

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 8261 of 2015 (G)

ARC 139/2011 of KERALA CO-OPERATIVE ARBITRATION COURT
(NORTHERN), KOZHIKODE.

PETITIONERS:

1. NANMANDA RURAL CO-OPERATIVE HOUSING SOCIETY
LIMITED NO.D.1988, NANMANDA P.O., KOZHIKODE,
REPRESENTED BY ITS SECRETARY.
2. THE PRESIDENT,
NANMANDA RURAL CO-OPERATIVE HOUSING
SOCIETY LIMITED NO.D.1988,
NANMANDA P.O., KOZHIKODE.

BY ADVS.SRI.P.C.SASIDHARAN
SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENTS:

1. K.M.RAVI
S/O.RAGHAVAN NAIR, THALIYACHA HOUSE, NANMINDA,
KOZHIKODE-673 616.
2. THE KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM-695 001.

R1 BY ADV. SRI.M.AJAY
R BY SRI. D. SOMASUNDARAM, SPL. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1- TRUE COPY OF THE AWARD IN ARC 139/2011 DATED 25.03.2014.

EXT.P2- TRUE COPY OF THE COVERING LETTER ISSUED IN THIS REGARD DATED 16.04.2014.

EXT.P3- TRUE COPY OF THE APPEAL.

EXT.P4-TRUE COPY OF THE JUDGMENT IN APPEAL NO.48/2014.

EXT.P5- TRUE COPY OF REVIEW PETITION OF THE JUDGMENT IN APPEAL NO.48/2014.

EXT.P6- TRUE COPY OF THE ORDER IN RP 1/2015 ON THE FILES OF THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R1(a) : TRUE COPY OF THE ORDER OF THE DISCIPLINARY SUB COMMITTEE OF THE SOCIETY DATED 03.12.2009 WITH TRANSLATION.

EXT.R1(b) : TRUE COPY OF THE PROCEEDINGS OF THE FIRST PETITIONER SOCIETY DATED 31.03.2010 WITH TRANSLATION.

EXT.R1(c) : TRUE COPY OF THE WRITTEN STATEMENT OF THE PETITIONERS DATED 11.2010.

EXT.R1(d) : TRUE COPY OF I.A. NO.9/12 IN ARC 139/2011 FILED BY THE PETITIONERS DATED 05.01.2012.

EXT.R1(e) : TRUE COPY OF THE PRELIMINARY AWARD DATED 27.08.2012 ISSUED BY THE CO-OPERATIVE ARBITRATION COURT (NORTHERN), KOZHIKODE.

EXT.R1(f) : TRUE COPY OF IA 42/14 IN ARC 139/11 FILED BY THE FIRST RESPONDENT DATED 03.04.2014.

EXT.R1(g) : TRUE COPY OF THE COUNTER STATEMENT IN RP 1/2015 IN AP 48/14 FILED BY THE FIRST RESPONDENT DATED 12.02.2015.

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P.(C)No.8261 of 2015 G

Dated this the day of September, 2015

JUDGMENT

Facts in Brief:

The first petitioner is a Co-Operative Society and the second petitioner, its President. In this writ petition, they impugned Ext.P1 award of the Co-Operative Arbitration Court; Ext.P4 judgment of the second respondent, the Co-Operative Tribunal; and also Ext.P6 order in review passed by the second respondent.

2. The facts in brief are that the first petitioner society, initially, initiated disciplinary proceedings against the first respondent, its erstwhile Secretary. In the very beginning, the first respondent was said to have objected to the appointment of a person as the Enquiry Officer on the ground that he had been rendering legal advice to the respondent society. Though the Enquiry Officer referred the issue to the Managing Committee of the Society; it, nonetheless, directed the Enquiry Officer to go ahead with the enquiry.

3. Since the first respondent did not participate in the enquiry,

the Enquiry Officer rendered ex parte findings and submitted the report to the Managing Committee. Eventually, the Disciplinary Sub-Committee, through Ext.R1(a) proceedings, recommended for the removal of the first respondent from service as a measure of major punishment. Accordingly, the first respondent was removed from service.

4. Aggrieved, the first respondent filed a statutory appeal before the Managing Committee, which in fact rejected it, thereby affirming the findings of the Enquiry Officer, as approved by the Disciplinary Sub-Committee. Further aggrieved, the first respondent filed ARC No. 51 of 2010, which was in due course renumbered as 139 of 2011, before the Arbitration Court. When the hearing in ARC was in progress, the petitioner society raised a preliminary issue by filing I.A. No. 9 of 2011 concerning the validity of the domestic enquiry and sought an interim order on the issue.

5. In fact, the learned Arbitration Court, through Ext.R1(c), passed what is termed as an interim award holding that the departmental enquiry had been vitiated. As a result, both the parties led further evidence before the Arbitration Court and invited Ext.P1

award dated 25.03.2014.

6. It appears that the first respondent, soon after obtaining a favourable award, noticed what is said to be a factual error in the award and filed I.A. No. 42 of 2014 seeking correction of the said factual error. On the same day, i.e., on 03.04.2014, the learned Arbitration Court issued an erratum which is Ext.P1—without notice to the first petitioner, though.

7. Assailing Ext.P1 not only on merits but also on account of the fact that the erratum had been issued without notice to it, the employer Society filed Ext.P3 memorandum of appeal before the Co-Operative Tribunal, the appellate authority. On the alleged concession made by the learned counsel for both the parties, the appellate Tribunal rendered Ext.P4 judgment remanding the matter to the Arbitration Court. No adjudication has taken place on merits. The petitioner society in the course of time, however, assailed Ext.P4 judgment by filing a review, which was dismissed through Ext.P6 order.

8. The plea of the first respondent is that on remand both parties had advanced their arguments, and when the Arbitration Court had reserved the matter for rendering an award, the petitioners approached

this Court by filing the present writ petition.

Summary of Submissions:

Petitioners':

9. In the above factual background, the learned counsel for the petitioners has contended that initially in the award passed by the learned Arbitration Court, there was a finding that one Ms. Balamony, said to be a crucial witness, was not examined, and that the said non-examination was fatal to the case of the petitioner Society. In fact, she was examined as DW4. Later, the said award rendered on 25.03.2014 was unilaterally modified in the name of supplying an erratum solely based on an interlocutory application filed by the first respondent, particularly without any notice to the petitioner society. The learned counsel has strenuously contended that it is not a mere correction of a typographical error.

10. The learned counsel has further contended that in the statutory appeal filed by the respondent society, it assailed Ext.P1 award not only on account of the unilateral correction of the award but also on merits. A specific challenged is said to have been laid against the findings rendered in the 'preliminary award' regarding the

sustainability of the departmental enquiry. It is the specific contention of the learned counsel that the petitioner Society wanted the entire issue to be left open and accordingly gave its consent to have the matter remanded to the Court of the first instance, the Arbitration Court, without any adjudication on merits by the appellate Tribunal.

11. According to him, the petitioner Society was constrained to file the review petition since the judgment in appeal, while remanding the matter, had only observed that the disposal was technical, and that the Arbitration Court should examine the legality of only the unilateral correction of the award without notice to the affected person, the petitioner Society. The order in review, contends the learned counsel, is laconic and has not addressed the principal issue as regards the merits of the matter, especially its erroneous observation that the adjudication by the Arbitration Court should be confined to the aspect of erratum but not beyond it.

12. The learned counsel has made very elaborate references to the statutory scheme of the Act, especially in comparison with Section 11A of the Industrial Disputes Act, 1947. They will, however, be adverted to at appropriate places.

First Respondent's:

13. Per contra, the learned counsel for the respondent, at the outset, has submitted that mala fides mark the entire approach of the petitioners vis-a-vis the first respondent. In elaboration, he has submitted that first the petitioner Society invited an interim order on the validity of the domestic enquiry; abiding by the interim order rendered by the Arbitration Court on that count, it took up trial and adduced evidence; and finally had an adverse award against it.

14. According to the learned counsel for the first respondent, there is no gainsaying the fact that the Arbitration Court issued the erratum in Ext.P1 award without notice to the petitioner Society. Nevertheless, the correction carried out by the Arbitration Court, contends the learned counsel, is only a correction of an error apparent on the face of the Award. The learned counsel has also further submitted that when the petitioner Society has raised the issue before the appellate Tribunal as regards the propriety of the Arbitration Court's approach in effecting a unilateral correction of the Award, the first respondent has, in fact, agreed to have the matter remanded without much ado.

15. It is the specific contention of the learned counsel for the first respondent that the Society, as an appellant, might have raised many issues in the appeal but in the end, it has, through its counsel, has agreed before the Tribunal to have the matter remanded to the Arbitration Court on the singular issue of unilateral amendment of the Award—specifically agreeing to avoid any adjudication on the merits of the matter. According to the learned counsel, unless the Society had given up its contentions on the issue of the validity of the domestic enquiry, the question of its counsel pleading before the Tribunal to remand the matter without entering into the merits of the matter would not have arisen.

16. In elaboration of his submissions, the learned counsel has also contended that indisputably the Tribunal remanded the matter without adverting to the merits of the matter, but directing the Arbitration Court to look into the solitary issue of the unilateral amendment of the Award.

17. Had it been a case that the Tribunal had not fully appreciated or even misunderstood the submissions of the learned counsel for the petitioner Bank, contends the learned counsel, nothing prevented the

very learned counsel who appeared before the Appellate Tribunal to file an affidavit setting out the facts and circumstances and seeking a review of the order. In other words, since the affidavit in review was filed by the officials of the petitioner Bank, rather than the learned counsel on record, the petitioner Bank cannot be allowed to speak for its counsel.

18. The learned counsel has further contended that having consented to have the matter remanded, the Society was estopped from assailing in review the judgment of remand. He thus justifies the Tribunal's dismissal of the review petition filed by the Society.

19. In expatiation of his submissions, the learned counsel has also contended that, on the dismissal of the review petition, the petitioner Society did participate in the hearing before the Arbitration Court. Only when the court of the first instance, after hearing the arguments on either side, had reserved the matter, did the petitioner Society rush to this Court assailing, inter alia, the order of the Tribunal in review. According to him, the approach of the petitioner-Society is impermissible.

20. Adverting to the merits of the matter, the learned counsel

has contended that the order of the Arbitration Court passed in the petitioner's interlocutory application has attained finality. In fact, the petitioner, without a demur, acted on it and led evidence, too. In the alternative, the learned counsel has submitted that the petitioner Society cannot import into the present adjudication the principles of industrial adjudication.

21. The learned Counsel has drawn my attention to Section 84 of the Act to contend that it is a specific provision conferring revisional power on the Tribunal as regards all interlocutory matters. The contention of the learned counsel is that the decision of the Arbitration Court on the issue of the validity of the domestic enquiry is an interim order eminently amenable to revisional jurisdiction of the Tribunal. In that context, the learned counsel would underline that any final award to be passed under Section 70 (1) of the Kerala Co-Operative Societies Act (for brevity 'the Act') should be appealable under Section 82 of the Act and an interim order to be passed shall be revisable under Section 84 of the Act.

22. Eventually, the learned counsel has summed up his submissions by submitting that the approach of the petitioner Bank to

various judicial fora after leading evidence and then on remand addressing arguments is not bona fide and is only aimed at harassing the first respondent endlessly. He has thus urged this Court to dismiss the writ petition as being devoid of merit.

Reply of the Petitioners:

23. In reply, the learned counsel for the petitioner has submitted that in ARC, at the earliest point of time, the petitioner society itself in its statement pleaded that the Arbitration Court is at liberty to set aside the enquiry report if it is of the opinion that the report cannot be sustained. According to the learned counsel, it is a statutory obligation cast on the employer, lest the management should be prevented from leading further evidence in defence of its action against the delinquent.

24. The learned counsel for the petitioner has taken me through Sections 69, 70, 70A, 70B, 82, 83, 85 and 87 of the Act to underline the various facets of the statutory remedies available to the aggrieved parties. According to the learned counsel, if there is an appeal under Section 82, no revision is maintainable under Section 87 of the Act. It is his contention that all the pivotal provisions under the Act should be read harmoniously; once they are read thus, there is no conflict to be

found among them as each of the provisions operates in its distinctive sphere.

25. Underlining the scope of appeal under Section 82 of the Act, the learned counsel would contend that the petitioner can only challenge the award and that an order in an interlocutory application cannot be treated as an award. Referring to what are said to be the two limbs of Section 70 of the Act, the learned counsel has submitted that sub-sections (1) to (3) of Section 70 of the Act deal with the powers conferred on the Arbitrator; on the other hand, sub-sections (4) to (6) of the same Section adumbrate the powers of the Registrar. In support of his submissions, the learned counsel has placed reliance on **St. Thomas Mission Hospital v. State of Kerala**¹.

26. Summing up his submissions, the learned counsel for the petitioner has submitted that the approach of the petitioner Society in the issue is unexceptionable. According to him, all along the endeavour of the Society is to have a comprehensive adjudication on the merits of the matter, and the first respondent cannot shy away from it by taking shelter under technicalities.

Issues:

¹ 2007(2) KLT 415

1. What is the nature of the Ext.R1 (e): can it be called an 'interim award'?
2. Whether the petitioner Society has no other option than challenging Ext.R1 (e) along with the main Ext.P1 Award?
3. Whether Section 84 of the Act, the provision for revision, is available to challenge Ext.R1 (e) order of the Arbitration Court?
4. Whether the petitioner Society can lay a comprehensive challenge against Exts.P1, P4 and P6, all in one proceeding?

Discussion:**Issue No.1:**

27. It is pertinent to observe that Section 70 of the Act refers to 'Award', so is Section 82 of the Act, the appeal provision. Chapter XI of the Act also provides for the execution of awards, decrees, orders and decisions. Section 99 of the Act speaks of the manner in which an award is to be pronounced. The very term 'Award' has, however, not been defined in the Act.

28. It is common knowledge that a co-operative society is treated as an industry in terms of the Industrial Disputes Act. The adjudication of service disputes, thus, had been undertaken under the said enactment until the Kerala Co-operative Societies Act incorporated the adjudicatory remedial mechanism; for example, Section 69 of the

Act. As such, we can, as has been heavily relied on by the learned counsel for the petitioner, profitably refer to the in para materia, or at least certain analogous, provisions of the Industrial Disputes Act to appreciate the adjudicatory ambit of the Kerala Co-operative Societies Act as regards service disputes.

29. Section 2, the lexical provision, of the ID Act defines 'award' to mean an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court, etc. It includes an arbitration award made under section 10A of the Act. Evidently the award, be it interim or final, determines any industrial dispute or any question relating thereto. Now the question to be determined is whether an order of the court in an interlocutory application determining the validity of the domestic enquiry is to be treated as an interim award.

30. The Oxford English Dictionary² defines the term 'interim', among other things, to mean: in the meantime, meanwhile, a temporary or provisional arrangement, adopted in the meanwhile. As an adjective, done, made, provided, occurring, etc. in or for the meantime; provisional, temporary. In the adjudicatory sense the term was first

² Oxford University Press, 2004

applied in the 16th century as a provisional arrangement for the adjustment of religious differences between the German Protestants and the Roman Catholic Church (of which there were three promulgated, one in 1541 and two in 1548) pending a settlement by a General Council. Black's Law Dictionary³ defines it to be something done, made, or occurring for intervening time; temporary or provisional.

31. In **P. Ramanatha Aiyar's Major Law Lexicon**,⁴ 'interim award', per se, is defined as follows:

"An arbitral award includes an interim award i.e. arbitrator has the power to make an interim award also. In an interim award, the arbitrator has to decide a part of the disputes referred to him. He may determine some of the issues or some of the claims. He may determine the issue of liability and leave the question of damages to be dealt with later on. An interim award must determine some part of the dispute referred to him. An interim award is also an award and has therefore to be made in the same way as an award, after proper hearing of the parties, and on consideration of the evidence adduced. (Arbitration)
(emphasis supplied)

32. In **State of Arunachal Pradesh v. Damani Construction Co.**,⁵ the Hon'ble Supreme Court has held that an 'interim award' given by an arbitrator is final to the extent the claims decided therein. In

³ 9th Ed.

⁴ 4th Ed. (2010), Vol.3

⁵ (2007) 10 SCC 742

Deep Mitra v. Dist. Judge, Allahabad⁶, the finding of fact by Arbitral Tribunal that the majority of the shareholders does not want division of the properties does not amount to 'interim award' under S. 34 of the Act, as it does not decide the rights of the parties, nor does it determine their liability.

33. In the present instance, on the application of the petitioner Bank, the Arbitration Court has decided on the issue of the validity of the domestic enquiry. It is, indeed, a step in aid of the adjudication of the actual dispute referred to it. The said determination, at best, is only a procedural safeguard for the petitioner to establish that the order of punishment rendered by the employer does not suffer from any procedural laches. The said determination, therefore, does not decide any element of dispute in arbitration or, for that matter, even any of the 'rights' of the parties finally.

34. If we examine Section 10 (4) of the ID Act, the said provision, while setting the adjudicatory bounds of, say, the Tribunal, mandates that the Tribunal shall confine its adjudication to the specified points of dispute referred to it by the Government and the matters incidental thereto. Indeed, the determination of the validity of the

⁶ AIR 2000 ALL (as quoted in Aiyar's)

domestic enquiry is one such incidental matter essential for a proper adjudication of the referred dispute; it is, thus, not an adjudication of the dispute per se—interim or final.

35. At the same time, there is no gainsaying the fact that Ext.R1 (e), the order of the Arbitration Court describes it as an 'interim award.' It may be said that a judicial or administrative determination is not denuded of its desired effect just because it has wrongly been described. Nothing lies in nomenclature either in statutory sense or Shakespearean sense: What's in a name? That which we call a rose; by any other name would smell as sweet.⁷

36. Under these circumstances, by any reckoning Ext.R1 (e) cannot be termed an 'interim award'; it is, on the contrary, an interim order determining the issue incidental to the substantive adjudication of the referred dispute.

Issue No.II & III:

37. Now, we may examine the stage at which an interlocutory order can be challenged. Before we can resolve the legal tangle on that issue, it is essential to have a comparative perspective certain provisions of the Kerala Co-operative Societies Act and the Industrial

⁷ Romeo and Juliet, Act II, Scene II

Disputes Act, 1947.

38. Chapter IX of the Act deals with 'settlement of disputes.' Section 69 of the said Chapter enumerates the disputes that can be decided by the Co-operative Arbitration Court and Registrar. The provision begins with a non-obstante clause: it prevails notwithstanding anything contained in any law for the time being in force. Clause (d) of sub-section (2) of Section 69 of the Act declares that any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of section 80 of the Act, including their promotion and inter se seniority, is arbitrable.

39. As to the establishment, the Co-operative Arbitration Courts are to come into being under Section 70A of the Act. There is, however, a division in adjudication of the disputes: the non-monetary disputes shall be referred to the Co-operative Arbitration Court; the monetary disputes, to the Registrar.

40. Having a dispute referred to it under sub-section (1) of Section 69 of the Act, the Arbitration Court, after adjudicating it, passes an award in terms of Section 70 of the Act. The adjudication shall be in accordance with the provisions of the Act and the rules and the bye-

laws made thereunder. The award shall be final, of course, subject to Section 82 of the Act, the provision for appeal.

41. Sub-section (2) of Section 70 of the Act specifically empowers the Arbitration Court to pass, pending award of dispute referred to it under section 69 of the Act, such interlocutory orders as it may deem necessary in the interest of justice.

42. It is pertinent to observe that as regards the monetary disputes, the Registrar may elect to decide the dispute himself, or transfer it for disposal to any person who has been invested by the Government with powers in that behalf. Indeed, pending decision or award, the Registrar, such person or the arbitrator, as the case may be, may make such interlocutory orders as he may deem necessary.

43. Chapter XIII of the Act deals with appeals, revision, and re-view. Through Section 81 of the Act under the said Chapter, a Tribunal is established to be an appellate authority on the orders and awards being passed under Section 70 of the Act. Any person can invoke the appellate provision if he or she is aggrieved by (a) an award of the Co-operative Arbitration Court under sub-section (1) of section 70; (b) an order of the Registrar made under clause (ii) of sub-section (8) or

clause (ii) of subsection (9) of section 14; (c) any decision of the Registrar made under sub-section (6) of section 70; (d) any decision under sub-section (6) of section 70 of the person invested with powers in that behalf by the Government; or (e) any award of the arbitrator under sub-section (6) of section 70. The period of limitation is 60 days. All other appeals shall be preferred before the authorities enlisted under Section 83 of the Act.

44. It is, indeed, essential to examine Section 84 of the Act, which invests the Tribunal with revisional powers, apart from its review powers under Section 85 of the Act. The revisional provision, Section 84, reads as follows:

"84. Revision by Tribunal:- The Tribunal may call for and examine the record of any proceedings in which an appeal lies to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or revised, the Tribunal may pass such order thereon as it may deem fit:

Provided that the Tribunal shall not take any action under this section if (a) the time for appeal against the decision or order has not expired; or (b) the decision or order has been made the subject-matter of an appeal;

Provided further that no order shall be made under this section unless notice has been given to all interested parties and they have been given a reasonable opportunity of being heard."

(emphasis supplied)

45. Proceeding further, we may pertinently examine Section 11A of the Industrial Disputes Act, 1947, which reads as follows:

"11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

(emphasis supplied)

The Relevance of Section 11A of the ID Act:

46. At the outset, I may have to observe that, painstaking and persevering as both the learned counsel for the petitioner Bank and the first respondent had been in their submissions, they did, however, approach the issue on hand as if it were an industrial dispute under Section 11A of the ID Act. They have made elaborate submissions on the issues of preliminary award, the validity of domestic enquiry and other related aspects of the ID Act.

47. If we examine Section 69 or 70 of the Act, it does not elaborate on the adjudicatory ambit of the Arbitration Court, save to the extent of declaring that it has all the trappings of a civil court, though not a civil court per se. It can try and adjudicate the disputes as if it were a civil court. Indisputably, ID Act is a forerunner to the Co-operative Societies Act. In the areas where not much guidance is available under the Co-operative Societies Act, reliance on the established practices or precedents under the ID Act, as a matter of external aids, is, to me, permissible.

48. On the issue of placing reliance on the analogous provisions of a statute as an external aid for interpretation of any other similar statute, G. P. Singh, the learned author of the celebrated commentary Principles of Statutory Interpretation, as quoted with approval by the Apex Court in **Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer**⁸, has observed to the following effect:

"12. On the doctrine of "pari materia", reference to other statutes dealing with the same subject or forming part of the same system is a permissible aid to the construction of provisions in a statute. See the following observations contained in Principles of Statutory Interpretation by G.P. Singh (8th Edn.), Syn. 4, at pp. 235 to 239:

"Statutes in pari materia

⁸ (2004) 1 SCC 755

It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in *pari materia* i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including 'other statutes in *pari materia*'. As stated by Lord Mansfield 'where there are different statutes in *pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other'.

* * *

The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context; it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute."

49. The learned author further observes, quoting **Regina v. Herrod, Ex parte Leeds City District Council**,⁹ that it is, however, not necessary that the entire subject-matter in the two statutes should be identical before any provision in one may be held to be in *pari materia* with some provision in the other. Illustratively, Section 20(c) of the Code of Civil Procedure is cited to have been applied while interpreting Article 226(2) of the Constitution.

⁹ (1976) 1 All ER 273 (CA)

50. Through numerous judicial pronouncements it has come to be established that use of same words in similar connection in a later statute gives rise to a presumption that they are intended to convey the same meaning as in the earlier statute. On the same logic when words in an earlier statute have received an authoritative exposition by a superior court, use of same words in similar context in a later Act will give rise to a presumption that Parliament intends that the same interpretation should also be followed for construction of those words in the later statute.

51. The rule as stated by Griffith, C.J. and approved by the Privy Council (Lord Halsbury) is: "When a particular form of legislative enactment, which has received authoritative interpretation whether by judicial decision or by a long course of practice, is adopted in the framing of a later statute, it is a sound rule of construction to hold that the words so adopted were intended by the Legislature to bear the meaning which has been so put upon them. . . James, L.J., himself reiterated the rule in slightly different words and according to Lord Macmillan in a better form, in a later case thus: "If an Act of Parliament uses the same language which was used in a former Act of

Parliament referring to the same subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the Legislature when using well known words upon which there have been well-known decisions uses those words in the sense which the decisions have attached to them.”

52. It will be seen that Lord Buckmaster treated the rule as one of ‘absolute obligation’, whereas Lord Macmillan treated the same ‘as a cannon of construction’, i.e., as a presumption in the circumstances where judicial interpretation was well settled and well recognised and even then he thought that the rule must yield to the fundamental rule that in construing statutes grammatical and ordinary sense of the words is to be adhered to, unless it leads to some absurdity, repugnance or inconsistency. (vide Justice G. P. Singh’s Principles of Statutory Interpretation, Pp.303-04)

53. The fact, however, remains that the interpretative principle of parity is applied so long as both the statutes are analogous in their expression and application; once, the latter statute provides for a distinct treatment of an issue, the importation of statutory sanctions from the earlier enactment is impermissible, even as an external aid. In

other words, if the subsequent enactment, may be with the previous legislative experience, treats an issue differently, thereby, taking a different path, the external aid of adopting the interpretative gloss of the previous enactment comes to an end.

54. The upshot of the above discussion, thus, is that only to such an extent as Section 11A of the ID Act does not deviate from Sections 69 and 70 of the Act we can rely on the judicial interpretation of that provision. Remedially, under ID Act does not have higher echelons of redressal after a party obtains an award—preliminary or final. Similarly, as regards the interim orders, except invoking Article 226 or 227 of the Constitution no other judicial redressal is provided. It is, for us, necessary to examine whether the position remains the same with the Co-operative Societies Act also.

The Need of a Preliminary Issue:

55. When we examine Section 11A of the ID Act, it does not even remotely suggest that there is any statutory compulsion to raise a preliminary issue on any count, including the validity of domestic enquiry. Nor has the Tribunal been fastened with the burden of deciding the validity or otherwise of the enquiry. It is, usually, for the management to

decide whether it would like to approach the issue with a margin of safety. It may, at its option, straight away proceed with the matter on merits and invite a decision. In such an eventuality, the Tribunal will have to adjudicate twin aspects: 1. Whether there are any procedural lapses affecting the verdict the disciplinary authority has handed down to the delinquent. 2. Whether the very decision of punishment passes the judicial muster.

56. More often than not the management may have made out a strong case on the merits of the matter, but it may, at the same time, be found wanting on the procedural front. All its exercise as a disciplinary authority may, thus, come a cropper. To obviate such an eventuality, the management does desire to play it safe, and plead before the Tribunal to have a preliminary adjudication on the issue of procedural propriety: the validity of domestic enquiry.

57. It can be seen that, despite the statute being laconic on this procedural safeguard, the Courts, in the course of time, have evolved the necessary judicial principles with a view to ensuring fairness on the processual front. Four of the pioneering judicial pronouncements on this aspect are **Delhi Cloth & General Mills Co. Ludh Budh Singh**¹⁰,

¹⁰ AIR 1972 SC 1031

Workmen of Firestone Tyre & Rubber Co. of India Pvt. Ltd. v. Management,¹¹ Cooper Engineering Ltd. v. P.P. Mundhe¹² and Shankar Chakravariti v. Britannia Biscuit Co. Ltd.¹³

(remove this line)

58. In **Ludh Budh Singh** (supra) the Supreme Court has held that when allegations of misconduct are levelled against a person, it is the primary duty of person making those allegations to establish the same and not for the delinquent to adduce negative evidence to effect that he is not guilty. The management did not ask for an opportunity to adduce evidence when proceedings were pending; nor did it avail itself of right given to it by law to adduce evidence before Tribunal during the pendency of proceedings. In that context, it is observed that an opportunity to adduce evidence shall be claimed at a proper stage and within a reasonable time.

59. The Apex Court has further held that if the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is

¹¹ (1973) 1 SCC 813

¹² (1975) 2 SCC 661

¹³ (1979) 3 SCC 371

only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it. In fact, *Ludh Budh Singh* (supra) echoes the judicial dictum of **State Bank of India v. R.K.Jain**.¹⁴

60. In **Firestone** (supra) the Apex Court has held that even if an employer has held no enquiry or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

61. It is apposite to extract two of the propositions laid down in **Firestone** (supra), and they are to the following effect:

“(4) Even if no enquiry has been held, by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action.

. . .

¹⁴ AIR 1972 SC 136

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct."

62. In **P. P. Mudhe** (supra), taking up the issue where it had been left in **Ludh Budh Singh** and **Firestone** (supra), the Apex Court has further held that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question, according to their Lordships, must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, postulates the Apex Court, it will not be thereafter permissible for it in any proceeding to raise the issue.

63. In **Shankar Chakravarti** (supra) the Apex Court has held that while adjudicating upon the legality or propriety of an order of termination of service, either under Section 10 or under Section 33 of the Act, no duty is cast on the Industrial Tribunal or the Labour Court to call upon the employer to adduce evidence to substantiate the charge of misconduct against the employee. It is for the employer to avail himself of an opportunity to lead evidence by a specific pleading or by a specific request. If no such opportunity is sought nor is there any pleading to that effect, the Tribunal or the Labour Court is under no obligation to call upon the employer suo motu to adduce evidence to substantiate the charges against the employee.

64. In **Rajendra Jha v. Presiding Officer, Labour Court**,¹⁵ a three-Judge Bench of the Hon'ble Supreme Court has taken a slightly different stand regarding when an employer can make a request to lead evidence. In that case when the hearing of the case was nearing completion, but before the final orders were passed therein, the employers asked for an opportunity to lead evidence to justify the order of dismissal. The Labour Court disposed of both the matters together through a common judgment. It held by one and the same order that

¹⁵ 1984 Supp SCC 520

the departmental inquiry was vitiated but that the employers should be allowed to lead evidence to justify the order of dismissal. The Court repelled the workman's contention that the employers did not ask for an opportunity to lead evidence at all and that the Labour Court acted gratuitously. In the end, it has observed that the Labour Court cannot be said to have acted without jurisdiction.

65. Of recent origin is the case in **Divyash Pandit v. Management, NCCBM**,¹⁶ in which the Supreme Court has observed, placing reliance on **Karnataka SRTC v. Laxmidevamma**,¹⁷ that the management may not have made any prayer for submitting additional evidence in its written statement, but that does not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded, once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman.

¹⁶ (2005) 2 SCC 684

¹⁷ 2001 Lab IC 1777

66. In the absence of any remedial mechanism in the ID Act to challenge the findings in the preliminary enquiry/interlocutory application, especially on the issue of validity of the domestic enquiry, more often than not, the managements were found to have been rushing to the High Courts. It has resulted in evitable delays of long intervals before the Tribunal could once again resume the adjudication, if the High Court stays the proceedings. In that context, in **P.P. Mudhe** (supra), the Apex Court has bemoaned the dilatory tactics of the managements observing thus:

“8. [W]e should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will also be legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

(emphasis supplied)

67. In **D.P. Maheshwari v. Delhi Admn.**,¹⁸ a three-Judge Bench of the Hon'ble Supreme Court has observed that it was just the other day that the Courts were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. It was noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter

¹⁸ (1983) 4 SCC 293

to the High Court under Article 226 of the Constitution and to the Supreme Court under Article 136 of the Constitution and delay a decision on the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile.

68. Taking note of the inordinate delay that has occurred on account of challenge laid before higher echelons against interim adjudication of certain issues by the Labour Court, their Lordships have observed that there was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. In that context, their Lordships have opined that it is better that the tribunals, particularly those entrusted with the task of adjudicating labour disputes, where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. A word of caution has also been served that the High Courts in the exercise of their jurisdiction under Article 226 of the Constitution should not stop the proceedings before a tribunal so that they may decide a preliminary issue.

69. It is also worthwhile, observed the Apex Court, to remember that the nature of the jurisdiction under Articles 226 and 136 is primarily supervisory, and in the exercise of such jurisdiction neither the High Court nor the Supreme Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.

70. It is pertinent to observe that in **P.P. Mudhe** (supra) and a series of other judgments in the same line the concern of the Apex Court is very evident: the managements have been taking recourse to the device of intermittent judicial adjudication of the preliminary issues before the High Court invoking its powers of judicial review—the result, inevitably, being inordinate delays in adjudication.

71. The issue on hand may have to be approached on two fronts: whether the same mechanism is in place even under the Co-operative Societies Act to assail the interim orders, as is under the ID Act? And what should be the remedy if the situation is on the converse? In other words, if prevention of delay is one of the cardinal principles of fair adjudication, what if not questioning the preliminary finding despite a statutory remedy being available in that regard results in further delay?

More particularly, after leading evidence and fully participating in the Trial, one of the parties wants to go back and question the preliminary findings, once it has suffered an adverse finding on the merits. Whatever delay is sought to be avoided, it appears to me, comes back in a different garb. Under these circumstances, can we apply the same principle as has been applied under the ID Act, even when the statutory position is different in the Co-operative Societies Act?

72. On the issue of the delays in converse cases, the Karnataka High Court in **Motor Industries Ltd. v. D. Adinarayanappa**¹⁹ observed thus:

"10. [B]y the observations made as aforesaid, the Supreme Court has certainly cautioned the High Court against interference on the decision of a Labour Court on the preliminary issue. But at the same time it should be noticed that the reason which prompted the Supreme Court to make the aforesaid observations are set out in the last sentence wherein it is stated that the Supreme Court was making those observations in their anxiety that there is no undue delay in industrial adjudication. Therefore, it is clear that if in a given case the refusal to interfere against the order of the Labour Court is itself going to defeat the purpose for which the Supreme Court made the aforesaid observations, it would be legitimate for the High Court to interfere even against an order of the Labour Court on a preliminary issue and particularly when the order of the Labour Court is contrary to the law laid down by the Supreme Court itself. It is also significant to note that what the Supreme Court has observed is that it would be legitimate for the High Court to refuse to interfere against the order of the Labour Court on a preliminary issue if it were to result in delay in industrial adjudication, and not that it

¹⁹ (1978) 1 LLJ 443 (kant.)

would not be legitimate for the High Court to interfere in a given case even if there is justification for interference at that stage.

(emphasis supplied)

73. In **Standard Pottery Works, Alwaye v. SPW Employees**

Union²⁰ one of the questions is whether a finding by an Industrial Tribunal that the domestic enquiry is vitiated and defective is not amenable to the writ jurisdiction of this Court. Having referred to the observations in Cooper Engineering (supra), this Court has observed that it is not inclined to read into the passage above any prohibition debarring this Court from exercising its writ jurisdiction. The Supreme Court in the case above has made it clear that the said observations have been made in the anxiety that there may be no inordinate delay in industrial adjudication.

74. In **Caterpillar India (P) Ltd. v. Presiding Officer**

Labour Court,²¹ a learned Division Bench of the High Court of Madras has held that it is open to a party to question the award (ostensibly the final one) of the Labour Court even on the question of preliminary issue decided by it. A learned Single Judge of this Court in **Dy. General Manager S.B.I. v. Roy Samuel**,²² 2004

²⁰ 1981 Lab IC 1132 (Ker)

²¹ 2004 (1) LIJ 984

²² 2004 (2) KLT 923

(2) K.L.T. 923, has, however, disagreed with the said proposition of law. His Lordship has observed, in a lucid exposition, thus:

"14. [I] cannot agree. The Supreme Court had only pointed out the restrictive practices which might develop. If the order was worthy of challenge, it was to be challenged, and it could have been entertained. The edifice of an award was to be built not on shaky foundations. If error was committed, it should have been got rectified at the earliest point of time. Possible hardships could not have been avoided only for the sake of convenience and advantage to one party to the proceedings. Otherwise it would have only contributed to vagaries of litigation, inflicted without reason, and not to be recognised or upheld as a sound practice."

His Lordship has further observed to the effect:

"15. This appears to be a case where interference is called for at this juncture since the risk that is faced by one of the parties in this case is that, even though there was an enquiry held in consonance with the principles of natural justice, the Tribunal has declared the findings unacceptable. The result is that there is no enquiry at all. Extreme consequences are likely to arise there from. Since procedural formalities are completed, it is to be presumed that there cannot be any further evidence that could be let in. Thus, the management will be forced to await final award to be passed which necessarily have to be adverse to them. In other words, even if it is prima facie possible for this Court to find that the said findings deserves nonetheless to be vacated, the Labour Court is to be permitted to continue with the adjudication and to pass award and such award has to be so awaited and then subjected to challenge. This circuitous process cannot be recommended acceptable as an expedient measure. The Supreme Court has in Cooper Engineering Ltd. v. P.P. Mundhe crystalised the law governing the circumstance by using a single adjective. If the cause is 'worthy' challenge is indeed possible. I respectfully follow the dictum."

(exphasis supplied)

75. Later, a learned Division Bench of this Court in **St. Thomas Missions Hospital v. State of Kerala and Ors.**,²³ 2007 (2) KLT 415, has quoted the judicial dictum of Roy Samuel (supra) with approval. Their Lordships have further held that in appropriate cases where the Labour Court has on a totally misconceived reasons set aside an enquiry, the management cannot be asked to wait till the final award is passed to challenge the preliminary order also. In such cases, this Court should certainly interfere at the first stage itself without relegating the management to the circuitous process as held in the above decision, holds the learned Division Bench.

76. On a compendious consideration of the above judicial discussions, it can be held that there is no invariable dictum laid down that under all circumstances challenge against a preliminary issue is barred at an interlocutory stage; that is, before the final award is rendered.

Scope of Revision:

77. The scope of revision, as has repeatedly been held, needs no specific emphasis. It is trite to hold that the scope of revision is

²³ 2007 (2) KLT 415

severely restricted, whereas that of an appeal is co-extensive with that of the primary adjudication. Confining ourselves to the issue of revision, we may further observe that there is a discernible distinction between a statutory revision and a judicial review as a matter of public law remedy or even as part of the supervisory jurisdiction of the Constitutional Courts.

78. To begin with, in both instances—statutory revision and judicial review—every error of adjudication is not amenable to revision. In practical parlance, there is a marked difference in the adjudicatory scope of statutory revision under Section 115 of Code of Civil Procedure, pre or post-amendment on the one hand, and supervisory revision under Article 227 of the Constitution of India on the other. The jurisdiction of a forum, judicial or quasi-judicial, exercising the power of statutory revision is so expansive as the relevant statute permits; but that of judicial review, in the manner of certiorari, is confined primarily to the jurisdictional issues.

79. To be more explicit, it is apt to state that the judicial review is to be exercised when (a) the court or tribunal below has assumed a jurisdiction which it does not have, or (ii) has failed to exercise a

jurisdiction which it does have, such failure occasioning a failure of justice, or (iii) the jurisdiction though available is being exercised in a manner which is tantamount to overstepping the limits of jurisdiction. (for an elaborate exposition of law on this aspect a reading of **Radhey Shyam v. Chhabi Nath**²⁴ is rewarding.)

80. The Courts have discouraged frequent invocation of judicial review in the matters interlocutory in nature, for there is no other efficacious judicial remedy available under the ID Act to assail either the interlocutory or the final orders. The position under the Kerala Co-operative Societies Act is entirely different. Our reliance on the ID Act and the judicial precedents on procedural parameters, as a matter of external aids to interpretation of the Act, shall come to an end here; of course, subject to the principle of stare decisis.

81. Now we may examine the remedial mechanism provided under the Act in question. Section 82 provides for appeals and Section 84 for revision. The Tribunal can call for and examine the record of any proceedings in which an appeal lies to it to satisfy itself on the count of the legality or propriety of any decision or order passed by the arbitration court. If it appears in any case to the Tribunal that the deci-

²⁴ (2015) 5 SCC 423

sion or order should be modified, annulled or revised, the Tribunal is at liberty to pass such order thereon as it may deem fit. Wide powers, indeed, revisional though.

82. In the present instance, the petitioner Bank has sought an interim adjudication on the validity of the domestic enquiry, suffered an adverse order, but did not impugn it despite the availability of the remedy of revision. On the contrary, the petitioner Bank abided by the verdict, acted in compliance with it, lead evidence, and eventually invited an order on the merits of the dispute.

83. The finding of the Arbitration Court is that the domestic enquiry is vitiated. In that context, what are the remedies available to the petitioner? Without reference to the remedial mechanism under the ID Act, if we confine ourselves to considering the issue with specific reference to the statutory scheme of the Act, it emerges, to my mind, that the petitioner has the following options: (1) The petitioner could have challenged the finding under Section 84 of the Act; (2) It could have rectified the defect, as had been found by the court, by leading evidence in support of the action it took against the respondent employee—which, in fact, it did; or (3) it could have proceeded with

the further adjudication of the dispute, disregarding the interim finding of the court, and eventually challenged the said finding comprehensively in the appeal while challenging the very award.

84. Once it has, especially, taken recourse to course No.2, it is estopped from turning around and questioning the correctness of the preliminary finding, once it suffered an adverse 'final' award. It cannot ask the appellate forum to wish away all the evidence it led before the Arbitration Court. Once the petitioner has acted in compliance with the interim finding of the Arbitration Court, there remained nothing to be impugned. Firstly, the petitioner is not compelled to abide by the interim finding of the court. Had it been certain of its conviction that the interim order is infirm, it could have proceeded with the adjudication of the issue on the strength of its domestic enquiry, and in the appeal it could have laid a comprehensive challenge on all issues. The petitioner, proverbially, cannot hunt with the hound and run with the hare, as if it were.

Issue No.4:

85. True, the petitioner has laid a comprehensive appeal before the appellate Tribunal against Ext.P1 award of the Arbitration Court.

The validity of such a challenge has already been addressed above. Now I may examine the residuary aspects. At the time of hearing before the Tribunal, the learned counsel for the appellant, the petitioner herein, sought remand of the matter to the Arbitration Court without adverting to the merits of the matter.

86. According to the learned counsel for the petitioner it has two aspects: 1. The Arbitration Court has to consider the first respondent's application for amending the Award. 2. It also has to reexamine its finding on the validity of the domestic enquiry, i.e., Ext.R1 (c). It is also the contention of the learned counsel that the petitioner was initially under a bona fide belief that the remand was comprehensive on both aspects.

87. The learned counsel has also contended that once the petitioner has realized that the remand was for the limited purpose of considering the amendment to the Award, it has filed the review application before the Tribunal, for there was an error apparent on the face record. Let us examine these pleas.

88. As has rightly been contended by the learned counsel for the first respondent, remand is usually possible when the appellate forum

finds an infirmity in the findings of the trial forum. Thus, essentially there ought to be, at the least, a prima facie consideration of the issue by the Tribunal on merits. In the present instance, as regards ex parte amendment of the award, the first respondent readily consented to the remand of the matter. Before the Tribunal, the learned counsel for the appellant, too, urged it to remand the matter without entering into the merits. In my considered view, a comprehensive remand could not have been possible, without setting aside the interim finding of the Arbitration Court on the issue of domestic enquiry. It inevitably called for an adjudication of the matter on merits either for the purpose of remanding or for the purpose of rendering a finding by the appellate Tribunal itself. Then the question of not entering into the merits of the matter does not arise.

89. It is pertinent to observe the submission of the learned counsel for the appellant/the first petitioner before the appellant forum, which has recorded in Ext.P4 judgment his plea as follows:

"9. The learned counsel for Appellant submitted that after pronouncing the award, the court below was incompetent and has no jurisdiction to make alterations and additions in the award already passed, on declaring that the award passed earlier is void. In the I.A. No.42/2014 also court below not issued notice to Appellant and were not heard before allowing the I.A. and making the correction, addition and deletion.

Therefore, the act of court below is illegal, arbitrary and against the procedural laws and binding precedents.”

90. As can be seen, the learned counsel for the first petitioner has not taken any other plea. The Tribunal, therefore, remanded the matter by observing that considering the technical illegality in the passing of second award, the award can be set aside and the case be remanded to court below for passing a fresh award in accordance with law.

91. Assuming there were to be any bona fide miscomprehension on the part of the learned counsel for the appellant before the Tribunal at the time he made such a representation, he certainly ought to have, as has been contended by the learned counsel for the first respondent, filed a sworn affidavit setting out the circumstances under which he pleaded for the remand of the matter without adjudication on merits. It was not to be. Indeed, the compelling conclusion in that context is that the appellant has given up its plea on the preliminary issue, assuming it still survived for consideration.

92. Another aspect to be examined is the propriety of challenging the order in revision after arguing the matter before the Arbitration Court on remand.

93. The learned counsel for the first respondent has submitted that once the review petition was dismissed, before the Arbitration Court, in view of the remand, the counsel for both the parties advanced their arguments, of course, after obtaining certain adjournments. Having heard the matter, the Arbitration Court, then, reserved the matter for orders. With that, in my view, no further adjudication remained to be undertaken. The parties have lost seisin over the matter.

94. Even otherwise, after the dismissal of the review petition, the petitioner subjected itself to the jurisdiction of the Arbitration Court and confined its arguments only to the aspect of the amendment of the Award. Having thus argued the matter, and more particularly when the matter was reserved for orders, the petitioner rushing to this Court for a judicial review of the issue is impermissible. The usual practice is that once a party does not want to be bound by a judicial verdict, he is supposed not to act in furtherance of that verdict. Remedially the party files a memo or a petition before the court seeking an adjournment with a view to challenging the order in question at higher echelons.

95. It is illustrative to cite one prevalent practice in the trial court: once a petition, say for amendment of the pleadings, is allowed on

costs, the opposite party once accepts the costs, it is estopped from questioning the said interlocutory order for amendment of pleadings. Similar is the case when a party argues the matter in compliance with a judicial directive. He cannot later, before a verdict is rendered, challenge the said judicial directive having already acted under it. He is estopped. Otherwise, the procedure has neither certainty nor finality. A justice delivery system already dogged with egregious procedural delays can ill afford such a luxury.

In the above facts and circumstances, the writ petition is dismissed. No order as to costs.

sd/-DAMA SESHADRI NAIDU, JUDGE.