Western Coalfields Limited

VIDHIKIRAN

An Initiative By Team Legal

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Chairman-cum-Managing Director
Western Coalfields Limited

Western Coalfields Limited
(A Miniratna Company)
A Subsidiary of Coal India Limited
Coal Estate, Civil Lines,
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FOREWORD

It is with great enthusiasm and a sense of purpose that Legal Department, Western Coalfields wishes to introduce this legal research journal dedicated to the exploration and dissemination of legal knowledge within the domain of Western Coalfields Limited. As we navigate the intricacies of the coal industry, it becomes increasingly evident that the pursuit of knowledge and the dissemination of latest developments in the realm of law are fundamental to our continued growth, sustainability, and excellence.

In the dynamic landscape of the energy sector, research and innovation stand as catalysts for progress. This journal, a culmination of diligent efforts and intellectual rigor, our commitment to advancing the frontiers of legal knowledge within Western Coalfields Limited. It serves as a conduit for the exchange of ideas, experiences, and latest judicial trends that will undoubtedly shape the trajectory of our operations.

The coal industry, with its multifaceted challenges and opportunities, demands a proactive approach to research and development. Through the pages of this journal, what is shared is not only the outcomes of research endeavours but also the spirit of inquiry that motivates us to move forward. Publication in a research journal is not merely a culmination of individual efforts; it is a collective endeavour of the Legal department. It is a testament to our commitment to fostering a culture of curiosity, exploration, and continuous improvement.

This journal, by providing a platform for the dissemination of legal knowledge, facilitates a broader dialogue among professionals, researchers, and stakeholders, thus enriching the collective intelligence of Western Coalfields Limited.

As we embrace this transformative power of research and its publication, let us continue to foster a culture that values innovation, embraces challenges, and ensures a sustainable future for Western Coalfields Limited.

Manoj Kumar

Director (Technical)
Western Coalfields Limited.

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MESSAGE

The Legal Department, Western Coalfields Limited has taken a very innovative and appreciable step to introduce this Journal, which will serve as a guiding light for legal knowledge within the coal mining sector. In a period characterized by technological advancements and dynamic changes in industry landscapes, the demand for research and its effective sharing has become increasingly imperative.

Legal knowledge is indispensable for the smooth functioning of coal industries, as it helps navigate the complex regulatory landscape that governs the extraction, production, and distribution of coal. The coal industry is subject to a multitude of laws and regulations that cover aspects such as environmental protection, safety standards, labour rights, and land acquisition. Understanding and complying with these legal frameworks is crucial to ensure the industry operates ethically, sustainably, and within the boundaries of the law. Legal expertise is especially vital in addressing issues related to land use rights, environmental impact assessments, workplace safety, and compliance with emissions standards. Additionally, legal knowledge is essential for resolving disputes, negotiating contracts, and staying abreast of evolving regulations that may impact the industry. Overall, a robust understanding of the legal aspects surrounding coal industries is not only a compliance necessity but also a strategic advantage for companies seeking to thrive in a highly regulated and dynamic sector.

These journals provide a forum for professionals to exchange their knowledge, approaches, and perspectives, cultivating an atmosphere of ongoing learning and innovation. This contributes to propelling the coal industry toward practices that are not only safer but also more efficient and sustainable.

Such publications highlight and promote the principles of transparency and accountability towards a more responsible business Organisation.

The publication in this journal covers wide range of topics relevant to our business operations and administrative decisions, such as arbitration, mining in ecologically sensitive zone, river diversion, banning /blacklisting of contactor, forfeiture of gratuity, and various issues peculiar to land acquisition activity carried out by our company.

I am very hopeful that this journal will help in providing a tailor-made solution for many new entrants to go ahead in their future endeavors.

Jai Prakash Dwivedi

PREFACE

Knowledge is truth. This has been universally accepted. 'सा विद्या या विमुक्तये' as mentioned in the Padma Purana, means "knowledge is that liberates". The maxim "*veritas voz liberabit*" also says "may the truth liberate you". The goal of life is the attainment of truth, that is, the ultimate knowledge. The task of any professional is to master his subject by learning and updating his subject. The professional solves any problems by applying this knowledge in his work. More able a person to solve the problem in his work, better professional he becomes. This is mentioned in Bhagvad Gita as "योग: कर्मसु कौशलम्". Then the work itself becomes yoga. In the pursuit to acquire knowledge, sharpening the skills is indispensible. This sharpening of skill is by constant self study which Taitareya Upanishad of Krishna Yajur Veda says "स्वाध्यायान्मा प्रमदः".

This Department while defending the litigations or providing legal opinions is doing the research work on the law applicable to the particular issues. This broadens the thought-process and the researcher evolves some philosophy by this endeavour. This is valuable and to be preserved. With a view to preserve, share and motivate such thought-process and philosophy, it was thought to publish the same. All the articles published in this e-book are the results of the research done by the named executives. They are the views of the researchers and may not be construed as the view of Legal Department as a whole nor of WCL. This may not be even construed as admissions on behalf of WCL. These articles are catalysts for upgrading the knowledge of the legal executives in the relevant field. By publishing this, Legal Department contributes not only to the in-house legal community, but also empower our organisation with the insights needed to overcome challenges and optimise our process.

We extend our wholehearted thanks to Shri Manoj Kumar, CMD, WCL, Shri J.P. Dwivedi, Director- Technical (Operations)/Personnel, WCL and Shri Anil Kumar Singh, Director-Technical (Projects and Planning), WCL for the encouragement and motivation in publishing this project. The guidance given by them is precious.

We extend our sincere appreciation to the contributors, reviewers, and everyone involved in the creation of this research journal. Your dedication to advancing knowledge and contributing to the intellectual wealth of our organization is commendable. We are confident that this publication will not only serve as a valuable resource for our professionals but will also inspire future generations to push the boundaries of what is known and explore the realms of what is possible.

Chief Manager/ HOD(Legal)

FORFEITURE OF GRATUITY: COAL INDIA's PERSPECTIVE

- **Deepak Agarwal, MT(Legal),WCL HQ**

INTRODUCTION

Gratuity is a statutory retirement benefit or fund provided to employees as a form of social security. It is paid by an employer to an employee as a token of appreciation for their long and meritorious service to the organization. Main aim of gratuity is to provide financial security to employees immediately after their retirement. It is meant to help the employees to resettle immediately after cessation of their services. Law relating to payment of gratuity in India is codified under Payments of Gratuity Act, 1972 [hereinafter referred as "Act"]. Further, Supreme Court and High Courts have time to time interpreted the provisions of the Act in order to provide auxiliary interpretation.

THE PAYMENTS OF GRATUITY ACT, 1972

Section 4(1) of the Act provides that every employee is entitled to receive gratuity on termination/cessation of his services if he has rendered continuous service for not less than 5 years. However, there are circumstances where gratuity may be forfeited or withheld. These circumstances are exclusively mentioned in Section 4(6) of the Act.

FORFEITURE OF GRATUITY

Forfeiture of gratuity refers to the act of forfeiting the payment of gratuity to an employee under certain legal provisions or contractual clauses. Section 4(6) of the Act provides that gratuity of an employee may be forfeited if services of the employee have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer to the extent of the damage or loss so caused.

Further, gratuity payable to an employee may be wholly or partially forfeited in case the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or if such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

FORMALITIES TO BE ADHERED TO BEFORE FORFEITURE OF GRATUITY

Once Form 'I' is submitted by the superannuated employee claiming gratuity, if the employer intends to reject the claim for payment of gratuity, he has to issue Form 'M' under clause (ii) of sub-rule (1) of rule 8 of The Payments of Gratuity (Central) Rules, 1972. Issuance of Form 'M' is of utmost importance as in this document employer specifies the reasons for rejecting the employees claim for gratuity. Further, the Form 'M' should directly be addressed to the applicant employee/nominee legal heir and should contain the Signature of the

employer/Authorized Officer and Stamp Seal of the establishment. The aforementioned rules also require that Copy of Form 'M' so provided to the applicant employee be sent to The Controlling Authority under the The Payments of Gratuity Act, 1972

DEPARTMENTAL INQUIRY SHOULD FOLLOW DUE PROCESS

In **State Bank of India v. Ram Lal Bhaskar (2011) 10 SCC 249,** the Supreme Court of India held that the forfeiture of gratuity can only be justified if it is based on a finding of misconduct, which is supported by evidence and is arrived at after holding a proper inquiry. The court held that the inquiry must be conducted in a fair and just manner and that the employer must provide the employee with a copy of the inquiry report and an opportunity to defend himself.

PRESSING ISSUE

When the employer, specially an government entity with-holds or forfeits the payment of gratuity of an employee, two major issues were debated upon and discussed by various High Courts time and again which are:

- Whether is it permissible in law for the employer to withhold the payment of gratuity of the employee, even after his superannuation from service, because of the pendency of the disciplinary proceedings against him? and
- Where the departmental enquiry had been instituted against an employee while he was in service and continued after he attained the age of superannuation, whether the punishment of dismissal can be imposed on being found guilty of misconduct in view of the provisions made in Rule 34.2 of the CDA Rules?

These questions have been dwelled upon by Hon'ble Supreme Court in series of cases which have been mentioned below:

JUDICIAL PRESPECTIVE PRE RABINDRANATH CHOUBEY

Before the Supreme Court's ruling in **Chairman-cum-MD, Mahanadi Coalfields Limited v Rabindranath Choubey AIR 2020 SC 2978,** judicial precedent governing forfeiture of gratuity was **Jaswant Singh Gill vs Bharat Coking Coal Limited (2007) 1 SCC 663** where the Hon'ble Apex Court held that even though the disciplinary proceedings against the delinquent employee was initiated prior to attaining the age of superannuation, when he retires from service on superannuation the question of imposing a major penalty of removal or dismissal from service would not arise. And applying the same analogy the power to withhold payment of gratuity as contained in Rule 34(3) of the Rules, 1978 shall be subject to the provisions of the Payment of Gratuity Act. Therefore, the statutory right accrued towards the delinquent employee to get gratuity cannot be impaired by reason of the Rules framed by the Coal India Ltd. which do not have the force of a statute.

CONTEMPORARY POSITION OF LAW

The most celebrated case of Supreme Court on this issue is **Chairman-cum-MD, Mahanadi Coalfields Limited v Rabindranath Choubey** (supra) there was an in-depth evaluation of and emphasis on the service rules applicable to the employee. In particular, the court quoted the following provision of the Coal India Executives' Conduct, Discipline & Appeal Rules, 1978 (amended upto 2021)

"Disciplinary proceeding, if instituted while the employee was in service whether before his retirement or during his reemployment shall, after the final retirement of the employee, be deemed to be proceeding."

The Supreme Court was of the view that full effect ought to be given to the aforementioned provision. If the service rules applicable to the employee provide that the disciplinary proceeding, initiated during service, can operate post retirement, the same should be allowed. An inquiry must, therefore, be allowed to reach its logical conclusion. In such cases, a legal fiction is created and the concept of deemed continuance in service would come into play, meaning that an order of removal can indeed be passed.

Based on the same line of reasoning the Supreme Court observed that the employer would be allowed to withhold gratuity until pendency of the disciplinary proceedings. Section 4(6) of the Gratuity Act allows the employer to forfeit gratuity in the event the employee's services are terminated due to an act causing damage/loss to the employer's property, the natural consequence would be that when a disciplinary proceeding on such charges is pending, the employer can withhold gratuity payment, and if the charges stand proved, the same need not be passed on to the employee. The court noted that although Section 4(1) of the Gratuity Act provides that gratuity would become payable upon an employee attaining superannuation age, the said provision is subject to Section 4(6) which sets out the circumstances in which gratuity may be forfeited. Section 4(6) is a non-obstante clause and would prevail over the former.

PUBLIC SECTOR EMPLOYERS

Such provisions are typically stipulated expressly by public sector employers as part of detailed service rules/regulations. Further, it is pertinent to mention that not every disciplinary proceeding would entitle the employer to withhold/forfeit gratuity. **Rabindranath Choubey** (supra) was a case wherein the charge pertained to substantial loss or damage to the employer's property. Under the Gratuity Act, there are limited cases wherein the employer can forfeit gratuity, and loss / damage to property is one such case. For this reason, the Supreme Court has recently allowed the employer to withhold gratuity during continuance of disciplinary proceedings and even forfeit the same upon establishing the guilt of the employee.

OFFENCE INVOLVING MORAL TURPITUDE

In **Western Coal Fields Limited vs The Presiding Officer, Appellate Authority under the Payment of Gratuity Act, 1972 and another[Writ Petition No. 6006 of 2016]** Hon'ble Bombay High Court distinguished between 'misconduct' and 'offence'. Hon'ble High Court ruled that for an employer to deprive an employee of gratuity under Section 4(6)(b)(ii) of the said Act, would necessarily require initiation of criminal proceedings that would culminate in a conviction for an "offence". Further, it is pertinent to mention here that Hon'ble Bombay High Court in **Western Coalfields Ltd. vs Ramjanam Yadav[Writ Petition No. 4281 of 2011]** ruled that acceptance of bribe will qualify as an act involving moral turpitude.

The aforementioned rulings of Hon'ble High Court has been endorsed by the Hon'ble Apex Court in the case of **Union Bank of India vs C.G. Ajay Babu and others (2018) 9 SCC 529**

which time and again cited by the Hon'ble Controlling Authority and Appellate Authority under Payments of Gratuity Act, 1972 while deciding the case.

CONCLUSION

Gratuity is one of the most significant terminal benefits provided to an employee and therefore The Payments of Gratuity Act, 1972 mandates to release gratuity to an employee within 30 days of cessation of services if the employee has provided continuous service for 5 years or more. However, under certain circumstances the Act provides for forfeiture of gratuity to enable the employer to compensate for the loss caused by the acts of the employee. However, before the employer forfeits the gratuity of an employee he needs to undergo the formalities of Form 'M'. However, it is safe to conclude that not every disciplinary proceeding would entitle the employer to withhold / forfeit gratuity. In **Rabindranath Chaubey (supra)** the charge pertained to substantial loss or damage to the employer's property. Under the Gratuity Act, there are limited cases wherein the employer can forfeit gratuity, and loss/damage to property is one such case. For this reason, the Supreme Court in Rabindranath Chaubey allowed the employer to withhold gratuity during continuance of disciplinary proceedings and even forfeit the same upon establishing the guilt of the employee.

POLYGAMY AND POLYGAMOUS MARRIAGES IN INDIA: AN IN-DEPTH LOOK INTO LEGAL FRAMEWORK

-Suweg Pawar, Manager (P),WCL HQ

INTRODUCTION

The term polygamy has been made up of two words “polys” meaning many and “gamos” meaning marriage. So, polygamy means a marriage of many. It originates from the Greek word “polugamos” which translates to often marrying. Polygamy is referenced frequently in the Bible, Quran, and Torah. Even the epics of Ramayana and Mahabharata mention instances of this practice along with some other Hindu scriptures. From debates and discussions, polygamy has also found a place in novels, memoirs, TV shows and movies. It cannot be denied that polygamy was a part of our society irrespective of region or religion. Through various researches and studies, it has been found that polygamy is worldwide, cross-cultural in its scope, it is found on all continents and among adherents of all world religions.

WHAT IS POLYGAMY

Polygamy refers to the practice of being married to more than one spouse at the same time. The term encompasses polygyny, where a man has multiple wives, and polyandry, where a woman has multiple husbands. Though prohibited in most countries worldwide, polygamous marriages have been culturally and legally accepted in some societies across history.

Types of Polygamy

Polygamy in India is primarily manifested in two forms – polygyny and polyandry.

POLYGYNY

Polygyny is the most common type of polygamous practice involving one husband with multiple wives.

POLYANDRY

Polyandry involves one wife marrying multiple husbands. Overall, polyandry has been relatively rare in India owing to its taboo status in both Hindu and Islamic traditions.

BIGAMY

If a person is already married and the marriage is still legally binding, then being married to someone else is known as bigamy, and the bigamist is the one who does it. It is considered a criminal offense in many countries, including India.

LEGAL FRAMEWORK GOVERNING POLYGAMOUS MARRIAGES

The legal status of polygamous marriages in India is complex. Different laws apply to different religious communities, some restricting and others permitting polygamy under certain conditions.

CONSTITUTIONAL VALIDITY

India comprises a secular state where no religious denomination is considered better or subordinate to another, and each religion is treated equally, with all religious scriptures respected and rules enacted under them. However, several regulations are being debated for their validity by other religions, namely, Islam and Hinduism, and in particular, the legislation dealing with 'polygamy.' They debate the Constitution's vital rights, which are enumerated in Articles 13, 14, and 15.

Article 13 of the Indian Constitution expressly specifies that legislation that conflicts with Part III of the Constitution is unconstitutional. In *R.C. Cooper v. Union of India* (1970), the Supreme Court observed that the theoretical approach that the component and construct of state intervention ascertain the severity of the safeguard that an underprivileged group may purport is incompatible with the constitutional provision, which aims to provide the ordinary citizen with the broadest possible safeguards of his fundamental rights.

Article 14 states that the state shall not refuse any individual under India's territory equal treatment under the law and equal protection under the law. The state is prohibited from discriminating against any person solely based on faith, ethnicity, gender, religion, or birthplace, according to Article 15(1) of the Indian Constitution.

Section 494(6) of IPC makes bigamy a criminal offence, but section 2(7) of Shariat Act allows the application of polygamy on Muslims. also, Muslim women aren't permitted to practice polygamy which brings about discretionary and preposterous order exclusively dependent based on religion and sex. In this way, the balance ensured under Article 14(8) is disturbed and then again, it is on the side of the legitimacy of Muslim polygamy.

HINDU MARRIAGE ACT, 1955

Under Section 11 of the Hindu Marriage Act, 1955, which states that polygamous marriages are void, the Act cautiously mandates monogamous relationships. When someone performs it, they are punished under Section 17 of the very same Act, as well as Sections 494 and 495 of the Indian Penal Code, 1860, which define such conduct as an offence. Because Buddhists, Jains, and Sikhs are all considered Hindus and do not have their own laws, the provisions in the Hindu Marriage Act apply to these three religious denominations as well. As a result, bigamous weddings are void and punishable under Sections 5, 11, and 17 of the Act.

MUSLIM PERSONAL LAW APPLICATION ACT (SHARIAT) OF 1937

The clauses under the 'Muslim Personal Law Application Act (Shariat) of 1937, as construed by the All India Muslim Personal Law Board, apply to Muslims in India. Polygamy is not prohibited in Muslim legislation because it is recognised as a religious practice, hence they tend to preserve and practice it. It is, nevertheless, clear that if this method is determined to violate the constitution's basic rights, it can be overturned.

When there is a disagreement between the Indian Penal Code and personal laws, the personal laws are implemented since it is a legal principle that a specific law supersedes the general law.

INDIAN PENAL CODE, 1860

Section 494 of the IPC makes remarriage during the lifetime of one's spouse an offence punishable by imprisonment. This applies to Hindu and Christian men. However, an exception is provided, for Muslim men, under Section 495 of IPC, however, if the muslim male marries a fifth wife he can very well be prosecuted under Section 494 of IPC since the fifth marriage is void as the present law permits only four wives to be taken together. As regard to the muslim ,the IPC provisions related to bigamy apply to women - since Muslim

Law treats a second bigamous marriage by a married woman as void. (Surajmani Stella Kujur Vs. Durgacharan - AIR 2001 SC 938; AS Nazar Vs. Jissa - (SSC Online Ker 17001)

SPECIAL MARRIAGE ACT, 1954

This optional civil law prohibits polygamy for inter-faith or civil marriages outside religious laws. Section 4 states that a marriage contracted under this Act cannot be valid if either party has a living spouse already.Overall, Hindu and Christian personal laws completely outlaw polygamy while Muslim law partially permits it. Judicial opinions have been mixed, upholding religious freedom as well as gender equality. Demands for a Uniform Civil Code continue from some sections.

Judicial perspective concerning polygamy

In **Javed vs. State of Haryana - AIR 2003 SC 3057** - the Hon'ble Apex Court dealt with the issue in question and held that what was protected under Article 25 was the religious faith and not a practice which may run counter to public order, health or morality. Polygamy was not an integral part of religion and monogamy was a reform within the power of the State under Article 25. This Court upheld the views of the Bombay, Gujarat and Allahabad High Courts to this effect. This Court also upheld the view of the Allahabad High Court upholding such a conduct rule. It was observed that a practice did not acquire sanction of religion simply because it was permitted. Such a practice could be regulated by law without violating Article 25.

In **State of Bombay v. Narasu Appa Mali [AIR (1952) Bom 84]** the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946) was challenged on the ground of violation of Articles 14, 15 and 25 of the Constitution. A Division Bench, consisting of Chief Justice Chagla and Justice Gajendragadkar (as His Lordship then was), held: (AIR p. 86, para 5) "[A] sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole.

In **Badruddin v. Aisha Begum [(1957) All LJ 300]** the Allahabad High Court ruled that though the personal law of Muslims permitted having as many as four wives but it could not be said that having more than one wife is a part of religion. Neither is it made obligatory by religion nor is it a matter of freedom of conscience. Any law in favour of monogamy does not

interfere with the right to profess, practise and propagate religion and does not involve any violation of Article 25 of the Constitution.

In **R.A. Pathan v. Director of Technical Education [(1981) 22 Guj LR 289]** having analysed in depth the tenets of Muslim personal law and their base in religion, a Division Bench of the Gujarat High Court held that a religious practice ordinarily connotes a mandate which a faithful must carry out. What is permissive under the scripture cannot be equated with a mandate which may [pic]amount to a religious practice. Therefore, there is nothing in the extract of the Quaranic text (cited before the Court) that contracting plural marriages is a matter of religious practice amongst Muslims. A bigamous marriage amongst Muslims is neither a religious practice nor a religious belief and certainly not a religious injunction or mandate. The question of attracting Articles 15(1), 25(1) or 26(b) to protect a bigamous marriage in the name of religion does not arise.

In **Ram Prasad Seth v. State of U.P. [AIR (1957) All 411]** a learned Single Judge held that the act of performing a second marriage during the lifetime of one's wife cannot be regarded as an integral part of Hindu religion nor could it be regarded as practising or professing or propagating Hindu religion. Even if bigamy be regarded as an integral part of Hindu religion, Rule 27 of the U.P. Government Servants' Conduct Rules requiring permission of the Government before contracting such marriage must be held to come under the protection of Article 25(2)(b) of the Constitution.

Case of **Smt.Sarla Mudgal, President, Kalyani and Others v. Union of India and Others, 1995 AIR 1531** is considered as a landmark judgement by the Supreme Court. The Practice of changing one's religion to have a 2nd marriage without dissolving the first marriage was held to be invalid. As it was against justice, equity and good conscience. Conversion from one faith to another doesn't dissolve the marriage of an individual. The marriage can only be dissolved by decree of divorce obtained by the competent court on any of the ground under Section 13 of the Hindu Marriage Act, 1955. The court also declared that if a person is found guilty then he will be charged under Section 494 of the Indian Penal Code, 1860 for bigamy.

In **Khursheed Ahmed v. State of UP, Hon'ble Apex Court - (2015) SCC 105** held that it may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted. Assuming the practice of having more wives than one or procreating more children than one is a practice followed by any community or group of people, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does. In view of the above, we are unable to hold that the Conduct Rule in any manner violates Article 25 of the Constitution.

The ruling came against a government employee who was fired for misconduct after it was found that he had a second marriage despite being already married. The judgment was supported by the fact that no religion is bigger than Indian laws and polygamy isn't an important practice in any religion in India.

As per the India Times report, Khursheed Ahmad Khan, the accused who was fired from his government job, was employed as an irrigation supervisor. The details of his second marriage

came out in the open when the sister of his first wife filed a complaint with India's National Human Rights Commission.

The judgment further added:

As regards the charge of misconduct in question, it is patent that there is no material on record to show that the appellant divorced his first wife before the second marriage or he informed the Government about contracting the second marriage. In the absence thereof, the second marriage is misconduct under the Conduct Rules.

This is the first time that Indian law has ruled out against an unnecessary or immoral practice that is shielded through religion by certain authorities irrespective of the fact that polygamy has no connection with any religion in India. Polygamy is an injustice to women and must be banned completely in India. Also, the law must be the primary religion for every Indian citizen beyond any other religion they practice.

The view expressed by the Law Commission in its unanimous 227th report (2009) presented to the government that traditional understanding of Muslim law on polygamy is gravely faulty and conflicts with true Islamic law in letter and spirit,[31] said that since polygamy is allowed in the Muslim personal laws so it could be not be banned but needs to be critically reviewed.

CONCLUSION

Polygamy/Bigamy can be regulated or prohibited by rules of the company as in the case of Khursheed Ahmed v State of UP subject to there is a provision of prohibition of polygamy/bigamy in misconduct rules of the company.

LAND ACQUISITION BENEFITS UNDER DIFFERENT ACTS AND POLICIES

-Nikhil Kumar, Manager (Mining/Legal),WCL HQ

INTRODUCTION

The location and quality of coal reserves, and their distance from major consumers largely determine the selection of mine sites. For reserves that are close to the surface, open cast mining has proven to be the most efficient mining method. While relatively inexpensive, open cast mines require large areas of land. Land is, thus, the essential requirement for the extraction of coal. Acquisition of land were done under the provisions of either the Coal Bearing Areas (Acquisition & Development) Act 1957 (the CBA Act) or the Land Acquisition Act 1894 (the LA Act). Payment of compensation for the acquired land is the only statutory requirement under the CBA Act & the LA Act. Provision of Rehabilitation & Resettlement (R&R) benefit (employment / monetary compensation in lieu of employment) in addition to land compensation is dealt by the CIL's R&R Policies which was introduced in 2000 and then revised in 2008 & 2012. The LA Act was replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the RFCTLARR Act) which included the provision of R&R benefit.

COAL BEARING AREAS (ACQUISITION & DEVELOPMENT) ACT 1957 (THE CBA ACT)

The land compensation is calculated as per the provisions of Section 13(5) of the CBA Act which specified the value of land to be taken as the market value of the land at the date of the publication of the notification under sub- section (1) of section 4.

A directive was issued by the Ministry of Energy (Department of Coal) vide its letter dated 12th May 1989 by which the additional component of 30% Solatium on market value, 12% per annum escalation on the market value of land (from Section 4 to Section 9 subject to maximum period of 3 years) and interests (9% per annum for first year and 15% per annum for the subsequent years on the amount of compensation including solatium) was made a part of land compensation. This was done to bring the calculation of land compensation as per CBA Act in line with that of LA Act which was having these said components as part of the land compensation.

The Section 14(1) of the CBA Act offers freedom to the acquiring body and the land owner to mutually agree to a rate of land compensation which is fixed by execution of agreement between both the parties.

A directive was issued by the Ministry of Coal vide its letter dated 06th December 2010 by which it was conveyed that where the rates of compensation payable to the land owners have been notified by the State Government, the amount of compensation fixed by the agreement under Section 14(1) of the CBA Act may be calculated at the said notified rates and no payment towards Solatium or Escalation would be payable in such cases.

In 2012, the following rates for land compensation for lands acquired for coal mining was notified by the Maharashtra State: Rs. 6 lakh per acre for barren land, Rs. 8 lakhs per acre for non-irrigated land and Rs. 10 lakhs per acre for irrigated land.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 (THE RFCTLARR ACT)

The land compensation is calculated as per the details specified in the First Schedule of the RFCTARR Act whose salient features are as follows:

- Market value of land is to be determined as provided under section 26.
- Factor by which the market value is to be multiplied in the case of rural areas is 1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government.
- Factor by which the market value is to be multiplied in the case of urban areas is 1.
- Value of assets attached to land or building is to be determined as provided under section 29.
- Solatium is equivalent to one hundred per cent of the market value of land multiplied by the factor specified against rural areas or urban areas plus value of assets attached to land or building

The definition of "affected family" as per Section 3(c) of the RFCTLARR Act includes—

(*i*) a family whose land or other immovable property has been acquired;

(*ii*) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(*iii*) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(*iv*) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

(*v*) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(*vi*) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;

The R&R benefit is provided as per the details specified in the Second Schedule of the RFCTARR Act whose salient features are as follows:

- where jobs are created through the project, after providing suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or

  one-time payment of five lakhs rupees per affected family or

  annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index for Agricultural Labourers.

- Each affected family which is displaced from the land acquired shall be given a monthly subsistence allowance equivalent to three thousand rupees per month for a period of one year from the date of award.

  In addition to this amount, the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to fifty thousand rupees.

  In case of displacement from the Scheduled Areas, as far as possible, the affected families shall be relocated in a similar ecological zone, so as to preserve the economic opportunities, language, culture and community life of the tribal communities

- Each affected family shall be given a one-time ―Resettlement Allowance‖ of fifty thousand rupees only.

- The stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the Requiring Body.

The Section 108 of the RFCTLARR Act provides an option to affected families to avail better compensation and rehabilitation and resettlement provided under a State law or policy of the State.

CIL'S REHABILITATION & RESETTLEMENT (R&R) POLICY 2000

Salient features are as follows:

- The value of the land is determined on the basis of prevailing legal norms.
- The family in relation to displaced person would mean husband, wife with minor children (below 18 years) and unmarried/widowed daughters on or before the date of notification under Section 4(1) of the LA Act or under Section 7(1) of the CBA Act in respect of the area/village. Major unmarried sons will be also included in the family. However, each major married son will constitute a separate family.

- One employment against 2 acres of irrigated land or 3 acres of non-irrigated land to the land owner or the nominee of the land owner falling under the purview of definition of family.
- Monetary compensation/financial package in lieu of employment against land, the monetary compensation shall be paid on the following basis:

  i) Rs 1,00,000/- (One lakh) only for first acre of land on pro-rata basis subject to a minimum Rs 25,000/- only.

  ii) Rs 75,000/- only on pro-rata basis for 2nd and 3rd acre of land.

  iii) Rs 50,000/- only on pro-rata basis for land beyond 3 acres.

  A person receiving a job forgoes all claims to above compensation and a person receiving above compensation forgoes all claims to employment.

CIL'S REHABILITATION & RESETTLEMENT (R&R) POLICY 2008

Salient features are as follows:

- The value of the land is determined on the basis of prevailing legal norms.
- The family includes a person, his or her spouse, minor sons, unmarried daughters, minor brothers, unmarried sisters, father, mother and other relatives residing with him or her and dependent on him or her for their livelihood and includes nuclear family consisting of a person, his or her spouse and minor children.
- One employment against 2 acres of land to the land owner or the nominee of the land owner falling under the purview of definition of family.
- Monetary compensation/financial package in lieu of employment against land, the monetary compensation shall be paid on the following basis:

  i) Rs 2,00,000/- (Two lakhs) only for first acre of land on pro-rata basis subject to a minimum Rs 25,000/- only.

  ii) Rs 1,50,000/- (One and half lakhs) only on pro-rata basis for 2nd and 3rd acre of land.

  iii) Rs 1,00,000/- (One lakh) only on pro-rata basis for land beyond 3 acres.

  A person receiving a job forgoes all claims to above compensation and a person receiving above compensation forgoes all claims to employment.

CIL'S REHABILITATION & RESETTLEMENT (R&R) POLICY 2012

Salient features are as follows:

- The value of the land is determined on the basis of prevailing legal norms. Land compensation shall be paid as per the provisions of the concerned Act or State Govt. notification.
- The family includes a person, his or her spouse, son including minor sons, dependent daughters, minor brothers, unmarried sisters, father, mother residing with him or her and dependent on him or her for their livelihood and includes nuclear family consisting of a person, his or her spouse and minor children.

- One employment against 2 acres of land to the land owner or the nominee of the land owner falling under the purview of definition of family. Maximum no. of employments would be limited to total no. of acres of land acquired divided by two.
- Monetary compensation in lieu of employment against land, the monetary compensation shall be paid at the rate of Rs 5,00,000/- (Two lakhs) for each acre of land on pro-rata basis subject to a minimum Rs 50,000/- (Fifty Thousand).

  A person receiving a job forgoes all claims to above compensation and a person receiving above compensation forgoes all claims to employment.

RELEVANT JUDGEMENTS

In WP no. 4253/2022, NilkanthMandavkar Vs WCL, it was held by the Honb'le High Court Nagpur that the R&R Policy of 2012 did not contemplate multiple employments against one holding even if the area acquired exceeded two acres.

In WP no. 1391/2020, Bhojraj Vaidya vs WCL, the Hon'ble High Court Nagpur accepted the denial of the employment by WCL (to brother of the land owner for employment under R&R Policy 2012) since reference has been made to a minor brother in the expression "Family" in R&R Policy 2012, it is implied that an elder major brother is not included therein.

In WP no. 8206/2018, Shankar Bodhe vs WCL, claim of employment to grand-daughter of the land owner under R&R Policy 2012 was denied by the Hon'ble High Court Nagpur as petitioner does not fall within the definition of the Family in the 2012 policy.

In WP no. 1690/2018, ChhabutaiDethe vs WCL, the Hon'ble High Court Nagpur denied the claim of employment to divorcee daughter of the land owner under R&R Policy 2012 as petitioner was not covered within definition of 'family' as occurring in the R&R policy of the year 2012.

CONCLUSION

The RFCTLARR Act have the provisions detailing in respect of calculation of land compensation amount and the provisions of R&R benefits whereas the CBA Act is not descriptive in that regard along with absence for provision of R&R benefit. The provision of employment under RFCTLARR Act was subject to job creation through the project whereas the R&R Policies provides employment irrespective of the condition of job creation through the project. The R&R Policies are thus preferred over the RFCTLARR Act under the provision of Section 108 the RFCTLARR Act. The definition of "Family" has evolved over time in R&R Policies so as to protect more effectively against unjustified claims, redundant manpower and swelling wage bills. The eligibility criteria for employment as per R&R Policy 2012 i.e., *one employment for every two acres of land* needs to be made explicit in the Policy to be in line with the *land holding concept* which is the prevailing practice in WCL.

LEGALITY AND REGULARISATION OF FRAGMENTS UNDER THE MAHARASHTRA FRAGMENTATION LAW

-Shivani Jaideep Karnik ,MT(Legal),WCL HQ

Being the forerunner in the mining industry, land is the most crucial resource for WCL to run its operations. Land is first acquired by the Central Government and then vested with WCL through three modes:

i. Under Land Acquisition Act, 1894
ii. Under the Coal Bearing Areas (Acquisition and Development)Act, 1957
iii. Through direct sale

WCL has 10 areas of Maharashtra and Madhya Pradesh. Therefore, local land laws also apply to the lands acquired by WCL in such areas. In Maharashtra, one of the most recent challenges faced by WCL in the sphere of land issues is dealing with illegally created fragments. Illegally created fragments are those parcels of land created by transfer or partition of a land which are below the limits specified by the Maharashtra Government. Although this limit may be different for different Tahsils, generally, the permissible limit is 2 Acres (0.81 Ha.) and above for unirrigated land and 1 Acre (0.40 Ha.) for irrigated land.

The relevant law holding the field in Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The salient provisions of the Act are:

I. Section 8. Fragmentation Prohibited

No land in any local area shall be transferred or partitioned so as to create a fragment

This section prohibits fragmentation by stating that no land shall be transferred or partitioned so as to create a fragment.

II. Section 8AA. Restriction on partition of land

(1) Where, by transfer, decree, succession or otherwise, two or more persons are entitled to shares in an undivided agricultural land in any local area for which standard areas have been fixed, and the land has to be partitioned among them, such partition shall be effected so as not to create a fragment

The aforesaid section restricts partition of land by transfer, decree, succession or otherwise. Partition between two or more persons are entitled to shares in an undivided agricultural land shall be effected so as to not create a fragment.

III. Section 9. Penalty for transfer or partition contrary to provisions of Act

(1) The transfer or partition of any land contrary to the provisions of this Act shall be void.

(2) The owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs. 250 as the Collector may subject to the general orders of the State Government, directly. Such fine shall be recoverable as an arrear of land revenue.

This section declares that the transfer or partition of any land contrary to the provisions of this Act shall be void. The owner of such land also is liable to pay such fine not exceeding Rs. 250 as the Collector may levy.

Regularisation of Fragmentation

There was an absolute prohibition on creation of fragments before 2017. However, upon enactment of Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2017, there are provisions for regularisation of fragments with retrospective effect. Two such newly inserted provisions are:

I. Section 8B. Sections 7, 8 and 8AA not to apply to land situated in certain areas.

Nothing in sections 7, 8 and 8AA shall apply to the land situated within the limits of a Municipal Corporation or a Municipal Council, or to the land situated within the jurisdiction of a Special Planning Authority or a New Town Development Authority appointed or constituted under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force, and also to any land allocated to residential, commercial, industrial or any other non-agricultural use in the draft or final Regional plan prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force :

Provided that, no person shall transfer any parcel of land situated in the areas specified above, which has area less than the standard area notified before the date of coming into force of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2015, unless such parcel is created as a result of subdivision or layout approved by the Planning Authority or the Collector, as the case may be, under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force..

The provision excludes application of provisions prohibiting fragmentation on the land situated within the limits of a Municipal Corporation or a Municipal Council, or the land situated within the jurisdiction of a Special Planning Authority or a New Town Development Authority, and also land allocated to residential, commercial, industrial or any other non-agricultural use in the draft or final Regional plan prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force.

However, this is subject to the condition that if such land has area less than the standard area notified before the date of coming into force of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2015, then, the provision will only apply if the parcel is created as a result of subdivision or layout approved by the Planning Authority or the Collector.

II. Provisos to Section 9(3)

Provided that, save as otherwise provided in section 31, the Collector may, upon an application made in this regard, regularise a transfer or partition of a land contrary to the provisions of this Act made on or after 15th day of November 1965 and before the date of commencement of Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2017, if such land is allocated to residential, commercial, industrial, public or semi-public or any non-agricultural use, in the prevailing draft or final Regional Plan; or is intended to be used for any bona fide non-agricultural user, subject to payment of regularisation premium at such per centum not exceeding 25 per cent. of the market value of such land as per the Annual Statement of Rates, as the Government may notify, from time to time, in the Official Gazette:

Provided further that, save as otherwise provided in section 31, if a transaction of transfer or partition of land contrary to the provisions of this Act is regularised on the ground that the land would be used for any bona fide non-agricultural use, then failure to start such bona fide non-agricultural use within 5 years from the date of regularisation.

This is the primary provision for regularisation of fragments. The Collector may, upon an application made in this regard, regularise a transfer or partition of a land contrary to the provisions of this Act made on or after 15th November 1965 and before 7th September 2017, if such land is allocated to residential, commercial, industrial, public or semi-public or any non-agricultural use, in the prevailing draft or final Regional Plan; or is intended to be used for any bona fide non-agricultural user, subject to payment of regularisation premium at such per centum not exceeding 25 per cent. of the market value of such land.

The second proviso adds another condition that if a transaction of transfer or partition of land contrary to the provisions of this Act is regularised on the ground that the land would be used for any bona fide non-agricultural use, then failure to start such bona fide non-agricultural use within 5 years from the date of regularisation shall result in forfeiture of such land by the Collector

Now, due to this change in the Act, the orders of the competent authorities under this Act regularising fragment must be examined. There are a few instances wherein the regularisation of fragments was done in contravention to these provisions.

1. **Issue 1**

The Tahsildar exercised his power under section 155 of the Maharashtra Land Revenue Code, 1966 (regarding correction of clerical errors) read with amended section 9 of the Fragmentation Act and regularised fragments created by sale and gift deeds. Illegal mutation entries were also carried out.

This order was challenged due to contravention of the second provision of Section 9. The allocation of land for residential, commercial, industrial, public or semi-public or any non-agricultural use is not shown to exist in the draft Final Regional Plan at the time of passing of such impugned order by the Tahsildar on 02.12.2021. The Tahsildar did not also satisfy himself about the existence of such a purpose. Therefore, this regularisation is contrary to law and under judicial scrutiny.

2. **Issue 2**

The Tahsildar regularised fragment created by sale deed dated 10.12.2020. Such an order was passed even after the Tahsildar repeatedly referred to the land still as "agricultural land", which cannot be regularised.

This order is illegal for two reasons. Firstly, as in the case of Tahsildar, Rajura, the land is shown to be agricultural land in the 7/12 extracts. Secondly, the land was transferred on 10.12.2020, which is beyond the period contemplated in the first proviso to Section 9(3), that is, between 15.11.1965 and 07.09.2017. Thus, this order violated two conditions of the same provision it utilised.

The Way Forward

The illegal regularisation of fragments poses a challenge to WCL as creation of more and more fragments is seen as an opportunity for more employments under the Resettlement and Rehabilitation (R&R) Policy by the landowners. Illegal regularisations can be weeded out by perusing the land related records and primarily checking two things:
i. date of transfer/partition of land and,
ii. nature of land- agricultural/non-agricultural.
As a practice of the company, employment is provided to landowners or their nominees holding only agricultural land.

Further, information from revenue authorities can be sought on publication of Section 4, CBA (A&D) Act, 1957 itself regarding any pending applications on each survey number which is part of the notified land. This will help WCL identify whether any cases of regularisation are genuine or a mere afterthought due to acquisition of land. The High Court had also held the date of notification published under Section 4, CBA (A&D) Act, 1957 as a cut-off date for any alienation or transaction of the land in the case of *Madhukar Wandre v. Vishwanath Sontakke &ors. (F.A. 568/2021).*

As these conditions are often violated while regularisation, such contravening orders can be challenged by WCL, when the land in question is acquired by WCL, before the appellate revenue authorities while simultaneously holding off the disbursal of R&R benefits till the matter is finally adjudicated.

PROHIBITION OF MINING IN ECOLOGICALLY SENSITIVE ZONE

- **Sarthak Jain, MT (Legal), Wani Area, WCL**

INTRODUCTION

An Ecologically Sensitive Zone (**ESZ**) which is also called an Ecologically Fragile Area refers to an area characterized by its high ecological significance and vulnerability which demands special attention and conservation measures. These zones are identified based on factors such as unique biodiversity, fragile ecosystems, and the presence of rare or endangered species. The purpose of designating an area as an ESZ is to ensure protection and preservation of its environmental integrity. These ESZ are notified by the Ministry of Environment, Forests and Climate Change (**MoEF**) under the provisions of the Environment Protection Act, 1986 around the boundary of a protected area, which includesnational park, sanctuary, conservation reserve or community reserve (**protected areas)** as Notified under the Wildlife Protection Act, 1972, to create a transition zone and to conserve the areas outside such protected areas by regulating and managing the activities around them.

The ESZ Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries issued by MoEF on February 9, 2011, enable States/Union Territories to develop specific guidelines for such protected areas within their states for declaration of ESZ. Due to tremendous development near boundaries of these protected areas, significant challenges are being faced to ensure a balance between economic interests and environmental conservation. One such development activity is mining which, while being essential for economic development of nation, can have profound and often irreversible impacts on the environment when carried out in ESZ. Common consequences include deforestation, soil erosion, water pollution and habitat destruction.

This article emphasize on the topic chosen by the author by discussing some earlier judgments of Supreme Court and the recent judgment passed on 26/04/2023 by the Supreme Court in ***T.N. GodavarmanThirumulpad vs. Union of India*(*I.A. No. 1000 of 2003 in the Writ Petition (Civil) No. 202 of 1995)*** wherein the court has clarified that prohibition of mining activities in protected areas shall also extend to an area up to one kilometer from the boundary of the protected area thus, to ensure that mining does not become a death trap for flora and fauna in protected areas.

BACKGROUND

The issue arises regarding mining activities within ESZ. The 2011 Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries dated February 9, 2011 provide all those activities which could be categorized as prohibited, regulated, and permitted in the ESZ.

- Prohibited activities are strictly prohibited in ESZs, such as commercial mining, establishment of major hydroelectric projects, commercial use of wood, and industries that cause pollution to water, air, soil, noise, etc.
- Regulated activities are regulated in ESZs to minimize their impact on the environment. These include establishment of hotels, commercial use of natural water, felling of trees, erection of electrical cables etc.
- Permitted activities are permitted in ESZs such as horticulture practices, rainwater harvesting, use of renewable energy sources and organic farming.

In addition to these guidelines, activities in ESZs are regulated by notifications which are specific to an ESZ. According to the Wildlife Conservation Strategy, 2000, ESZs were defined as lands falling within 10 kms of the boundaries of protected areas.

RELEVANT JUDGMENTS

The issue regarding mining activities in ESZ came up for consideration before the Supreme Court in the following cases:

1. **Samata vs. State of Andhra Pradesh(*AIR 1997 SC 3297)*:** In this landmark case, the Supreme Court emphasized the need to protect tribal rights and the environment from the adverse effects of mining. The judgment emphasizes the importance of sustainable development and the duty of the state to prevent ecological damage. It has set a precedent for considering the social and environmental impacts of mining activities, particularly in ESZs.
2. **Lafarge Umiam Mining Pvt. Ltd. vs. Union of India(*I.As Nos. 1868, 2091, 2225-27, 2380, 2568 and 2937 in WP (C) No. 202 of 1995)*:** This case addressed the issue of limestone mining in forest areas without obtaining the necessary environmental clearances. The Supreme Court ruled that mining in forest areas without proper clearances is impermissible. The judgment highlighted the significance of obtaining environmental clearances before engaging in any mining activities, especially in eco-sensitive regions.
3. **T.N. GodavarmanThirumulpad v. Union of India*(2022) 10 SCC 544*** decided on 03/06/2022**:**In this case the Supreme Court considered two issues:-
   - The first was in relation to mining activities in and around a wildlife sanctuary in the State of Rajasthan known as “Jamwa Ramgarh”.
   - The second issue was wider in scope and involved prescribing ESZ surrounding the protected areas. The subject of mining and other related activities was also dealt.

The Supreme Court issued following directions in this case:

(i) Each protected area must have an ESZ of minimum one km measured from the demarcated boundary of such protected area (**Direction 1**).

(ii) In case an ESZ is already prescribed as per law that goes beyond the 1 km buffer zone, the wider margin of ESZ will prevail (**Direction 2**).

(iii) Mining within national parks and wildlife sanctuaries are not permitted (**Direction 3**).

(iv) In case any such activity was already been undertaken within one km or extended buffer zone, as the case may be, of any national park or wildlife sanctuary which does not come within the ambit of prohibited activities as per the guidelines for Declaration of Eco-Sensitive

Zones around National Parks and Wildlife Sanctuaries dated February 9, 2011, such activities may continue with the permission of the Principal Chief Conservator of Forests (PCCF) of each State or Union Territory and the person responsible for such activities must obtain necessary permission within six months **(Direction 4**).

4. **T.N. GodavarmanThirumulpad vs. Union of India(*I.A. No. 1000 of 2003 in the Writ Petition (Civil) No. 202 of 1995)*:** However, in 2023 the Union of India (UOI) by filing a petition sought modifications of the 2022 judgment, on the following grounds that:
   a) The area to be declared as ESZ cannot be uniform and will be protected area specific.
   b) The directions contained in the 2022 judgment are causing great hardships to people residing in ESZs. Hundreds of villages are living in ESZs. If Direction 4 is continued, then no permanent structure would be permitted for whatsoever purpose.
   c) The Forest Department will not be able to conduct eco-development activities around national parks and wildlife sanctuaries.

The Supreme Court noted that the objective of declaring ESZs was not to hamper day-to-day activities but to safeguard the protected areas from any negative impact. Therefore, the Supreme Court modified its 2022 judgment to the following extent:

I. *Modification of Direction 1*: Direction 1 shall not be applicable to ESZs in which a draft and final notification has been issued by MoEF. Further, Direction 1 will not be applicable in those protected areas which are located on inter-State borders and/or which share common boundaries.
II. *Modification of Direction 3*: Mining within an area of 1 km from the boundary of the protected area is not permissible.
III. *Modification of Direction 4*: Following directions were passed:
   - MoEF shall strictly follow the 2011 Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries dated February 9, 2011and the provisions of ESZ notifications related to respective protected area with regard to prohibited, regulated, and permitted activities.
   - While granting environment and forest clearances for activities in the ESZ and other areas outside the protected areas, the UOI shall strictly follow the provisions contained in the office memorandum FC-11/119/2020-FCdated 17/05/2022 issued by the MoEF.

SUBSEQUENT DEVELOPMENTS

After passing of the 2023 judgment, an application bearing **I.A. No. 3949 of 2016** was filed in the writ petition by one M/s Puntambekar Minerals **(applicant),** who was granted permission to execute a mining lease, for seeking clarification from Supreme Court regarding the modified Direction 3. The applicant's case was that the 2023 judgment only prohibits mining in ESZ within one km from the boundary of protected area. However, the applicant proposed to carry out mining activity in an ESZ, which is beyond 2.26 km from the nearest boundary of Radhanagari Wildlife Sanctuary. It was argued that since mining activity was more than one km from the boundary of the protected area, therefore it must be allowed.

The Supreme Court by order dated 28/04/2023 held:

i. The directions issued in the 2023 judgment were clear and requires no further clarification.
ii. The 2023 judgment emphasizes that the 2011 Guidelines and specific ESZ notifications had to be strictly followed.
iii. The activities prohibited by 2011 Guidelines and ESZ notification must not be allowed.

iv. The law related to mining activities in ESZ is governed by the 2023 judgment. Even in cases where ESZ is more than one km and mining activities are proposed in such ESZ, the mining activity will not be permitted. The prohibition of one km from the boundary of the protected area is only with regard to cases where the boundary of ESZ is less than one km.

CONCLUSION

The order passed by the Supreme Court emphasizes the primary objective of declaring an ESZ i.e. to protect the environment and wildlife without affecting the day to day activities of citizens. A balance must be maintained between the environmental conservation and the developmental needs which can be achieved by promoting eco-tourism, sustainable livelihoods and green infrastructure within these zones. To prevent any illegal activities, encroachments or violations, it is important to monitor these zones effectively. The government and communities has to work together to ensure that these zones are managed effectively and are monitored for the benefit of all.

UNILATERAL APPOINTMENT OF AN ARBITRATOR

- **Niteesh Kumar Mishra, MT (Legal), WCL HQ**

INTRODUCTION

Arbitration, a cornerstone of alternative dispute resolution, serves as a vital mechanism in resolving conflicts outside traditional court systems. This process offers parties a confidential and flexible platform to settle disputes through a neutral arbitrator's decision, which holds legal weight akin to a court judgment. Its efficiency, adaptability to diverse industries and cross-border matters and the ability to tailor proceedings to suit specific needs have positioned arbitration as a preferred method for resolving disputes worldwide.

In the structure of legal systems, a hierarchical order of courts upholds the rule of law. Arbitration aims to move away from traditional courts, opting instead for a third-party arbitrator who acts as a judge. However, despite agreeing to appoint this arbitrator, there is a natural human tendency to not strictly adhere to the rule of law. Parties with more power might seek to dominate the weaker side. To address this, legislations like Arbitration and Conciliation Act, 1996, are enacted to regulate the adherence to the rule of law. In instances where parties deviate from these principles, the recourse lies in approaching the courts. Courts, ultimately, serve as the guardian of the rule of law in such cases.

In the realm of arbitration, the notion of unilaterally appointing an arbitrator has been a subject of debate and contention. The practice of unilaterally appointing an arbitrator though permissible under party autonomy, goes fundamentally against the principle of Natural Justice. In spite of this glaring fallacy numerous Public Sector Undertakings (PSUs), Banks and other institutions continue to preserve the arbitration clauses granting unilateral appointment authority to figures such as CMDs, Directors, or other designated authorities. Hence, we'll now assess the permissibility of this practice.

SCENARIO PRIOR TO 2015 AMENDMENT

In 2015, significant changes were made to the Arbitration and Conciliation Act, 1996. However, even before this amendment, the issue regarding the unilateral appointment of an arbitrator had been raised in numerous cases. Various courts have deliberated on this matter and a set of judgments clearly stated that the unilateral appointment of an arbitrator is impermissible under the Arbitration and Conciliation Act 1996. Even under the provisions of the 1940 Act, courts ruled against the permissibility of

appointing an arbitrator unilaterally. A few judgments exemplifying this stance are reproduced below for reference.

In **Prajakta Mahesh Joshi And Another v. Rekha Uday Prabhu And Others (Arbitration Petition No. 121 of 2012)** Hon'ble Bombay High Court has held that:

"The arbitration clause referring to the Arbitration Act permits the parties to resolve their dispute through a sole Arbitrator. ***Considering the scheme and object of Arbitration Act, in my view, first requirement is that the Arbitrator must be appointed by the consent of the parties.*** *The consent of Petitioner was never obtained.* ***Therefore, the unilateral appointment of Arbitrator, in such fashion itself is impermissible mode to resolve the disputes by this alternative dispute resolution mode through the Arbitration****."*

Hon'ble Supreme Court in **Dharma Prathishthanam v. Madhok Construction (P) Ltd**. **(2005 (9) SCC 686)** (Under Arbitration and Conciliation Act, 1940) held that:

*"****A unilateral appointment and a unilateral reference both will be illegal****. It may make a difference if in respect of a unilateral appointment and reference the other party submits to the jurisdiction of the arbitrator and waives its rights which it has under the agreement, then the arbitrator may proceed with the reference and the party submitting to his jurisdiction and participating in the proceedings before him may later on be precluded and estopped from raising any objection in that regard."*

SCENARIO POST 2015 AMENDMENT

From the scrutiny of the aforementioned judgments, it becomes evident that courts consistently favored the appointment of arbitrators through mutual consent.

Law Commission's Report No. 246 (Amendments to the Arbitration and Conciliation Act 1996) specifically dealt with the issue of **"Neutrality of Arbitrators"**. The Law Commission observed in its report that:

"It is universally accepted that any quasi-judicial process, including the arbitration process, must be in accordance with principles of natural justice. In the context of arbitration, neutrality of arbitrators viz. their independence and impartiality, is critical to the entire process."

Further, it was observed, "***Since the principles of impartiality and independence cannot be discarded at any stage of the proceedings, specifically at the stage of constitution of the arbitral tribunal, it would be incongruous to say that party autonomy can be exercised in complete disregard of these principles – even if the same has been agreed prior to the disputes having arisen between the parties***. *There are certain minimum levels of independence and impartiality that should be required of the arbitral process regardless of the parties' apparent agreement. A sensible law cannot, for instance, permit appointment of an arbitrator who is himself a party to the*

dispute, or who is employed by (or similarly dependent on) one party, even if this is what the parties agreed."

The issue of unilateral appointment of an arbitrator came before the Hon'ble Supreme Court **In Perkins Eastman Architects DPC &Anr. v/s HSCC (India) Ltd.(2019) SCC Online SC 1517**, wherein it was held that:

*"The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter balanced by equal power with the other party. But, **in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator.** That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognized by the decision of this Court in TRF Ltd."*

In **Yashovardhan Sinha HUF &Ors. v/s SatyatejVyapaarPvt. Ltd**. **(A.P. No. 156 of 2022)** the Hon'ble Calcutta High Court has held that:

*"Therefore, the dicta laid down in these judgments makes it crystal clear that there cannot be unilateral appointment of a sole arbitrator by the respondent as per Clause 19 of the loan agreement as the same is illegal and defeats the very purpose of unbiased and impartial adjudication of the dispute between the parties**. The guiding principle is transparency, fairness, neutrality and independence in the selection process and hence, appointment of a sole arbitrator can either be with mutual consent of parties or by an order of the competent court. There can be no third way**."*

In **Hanuman Motors Pvt. Ltd. &Anr.Vs. M/s. Tata Motors Finance Ltd. (Arbitration Petition NO. 241 OF 2022)**the Hon'ble Bombay High Court observed that:

"The real crux of the matter is that when one of the parties to the dispute has an overwhelming and unilateral power to appoint a sole arbitrator, the same completely vitiates such an appointment as being hit by Section 12(5) read with the Seventh Schedule of the said Act."

The rationale behind setting aside such appointments is rooted in the fact that when an arbitrator is appointed solely by one party without affording the other party an opportunity, it inherently introduces elements of bias and partiality into the arbitration process.

A BALANCING MECHANISM IN CASE OF PANEL OF ARBITRATORS

In cases of unilateral appointment of an arbitrator, courts have deemed such appointments illegal, especially when there's a sole arbitrator involved. However, In the case of a panel of arbitrators, such as in a panel of three-member, courts have held

that if one party maintains a panel unilaterally (Broad Based) and gives the opportunity to the other party to nominate an arbitrator from that panel, it counterbalances the dominating power of the party having authority to make appointment. In such instances, these appointments are considered valid and not in violation of judgments laid down by the Supreme Court in cases like TRF and Perkins. This approach, as evident in the Supreme Court's judgments in the **Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd. (2017) 4 SCC 665** and **Central Organisation for Railway Electrification v ECI-SPIC-SMO-MCML (JV) (2020) 14SCC 712**, suggests that providing such a choice mitigates grounds for contesting the appointment of an arbitrator.

In **Central Organisation for Railway Electrificationv ECI-SPIC-SMO-MCML (JV) (2020) 14 SCC 712**Hon'ble Supreme Court has held as under:

"Since the respondent has been given the power to select two names from out of the four names of the panel, the power of the appellant nominating its arbitrator gets counter-balanced by the power of choice given to the respondent. ***Thus, the power of the General Manager to nominate the arbitrator is counter-balanced by the power of the respondent to select any of the two nominees from out of the four names suggested from the panel of the retired officers****. In view of the modified Clauses 64(3)(a)(ii) and 64(3)(b) of GCC, it cannot therefore be said that the General Manager has become ineligible to act as the arbitrator. We do not find any merit in the contrary contention of the respondent. The decision in TRF Limited is not applicable to the present case."*

However, the correctness of this decision has been doubted in the case of **Union of India vs Tantia Constructions (2021)**and the issue has been referred to a larger bench.

CONCLUSION

In conclusion, considering the 2015 amendment and the jurisprudence outlined in various court judgments, it becomes evident that the unilateral appointment of an arbitrator, without affording the other party an opportunity to participate in the process of appointment, is not permissible. The emphasis placed on arbitrator neutrality, independence, and the foundational principles of fairness and impartiality within arbitral proceedings, as highlighted by both legislative changes and court rulings, unequivocally supports the notion that unilateral arbitrator appointments are not in alignment with the fundamental tenets of arbitration in contemporary legal frameworks.

GENERAL PRINCIPLES FOR BANNING/BLACKLISTING IN GOVERNMENT CONTRACTS

- **RONAK KANOONGO, MT (LEGAL), WCL HQ**

INTRODUCTION

The Union and the State are granted executive authority under Article 298 of the Indian Constitution to engage in any kind of commerce and to enter into agreements. An entity with the ability to contract has the inherent right to refuse to enter into a contract, just like in any other contractual relationship. Due to this reason, the government may decide not to enter into any contract with individuals or companies and, in severe circumstances, may even ban them. Banning has certain negative consequences attached to it and due to these negative effects certain principles have been established by Courts of Law to protect the interests of private contractors.

The action of blacklisting affects the concerned contractor who is getting blacklisted and leads to the civil consequences, stigmatises the person or organisation getting blacklisted, affects its future business and maligns its image in the market. The order of blacklisting has the effect of depriving a person of equality of opportunity, especially in the matter of public contracts.

MEANING OF BLACKLISTING

Blacklist is a list of people or organizations which includes Sole proprietorship firm, Partnership firm, Limited Liability Partnership, Companies, Joint Ventures, etc. who are put in a list in order to preclude them from submitting bids in the future tenders. Blacklists can lead to unfair and unlawful discrimination since their main function is to exclude and discriminate. Being placed on a blacklist can have a lot of negative impacts, major inconvenience being the least of them. More serious consequences include financial difficulties, a reduction in client business, a loss of trust and goodwill, and more. A blacklist is a list of Sole proprietorship firm, Partnership firm, Limited Liability Partnership, Companies, Joint Ventures, etc. that are subject to sanctions due to allegations of unethical or unfavorable behavior.

Thus, blacklisting refers to the decision made by the State or its agencies to deal with a certain person or class of people because it is undesirable to enter into a contractual relationship with them. Blacklisting may also be referred to as banning, delisting and debarment.

POWER OF EMPLOYER TO BLACKLIST AND CIRCUMSTANCES IN WHICH A COMPANY CAN BE BLACKLISTED

In the absence of a statute, the government may debar corporations and prevent them from bidding by virtue of agreements entered into by state entities with the contractors. The party awarding contracts has the inherent authority to impose banning. But these business judgments have to be made fairly and after complying with the Principles of Natural Justice. For complying with the Principles of Natural Justice it is required to give a show cause notice to the contractor to provide reasons why he should not be banned from participating in future tenders. After serving show cause notice and objectively assessing the reply submitted by the contractor, if the state or its agencies are not satisfied with the reply of the contractor and want to go ahead with banning process, personal hearing to the contractor needs to be given. The final order will be issued based on the designated authority's subjective assessment and the final order has to be a speaking order. Nonetheless, judgments of this nature must to be made impartially and without bias towards the contractor.

There are numerous reasons why a business might be placed on a blacklist. In order to maintain transparency and system openness, the Central Government, several State Governments, and their agencies have established clear guidelines and grounds for debarment. The following are some typical reasons and situations for debarring a contractor:

A. There are ample and convincing grounds to suspect that the contractor or any of his workers have engaged in unethical behavior like bribery, corruption, or fraud.

B. Stealing or improper handling of supplies provided by the government for designated projects.

C. When the blacklisting order is justified by security concerns, such as suspicions of State disloyalty.

D. Misconduct or intimidation of supervisory and departmental officers while work is being done or during the tendering process.

E. Participating in any kind of tender fixing.

F. Consistent failure to reach targets for fictitious or insufficient reasons.

G. Disregarding quality standards even after being made aware of them.

H. Consistent and deliberate breach of significant contract terms.

I. Filing fake, counterfeit, or fraudulent documents to be considered for a tender.

SHOW CAUSE NOTICE AND JUDICIARY'S APPROACH

A notice to show cause is issued when the state or its agengies thinks that a contract has been violated or breached in some way. It has to be kept in mind by the authority issuing show cause notice that it should not give an impression that the cause has already been decided by the authorities and should reflect that a fair and effective opportunity will be given to rebut the allegations. This was held in the case of ***Oryx Fisheries Private Limited v. Union of India &Ors. [(2010) 13 SCC 427]***, wherein the Hon'ble Supreme Court of India held that:

"*Show cause notice cannot be read hyper technically and it is well settled that it is to be read reasonably. But while reading a show-cause notice the person who is subject to it must get an*

impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence."

Further, in the case of ***SBQ Steels Ltd. v Commissioner of Customs, Central Excise and Service Tax, Guntur 2013 (1) TMI 359 (Andhra HC),***it was held that**"***While issuing a show cause notice, the department should ensure that it does not indicate any pre-meditation or prejudgment by the Department."*

In the case of ***Union of India v. Vicco Laboratories [2007 (11) TMI 21 (Supreme Court)],*** it was held that Writ Court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show cause notice has been issued.
Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without any exceptions.
Where a show cause notice is issued either without jurisdiction or an abuse of process of law, certainly in that case, the Writ court would not hesitate to interfere even at the stage of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner.

In the case of ***Tanushree Logistics Private Limited v. Union of India 2015 (9) TMI 420 (Rajasthan High Court)***, Hon'ble Rajasthan High Court held that without even filing of reply to the show cause notice, approaching the High Court is premature. It was further held that if reply to Show Cause notice is furnished, it is always open to the authority to consider and decide in accordance with the law. Moreover, Hon'ble Delhi High Court in the case of ***Mega Corporation V. Commissioner of Service Tax 2015 (1) TMI 1095 (Delhi High Court)***, held that the petitioner should first respond to show cause notice and take recourse to such remedies as are available in law in the circumstances of the case. The petitioner is directed to file a reply or appropriately respond to the show cause notice.

It was held by the Hon'ble Calcutta High in ***Naresh Kumar & Co, Private Limited v. Union of India [2013 (2) TMI 676 (Calcutta High Court)]*** that the High Court might interfere with a show cause notice which does not fulfill the statutory conditions for issuance thereof or ex-facie does not disclose any offence, misconduct or other cause of action for which action is contemplated in the show cause notice. For this purpose the court may examine whether jurisdiction to issue show cause notice has been properly exercised or such jurisdiction is usurped by pretended invocation of a provision of a statute.

KEY JUDGMENTS REGARDING BANNING

In the case of ***Grosons Pharmaceuticals (P) Ltd. &Anr. v. State of U.P., (2001) 8 SCC 604***, the order of blacklisting was challenged by the contractor on the ground that the contractor was not supplied with all the materials on the basis of which charges against him were based.

It was the case on behalf of the contractor that non-supply of such material resulted in violation of principles of natural justice. On that point, the Hon'ble Supreme Court observed that it was sufficient requirement of law that an opportunity of show cause was given to the appellant before it was blacklisted. *This Court observed that the contractor was given an opportunity to show cause and it did reply to the show cause to the State Government and therefore the procedure adopted by the Government while blacklisting the contractor was in conformity with the principles of natural justice.*

Moreover, in the case of ***Gorkha Security Services v. Govt. (NCT of Delhi) &Ors (2014) 9 SCC 105***, it was observed by the Hon'ble Supreme Court of India that the fundamental purpose behind the serving of a show- cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same.

In the case of ***Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Ors. (2014) 14 SCC 731***, the Hon'ble Supreme Court has observed that "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor. It is observed and held by this Court that while determining the period for which the blacklisting should be effective, for the sake of objectivity and transparency it is required to formulate broad guidelines to be followed. It is further observed that different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines.

Furthermore, in cases of ***Jagdish Mandal v. State of Orissa & Others [(2007) 14 SCC 517], Central Coalfields Limited & Another v. SLL-SML (Joint Venture Consortium) & Others [(2016) 8 SCC 622], and Silppi Constructions Contractors Versus Union of India & Another [(2020) 16 SCC 489]***, it was observed that if the action of banning is taken after following the due procedure and in compliance with the principles of Natural Justice, then courts would not interfere with the decision of banning.

DOCTRINE OF PROPORTIONALITY

The classical definition of proportionality was given by Lord Diplock by stating *"you must not use a steam hammer to crack a nut if a nut cracker would do"* in the case of ***R v. Goldsmith (1983) 1 WLR 151***. Thus, proportionality broadly requires that government action must be no more intrusive than is necessary to meet an important public purpose. However the greatest advantage of proportionality as a tool of judicial review is its ability to provide objective criteria for analysis. It is possible to apply this doctrine to the facts of a case through the use of various tests.

The Hon'ble Supreme Court in the case of ***Association of Registration, Plates v. Union of India, (2004) 5 SCC 364*** held that any judicial review of any action taken by any administrative authority only has the power to determine the validity of the said decision but cannot determine the legitimacy of the said decision. Mere probability of a particular point of view cannot be a basis for intervention. Therefore, the courts do not have the power to intrude until and unless said decision is irrational or illegal or suffers from some flaws with regards to proportionality.

In the case of ***Coimbatore District Central Coop Bank v. Employees Association, (2007) 4 SCC 669,*** it was held that while using the doctrine it cannot be allowed to use a sledgehammer for the purpose of cracking a nut when a paring knife for the same would suffice. Hence, the courts must take into account administrative procedures for the purpose of making or reversing a decision.

In the case of ***Union of India v. G Ganayutham, (1997) 7 SCC 463,*** the Supreme Court held that only when the court has to decide on the reasonableness of a restriction during the exercising of fundamental rights can the doctrine of proportionality become completely applicable in constitutional adjudication. Nevertheless, the application of the doctrine is still at an embryonic stage in the field of administrative law. Currently, the court does not have the authority to question the decisions taken by the administrator, hence, it can be said that this doctrine is still not being put to its fullest use in Indian administrative law.

CONCLUSION

The State and its entities may blacklist certain contractors in the public interest in order to protect the greater good and to make sure they are never hired for public work again. However, it should not make biased or capricious decisions. They ought to abide by the Doctrine of Proportionality as well as the Audi Alteram Partem rule. Moreover, the Supreme Court has ruled that even in cases where the State's regulations don't specifically address it, the principles of Natural Justice must be adhered to, given that being placed on a blacklist can permanently damage a person’s career, the government should uphold the aforementioned values and refrain from using blacklisting as a political tool. The Supreme Court and High Courts in a large number of cases have deprecated the practice of entertaining writ petitions questioning the legality of the show cause notices stalling the tenders.

DETERMINATION OF LAND COMPENSATION UNDER THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

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INTRODUCTION

One of the few natural resources is land. According to Article 300(A) of the Constitution no person can be deprived of his property save by authority of law. The constitutional requirement is met by the Land Acquisition Act, 1894 which is 128 years old act. In the Act of 1894 there were lack of a unified national legal framework that addresses just compensation, rehabilitation, and landowner resettlement; lack of provisions to deal with the problem that is immediately impacted by the loss of employment; lack of an appropriate method to determine the land's market worth and lack of support for the most vulnerable members of society (Section 41). Before the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 went into effect on January 1, 2014, land acquisition was governed by the Land Acquisition Act of 1894.

MEANING OF AFFECTED FAMILY

Affected families include:

a. those whose land or other immovable property have been acquired;
b. those who have lost their means of subsistence;
c. those belonging to tribes and other traditional forest dwellers who have lost any traditional rights granted by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 as a result of land acquisition; and
d. whose members have received lands from the government.

MARKET VALUE

Market value exceeds:
(a) the minimum land value determined by the Indian Stamp Act of 1899.
(b) The average price at which a comparable type of land sold nearby; (c) The average price at which a private or PPP project's sale price was already paid or agreed to be paid.

Moreover, any amount already paid as compensation for land previously acquired under this Act shall not be considered. Also, prior to starting the acquisition process, the collector shall take the required actions to update the land's market value. In addition, as stated in the First Schedule, the market value determination will be multiplied by a factor of one in urban areas

and a factor of two in rural areas to guarantee sufficient recompense to the land owners and one hundred percent of the compensation amount as solatium.

DETERMINATION OF COMPENSATION AMOUNT

In determining the appropriate compensation for land acquired under this Act, the collector is mandated by Section 28 to consider the following factors:

1) The market value as assessed under Section 26 and the First and Second Schedules are used to determine the award amount;
2) The harm caused to the interested party by the removal of any trees and standing crops that may have existed on the property when the Collector took control of it;
3) The damage caused to the interested party by the Collector disconnecting the property from his other properties when he took control of the property;
4) The injury sustained by the interested person upon the collector's taking possession of the property because the acquisition adversely affected his earnings or any other property he owned, whether immovable or not;
5) Due to the collector's acquisition of the land, the interested party is required to relocate or change his place of business and will be responsible for any reasonable moving-related expenditures;
6) The actual injury resulting from the decline in land earnings between the publication of the Section 19 declaration and the collector's takeover of the property; and
7) Any other justification that would serve the goals of justice and equality as well as the impacted families.

VALUE OF ATTACHED ITEMS

1. The market value of the building and any other immovable property or assets attached to the land or building that are to be acquired under Section 29 will be ascertained by the collector with the assistance of a qualified engineer or any other specialist in the relevant field, as may be deemed necessary by him.
2. In order to determine the value of the trees and plants associated with the land purchased, the collector could seek the aid of specialists in the domains of horticulture, forestry, agriculture, sericulture, and any other topic he may deem pertinent.
3. The collector may use the expertise of those in the farming industry if he believes it is necessary to assess the value of the standing crops that were destroyed in the process of acquiring the land.

DETERMINATION OF SOCIAL IMPACT ASSESSMENT

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013's Section 4 is crucial since it addresses the preparatory research necessary to determine the public purpose and social impact.

1. Every time the government plans to purchase land for public use, it must conduct a social impact assessment study in consultation with the relevant Panchayat, Municipality, or Municipal Corporation in the impacted area. Subsequently, the Government's notification will be uploaded to the Government website, published in the affected area, and made available in the local language.
2. Furthermore, as mandated by section 4(2), the Social Impact Assessment study is to be finished within six months of the start date.

3. The steps in the preparation process include consulting with local authorities, issuing a notification, publishing it in the local language, posting it to the government website, and publishing the Social Impact Assessment study report.

RIVER DIVERSION- THE PUBLIC TRUST DOCTRINE

- **Bhimavarapu Aravind, Dy.Manager(Legal), WCL HQ**

INTRODUCTION

The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership.

The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of few. Professor Joseph L. Sax in his classic article, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention" (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

In this background, this paper begins by examining the aspect of River diversion taking place due to mining activity. Thereafter, it aims to analyse the Public Trust Doctrine-its evolution in India. During such process, judicial pronouncements given by various Courts will be explored. Towards the end, the Article concludes with the concluding remarks.

WHAT IS PUBLIC TRUST DOCTRINE?

The natural resources are there for human use. The rapid population growth witnessed during the latter part of 20th Century compelled for the increased use of the earth's natural resources and thereby resulting in their depletion. Concerning the same, several questions need to be answered such as to what extent can these resources be utilised? Is there any limitation to the consumption of these resources? Who is the person in charge of managing the checks and balances of these usages? Is there an owner for these resources etc.

The doctrine of Public Trust gives answers to all of these questions. Public Trust Doctrine is a principle which states that specific resources should be held in trust by the state and taken care of for the common good of the public. This doctrine makes the state or the government a trustee of the public who should safe guard the resources such as forests, navigable water, seashore, the land beneath the water, air etc. and preserve them for public use. In other words, the state is under the obligation to protect, preserve and prevent the natural resources and environment from overexploitation as per this Doctrine.

The Public Trust Doctrine not only makes it obligatory for the state to take effective control and manage the natural resources but also empowers the citizens to raise questions in the

instances of their ineffective management. Hence, any act against nature or is in favour of environmental degradation should be controlled or prohibited.

The doctrine follows the basic principle that natural resources are the gifts given by the nature to the human beings. They should be utilised in a sustainable manner. The rights of the future generation to utilise such natural resources will be deprived due to overexploitation of the resources. It should be noted that we have just borrowed the earth, which consists of the environment, from our children, and it is the duty of each individual to return it back to their children in a better condition and not in the worst condition.

PUBLIC TRUST DOCTRINE IN INDIA

The Public Trust Doctrine is new to India. This doctrine has been accepted under the common law through various judicial pronouncements. Although the Indian Constitution makes no explicit reference to this notion, it does contain provisions that make the state the trustee of natural resources.

Article 21 which guarantees the fundamental right to life under the Indian Constitution can be regarded as a basis of the Public Trust Doctrine. The apex court through various landmark cases clarified that Right to life doesn't only mean the right to live, but also include and not limited to, the right to live with dignity, right to livelihood, right to a healthy environment, Pollution free air, clean water, etc. Getting access to clean and healthy environment is essential for every individual. In order to lead a healthy life, it is necessary to protect and improve the natural environment.

Articles 48A and 51A of the Constitution especially deal with the protection of the environment. *Article 48A* makes it mandatory for the state to improve and protect the environment and makes it mandatory for the state to preserve the forest and the country's wildlife. *Article 51A* deals with the fundamental duties of the citizens. Article 51(A)(g) makes it a duty of the citizens to protect and improve the natural environment that includes lakes, rivers, forests, and wildlife. This provision is similar to Article 48A, but the only difference is that it concentrates on fundamental duty of citizens whereas Article 48A instructs the state to perform their duties and protect environment. Therefore, there is an obligation enshrined in the Constitution not only to protect the environment from pollution but also improve its quality.

OTHER LANDMARK CASES ENLIGHTENING THE PUBLIC TRUST DOCTRINE

Initial Stage of the Doctrine

The development of this doctrine has been enriched through various judgments. The Public Trust doctrine didn't exist in India as a doctrine but it came through a landmark judgement which was **M.C Mehta vs Kamalnath**. A private company, Span Motels Private Limited built a motel by encroaching substantial forest land and by turning course of river Beas in Himachal Pradesh and the minister of environment Mr Kamalnath [respondent] also allowed the company to change the course of the river for the construction by blasting the river bed. The ministry as well as the gram panchayat of that area allowed the hotel construction on the said land which was taken on a 99-year lease.

The Supreme Court held that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be

converted into private ownership. Further, the Court stated that "if there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use".

Additionally, the court mentioned that the aesthetic use and the pristine glory of the natural resources, the environment and the eco-systems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public goods and in public interest to encroach upon the said resources. The court asked the company to pay compensation for the restoration of the environment of that area under the polluter pay principle.

Th. Majra Singh v. Indian Oil Corporation (1998)

The main issue in this case was that a suit was filed against the location of a liquefied petroleum gas (LPG) plant that was used for filling cylinders. The petitioner submitted that it was situated near the village of Kartholi in Jammu District and could be harmful to the health of the people living in that area. The Court in furtherance of Public Trust Doctrine held that people's notion that they have the right to anticipate particular lands to retain their originality is making its way into the law of the land.

M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu (1999)

In the case of M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu, The Court while upholding the public trust doctrine under Article 21 of the Constitution stopped the construction of the shopping complex in the place of a public garden stating the garden as a public resource. The court took the support of public trust doctrine laid down in M.C. Mehta case and observed that the park is a public place with historical importance.

The Court opined that permitting the Construction would deprive the public of the quality of life as guaranteed under the Constitution. The court put the government under the obligation to maintain the public park for the citizens as the government has obligatory duties under the public trust doctrine which is applicable in India. Moreover, the Court also pointed out that the public trust doctrine is derived and evolved under Article 21 of the Indian constitution and it is emerged to uphold the fundamental rights of the people.

Other Landmark Judgments

Shailesh R. Shah v. State of Gujarat (2002)

The petitions centre around the question of protecting, preserving and improving the water-bodies in the State and safeguarding them against encroachments. The Gujarat High Court depicted the obligation of the state in a positive nature. The court said that the state holds all the resources such as the lake, pond, natural gases, wetland etc. and as the state is held as the trustee it has an obligation to take affirmative action for effective management and control of the natural resources by safeguarding them from degradation.

Jitendra Singh v. Ministry of Environment (2019)

The Case was filed against the allotment of water bodies to private industrialists. The Supreme Court held that Water bodies like ponds are an important source of potable water and fishing for the villagers. Most Indians do not have access to clean drinking water. So it

was observed that the ministry's scheme to allow private industrialists to gain absolute control over the water bodies without providing an alternative is not permissible.

Lt. Col. Sarvadaman Singh Oberoi v. Union of India (2020)

The National Green Tribunal (NGT) in this Case discussed the issue regarding the restoration of water bodies more particularly in the State of Haryana that are in the position of Gurgaon District. The tribunal while discussing the Public Trust Doctrine opined that certain measures should be adopted for prohibiting the discharge of effluents and the disposal of solid waste into water bodies.

Previously, this doctrine was only limited to protect the rights like the right to fisheries, hunting, boating, navigation for anchoring or standing. However, in the contemporary era, it checks the state action for management of the resources and it also questions its action.

Re: T.N. Godavarman v. Union Of India And Ors. (2022)

The Supreme Court of India upheld this public trust doctrine by stating that it is the State's responsibility to act as the trustee of the natural resources for the welfare of the public and ascertain that these natural resources should be used by the citizens in a sustainable manner. If these resources are used wisely, then they could last a long time without becoming extinct.

It was also observed by the Court that every forest is required to have an Eco-Sensitive Zone (ESZ) that is at least one kilometre long for its protection as it minimises depletion. The Court also opined that the State is not only a facilitator for the economic upliftment of society but also a trustee who works for the welfare of the people concerning the natural resources to achieve sustainable development. It was also stated that the public trust doctrine is an integral part of the Indian legal system and should be used to safeguard natural resources from becoming private property.

SPECIFIC USE OF PUBLIC TRUST DOCTRINE: RIVER DIVERSION

Many mines around the world are intersected by rivers and their floodplains. It is common for these river channels to be diverted around the mine area into an entirely new engineered channel to facilitate access to mineral deposits under the river or floodplain and minimise potential flood impacts on the mine. This process is called river diversion (or river relocation). For an example, coal exists under the ground which can be extracted by removing the top soil. If the same coal exists below the river bed, the river has to be diverted in order to extract the coal. The role of a river diversion changes throughout the life cycle of the mine.

The benefits of river diversion include: saving the surrounding lower level villages from inundation, extending the life of the mine by preventing all the men and machinery from becoming idle and useless, increasing the revenue in the form of royalty and other taxes which can be used for development work by the State government authority, and ultimately benefit the nation by mining the Coal and meet the growing energy requirements.

STATUS OF WATER IN THE CONSTITUTION

Under the Constitution, entry 17 of the State List, deals with 'Water' which includes– Water supply, irrigation, canal, drainage, embankments, Water storage and Water power. Entry 56 of Union List empowers the Central Government to regulate and develop inter-state rivers and river valleys to the extent declared by Parliament to be expedient in the public interest

(usually during a flood situation). Hence, for all practical purposes, unless there is an emergency situation, 'Water' continues to be a state subject.

Therefore, when Rivers are relocated into new artificial channels due to mining activity, one has to obtain necessary approvals from the Water Resource Department of the State. During mine operation, river diversion channels are designed to convey large floods with an emphasis on channel stability and effective flow conveyance. Hence, scientific study from an expert agency has to be carried out. In Maharashtra, Central Designs Organization (CDO)/ Maharashtra Engineering Research Institute, Nasik is one such agency for obtaining design of river diversion. Such detail design is worked out on the basis of standard CDO code of practice, Technical Circulars issued by Government and relevant J.S. codes. Accordingly optimum design of diversion is proposed.

CONCLUSION

Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different countries are full of stories of man's zeal to protect the environment and ecology. Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc., because it is believed that they belong to all living creatures.

Protecting the environment and its natural resources is the need of the hour. It is the responsibility of both the state and the citizens to safeguard and utilize resources in the most efficient manner possible. The Doctrine of Public Trust is currently in its early stages of development and is constantly in flux. In India, the theory has been developed to a large part by the Indian judiciary through judicial interpretations, which have been incorporated into numerous case laws. The doctrine is an excellent strategy to ensure environmental protection since it checks government administration and assures good management and protection of natural resources from over-exploitation.

Development remains the greatest pursuit as well as a challenge, faced by humanity. In the pursuit of sustainable development, it is crucial to strike a balance between development and environmental conservation. India has vast reserves of Coal which needs to be explored economically to achieve the energy requirements of the country. Inspite of environment and other challenges, the diversion of Nalas become sometimes inevitable when huge reserve of coal is available beneath them. Sustainable development necessitates careful consideration of the consequences associated with such initiatives. Therefore, the diversion of Nallas can be designed after conducting scientific study and obtaining necessary approvals from concerned Statutory authorities. Such authorities may also warrant for submission of compliances reports periodically. Courts may interfere and stay such projects or direct to take remedial measures in the instances of extreme damage. This is due to the underlying thought that development policies promote economic well being, while environmental policies have been seen to be restricting it. Thus, development goals must be pursued without breaching environment regulations.

THE INTERPLAY BETWEEN THE MSMED ACT AND THE ARBITRATION AND CONCILIATION

- **Shejal Khare, MT (Legal),Nagpur Area, WCL**

INTRODUCTION

The Micro, Small and Medium Enterprises Development Act, 2006('MSMED Act') was enacted with the object of facilitating the promotion, development and enhancing the competitiveness of small and medium enterprisesthrough shortening their working capital cycle by incentivising timely payments to MSMEs. Procurements from MSME by Central government/Departments and Central Public Sector Enterprises for the FY2022-23 amounted to 34.39% of the total public procurement. Western Coalfields Limited, in particular, benefited 783 MSEs in the same financial year.

The interplay between the MSMED Act and the Arbitration and Conciliation Actposits a puzzling scenario between institutional or statutory arbitration on one hand and ad-hoc arbitration initiated independently in terms of agreement between the parties.

Institutional arbitration refers to the administration of arbitration by an institution in accordance with its rules of procedure.On the other hand, ad hoc arbitration gives parties greater control over the arbitration process, the flexibility to decide the procedure, and cost-effectiveness.

CASE LAW ON THE CONFLICT

Section 18(3) of MSMED Act provides that where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub- section (1) of section 7 of that Act.

It is at once clear that the provision of Section 18(3) of the Act does not leave any scope for a non-institutional arbitration. So, there exists a clear inconsistency between any arbitration agreement between the parties and Section 18(3) of the MSMED Act. Section 24 of the Act contains a non-obstante provision and expressly provides that the provisions of Section 15 to 23 of the Act will have an overriding effect. Therefore, the Courts have held time and again

that the provisions of Section 18(3) of the Act cannot be diluted and must be given effect to notwithstanding anything inconsistent, including the arbitration agreement in terms of section 7 of the A&C Act.

M/s Steel Authority of India and Anr. v. MSEFCAIR 2012 Bom 178, was the first significant case on the issue of maintainability of an arbitration clause against the MSMED Act. The Court held that by virtue of the non-obstante clause in Section 18 of the MSMED Act, it cannot be said that an independent arbitration agreement between the parties will cease to have effect.

In ***Bharat Heavy Electricals Limited v State of UP****(2014 (4) ALJ 52*, the Allahabad High Court diverged from the Bombay High Court in Steel Authority of India by holding that: "...The proceedings had been entertained by the Council in pursuance of the provisions of the Act. Though there may be an arbitration agreement between the parties, the provisions of Section 18(4) specifically contain a non-obstante clause empowering the Facilitation Council to act as an Arbitrator.

In the ***Principal Chief Engineer v. M/s Manibhai and Brothers (Sleepers)*** First Appeal No. 637 of 2016 before the Gujarat HC, the Court rejected the view of the Bombay High Court in M/s. Steel Authority of India Ltd. and held that the provisions of the MSMED Act shall prevail over the Arbitration clause.

In, ***Porwal Sales v. Flame Control Industries (Judgment dated August 14, 2019, Bombay HC, Arbitration Petition No. 77 Of 2017)***, the Buyer, filed an application under Section 11 of the Arbitration Act for appointment of an arbitral tribunal under an arbitration agreement between the parties. One of the objections raised by the Supplier/MSME was that since it was a supplier within the meaning of the MSME Act, and in light of section 18(4), the jurisdiction of the court to entertain an application under section 11 of the Arbitration Act would be ousted. The Court held that, if the intention of section 18(4) of the MSME Act was to create a legal bar on a party who has a contract with a Supplier under the MSME Act from invoking section 11 of the Arbitration Act, then the legislature would have expressly provided that the MSME Act overrides any arbitration agreement entered into with a Supplier under the MSME Act**.** It also observed that section 18(4) would come into play only in cases where a reference was made to the Council under section 18(1). The Court considered the use of the word "may" in section 18(1) and held that in light of the language used, it cannot be said to be mandatory for a Buyer to refer its dispute to the Council under section 18. Further, held, that since the jurisdiction of the Council had not yet been invoked, there was nothing barring the court from appointing an arbitrator in terms of the arbitration agreement between the parties.

More recently, in **M/s. *Silpi Industries, etc. v. Kerala State Road Transport Corporation &Anr. etc*. (2021) SCC OnLine SC 439** the Supreme Court of India was presented with yet another opportunity to address this conundrum, in the context of ascertaining whether a buyer could be permitted to file its counterclaims in the absence of any such provision under the MSME-D Act. In this case, the Supreme Court of India held that even in cases where there is no arbitration agreement between the parties, if a supplier who is covered under the MSME-D Act approaches the MSEFC for resolution of dispute, the parties would be bound by the provisions under the MSME-D Act. The Supreme Court noted that even in instances where a specific arbitration agreement exists the same ought not to be considered, thereby paving way for the precedence of the MSME-D Act.

COMMITTEE ON INSTITUTIONALISATION OF ARBITRATION AND THE PROBLEMS WITH MSEFC

To keep up with the global trends a High-Level Committee headed by Justice B.N. Srikrishna was formed in 2017 to review the institutionalisation of arbitration mechanism in India. The committee suggested a way forward for the same acknowledging the reasons why ad-hoc arbitration is still preferred in India. The Committee recommended the strengthening of institutional arbitration in India through measures such as the grading of arbitral institutions, the accreditation of arbitrators, the creation of a specialist arbitration bar and bench, and the provision of governmental and legislative support for institutional arbitration. The Arbitration amendment act 2019 provides for the establishment of an independent body known as the Arbitration Council of India (ACI) to implement these measures which is yet to be constituted.

One of the pertinent issues under the MSMED Act is that it does not define or prescribe any qualifications or requirements of an "institution or centre providing alternate dispute resolution services".Even the Arbitration Amendment act 2021 has omitted the eighth schedule containing the general qualifications and experience for becoming an arbitrator, still the parties are free to appoint arbitrators regardless of their qualifications. This amendment is done with a hope to attract eminent international arbitrators to the country and further the goal of making India a hub of international arbitration.The amendment to Section 43J of the Arbitration Act states that qualifications of arbitrators will be based on the "regulations", which as defined under Section 2(1)(j) to include regulations made by the Arbitration Council of India which again has not come in existence yet.Ad hoc arbitrations allows parties to choose arbitrators having knowledge / experience in the area in which the dispute arose, and gives them the liberty to choose arbitrators in accordance with the complexity of the dispute. Whereas the nomination to the panels of arbitrators maintained by arbitral institutions has been looked into doubt and suspicionfor the poor quality of arbitrators, a lack of professionalism in appointments, and a heavy reliance on retired judges as arbitrators

Madras High Court in M/s.Raster Images Pvt. Ltd. v. The Micro Small Enterprises Facilitation Council&Anr.(W.P. 13059/2023) has noted that the Council's practice of issuing hurried orders in nearly every case where a petition is filed seeking a claim has become routine. The Court also noted that the Council did not even start the conciliation process in a number of the cases. In the event that conciliation procedures are started and are unsuccessful, the Council will immediately issue an order based only on the merits of the case, skipping the arbitration process altogether.

The Facilitation Council has been constituted under the MSME Act with the very purpose of providing for a less time-consuming alternative for the aggrieved suppliers. However, when the Council flouts the procedure envisaged under section 18, the parties involved would inevitably end up in a chain of endless litigation. This is because, the next course of action to remedy the wrong is approach the High Court through a writ petition under Article 226 which in turn defeats the whole purpose of constituting the Council under the MSME Act.

While the rules of an institution cannot be challenged before an arbitral tribunal, however, this does not mean that if the rules are opposed to public policy, the same can be enforced in India. If the Rules of an Institution were opposed to the public policy of India, then the Courts in India will not enforce such arbitral awards passed on the basis of those rules. The enforcement of such an award cannot be claimed as a matter of right in India, and the same

has to be in consonance with the public policy and laws of India. As a general principle,though, rules of the institution cannot be interfered with.One cannot be allowed to approbate and reprobate at the same time. Thus, if the parties have agreed to be governed by a particular Institution and its rules, then the same principle would apply.

WAY FORWARD

In order to support sellers even more, the MSME Act stipulates that if a buyer challenges (or "appeals") any order, decree, or award (more specifically, "award"), the appellant's request to have the award set aside will not be granted unless the appellant deposits a substantial 75% of the award amount. The seller will receive a portion of this amount, as determined by the relevant court, while the appeal is pending, subject to any necessary instructions. The Kerala High Court in Kerala S.R.T.C. v. Union of Indiamaintained the validity of this rule when it was challenged in court.

While the obviousintention of legislature behind MSMED act was to extend benefits to medium and small enterprises, it also gave more impetus to institutionalisation of arbitration and reducing the burden of Courts. However, mandatorily compelling the buyers to submit to the jurisdiction of MSEFC eliminating any recourse to ad-hoc arbitrationis an imposition too unreasonable and in fact violation of their legal right to choose a forum of one's own choice.

Will the Court's entertain an application under Section 9 for granting interim measures or Section 11 of the Arbitration Actfor appointment of arbitrator pending any reference before MSEFC is a moot question. It is on Courts now to deal with the inconsistencies between the MSMED act and Arbitration and Conciliation Act and move ahead with harmonious interpretation which is not tilted more in favour of one of the stakeholders. Arbitral institutions are the way forward but the status quo makes us think otherwise as both the competence and credibility of MSEFC need to be put to test. Major reforms are required for drawing the interest and commitment of government departments and PSUs into it.

GOOGLE EARTH / SATELLITE IMAGES AS CORROBORATIVE EVIDENCE

- **Yogeshwari Shekhawat, MT(Legal), Majri, WCL**

Section 3 of Indian Evidence Act 1872 defines evidence and it states that " evidence means and includes- all the statements which the court permits or require to be made before it by witness in relation to matters of fact under inquiry. Such statement is called as evidence.

2.all document including electronic record produced for the inspection of the court, such document is called as documentary evidence.

Electronic evidence are used corroborative evidence and Corroborative evidence, are evidence used for support, explain, rebute, contradict or strengthen already existing evidence. As its name suggest, they are used in corroboration of other evidence and they cannot be sole ground of conviction or acquittal. As the time changes, form of evidence has also been changed and now days electronic evidence are also used as corroborative evidence.

Electronic evidence has derived its evidentiary value from section 65B of Indian evidence act 1972 and information technology act,2000.

There are various types of electronic evidence such as - Logs, , Video Footage and Images, Archives , Active data, Metadata,, Residual data, Volatile data, google earth etc.

Corroborative evidence plays a crucial role in legal proceedings, supporting the credibility and reliability of primary evidence presented in court. Google Earth can serve as corroborative evidence by providing visual representations of geographical features, land boundaries, and environmental conditions. This technology assists legal professionals in verifying claims, establishing timelines, and presenting a clear spatial context for alleged incidents. In property-related disputes, Google Earth can be used to corroborate claims regarding land boundaries and encroachments. Satellite imagery can offer a historical perspective, helping to establish the status of the disputed property over time. This visual evidence can be crucial in cases involving illegal construction, land grabbing, , boundary disputes. Or status of land.

The court has placed some reliance on images taken by google earth-in the case of T .N. Godavarman v. Union of India MANU/SC/1993/2006 (2006) 5 SCC 28 (paragraphs 16, 18, 33, 37, 38) to show that this Court had accepted the reliability of the FSI report based on satellite imagery.

PROPERTY DISPUTES

In property-related disputes, Google Earth can be used to corroborate claims regarding land boundaries and encroachments. Satellite imagery can offer a historical perspective, helping to establish the status of the disputed property over time. This visual evidence can be crucial in cases involving illegal construction, land grabbing, or boundary disputes.

In the case of Haryana Mining Company vs. State of Haryana and Ors. (06.09.2021 - PHHC) : MANU/PH/1138/2021, it was stated that- A fresh survey by the Mining Officer, Narnaul along with revenue, forest and local representatives has also clearly established that the lessee has mined outside the leasehold area. The plotting of GPS Coordinates of the boundary pillars on the Google Pro application clearly shows mining outside the lease area towards the higher hillocks. Even trucks operating outside legal lease area can be seen in the Google Earth image. The benches created outside the lease area are also visible hearing". It was further held that "*Whereas the stand of the lessee firm is not tenable. The violation has been reported in three different reports and is clearly visible on Google Pro-application. The mining operations in the mine are already lying suspended on account of non-payment of Government dues. In view of the above the reply dated 27.3.2019 and submissions made during hearing were not found satisfactory and there is clear evidence of lessee having undertaken mining operations outside the leasehold area as shown in the report of three different inspection reports and the Google Pro application image under the garb of mining lease granted in favour of M/s. Haryana Mining Company over an area of 6.70 hectares of land comprising in Khasra No. 7 of Village Garhi".*

Pratap Yeshwant Kanolkar and Ors. vs. The State of Goa and Ors. (13.04.2022 - BOMHC) : MANU/MH/1327/2022-, para 25, He has taken us through the proposed roads in just position in the Google Earth Map imagery taken on 21.04.2019 and the relevant correspondence on the subject. He invited our attention to the fact that alternate routes are possible through various other lands and that these routes have been suggested to the respondents, but to no avail.

In case of Inderjeet Singh and Ors. vs. State of Punjab (07.07.2017 - PHHC) : MANU/PH/2366/2017, court has stated in para 17. The petitioner filed additional affidavit dated 4.10.2013 in response to the report of the Committee. It was submitted that the recommendation made by the Committee to relocate the two residential structures by considering the actual covered area under the residential use as 65% ground coverage and giving additional 35% area for ventilation purposes to the nearest place as depicted in the Plan was misconceived. It was urged that the said conceptual plan neither depicted any khasra number nor did it disclose on what scale the said plan/drawing/map had been drawn. Based on a Satellite photograph/image as downloaded from Google Earth Map (Annexure P-72) it was stated that the property of the petitioner could not be said to be in the middle portion of the site to be kept reserved for Hospital and Medical Research Institute as mentioned in the report of the Committee. Based on the Google Earth Map it was asserted that in order to arbitrarily release the land of RSSB some portion of land has been released in the garb of categorizing the same as 'No Construction Zone', though the same falls beyond 100 metres from the boundary of Air Force Satellite base, which has been prescribed as no Construction Zone as per the notification issued under the Works of Defence Act, 1903.
Court on its own motion and Ors. vs. Chandigarh Administration and Ors . It was held that, .19. He also noticed certain ongoing construction activities at the stage of completion apart from witnessing that some ongoing activities were stopped temporarily on the date of

his visit. The construction activity could also be seen by browsing "Google Earth Pro" as far as Village Kansal Punjab is concerned. He further noticed many under construction houses/buildings which were provided electricity supply by the State Electricity Department. In other words, his submission is that the State instrumentality was supporting new construction in the area. The potable water was supplied from tubewells in Kansal area.

Shymon .M.P. V/S T.G. sunil , para 24. Subsequently, the KSREC submitted Ext.P12 report. The Observations and Conclusions in the report read as follows:

"The analysis has been carried out from all available data sets of toposheet (1967) and different satellite data sets of 2008, 2011, 2013 and 2016 for the survey plot. In 1967 data, the plot was observed under paddy land. The satellite imageries of survey number 801/1 was observed predominantly under mixed vegetation/plantation with a water logged area towards the southern region and agricultural fallow land in the imagery of 2008. The same trend of land use has been continued in the imageries of 2011, 2013 and 2016."

It is obvious from Ext.P12 KSREC Report that the land in question is predominantly under mixed vegetation/plantation with some waterlogged area and fallow land.

C.K. salim and anothers V/S state of Kerla W.P.(C)NO. 40499/2016(J), court states that As a first step for identifying the paddy lands and wetlands that were in existence as on the date of coming into force of the 2008 Act, it was envisaged that a Local Level Monitoring Committee [LLMC], that was constituted in terms of the Act, would be entrusted with the task of preparing a data bank with the details of cultivable paddy land and wetland, within the area of jurisdiction of the Committee, with the help of the map prepared by the State Land Use Board or Centre-State Science and Technology Institutions on the basis of satellite pictures by incorporating the survey numbers and extent in the data bank, and to get it notified by the Panchayat/Municipality/Corporation concerned, and thereafter exhibit the same for the information of the public, in the respective Panchayat/Muncipality/Corporation Office and in the Village Offices.

MANGROVES CASE

In the case of Bombay environmental action group V/ the state of Maharashtra and others

> "The areas shown as mangrove area in the satellite study repo t "Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing" dated August, 2005, prepared by the Maharashtra 77 of 83 pil-87.06 final.doc Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in Phase-II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried out within a period of 6 months from today"

In a report of the committee for inspection of M/S adani port and SEZltd, Mundra, Gujarat-

> 3.2.2: Examination of Issue by this Committee

This Committee carried out an analysis based on satellite imagery (Landsat 5 TM) and Google Earth imagery from different years. This was done to ascertain the changes in mangrove cover in the project area, particularly in the conservation areas stipulated under EC conditions as well as those areas where local communities had alleged destruction.

Mangrove along Navinal creek: As per the EC granted in August 1995, for general cargo and storage at Navinal, a 100 meters mangrove belt was to be created west of the Navinal creek. There is a very clear mangrove patch along the west of Navinal creek in the year 2005 (see Figure 5: Google Earth Imagery of Navinal dated December 7, 2005) but the same has vanished in 2011 (see Figure 6: Google Earth Imagery of Navinal dated April 6, 2011).

This is in violation of not just the EC condition on mangrove destruction but also the specific EC condition related to Navinal. The Committee also observed previously cut remnants of a few mangroves during their January 2013 visit in the same area (22° 44' 59.389"N, 69° 42' 17.842"E).

Mangrove destruction and Bocha conservation area of 88 ha (January 2005 and June 2010): The 'head' portion of Bocha Island is a mangrove conservation area as per the EC granted in January 2009 for waterfront development (see Figure 7: Satellite Imagery of Bocha Island).

SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

Complaints regarding compliance with environmental conditions and allegations of distortion of the original HTL/LTL by M/s Adani Port and SEZ Ltd, located at Mundra in Gujarat. The Committee has in its review, taken a detailed, fact based assessment of each issue, based on documents, field visit and meetings with local community and company representatives. In addition, it has used satellite and Google Earth images to assess the time series changes in the landscape. This was done because it was not possible for the Committee to assess allegations of damage to mangroves and creeks systems, which have taken place over the past 6-7 years during the period of construction of ports, power plant and its ancillary facilities.

The allegations made against the company have centered on the following: a. There has been widespread destruction of mangroves, which was strictly prohibited in the clearances granted;

b. The creeks and inter-tidal system has been adversely affected, particularly, the Kotdi creek, which has been blocked.

JUDGEMENT WHERE COURT HAS NOT TOTALLY RELIED ON GOOGLE EARTH

While Google Earth can be a powerful tool for corroborative evidence, it is not without its challenges. The accuracy of satellite imagery may vary, and real-time information may not always be available. Additionally, legal professionals must ensure the admissibility of such evidence in court, addressing concerns related to authentication and reliability

in the case of Ansari Kannoth vs State Of Kerala Rep. on 24 January, 2011 it was held that,Google Earth gives only a satellite imagery and need not always having regard to the

existence of clouds, etc., give a clear picture of the area. Though reliance is placed by the Society on Exts.P10 and P11, the photographs taken in December, 2003 from Google Earth (marking the property of the Society) to contend that even as in December, 2003 there were no mangroves in the property of petitioner, we are not inclined to accept that contention based on Exts.P10 and P11. Google Earth gives only a satellite imagery and need not always having regard to the existence of clouds,

COMMITTEE REPORTS

Google Earth's ability to display changes in landscapes over time is valuable in cases of environmental violations. For instance, it can be used to document illegal mining activities, deforestation, or unauthorized construction in ecologically sensitive areas. The visual evidence can support claims made by environmental agencies or concerned citizens.

In Report Of National Committee On Forest Right Act(a Joint Committee Of Ministry Of Environment And Forest And Ministry Of Tribal Affairs, Government Of India)

it is stated in point 2.6-use of spatial technology -

Use of remote sensing imagery combined with geographical information system (GIS) and global positioning system (GPS) have become very handy for demarcating land boundary, preparing maps and determining area essential for land management. Besides high speed of execution of survey and demarcation, this technology is objective and fairly accurate. High resolution (1 to 2 m) remote imagery gives detailed picture of land features showing even individual trees, field bunds etc and therefore has become very useful in updating revenue maps showing smaller parcels of lands in the recent past. High resolution satellite imageries are available since 1999 (Ikonos) Quickbird (2003) and Indian satellite (Cartosat I May 2005).

In determining the area in forests particularly under FRA, high resolution remote imageries have very important role to play specially in disputed areas where evidences are not sufficient to establish whether the forest lands under possession/cultivation of ST/OTFD are prior to cut off date (13 Dec 2005) or not. Interpretation /visualization without specialized training of a high resolution satellite data of the disputed area around cutoff date gives the clear picture and resolves the dispute as the land-use and boundaries of the land parcel can be mapped in an objective and transparent way. The satellite imagery is useful even for assessing the exact area under the occupation. By geo-referencing the imagery with GPS the ground features are tallied on the imagery and then marked accurately on the imagery. The area of each parcel of land under cultivation/ possession of individual ST/OTFD is measured on the computer. In specific cases where the land under the possession of the tribal/OTFD has remained under the tree cover because of raising horticultural crops, differentiation with adjoining forests on the basis of the imagery poses a problem. In such situations use of remote imagery without ground verification is not a verifiable method.

The resolution and period of the images uploaded on Google earth are location specific and not uniform for all the places across the country world. These images are good for general purpose viewing unless by chance they meet the required criteria of any specific locality. For example for FRA implementation images of some area could be of high resolution and close to cut off date for claiming the forest right. Viewing and understanding such high resolution Various states have used Remote Sensing-GIS-GPS technologies in the implementation of the Act to different extents. Some states like Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Uttar Pradesh and Rajasthan have used GPS systems for measurement

of forest lands under claim. Andhra Pradesh, Gujarat, Karnataka and Madhya Pradesh have used Google earth images in conjunction with PDA/ GPS outputs while Maharashtra has used two series of Cartosat-1 images of the relevant periods (of around December 2005 and December 2007) as well as google earth images with GPS outputs superimposed on them by using a software (TRTI-VGIS) developed by the Tribal Research and Training

Madhya Pradesh

The accuracy of the measurements did become a concern in some areas. Later, however, the FD tried to increase the utility of its exercise of measuring the land by PDAs by superimposing the PDAs' outputs on the google earth images and view the land use/vegetation cover details etc. A severe limitation was however faced because of the fact the the google earth images of various areas did not necessarily correspond to the relevant dates.

Similarly other states has also used google earth for transparency, accuracy and The decision making authorities (Committees) become fearless and confid of their decisions. (This is important because wrong decisions allowing use forest land for non-forestry purposes amount to violation of FR Act as well Forest Conservation Act 1980). Quick and fair decision in granting forest rights to eligible claimants. Ineligible claims easy to reject. Forest land saved from new encroachers.

In a Committee Report Of Central Pollution Control Board In Sanjay Kumar And Other v. State Of u.p. It is stated that :-

Wherever possible, a bottom-up approach from the block level was used to determine regional activity. For preparing the State wise gridded inventory, the emissions were determined within a Geographic Information System using polygons at the district level. An image of the political map of India (Census of India 2011) was georeferenced using Google Earth and all the districts within the Indo Gangetic Basin were digitized as polygons to generate a shape file. This shape file had an attribute table containing all the districts and yearly emission quantities were recorded for each district.

Google Earth has emerged as a valuable resource in the legal landscape, offering a new dimension to corroborative evidence in Indian courts. Its ability to provide visual context and historical data has proven beneficial in property disputes, environmental cases, criminal investigations, disaster management, determining rights of individual and companies and status of land.

ABUSE OF DOMINANCE

-Pratishtha Saxena, Manager(Legal), WCL HQ

INTRODUCTION

The Competition Act, 2002 was introduced after repealing the earlier legislation Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, wherein a new authority was established as Competition Commission of India (CCI) to administer the compliances in relation to competition in India.

The Competition Commission of India (CCI) is the national anti-trust authority responsible for enforcing the provisions of the Act and enjoys wide regulatory as well as quasi-judicial powers for the enforcement of the provisions of the Act. Where the Commission is of the '*prima facie*' opinion that an enterprise or a group has abused its dominance in a market, it directs the Director General (DG), Competition Commission of India to investigate the conduct of such an enterprise and assess the anti-competitive concerns arising out of such conduct. The Commission as well as the DG have wide powers of enquiry and investigation and any non-compliance or non-cooperation with their directions may expose a company to penal consequences.

The conduct of dominant enterprises is regulated by Section 4 of the Competition Act, 2002 (the Act). Section 4 prohibits the abuse of a dominant position by an enterprise or group. Notably, while abuse of dominant position is prohibited, 'dominance' per se is not illegal under the Act but the abuse of such dominant position in an exclusionary or in an exploitative manner is restricted. The Act regulates the conduct of both private and public sector (state-owned) enterprises as well as departments of the government that engage in non-sovereign functions.

Prior to the Competition (Amendment) Act, 2007, the provisions of Section 4 were applicable only to enterprises but after the said amendment, the provisions also became applicable on a group of endeavors. Now, every enterprise or group is abstained from abusing its dominant position, in terms of the provisions of the Competition Act, 2002.

1. DOMINANT POSITION AND ITS ABUSE

1.1. Abuse of dominant position- Concept

Abuse happens when an undertaking or a group of endeavors uses its prevailing situation in the significant market in an exclusionary or/and in an exploitative way. The Act

gives a comprehensive list of practices that will comprise abuse of a dominant position and under which circumstances these are disallowed. Such practices will establish misuse when received by an endeavor getting a charge out of a prevailing situation in the pertinent market in India. Abuse of dominant position is decided as far as the predefined sort of acts committed by a prevailing undertaking. Such acts are precluded under the law.

As per explanation affixed to Section 4 of the Competition Act, 2002, dominant position implies a position of strength enjoyed by an enterprise in the relevant market which enables it to operate independently of competitive forces or affect its competitors or consumers in their favor in the relevant market.

1.2 Factors to determine the dominant position

Dominance has been customarily characterized as regards the part of the market share of the enterprise or group of undertakings are concerned. In any case, various elements assume a role in deciding the impact of an undertaking or a group of endeavors in the market. These include:

a) The market share
b) The size and assets of the undertaking
c) Size and significance of contenders or competitors
d) The financial intensity of the undertaking
e) A vertical combination or integration
f) A reliance on customers on the undertaking
g) Degree of section and exit barriers in the market
h) Countervailing purchasing power
i) Market structure and size of the market
j) The source of dominant position viz. regardless of whether acquired because of resolution or statute and so on.
k) Social expenses and commitments and commitment of big business getting a charge out of the prevailing situation to financial improvement.

The Competition Commission of India is empowered to consider other factors which it might think about applicability for the assurance of dominance.

1.3 Relevant Market

In order to determine abuse of dominant position, the first thing to be ascertained is the ‘relevant market’ in which the enterprise has a predominant position. The reason served by depicting a relevant market is to characterize the degree inside which the situation of an endeavor is to be tried for strength and misuse thereof. The ‘relevant market’ is characterized as ‘product’ and ‘geography’, in other words, the applicable market recognizes the specific item/administration or class of items created or benefits rendered by an enterprise(s) in a given geographic territory.

1.4 Relevant Market Product

A market comprises all those products or services that are interchangeable or are substituted by the consumer. Factors determining the relevant product market are:

1. Physical characteristics or end-use of goods.
2. Price of goods or services.
3. Consumer preference
4. Exclusion of in-house producers.
5. Existence of specialized producers.
6. Classification of Industrial products.

In the case of Atos Worldline vs Verifoneindia , , the Competition Commission of India (CCI), held that the relevant product market is to be looked at from both demand and supply perspective based on the characteristics of the product, its price and intended use. Similarly, in the case of Surinder Singh Barmi v The Board of Control for Cricket in India (BCCI) , it was held that the relevant market was settled on the thought of demand substitutability of different types of amusement or entertainment. It was held that a cricket match couldn't be held to be substitutable by some other game dependent on neither qualities nor the intention of the person watching the cricket match.

1.5 Relevant Geographic Market

A market comprising the area in which the condition of competition for supply or demand of goods or services are distinctly homogeneous and can also be distinguished from conditions prevailing in the neighboring areas.

Factors determining the relevant geographic market:

1. Regulatory trade barriers.
2. Local specialization requirements.
3. National procurement policies.
4. Adequate distribution facilities.
5. Transport cost.
6. Language.
7. Consumer preference.
8. Need for secure or regular supplies or rapid after-sales service.

In the case of Bijaya Poddar v. Coal India Ltd. , it was held that these are territories or areas where demand and supply of products of administrations can be said to be homogenous and discernable from markets in neighboring regions.

Similarly, in the case of Atos Worldline v Verifoneindia , [Case No. 56 of 2012], it was held that naturally, a few factors at that point, as regulatory trade barriers, local detail necessities, national acquirement approaches, satisfactory conveyance offices, transport costs go under the domain of thought. Consequently, if every such factor were uniform all through the nation versus an item, the entire nation would be the relevant geological region.

2. IDENTIFICATION OF ABUSIVE USE OF DOMINANT POSITION

There are five kinds of abusive use of dominant position-

a) Unfair or biased trade practices: According to this, abuse of dominant position happens when an undertaking or gathering legitimately or in an indirect way forces

prejudicial conditions on the sale of goods or rendering of costs or cost in deal or acquisition of ruthless cost of products or administrations.

b) Limiting creation or specialized or scientific improvement: An abuse of dominant position occurs in the market where an endeavor or group legitimately or in an indirect way forces conditions that limit the creation of the merchandise or specialized or logical advancement bringing about the creation of the products or administrations.

c) Denial of access to showcase, barriers to entry and development: Any condition that makes forswearing access to the market in any way will comprise an abuse of the dominant position.

d) The imposition of beneficial commitments: When an undertaking makes the finish of agreements subject to an acknowledgment of advantageous commitments by different parties and those commitments are to such an extent that by their very nature or as per business use in that field, they have no association with the topic of the agreement.

e) Protection of different markets–When an enterprise utilizes its situation in a significant market to go into another market, at that point there is an abuse of dominant position.

Thus it can be stated that Section 4(2) of the Act indicates the accompanying practices by a dominant enterprise or group of endeavors as misuse either in an straightforward manner or in an indirect way of imposing out of line or oppressive condition in the sale or purchase of goods or administration; straightforward or in an indirect way of imposing an unjust or prejudicial cost of products or administration; constraining or confining the creation of products or arrangement of administrations or market; denying market access in any way and using its dominant situation in one important market to enter into or ensure other applicable markets.

3. TYPES OF DOMINANT POSITION

There are two types of domination:

3.1 Exploitative such as excessive pricing

Exploitative activities are those where the enterprise abuses its strength by forcing biased or potentially low conditions on different firms or shoppers. In the case of, Pankaj Agarwal v. DLF , where, for a situation relating to the distribution of apartment, the agreements drafted singularly by Delhi Land and Finance (DLF), empowered them to be discretionary about the designation of super-area, secretive about data pertinent to the buyer, like the number of the apartment on the floor, and to drop portions and relinquish booking sums. The Commission held the agreements to be exploitative against purchasers, and consequently, it was one-sided and abusive.

3.2 Exclusionary such as a denial of market access

Exclusionary activities are those in which the dominant body utilizes its strength to confine entry of competition into the relevant market. For instance, in the case of Re Shri Shamsher Kataria v Seil Honda , where there already existed agreement between the dominant entities and the Overseas Suppliers of unique vehicle parts which kept the Overseas Suppliers from providing parts to free repairers, such understandings were held to be anti-competitive as they limited passage of new firms.

4. PROCEDURE FOLLOWED BY THE COMMISSION

4.1 Inquiry into the abuse of dominance

In exercise of powers vested under Section 19 of the Act, the commission may ask into any supposed negation of Section 4(1) of the Act that states about the abuse of dominant position. Section 19(4) gives a detailed list of elements that the Commission will consider while asking into any claim of abuse of dominance. A portion of these components is the market share of the endeavor, size, and assets of the venture, size, and significance of the contenders, reliance of buyers, passage obstructions, and social commitments and expenses in the pertinent geographic and item showcase.

The Commission, on being fulfilled that there exists a prima facie case of abuse of dominant position, will guide the Director-General to cause an examination and submit a report. The Commission has power vested in a Civil Court under the Code of Civil Procedure in regard to issues like summoning or authorizing the participation of any individual and examining him on the pledge, requiring revelation and creation of records and accepting proof on an affidavit. The Director-General, to complete an examination, is vested with power of the civil court other than authority to lead ‘search and seizure’.

5. APPEALS

The Competition Appellate Tribunal (COMPAT) is set up under Section 53A of the Act, to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under various provisions of the Act. The Appellate Tribunal also has power to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission and to pass orders for the recovery of compensation under section 53N of this Act.

An appeal must be filed within 60 days of receipt of the order or direction of the Commission.

CONCLUSION

Thus, with the increasing instances of abuse of dominant position, the Competition Act, 2002 also became relevant. The reason behind the statute is to ensure the independence of business

and also to have an unstigmatized economic outlook without any fear of the dominant position of any other in the economy. Therefore, in the market, there should be an equal opportunity for all who want to do the business while at the same time the competition should prevail. The Commission (CCI) as well as the COMPAT are still evolving while trying to ensure that the balance is maintained.

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