

## CONTENTS

Hanumanagouda v. United India Insurance Co. Ltd. & Ors. etc.	.....	853
Janatha Dal Party v. The Indian National Congress & Others	.....	747
Montford Brothers of St. Gabriel & Anr. v. United India Insurance & Anr. etc.	.....	835
Patel (J.H.) (D) by Lrs. and Ors. v. Nuboard Manufacturing Co. Ltd. & Ors.	.....	773
Perumal v. Janaki	.....	591
Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.	.....	783
Sanjay Kumar v. The State of Bihar & Anr.	.....	848
Shatrughan Chauhan & Anr. v. Union of India & Ors.	.....	609
Stanzen Toyotetsu India (M/s) P. Ltd. v. Girish V & Ors.	.....	758
Vishal Agrawal & Anr. v. Chhattisgarh State Electricity Board & Anr.	.....	857
World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.	.....	796

**SUBJECT-INDEX****ADMINISTRATIVE LAW:**

(See under: Constitution of India, 1950) ..... 609

**ARBITRATION AND CONCILIATION ACT, 1996:**

(i) ss.44 and 45 - Foreign seated arbitration - Jurisdiction of High Court to pass an order of injunction restraining a foreign seated international arbitration at Singapore between the parties - Plea of respondent that the main agreement which contains arbitration agreement is void because of fraud and misrepresentation by appellant and therefore court cannot refer the parties to arbitration - Held: s.45 of the Act postulates that even where request of arbitration is made by a party, it will not refer the parties to arbitration, if it finds that the agreement is null and void, inoperative or incapable of being performed - In the instant case, allegation of fraudulent misrepresentation in the main agreement did not impact the validity of arbitration agreement which was separable from the rest of the contract - Therefore, applying principle of severability parties were wrongly refused to refer arbitration on the ground that arbitration agreement was also void along with main agreement - Principle of severability.

(ii) Arbitration restricting the right of parties to move the courts for appropriate relief and also barring the right to trial by a jury - Whether void for being opposed to public policy as provided in s.23 of the Indian Contract Act, 1872 and void for being an agreement in restraint of the legal proceedings in view of s.28 of the said Act - Held: Parliament has made the Arbitration and Conciliation Act, 1996 providing domestic arbitration and

(iii)

international arbitration as a mode of resolution of disputes between parties and Exception 1 to s.28 of Contract Act, 1872 clearly states that s.28 shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred - The right to jury trial is not available under Indian laws - In the instant case, finding of Division Bench of High Court that arbitration clause of Facilitation Deed is opposed to public policy and is void u/ ss.23 and 28 of Contract Act, 1872 is clearly erroneous - Contract Act, 1872 - ss.23, 28.

*World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.* ..... 796

**CODE OF CIVIL PROCEDURE, 1908:**

(1) s.2(11).

(See under: Motor Vehicles Act, 1988) ..... 835

(2) s.9.

(See under: DOCTRINES / PRINCIPLES) ..... 796

**CODE OF CRIMINAL PROCEDURE, 1973:**

(1) ss.4, 154 and 172.

(See under: Electricity Act, 2003) ..... 857

(2) ss.195, 340 - Private complaint - Maintainability - Complaint by appellant praying for trial of respondent police officer u/s.193, IPC on the ground that appellant was prosecuted in a criminal case on the basis of a palpably false statement made by respondent - Dismissed by Magistrate holding that in view of ss.195 and 340, complaint was not maintainable - High Court affirmed the order - Held: Conclusion of the Magistrate is correct

(v)

- The court before whom complaint was lodged was not the same court before whom appellant was prosecuted by respondent - However, both s.195(1) and s.340(2) authorise exercise of power conferred u/s.195(1) by any other court to which the court in respect of which the offence is committed is subordinate to - High Court invested with powers of superintendence over all courts within its territory not only has the authority to exercise such jurisdiction but also has an obligation to exercise such power in appropriate cases - Therefore, matter remitted to High Court for appropriate course of action to initiate proceedings against respondent on the basis of complaint of appellant in accordance with law - Penal Code, 1860 - ss.191, 193.

*Perumal v. Janaki* ..... 591

(3) s.354(5) - Death sentence - Execution by hanging - Held: The method of hanging prescribed by s.354(5) is not violative of the guaranteed right u/Art. 21 of the Constitution on the basis of scientific evidence and opinions of eminent medical persons which assured that hanging is the least painful way of ending the life.

(Also see under: Constitution of India, 1950)

*Shatrughan Chauhan & Anr. v. Union of India & Ors.* ..... 609

(4) s. 482.

(See under: Pleadings) ..... 848

CONSTITUTION OF INDIA, 1950:

(1) (i) Arts. 72/161 - Commutation of death sentence to life imprisonment - Effect of supervening circumstances - Held: Undue long delay in execution of sentence of death entitles the condemned prisoner to approach Supreme Court u/Art. 32 - However, Supreme Court will only

(vi)

examine the circumstances surrounding the delay that has occurred after sentence was finally confirmed by judicial process - Unexplained delay is a ground for commutation of death sentence into life imprisonment and the said supervening circumstance is applicable to all types of cases including the offences under TADA - Insanity is also one of the supervening circumstances that warrant for commutation of death sentence - In the instant writ petitions, in the light of principles and facts of each case, death sentence of all the petitioners is commuted into imprisonment for life - Code of Criminal Procedure, 1973 - Prisons Act, 1894.

(ii) Arts. 72/161 - Nature of power guaranteed under - Held: The power vested in the President u/ Art. 72 and the Governor u/Art. 161 is a Constitutional duty - It is an important constitutional responsibility reposed by the people in the highest authority - The power of pardon is essentially an executive action, which needs to be exercised on the aid and advice of Council of Ministers.

(iii) Arts. 72/161 - Limited Judicial Review of the executive orders u/Arts. 72/161 - Held: Executive orders u/Arts. 72/161 should be subject to limited judicial review based on the rationale that the power u/Arts. 72/161 is per se above judicial review, however, the manner of exercise of power is certainly subject to judicial review - Administrative law.

(iv) Arts. 72/161 - Processing the mercy petition - Procedure adopted u/Arts. 72/161- Discussed.

(v) Arts. 72/161 - Mercy petition - Limitation period for adjudication - Held: After the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the

(vii)

authorities to dispose of the same expeditiously - Though no time limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage - Limitation.

(vi) Arts. 72/161 - Mercy petition - Procedural Lapses - Held: Ministry of Home Affairs, Government of India has detailed procedure regarding handling of petitions for mercy in death sentence cases - Rules make it clear that at every stage the matter has to be expedited and there cannot be any delay at the instance of the officers, particularly, the Superintendent of Jail, in view of the language used therein as "at once" - Apart from these Rules regarding presentation of mercy petitions and disposal thereof, necessary instructions have been issued for preparation of note to be approved by Home Minister and for passing appropriate orders by the President of India.

(vii) Art. 21 - Right to life - Rights of accused vis-a-vis right of victim - Held: While Art. 21 is the paramount principle on which rights of convicts are based, it must be considered along with rights of victims or deceased's family as also societal consideration since these elements form part of the sentencing process as well.

(viii) Art. 32 - Writ petition by death convict asserting violation of Art. 21 on account of undue, unreasonable and prolonged delay in disposal of his mercy petition - Held: When Art. 21 is violated, it is not a question of judicial review but of protection of fundamental rights and courts give substantial relief not merely procedural protection - The question of violation of Art. 21, its effects and appropriate relief is the domain of Supreme Court - There is no question of remanding the matter for consideration because Supreme Court

(viii)

is the custodian and enforcer of fundamental rights and final interpreter of the Constitution - Further, Art. 21 is the paramount principle on which rights of convict are based, this must be considered along with rights of victims or deceased's family as also societal consideration.

*Shatrughan Chauhan & Anr. v. Union of India & Ors.* ..... 609

(2) Arts. 226, 227.

(See under: Motor Vehicles Act, 1988) ..... 835

CONTRACT ACT, 1872:

ss. 23, 28.

(See under: Arbitration and Conciliation Act, 1996) ..... 796

DOCTRINES / PRINCIPLES:

Principle of Comity of Courts - Applicability of - Plea of appellant that on principle of comity of courts, Bombay High Court should have refused to interfere in the matter and should have allowed parties to resolve their dispute through ICC arbitration subject to jurisdiction of Singapore Courts in accordance with arbitration clause of Facilitation Deed - Held: Not applicable in the instant case, no decision of a court of foreign country or no law of a foreign country was cited on behalf of appellant to contend that courts in India out of deference to such decision of foreign court or foreign law must not assume jurisdiction to restrain arbitration proceedings at Singapore - On the other hand, u/s.9 of CPC, courts in India have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred - Thus, appropriate civil court in India has jurisdiction to entertain the suit and pass appropriate orders in the suit by virtue of s.9 of CPC - Code of Civil Procedure, 1908 - s.9.

(Also see under: Arbitration and Conciliation Act, 1996)

*World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.* ..... 796

#### ELECTRICITY ACT, 2003:

s. 151 r/w ss.135/126 of the Act and r.12 of Electricity Rules, 2005 - Theft of electricity - Officers authorized to file complaint - Cognizance of offences - Plea that Assistant Engineer had no authority to make a written complaint - Held: Amendment to s.151 is clarificatory in nature - Further, notwithstanding the provisions of s. 151 of the Act, an FIR could be filed with the police - Even when a Magistrate is to take cognizance on a complaint filed before him, that would not mean that no other avenue is opened and complaint/FIR cannot be lodged with police - If the offence under the Code is cognizable, provisions of Chapter XII containing s.154 Cr.P.C. and onward would become applicable and it would be the duty of police to register FIR and investigate into the same - Code of Criminal Procedure, 1973 - ss.4, 154 and 172.

*Vishal Agrawal & Anr. v. Chhattisgarh State Electricity Board & Anr.* ..... 857

#### EVIDENCE ACT, 1872:

s. 165.  
(See under: Pleadings) ..... 848

#### FATAL ACCIDENTS ACT, 1855:

s.1A.  
(See under: Motor Vehicles Act, 1988) ..... 835

#### GENERAL CLAUSES ACT, 1897:

s.6.  
(See under: Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) ..... 783

#### GUIDELINES:

Mercy petitions - Guidelines for effective governing of the procedure of filing mercy petitions and for the cause of the death convicts - Framed.

(Also see under: Constitution of India, 1950)

*Shatrughan Chauhan & Anr. v. Union of India & Ors.* ..... 609

#### INDUSTRIAL DISPUTES ACT, 1947:

s.32(2)(b).  
(See under: Uttar Pradesh Industrial Disputes Act, 1947) ..... 773

#### INTERPRETATION OF STATUTES:

(See under: Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) ..... 783

#### LABOUR LAW:

Dismissal from service - Misconduct - Complaint by workmen against officers of company - Officers acquitted - Charge-sheet against workmen that they filed false case against officers of company - Workmen dismissed from service - Held: There is no discussion whatsoever about the evidence as to why Labour Court came to conclusion that the misconduct is established - In the circumstances, finding of Labour Court that management had proved the misconduct cannot be sustained - Therefore, workmen were entitled to declaration that termination of their services was bad in law and for consequential relief - Workmen are entitled to award of compensation towards back-wages quantified at 50%, with interest at 6% per annum, from the date of dismissal until the date of superannuation/death, whichever is earlier - Principles of natural justice.

(xi)

(Also see under: Uttar Pradesh Industrial Disputes Act, 1947)

*J.H. Patel (D) by Lrs. and Ors. v. Nuboard Manufacturing CO. Ltd. & Ors.* ..... 773

LAND ACQUISITION ACT, 1894:

s.11.

(See under: Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) ..... 783

LIMITATION:

(See under: Constitution of India, 1950) ..... 609

MERCY JURISPRUDENCE:

(See under: Constitution of India, 1950) ..... 609

MIZORAM MOTOR ACCIDENT CLAIMS TRIBUNAL RULES, 1988:

r.2(C).

(See under: Motor Vehicles Act, 1988) ..... 835

MOTOR VEHICLES ACT, 1988:

(1) s.166 - Legal representative - Appellant is a Catholic Society and its members are called 'Brothers' who on joining Society abandon all their worldly rights in favour of the Society which includes the insurance claim - One 'Brother' of Society died in a motor accident - Claim petition by appellant Society - Tribunal allowed the claim petition - On writ petition, High Court set aside order of Tribunal on the ground that claimants were not competent to claim compensation - Held: Motor Vehicles Act does not define the term "legal representative" but Tribunal noted in its judgment that clause (C) of Rule 2 of the Mizoram Motor Accident Claims Tribunal Rules, 1988, defines the term 'legal representative' as having the same meaning as assigned to it in clause (11) of s.2, CPC - As per s.2, CPC, in case of death of a person in a motor

(xii)

vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act - Therefore, a person claiming to be a legal representative has the locus to maintain an application for compensation u/s.166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue - High Court erred in law in setting aside the judgment of the Tribunal by ignoring the fact that the respondent-Insurance Company had not pressed issue of maintainability before the Tribunal nor had it pleaded and led evidence in respect to the said issue - Whether or not appellant is legal representative of the deceased is an issue of fact which could not be decided by the High Court for the first time in a writ petition which could only be entertained under Art. 227 of the Constitution for limited purpose - Order of Tribunal restored - Constitution of India, 1950 - Arts. 226, 227 - Code of Civil Procedure, 1908 - s.2(11) - Mizoram Motor Accident Claims Tribunal Rules, 1988 - r.2(C) - Fatal Accidents Act, 1855 - s.1A.

*Montford Brothers of St. Gabriel & Anr. v. United India Insurance & Anr. etc.* ..... 835

(2) Fatal accident - Liability of insurer - Deceased as 'Gumasthe' accompanying the goods in lorry - Held: The relevant clause in the policy, i.e. "persons employed in connection with the operation", is clearly over and above the coverage provided by the policy to "persons employed in connection with loading/unloading of motor vehicle" - Deceased, as Gumasthe, was accompanying the goods in transit for the purpose of delivery of goods and, as such, would be covered by expression "persons employed in connection with operation of motor

(xiii)

vehicle" - Insurance Company will be bound by the award and liable to pay compensation to claimants.

*Hanumanagouda v. United India Insurance Co. Ltd. & Ors. etc.* ..... 853

NATURAL JUSTICE:

(See under: Labour Law) ..... 773

PENAL CODE, 1860:

ss.191 and 193.  
(See under: Code of Criminal Procedure, 1973) ..... 591

PLEADINGS:

Complaint for offences punishable u/ss 406 and 420 IPC and s. 138 of Negotiable Instruments Act - Quashed by High Court - SLP by complainant - Notice to petitioner-complainant to show that the institution was a fake one as pleaded by him - Petitioner seeking to ignore such pleadings - Held: Pleadings have to be true to the knowledge of parties and in case a person takes such misleading pleadings, he can be refused not only any kind of indulgence by court but can also be tried for perjury - In case, pleading taken by petitioner is true, he cannot ask for ignoring the same - In case, it is false and as such statement had been made on oath, he is liable to be tried for perjury - Conduct of petitioner condemned - Code of Criminal Procedure, 1973 - s. 482 - Evidence Act, 1872 - s. 165.

*Sanjay Kumar v. The State of Bihar & Anr.* ..... 848

PRACTICE AND PROCEDURE:

Advocate-on-Record - Not appearing before Court in spite of directions - Held: In Re: Rameshwar Prasad Goyal, Court has held that in case AOR does not appear in Court, his conduct may tantamount to criminal contempt of Court - In the

(xiv)

instant case, AOR, with impunity was disdainful towards the order of the Court directing him to appear in Court - He had also not filed any appearance for the counsel who had appeared, nor did the said counsel disclose his name - Court takes serious note of conduct of AOR and warns him to behave in an appropriate manner befitting the conduct of an advocate and an AOR, otherwise Court will take action against him - His conduct will be under close watch of the Court.

*Sanjay Kumar v The State of Bihar & Anr.* ..... 848

PRISONS ACT, 1894:

s.30(2) - Solitary confinement - In case of prisoner under sentence of death - Held: Solitary confinement, even if mollified and modified marginally, is not sanctioned by s.30 for prisoners 'under sentence of death' - The crucial holding u/ s.30(2) is that only after rejection of mercy petition by the Governor and the President, and on further application, if there is no stay of execution by the authorities, the person is under sentence of death - During that interregnum, he attracts the custodial segregation specified in s.30(2), subject to the ameliorative meaning assigned to the provision - To be 'under sentence of death' means 'to be under a finally executable death sentence'.

(Also see under: Constitution of India, 1950)

*Shatrughan Chauhan & Anr. v. Union of India & Ors.* ..... 609

RIGHT TO FAIR COMPENSATION AND

TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013:

(i) s. 24(2) - Proceedings deemed to have lapsed - Award made 5 years prior to coming into force of 2013 Act - Compensation neither paid to land

owners/claimants nor deposited in court - Held: Subject land acquisition proceedings shall be deemed to have lapsed u/s 24(2) of the 2013 Act - Deposit of the amount of compensation in the government treasury is not equivalent to the amount of compensation paid to landowners/persons interested and liability of State to pay interest subsists till the amount has not been deposited in court - Land Acquisition Act, 1894 - s.11 - Interpretation of statute.

(ii) s.114(2) - Repeal and savings - Held: Sub-s. (2) of s. 114 makes s. 6 of General Clauses Act applicable with regard to the effect of repeal but this is subject to provisions in 2013 Act - Under s.24(2) land acquisition proceedings initiated under 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of land is not taken or compensation has not been paid - Legal fiction u/s 24(2) comes into operation as soon as conditions stated therein are satisfied - General Clauses Act, 1897 - s.6.

*Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.* ..... 783

#### SERVICE LAW:

Disciplinary proceedings - Stay of disciplinary proceedings pending the decision of criminal case in respect of same incident - Vacation of stay - Propriety of - Held: Disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity - While seriousness of the charge leveled against employee is a consideration for stay of disciplinary proceedings, the same is not by itself sufficient unless the case also involves complicated questions of law and fact - Even when the charge is found to be serious and complicated

questions of fact and law that arise for consideration, the court has to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly especially where number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution.

*M/s Stanzen Toyotetsu India P. Ltd. v. Girish V & Ors.* ..... 758

#### SUIT:

Suit by Indian National Congress for declaration of title to and for possession of Congress Bhavan in City of Bangalore after split in Congress - Held: The order of ECI and Supreme Court in Sadiq Ali's case clearly indicate that the Congress then led by Indira Gandhi had established rights on the properties in question - On facts, it is clearly found that Congress (O) or Janata Dal had no right in the suit property and, as such, various lease deeds executed by them also cannot stand in the eye of law - Time granted to respondents to vacate the premises.

*Janatha Dal Party v. The Indian National Congress & Ors.* ..... 747

#### UTTAR PRADESH INDUSTRIAL DISPUTES ACT, 1947:

s.6-E(2)(b) - Misconduct - Dismissal - Prior approval from Labour Court during pendency of proceedings - Held: Since earlier proceedings were pending, Management was required to obtain prior approval from Labour Court - However, failure to do so will not disentitle the Management from proving the misconduct in court - Industrial Disputes Act, 1947 - s.32(2)(b).

(Also see under: Labour Law)

*J.H. Patel (D) by Lrs. and Ors. v. Nuboard Manufacturing Co. Ltd. & Ors.* ..... 773