.2015 for Stage 1 and on 23.10.2018 for Stage 2. Section 9 application was filed by Operational Creditor on 05.12.2022. Adjudicating Authority by impugned order has dismissed the Section 9 application on the ground that it is barred by limitation as well as there being no agreement placed on record for interest it does not fulfil the threshold of Rs.1 Crore. Aggrieved by the impugned order, this Appeal has been filed.

Decision: Dismissed.

Reason:

The Appellant having advanced the submission to the effect that the Appellant was entitled for exclusion of period under Section 14 of the Limitation Act during which period the suit filed by the Appellant was pending in the Civil Court, we need to first consider the above submission.

The law laid down by the Hon'ble Supreme Court is that even if Section 14 of the Limitation Act does not apply in an appeal, however, the principles underlying Section 14 can be applied while considering exclusion of period under Section 14. Thus, we proceed to examine the contentions of the parties on the premise that principles underlying Section 14 are also attracted in an appeal filed under Section 61 of I&B Code.

One of the conditions which is required to be fulfilled for extending the benefit of Section 14 as per the law laid down by the Hon'ble Supreme Court is "failure of the prior proceedings due to defect of jurisdiction or other cause of like nature". The withdrawal of the suit filed by the Appellant on its own application cannot be said to be failure of prior proceeding due to defect of jurisdiction or other cause of a like nature. When we look into the order passed by the Civil Court as extracted above, it is clear that the Appellant himself has withdrawn the suit for filing the application, which was withdrawn with subject to payment of cost of Rs.5,000/- to the Defendant.

The Suit was withdrawn without any liberty to institute a fresh suit which is clear from the order itself. Order XXIII Rule 3 of the CPC itself contemplated that when the Court is satisfied that a suit must fail by reason of some formal defect, or where there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, Court shall grant liberty to institute a fresh suit. No such liberty has been granted to the Operational Creditor to institute a fresh suit. We, thus, are satisfied that the Appellant is not entitled for benefit of Section 14 of the Limitation Act as has been contended by Counsel for the Appellant.

Benefit of Section 14 of the Limitation Act was sought by the Appellant on the basis of filing of suit and pendency of the suit during the period 03.10.2017 till 18.07.2022. As noted above, suit was withdrawn without any liberty from the Court to institute a fresh proceeding and termination of suit cannot be held on ground of defect of jurisdiction on cause of like nature. Thus, an essential condition for extending the benefit of Section 14 is absent. We, thus, are satisfied that delay in filing Section 9 application with delay cannot be said to be a sufficient cause within the meaning of Section 5.

In the circumstances, we are also satisfied that the present was a case filed by the Operational Creditor only for recovery of its contractual dues with regard to default committed as per the case of the Appellant on 30.04.2015 for stage 1 and 23.10.2018 for stage 2. The Adjudicating Authority did not commit any error in rejecting Section 9 application as barred by time. We do not find any merit in this Appeal. The Appeal is dismissed.

LW 85:12:2023

PHENIL SUGARS LTD v. LAXMI GUPTA & ORS [DEL]

CO.A (SB) 9/2015 & CO.APPL. 615/2015

Pratibha M Singh , J. [Decided on 10/11/2023]

Companies Act,1956- Section 111A - refusal to register transfer of shares- appellant refused to register share transfer in the name of respondents- respondents were inimically disposed to appellant – whether the refusal is correct-Held, Yes.

Brief Facts:

The present appeal has been filed by the Appellant under Section 10F of the Companies Act, 1956 (hereinafter 'the Act') against the impugned judgment and order passed by the Company Law Board (CLB). Vide the impugned order, the CLB has held that the reason given by the Appellant to refuse registration of shares of the Respondents do not fall within the ambit of Section 111A of the Act. The appeal at hand arose out of an application filed by the Respondents against the Appellant Company - M/s Basti Sugar Mills (now 'Phenil Sugars Ltd.') seeking a prayer to the effect that their shareholding ought to be registered by the company.

Decision: Allowed.

Reason:

The Company Law Board, it appears, was of the view that the refusal to register the transfer of shares can be permitted only if the transfer is otherwise illegal or impermissible under any law. Going by the expression "without sufficient cause" used in Section 58(4), it is difficult to appreciate that view. Refusal can be on the ground of violation of law or any other sufficient cause. Conflict of interest in a given situation

can also be a cause. Whether the same is sufficient in the facts and circumstances of a given case for refusal of registration, is for the Company Law Board to decide since the aggrieved party is given the right to appeal. The contention of the Appellant before the Company Law Board that the whole transfer is deceptive and mala fide in the background of the Respondent company, should have been considered."

The Supreme Court in *Balwant Singh v. Jagdish Singh AIR 2010 SC 3043* has explained the meaning of the expression 'sufficient cause'. It observed as under:

"...The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plenitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one."

Further, the Supreme Court while interpreting the said expression in the context of Section 5 of the Limitation Act, 1963 observed as under:

"11. The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."

Thus, the interpretation of the expression 'sufficient cause' in the context of refusal by a Company to register shares has to be pragmatic, reasonable and in consonance with the purpose of the legislation. Moreover, it has to be kept in mind that the legislature deliberately used the expression "sufficient cause" in proviso to Section 111A (2) as against the expression "contravention of any of the provision of law" used in proviso to Section 111A (3) of the Companies Act, 1956.

In the opinion of the Court, the import of the expression 'sufficient cause' cannot be reduced to mean only violation or contraventions of law. Any mala fide transfer done with the intention of obstructing the functioning of the company can also constitute sufficient cause for refusing the registration of transfer of shares. There is no doubt in the mind of the Court that a company can refuse registration of transfer of shares if:

i. There is an apprehension that the transfer is not in the best interest of the company and all its stakeholders including the shareholders;

ii. The said apprehension is reasonable and there is material on record to support the apprehension.

In the case at hand, Respondent No.4 was associated with the Appellant company in the past. Respondent No.1 is stated to be his wife while Respondent No.5 is his daughter. On the other hand, Respondent Nos.2 and 3 are alleged to be relatives of the Ex-statutory director of the Appellant company. The Respondents have filed multiple complaints against the Appellant company to various statutory authorities. There are various allegations against Respondent no.4 and the manner in which he has functioned as an auditor of the Company. In this background, the allegation of the Appellant company is that the Respondents seek to cause hurdles in the way of bona-fide corporate decisions taken by the Appellant Company. The Respondents have chosen not to appear before this Court to rebut the allegation of the Appellant.

In the opinion of the Court, these facts constitute 'sufficient cause' and the Appellant company has rightly refused to register the shares of the Respondents. In view of the above legal and factual position, the order of the CLB is unsustainable and is accordingly set aside.

LW 86:12:2023

PLATINO CLASSIC MOTORS INDIA PVT. LTD. v. DEPUTY COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE & ORS [KER]

WP(C) NO. 7997 OF 2023

Dinesh Kumar Singh, J. [Decided on 26/10/2023]

Insolvency and Bankruptcy Code,2016- liquidation proceedings- claims as to finalised tax demands- whether allowable-Held, Yes.

Brief facts:

In response to the public notice, the Liquidator of the petitioner has received claim in Schedule II, Form C from the 1st respondent presenting five items of claims, finalisation of tax demands arising out of assessment proceedings, before the Official Liquidator.

Decision: Dismissed.

Reason:

I have considered the submissions. From perusal of Section 14 of the IBC and several Judgments of the other High Courts as well as the Supreme Court, it is well settled that Section 14 of the IBC does not create a bar for finalisation of the assessment and adjudication proceedings in respect of the taxes. On the resolution once the reference has been admitted, there is moratorium for recovery of the tax dues but, there is no bar for finalisation of the assessment and adjudication proceedings. On perusal of the impugned orders Exhibits P-7 to P10, it is evident that the petitioner was issued notice to which reply was filed and after hearing, these orders in Exhibits P-7 to P-10 has been finalised. Therefore, I do not find any substance in the submissions of the Learned Counsel for the petitioner that: since the Official Liquidator was not heard, the order has become bad. It is the petitioner who was issued notice. The representative of the petitioner remained present during the hearing. His reply was also filed in the show cause notice and thereafter the orders in Exhibits P-7 to P-10 has been passed. Thus, I find no substance in the writ petition and the same is hereby dismissed. The Official Liquidator should consider the five claims of the petitioner in accordance with the law.

Industrial & Labour Laws

LW 87:12:2023

THANKAMMA BABY v. THE REGIONAL PROVIDENT FUND COMMISSIONER [SC]

Civil Appeal No. 4619 of 2010 with connected appeal

Abhay S. Oka & Sanjay Karol, JJ. [Decided on 07/11/2023]

Employees Provident Fund (Miscellaneous Provisions) Act,1952- establishment carrying on commercial activity- whether covered under the PF coverage notification- Held, Yes.

Brief facts:

The appellant is engaged in manufacturing, assembling, and selling umbrellas. The respondent issued a notice to the appellant, alleging that the 1952 Act was applicable to the appellant. Thereafter, the respondent held that the case of the appellant was covered by the notification dated 7th March 1962. A Review Petition was filed by the appellant, which was rejected by the respondent. An appeal preferred by the appellant to the Appellate Authority against the decision of the respondent was dismissed. Being aggrieved by the said orders, a Writ Petition was filed by the appellant. The learned Single Judge dismissed the Writ Petition, and the order of the learned Single Judge has been confirmed by the impugned judgment by a Division Bench of the Kerala High Court in a Writ Appeal filed by the respondent. Hence the present appeal to the Supreme Court.

Decision: Dismissed.

Reason:

Before we deal with the contentions raised by the appellant, we must note here that the Constitution Bench of this Court, in the case of *Mohmed Ali & Ors v. Union of India & Anr, 1963 Supp (1) SCR 993* has dealt with the issue of interpretation of the provisions of the 1952 Act and in particular sub-Section (3) of Section 1 of the 1952 Act. The Constitution Bench held that:

a) The 1952 Act was made to institute provident funds for the benefit of the employees in factories and other establishments;

b) The provisions of the 1952 Act constitute social justice measures; and

c) The underlying idea behind the provisions of the 1952 Act is to bring all kinds of employees within its fold as and when the Central Government might think it fit after reviewing each class of establishments.

After considering clause (a) of sub-Section (3) of Section 1, the Constitution Bench held that, in so far as establishments which do not come within the description of the factories engaged in industries enumerated in schedule I are concerned, the Central Government has been vested with the power of specifying such establishments or class of establishments as it might determine to be brought within the purview of the 1952 Act.

Clause (a) of sub-Section (3) is applicable only to those factories engaged in any industry specified in Schedule I. Clause (b) of sub-Section (3) is applicable to all other establishments which are not covered by clause (a) of sub-Section (3) provided such establishments are notified by a notification issued by the Central Government which is published in the official Gazette. Clause (b) of sub-Section (3) takes within its fold all establishments which are not covered by clause (a). Therefore, a notification under clause (b) can be issued in respect of factories engaged in any industry which is not specified in Schedule I. Hence, the argument that a notification cannot be issued under clause (b) of sub-Section (3) regarding a factory engaged in an industry not covered by Schedule I cannot be accepted. We are dealing with a social welfare legislation described by the Constitution Bench as a measure of social justice. Therefore, to give effect to the legislature's intention, the Court will have to adopt a purposive interpretation. We, therefore, reject the contention that all factories which are not covered by industries in Schedule I are out of the coverage of clause (b).

We may note here that it is not the case of the appellant that her establishment has been exempted under Section 16 of the 1952 Act. Under the notification dated 7th March 1962, there is a category of 'trading and commercial establishments'. Admittedly, the appellant is carrying on the business of assembling/manufacturing umbrellas and selling the same. The respondent has recorded a finding of fact that the business of establishment of the appellant was of assembling umbrellas and selling the same in her own outlet. Thus, the establishment of the appellant is a commercial establishment. It is an establishment predominantly carrying on commercial activity. Therefore, it cannot be denied that the business of the appellant will fall in the category of 'trading and commercial establishments'. In the circumstances, the case of the appellant will be governed by the said notification issued under clause (b) of sub-Section (3) of Section 1. The decision of this Court in the case of *Regional Provident Funds Commissioner v. Shibn Metal Works (Supra)* does not deal with clause (b) of sub-Section (3) of Section 1.

We, therefore, find absolutely no error in the view taken by the learned Single Judge and Division Bench of Kerala High Court. Accordingly, we dismiss the appeals with no order as to costs.

LW 88:12:2023

WEST ACADEMY SENIOR SECONDARY SCHOOL v. DEPUTY LABOUR COMMISSIONER & ORS [P&H]

Civil Writ Petition No. 25382 of 2023

Jagmohan Bansal, J. [Decided on 17/11/2023]

Payment of Gratuity Act,1972-dismissal from service-gratuity denied-no ground for forfeiture pleaded-Controlling and appellate authorities directed the petitioner to pay gratuity- whether correct-Held, Yes.

Brief facts:

The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of order of the Appellate Authority(Respondent No.1) upholding the order of the Controlling Authority (Respondent No.2) whereby the petitioner was directed to pay gratuity to respondent No.3.

The petitioner on account of complaints of students initiated an inquiry against respondent, which culminated into her dismissal from service. The respondent requested the petitioner to pay her gratuity. The petitioner did not release gratuity of the respondent. The respondent approached Controlling Authority and came to a conclusion that respondent is entitled to gratuity despite the fact that she was dismissed from service. It was also held that there is no order of forfeiture of gratuity and petitioner has not quantified any loss caused by the respondent, thus, gratuity cannot be withheld. The petitioner preferred an appeal which came to be dismissed.

Decision: Dismissed.

Reason:

The petitioner before the Controlling Authority pleaded that employee-respondent was dismissed from service, thus, she is not entitled to gratuity. There was no argument before the Controlling Authority as well as Appellate Authority that respondent has been dismissed from service and she was dismissed on account of her disorderly conduct, thus, her gratuity is liable to be forfeited and Controlling Authority is supposed to decide question of forfeiture of gratuity. The petitioner withheld gratuity forming an opinion that respondent has been dismissed from service, thus, she is not entitled to gratuity. The said argument of the petitioner has been turned down by the authorities below and now the petitioner has raised a totally new set of arguments. The gratuity was not withheld forming an opinion that there was disorderly conduct on the part of respondent. It is conceded fact that no order with respect to withholding or forfeiture of gratuity was passed while dismissing respondent from service. In the absence of order of forfeiture coupled with a totally different opinion of the petitioner at an initial stage, the petitioner has no authority to withhold gratuity of the respondent.

The petitioner is relying upon Section 7(4) (a) of 1972 Act which is not applicable at all because Section 7(4) (a) enjoins the employer to deposit admitted amount in case of dispute raised by an employee. The other clauses of said sub-section do not enjoin the Controlling Authority, on the application of an employee, to decide question of forfeiture vis-à-vis allegation of disorderly conduct. The petitioner neither approached Controlling Authority nor raised question of disorderly conduct, thus, there was no occasion to decide said question while adjudicating application of the respondent.

This Court while exercising writ jurisdiction cannot act as an appellate authority over the orders passed by authorities constituted under the 1972 Act. It is apt to notice that 1972 Act is a piece of beneficial legislation and warrants liberal interpretation. In the wake of above discussion and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

LW 89:12:2023

IMT INDUSTRIAL ASSOCIATION & ANR v. STATE OF HARYANA & ANR[P&H]

Civil Writ Petition No. 26573 of 2021 with connected petitions

G.S.Sandhawalia & Harpreet Kaur Jeewan,JJ. [Decided on 17/11/ 2023]

The Haryana State Employment of Local Candidates Act, 2020- employment in private sector industries- directing 75% of the employment to Haryana domiciled locals in the posts are not of technical nature- whether constitutionally valid-Held, No.

Brief Facts:

Purely a legal question is involved in this batch of cases regarding the vires of The Haryana State Employment of Local Candidates Act, 2020 (in short 'the 2020 Act') and whether the same is unconstitutional and violative of Part-III of the Constitution of India. The 2020 Act required that 75% of the employment was to be given to the persons having domicile of Haryana where the posts are not of technical nature.

The petitioners lay challenge to 'the 2020 Act' on account of the fact that it provides reservation in private employment and creates an unprecedented intrusion by the State Government into the fundamental rights of the private employers to carry on their business and trade as provided under Article 19 of Constitution of India. The restrictions thus placed upon the rights of the petitioners are alleged not to be reasonable and are manifestly arbitrary, capricious, excessive, and uncalled for and the same being violative of the principles of natural justice, equality, liberty, and fraternity laid down in the Preamble of the Constitution of India and is subject to challenge.

Decision: Allowed.

Reason:

Counsels for the petitioners are right in contending that what is to be seen is the pith and substance of the legislation. The underlying object of the legislation, as has been succinctly put by counsel for the petitioners, is to create an artificial gap and a discrimination qua the citizens of India. The purpose of the legislation itself is stemmed on the fact that there are a large number of migrants who are taking up the jobs of the local candidates which apparently are comparatively lower paid and the amount has been reduced from Rs.50,000/- per month to Rs.30,000/- per month. It is in such circumstances the 75% reservation is being now made. The end effect is, thus, to be noticed by the Court that the powers of the State legislature cannot be to the detriment to the national interest and they cannot be directly encroaching upon the power of the Union.

The structure of the Act as such would be violative of Article 19 of the Constitution of India and Article 19(5) is subject to regarding reasonable restrictions to the extent of right conferred for the interest of the general public which could permit the State to make any law or for the protection of interest of any Scheduled Tribe. Therefore, the Act is

imposing unreasonable restrictions regarding the right to move freely throughout the territory of India or to reside and settle in any part or the territory of India. Similarly, while referring to Article 19(6), it can be said that the right of the State is regarding the provisional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business to restrict the right under Article 19(1)(g) or to carry on any trade, business, industry or service exclusively by the State or its Corporations to the exclusion of other citizens. It can, thus, be said that the Act as such cannot be said to be reasonable in any manner and it was directing the employers to violate the constitutional provisions.

Reliance can be placed upon the judgment in *P.A. Inamdar and others vs. State of Maharashtra and others, (2005) 6 SCC 537* wherein it was held by a 7-Judge Bench of the Apex Court that appropriation of seats in the minority institutions could not be held to be a reasonable restriction within the meaning of Article 19(6) of the Constitution of India. Merely since the State resources are poor and limited, the private employer could not be forced to employ on the basis of the reservation policy in favour of local candidates. Similarly, while placing reliance upon *Pramati Educational and Cultural Trust (Regd.) & Ors v. Union of India & Ors, (2014) 8 SCC 1*, a 5-Judge Bench of the Apex Court, reliance can be made on the observations that the right given under Article 19(5) was only to the extent of protection of interests of Scheduled Tribes. The issue which was being examined was whether the State could force charitable elements of private educational institutions and destroy the inbuilt right under Article 19(1)(g) of the Constitution of India. It can accordingly be pointed out that the power as such which has been given under Article 15(5) of the Constitution of India is confined to the admission of socially and educationally backward class of citizens to private educational institutions and the right of the Court to declare the law as ultra vires under Article 19(1)(g) has been kept open and any constitutional amendment could not destroy the right.

The restrictions imposed upon all types of private employers as defined under Article 2(e) are gross to the extent that a person's right to carry on occupation, trade or business is grossly impaired under Article 19(1)(g) of the Constitution of India. The requirement to register any employee on the designated portal within three months who was being paid less than Rs.30,000/- per month up to 75%, thus, is violative of the fundamental rights protected under the Constitution of India. The control of the State by a designated officer having a right to consider the cases of exemption to reject them are onerous. The requirement of submitting quarterly reports and the power of the Authorized Officer to call for records and to inspect premises for purposes of examining the records, registers and documents by just giving one day prior notice as such are conditions which can be termed as the "Inspector Raj" of the State. The private employer, thus, has been put under the anvil of the State as to whom to employ and the penalties which are liable to be imposed on contravention which have already been noticed which multiply on account of any violations apart from leading to criminal prosecution by filing of a complaint. The bar under Section 20 of not being able to challenge the legal proceedings in any Court against any Authorized Officer or designated officer further ties the hands of the employer. Therefore, the State continues to exercise absolute control over a private employer and as noticed, directing it to do which itself is forbidden for public employment.

In such circumstances, we are of the considered opinion that the restrictions imposed in the Statute as such have far reaching effect and cannot be held to be reasonable in any manner which would warrant no interference. Resultantly, we are of the considered view that they cannot be protected under Articles 19(5) and 19(6) of the Constitution of India, as contended by counsel for the State.

Keeping in view the above four questions being answered against the State, we are of the considered opinion that the writ petitions are liable to be allowed and The Haryana State Employment of Local Candidates Act, 2020 is held to be unconstitutional and violative of Part III of the Constitution of India and is accordingly held ultravires the same and is ineffective from the date it came into force.

LW 90:12:2023

JASPAL SINGH DHILLON v. BHAKHRA BEAS MANAGEMENT BOARD & ORS [P&H]

Civil Writ Petition No.18923 of 2022

Jagmohan Bansal,. [Decided on 17/11/ 2023]

Employee retired- recovery of excess payments from retirement dues- whether correct-Held,No.

Brief facts:

The petitioner through instant petition is seeking setting aside of order whereby respondent has recovered a sum of Rs.2,20,881/- from the retiral benefits of the petitioner. The petitioner joined respondent-BBMB On 22.07.1987 and time to time was promoted and he retired on 30.09.2021 on attaining the age of superannuation. The respondent while releasing retiral benefits of the petitioner deducted a sum of Rs.2,20,881/-. The respondent deducted said amount forming an opinion that from 01.11.2010 to 31.12.2020, an excess payment was made by way of an increment which the petitioner was not entitled.

Decision: allowed.

Reason:

I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

The sole contention of the respondent is that there was undertaking dated 02.12.2009 furnished by the petitioner. The said undertaking needs to be considered in conjunction with option Form filed by the petitioner. The petitioner filed option Form while opting for revised pay scale and at that point of time undertaking was furnished. The said undertaking cannot be linked with increment which was assessed on 18.06.2012 and was extended from July' 2010 to September' 2021. The respondent on account of said undertaking got right, if any, to recover excess payment made on account of revised pay scale. The payment on account of revised pay scale could be made pre as well as post undertaking, thus, respondent at the most would recover excess payment with respect to revised pay scale. The undertaking cannot be linked with excess payment made on account of increment assessed on 18.06.2021.

The facts of the present case are distinguishable from facts in the case of *Jagdev Singh (supra)* whereas judgment of Supreme Court in *Rafiq Masih (supra)* is squarely applicable to the case in hand. Hon'ble Supreme Court in *Rafiq Masih (supra)* in Para 12 has clearly held that no recovery should be made from retired employees or employees who are due to retire within 1 year of the order of recovery. The respondent has effected recovery from the retiral benefits of the petitioner. This Court in *Tara Chand Vs. Secretary to Government of Punjab and others 2013 (4) SCT 251* in similar circumstances has held that excess payment made on account of step up on completion of 16 or 24 years' service cannot be made from the retiral benefits.

In the wake of above discussion and findings, this Court is of the considered opinion that respondent has effected recovery contrary to law laid down by Hon'ble Supreme Court in Rafiq Masih and this Court in Tara Chand. The respondent is liable to refund the already recovered amount. The respondent shall refund the said amount within 2 months from today. The impugned order is hereby quashed and writ petition is allowed in above terms.

General Laws

LW 91:12:2023

VASUDEV GARG & ORS v. EMBASSY COMMERCIAL PROJECTS [Del]

O.M.P.(I) (COMM.) 269/2023 & IA No.20370/2023

Yogesh Khanna, J. [Decided on 31/10/ 2023]

Arbitration and Conciliation Act,1996- section 9- interim relief- seat of arbitration fixed at Mumbai- petition filed in Delhi-whether maintainable-Held,No.

Brief facts:

This petition is filed by the petitioner under Section 9 of the Arbitration and Conciliation Act seeking interim relief from this Court to restrain the respondents from carrying out any construction/development activity based on the illegal Modified Development Plan dated 27.10.2022; unilateral appointment of M/s.Alotech as Co-developer; unilateral amendment of development schedule and budget of Whitefield project and doing anything which shall be detrimental to the interests of both the petitioners and the project.

Decision: Dismissed.

Reason:

Admittedly, there is no pleading in the entire petition qua the seat of arbitration being at New Delhi. The facts show Mumbai is indicated as a place of arbitration in clause 17.1. It does not say Mumbai and Delhi, both shall be the places of arbitration, hence there is no confusion qua the place of arbitration. Further there is no contrary indicator in the agreement that any other place other than Mumbai shall have the jurisdiction in case of arbitration. Interestingly clause 21.3 is made subject to clause 17.1. Thus, even if there is conflict amongst clauses 17.1 and 21.3; then clause 17.1 shall prevail. Clause 17.1 is in line with Section 20(1) of the Arbitration and Conciliation Act, hence there is no chance of any misunderstanding.

The crux is when per clause 17.1 the parties have agreed to conduct arbitration as per SIAC at Mumbai, then their intention to designate Mumbai as a seat of arbitration is evident from clause 17.1; reinforced per clause 21.3. There exist no contrary indication to designate any other seat of arbitration. The cause of action has no relevance in the facts and circumstances and hence only the Courts at Mumbai shall have supervisory jurisdiction.

In M/s. Talwar Auto Garages Private Limited vs. M/s. VE Commercial Vehicles Limited 2023 SCC OnLine Del 4940 it was held only such Courts shall have the jurisdiction under Section 11 of Arbitration and Conciliation Act where the seat of arbitration is located. In this context, if we examine the clauses of the SHA, there is nothing to show the parties intended to confine Mumbai as a place of meetings only, reducing it to a mere "venue". On the other hand, Clause 17.1 read with Clause 21.3 lays down a clear-cut regime, whereby Mumbai emerges as the seat from where the entire arbitration proceedings would be anchored. This aspect is clearly established from the expression "subject to the provisions of Clause 17 (Dispute Resolution)" used in Clause 21.3, which relegates the anchoring of entire arbitration proceedings to the place, as contemplated in Clause 17.1, which is Mumbai. It needs to be noted that once arbitration proceedings stand relegated to Clause 17.1, reference to courts of exclusive jurisdiction is reduced to the adjudication of disputes other than those covered by Clause 17.1, i.e. other than those covered in arbitration agreement.

Therefore, to conclude, clause 21.3, cannot be construed to infer any intention that Delhi also, apart from Mumbai, was meant to be seat of arbitration. It is now a settled law that principles of Section 20 of CPC do not apply to the arbitration proceedings, hence accrual of cause of action, howsoever trivial or significant, would not make Delhi a seat of arbitration and it is for this reason that the draftsman who drafted the arbitration agreement contradistinguished the scope of clause 21.3 from clause 17.1 by excluding arbitration proceedings from the scope of clause 21.3 and restricting the scope of clause 21.3 to those matters which are required to be adjudicated in court only being excepted from arbitration. Furthermore, to say it is clause 21.3 of SHA which provides for "seat" of arbitration, would lead to a situation of dual seats of arbitration, giving courts in both Mumbai and Delhi supervisory jurisdiction, which is clearly contrary to the rationale for providing "seat" of arbitration.

All previous correspondences in view of Clause 22.2 need to be ignored and hence cannot be looked into. *Joshi Technologies International Inc. vs. Union of India and Others (2015) 7 SCC 728* may be seen in this context. (more specifically paras 41 and 42). The petition lacks Delhi jurisdiction and is thus liable to be dismissed.