IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 20TH DAY OF MARCH 2015

THE HON'BLE MR. JUSTICE R. MAHADEVAN

O.P.No.818 OF 2013

In the matter of the Arbitration & Conciliation Act 1996
AND
In the matter of the Arbitral Award dated 22 August 2013 passed by the Arbitral Tribunal in Arbitration Matter No.MCX/Legal/1292A/13

Mr.T.C.Mohan,
Door No.23 (Old No.10/2),
Ganapathi(Muddali) Street,
Off TTK Road,
Royapettah,
Chennai 600 014. ... Petitioner

VS

1.Emkay Commotrade Limited,
Paragon Centre,
C-06 Ground Floor,
PB Marg, Opp Century Mills,
Worli,
Mumbai 400 013. ...First Respondent

2. Mr.Justice E.Padmanabhan (Retd)
Sole Arbitrator,
C/o.Multi Commodity Exchange of India Limited,
Exchange Square, Suren Road,
Andheri(East),
Mumbai 400 093. ...Second Respondent

Original petition prays that this Hon'ble Court may be pleased to set aside the Award dated 22/08/2013 passed by the second respondent herein.

This Original Petition coming on this day before this court for hearing the court made the following order:

This petition has been filed by the claimant against the award of the arbitrator dated 22.08.2013.

2. The claimant seems to have invested money with the respondent, who is a trading company over a period of time. According to the claimant, investment was made to trade in stock and commodities in MCX Platform, through the 1st respondent. However, when the returns as promised did not come, the claimant grew suspicious and on enquiry came to know that without his instructions and without putting him on notice through hard copy, the staff of the 1st respondent company had traded and lost his money. Since his complaint did not evoke any favourable reply, the arbitration proceedings were initiated and the claim petition was filed.

3. The 1st respondent contested the claim contending that the summary of the entire transactions were sent by sms and email periodically. The transactions were well within the knowledge of the claimant and having sustained the loss as an after thought, the claim has been filed.

4. Considering the rival pleadings and the documents, the Hon'ble Arbitrator has dismissed the claim. Aggrieved, the application under section 34 has been filed.

5. Assailing the award, the counsel for the claimant contended that the award is contrary to public policy as the parties were not permitted to seek the aid of counsels during the proceedings. The counsel also contended that the arbitration agreement is itself void and is hit by section 23 of the Indian

Contract Act and hence sought the setting aside of the award. The counsel also relied upon the judgments reported in ***Oil & Natural Gas Corporation Ltd. vs. SAW Pipes Ltd. ((AIR 2003 SC 2629) (manu/SC/0314/2003)), Venkatraman Sambamurthy vs. Union of India and another (1986 II LLJ 62 Bom), J.K. Aggarwal vs. Haryana Seeds Development Corporation Ltd. and others ((AIR 1991 SC 1221 (MANU/SC/0294/1991)).***

6. The learned counsel for the 1st respondent raised preliminary objection as to the maintainability of the application under section 34 before this court as it is only the courts in Mumbai which will have jurisdiction as per the bye-laws. The counsel further contended that as per regulation 15, both the parties were prevented from availing the service of the counsel and having initiated and failed in the arbitration proceedings, the claimant is estopped from challenging the very proceedings itself.

7. Both the counsels have relied upon the judgment reported in ***Swastick Gases P. Ltd. vs. Indian Oil Corpn. Ltd. (2013 (5) CTC 527)*** regarding the maintainability and non-maintainability of the application before this court.

8. Heard both sides and perused the records.

9. With regard to the plea of jurisdiction, the counsel for the claimaint has contended that since a part of cause of action,

arose within the jurisdiction of this court, the application to set aside the award is maintainable. Per contra, the learned counsel for the 1st respondent has contended that as per regulation 15.6 of the bye-laws , it is only the court in Mumbai which will have jurisdiction to give effect to the provisions of the Act.

9a. Clause 15.6 of the Bye-laws, reads as under:-

> *"JURISDICTION : All parties to a reference to arbitration under these Bye-Laws. Rules and Regulations and the persons, if any, submitting claims under them, shall be deemed to have submitted to the exclusive jurisdiction of the Court in Mumbai for the purpose of giving effect to the provisions of the Act, these Bye-Laws and Rules and Regulation in force."*

10. Both the counsels have relied upon the judgment reported in 2013 (5) CTC 527, cited supra, wherein the Apex Court has held as follows:-

> *"27. The question in Interglobe Aviation[**Interglobe Aviation Limited v. N. Satchidanand; (2011) 7 SCC 463**], inter alia, was whether the Permanent Lok Adalat at Hyderabad had territorial jurisdiction to deal with the matter. The standard terms which governed the contract between the parties provided, "all disputes shall be subject to the jurisdiction of the courts of Delhi only". The contention on behalf of the appellant before this Court was that the ticket related to travel from Delhi to Hyderabad. The complaint was in regard to delay at Delhi and, therefore, the cause of action arose at Delhi and that as contract provided that the courts at Delhi only will have jurisdiction, the jurisdiction of other courts was ousted. This Court in paragraph 22 (pgs. 476-477) of the Report held as under :-*

"22. As per the principle laid down in A.B.C. Laminart [(1989) 2 SCC 163], any clause which ousts the jurisdiction of all courts having jurisdiction and conferring jurisdiction on a court not otherwise having jurisdiction would be invalid. It is now well settled that the parties cannot by agreement confer jurisdiction on a court which does not have jurisdiction; and that only where two or more courts have the jurisdiction to try a suit or proceeding, an agreement that the disputes shall be tried in one of such courts is not contrary to public policy. The ouster of jurisdiction of some courts is permissible so long as the court on which exclusive jurisdiction is conferred, had jurisdiction. If the clause had been made to apply only where a part of cause of action accrued in Delhi, it would have been valid. But as the clause provides that irrespective of the place of cause of action, only courts at Delhi would have jurisdiction, the said clause is invalid in law, having regard to the principle laid down in A.B.C. Laminart [(1989) 2 SCC 163]. The fact that in this case, the place of embarkation happened to be Delhi, would not validate a clause, which is invalid."

28. In a comparatively recent decision in A.V.M. Sales ***[A.V.M. Sales Corporation v. Anuradha Chemicals Private Limited ; (2012) 2 SCC 315],*** *the terms of the agreement contained the clause, "any dispute arising out of this agreement will be subject to Calcutta jurisdiction only". The respondent before this Court had filed a suit at Vijayawada for recovery of dues from the petitioner while the petitioner had filed a suit for recovery of its alleged dues from the respondent in Calcutta High Court. One of the questions under consideration before this Court was whether the court at Vijayawada had no jurisdictionto entertain the suit on account of exclusion clause in the agreement. Having regard to the facts obtaining in the case, this Court first held that both the courts within the jurisdiction of Calcutta and Vijayawada had jurisdiction to try the suit. Then it was held that in view of the exclusion clause in the agreement, thejurisdiction of courts at Vijayawada would stand ousted.*

29. Section 11(12)(b) of the 1996 Act provides that where the matters referred to in sub-sections (4), (5),(6), (7), (8) and (10) arise in an arbitration *other than the international commercial arbitration, the 2013 STPL(Web) 527 SC 9 M/S. Swastik Gases P. Ltd. Vs. Indian Oil Corp. Ltd. Supreme Court Judgements @ www.stpl-india.in reference to 'Chief Justice' in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the Principal Civil Court referred to in Section 2(1)(e) is situate,and where the High Court itself is the court referred to in clause (e) of sub- section (1) of Section 2, to the Chief Justice of that High Court. Clause (e) of sub-section (1) of Section 2 defines 'Court' which means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.*

30. When it comes to the question of territorial jurisdiction relating to the application under Section 11,besides the above legislative provisions, Section 20 of the Code is relevant. Section 20 of the Code statesthat subject to the limitations provided in Sections 15 to 19, every suit shall be instituted in a Court withinthe local limits of whose jurisdiction (a) the defendant, or each of the defendants where there are morethan one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business,or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personallyworks for gain, provided that in such case either the leave of the court is given, or the defendants who donot reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or(c) the cause of action, wholly or in part arises. The explanation appended to Section 20 clarifies that a corporation shall be deemed to carry on business at its sole or principal office in India or, in respect ofany cause of action arising at any place where it has also a subordinate office, at such place.

31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, *Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is,whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties -by having clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall havejurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because forconstruction of jurisdiction clause, like clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.*

60. It will be seen from the above decisions that except in A.B.C. Laminart where this Court declined to exclude the jurisdiction of the Courts in Salem, in all other similar cases an inference was - drawn (explicitly or implicitly) that the parties intended the implementation of the exclusion clause as it *reads notwithstanding the absence of the words "only", "alone" or "exclusively" and the like. The reason for this is quite obvious. The parties would not have included the ouster clause in their agreement were it not to carry any meaning at all. The very fact that the ouster clause is included in the agreement between the parties conveys their clear intention to exclude the jurisdiction of Courts other than those mentioned in the concerned clause. Conversely, if the parties had intended that all Courts where the cause of action or a part thereof had arisen would continue to have jurisdiction over the dispute, the exclusion clause would not have found a place in the agreement between the parties.*

62. For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the Courts in Kolkata had jurisdiction to entertain the disputes between the parties.

11. The counsel for the claimant has relied upon the judgment to contend that if a part of cause of action had arose within the jurisdiction of the court, then the application would be maintainable and that there is no specific ouster.

12. The counsel for the 1st respondent has relied upon the judgment to contend that once the jurisdiction of other courts are specifically ousted, only the court in Mumbai will have jurisdiction.

13. It is pertinent to mention here that in the case before

the Supreme Court, not only the part of cause of action arose in kolkatta, but also the parties had accepted that the courts in Kolkata alone will have jurisdiction. It is not the case on hand. The office of the respondent is at Mumbai. The bye-laws state that the courts in Mumbai alone will have jurisdiction. However, the payments were made by the claimant to the local office at Chennai only. Further as per regulation 15.20, the venue of arbitration can be at any place and in the instant case, it has been fixed at Chennai.

14. Regulation 15.40 relating to challenge of the award would read as follows;

> *"15.40 Right to Appeal:-*
>
> *15.40.1 Award Final and Additional Risk Containment Measures Applicable : A party to a reference who is dissatisfied with an award of the arbitral tribunal may appeal to the competent court of jurisdiction as provided in the Arbitration and Conciliation Act. The award shall be final under these Bye-Laws and Regulations of the Exchange and vis-a-vis the Exchange interms of any action, which is required to be initiated, as may be provided for in the Bye-Laws or notifications issued from time to time. Provided that the party to the reference shall be required to deposit the amount of award with the Exchange before filing the appeal and such amount shall be kept with the Exchange in abeyance and shall be disposed of eventually as per direction of the Court.*

> *15.40.2 Enforcement of Award as a Decree: - When the time for preferring*

> *an appeal has expired and no appeal has been preferred or the appeal has been preferred and the appeal has been rejected and when the time for making an application to set aside the award under the relevant provision of the Arbitration and Conciliation Act has expired, or such application having been made, it has been refused, the final award shall be enforceable by the Exchange in the same manner as if it were a decree of the Court, if the award is against an exchange member or a clearing member."*

15. As per the above two regulations, it is clear that regulation 15.6 cannot be made applicable to an application under section 34, as part of cause of action has also arose at Chennai. The word 'exclusive' used in regulation 15.6 can only termed as directory and not mandatory. If it was designed to give jurisdiction to courts in Mumbai alone to challenge the award, then it would have been stated so in regulation 15.40 of the bye-laws also. The jurisdiction of this Court, under the circumstances cannot be treated as ousted. Hence, this application is maintainable before this Court.

16. With regard to the plea that the agreement is opposed to public policy and that the award is vitiated as the claimant was prevented from engaging a counsel, it is evident that the claimant did not seek for any permission to engage a counsel before the Arbitrator. Obviously, the ground has been raised for the first time. Therefore, the award cannot be said to be vitiated are opposed to public policy.

17. The claimant has relied upon the decision in AIR 2003

SC 2629 (manu/SC/0314/2003), cited supra, wherein, the Apex Court has held as under:-

CONCLUSIONS:-

In the result, it is held that:-

A. (1) The Court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof that:-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

2) The Court may set aside the award:-

(i) (a) if the composition of the arbitral tribunal was not in accordance with the agreement of the parties,

(b) failing such agreement, the composition of the arbitral tribunal was not in accordance with Part-I of the Act.

(ii) if the arbitral procedure was not in accordance with:-

(a) the agreement of the parties, or

(b) failing such agreement, the arbitral procedure was not in accordance with Part-I of the Act.

However, exception for setting aside the award on the ground of composition of arbitral tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part-I of the Act from which parties cannot derogate.

(c) If the award passed by the arbitral tribunal is in contravention of provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.

(3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:-

(a) fundamental policy of Indian law;

(b) the interest of India; or

(c) justice or morality, or

(d) if it is patently illegal.

(4) It could be challenged:-

(a) as provided under Section 13(5); and

(b) Section 16(6) of the Act.

18. In the above judgment, the Apex court has laid down the circumstances under which an award can be set aside. The counsel for the claimant has attacked the very arbitration agreement itself as it is contrary to section 23 of the Contract Act and is against the public policy.

Section 23 of the Indian contract Act, reads as under.

Section 23 in The Indian Contract Act, 1872

"23. What consideration and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— —The consideration or object of an agreement is lawful, unless—" it is forbidden by law; [14] or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the

Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations. (a) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations."

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations. (b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations."

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations. (c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations."
(d) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations. (d) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations."

(e) A, B and C enter into an agreement for the

division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful. (e) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful."

(f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful. (f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful."

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal. (g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal."

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter and would so defeat the object of the law. (i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter and would so defeat the object of the law."

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C

promises to pay 1,000 rupees to A. The agreement is void, becuase it is immoral. (j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, becuase it is immoral."

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code (45 of 1860).

19. A contract opposed to public policy is void is the contention of the counsel for the petitioner.

20. **In Venkatraman Sambamurthy vs. Union of India and another (1986) II LLJ 62 Bom)**, the High Court of Bombay has held as under:-

"19. This brings us to the third limb of Regulation 26(5). The circumstances of the case warranted the exercise of the department's discretion in allowing the appellant the legal assistance sought by him.

"20. At the enquiry 61 documents were listed and most of them, according to the appellant, were in Oriya. According to the respondents only a few were in Oriya. Out of 54 witnesses, 24 were examined by the prosecuting officer. The defence examined 14 witnesses and exhibited 60 documents. The enquiry took 10 sittings in 47 days. The prosecuting officer knew Oriya. The appellant did not. Neither did the enquiry officer. The evidence of the Oriya speaking witnesses was translated by the translator provided by the department and recorded in English by the enquiry officer. While we see no reason to assume that the poor dear translator was in league with the Oriya-knowing prosecuting officer and moulded the translation to suit him, the very ignorance of Oriya language by the appellant would itself be a tremendous handicap to the appellant, personally conducting his defence. This factor might well have permitted the department to exercise its discretion

in allowing the appellant legal assistance. It is not enough for Mr. Shah to say that the appellant could have asked for the service of a Commission's employee knowing Oriya or that the appellant's co-delinquent knew the language. Surely, in a strange place among strange people, the appellant should have been allowed an independent Oriya speaking person of his confidence. And what could be a better choice than an Oriya-speaking local lawyer. Denied this, what choice had the appellant but to jog along with his Oriya-knowing co-delinquent having to rely on the translations given to him by the latter. What also was the guarantee that the co-delinquent being in the same boat as the appellant, would hold the scales even between himself and the appellant, charged as they were of acting in connivance with each other.

21. It is in these circumstances that we are of the opinion, that the department should have exercised it discretion under the 3rd limb of Regulation 26(5) and given the appellant the legal assistance asked for by him.

22. Holding as we do, that the principles of natural justice were violated, the enquiry and demotion order must be set aside. In the light thereof, the other challenges advanced by Mr. Cama become academic.

23. We however clarify that nothing we have stated in this judgment applies or is deemed to apply to the appellant's co-delinquent Dora. We do not know in what circumstances he was placed, nor do we need to. His petition, we are informed, is pending before another High Court which will naturally deal with it on its own merits.

24. On behalf of the respondents, Mr. Shah invites us to direct the department to hold a fresh enquiry against the appellant. On the other hand, Mr. Cama says that the department cannot do so as the appellant retired in May 1984. It is unnecessary for us to enter into this controversy. Both parties are relegated to such future course of action as they may be advised and permissible in law.

21. In J.K. Aggarwal vs. Haryana Seeds Development Corporation Ltd. and others ((AIR 1991 SC 1221 (MANU/SC/0294/1991)), the Hon'ble Supreme Court has observed as under:-

> *5. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the enquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting-Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior-Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in Pett's case that in defending himself one may tend to become "nervous" or "tongue tied". Moreover, appellant, it is claimed, has had no legal background . The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice.*
>
> *The question remains as to the manner of remedying the situation. Some circumstances require to be noticed in this behalf. The inquiry was proceeded with and as many as 13 witnesses have been examined. The Examination-in-Chief as well as such cross-examination as the appellant himself attempted are on record. They shall remain part of the record. The Examination-in-Chief of these witnesses is not vitiated by a reason alone of the circumstance that the appellant did not then have the assistance of a lawyer to cross-examine them. The situation could be remedied now by tendering the witnesses for further cross-examination by a lawyer to be engaged by the appellant. In order that that further protraction of the inquiry proceedings is avoided as required the appellant to state the names of the witnesses he wants to be so tendered for further cross-examination. Appellant has filed a list of eight such witnesses, viz., J.L. Sah*

Thulgharia, Production Manager; Joginder Singh, Sr. Scale Stenographer, D.M. Tyagi, Executive Engineer, Vakil Singh, Ex-driver; B.P. Bansal, Chief Accounts Officer, Randhir Singh, Manager (Personnel) and R.S. Mallik, Ex-Managing Director. The further proceedings of the inquiry shall be commenced on 20th October and continued from day to day.

There shall be no necessity for the inquiry-authority to issue fresh notices to the appellant in respect of the further proceedings on that day. The appellant shall appear along with his lawyer before the inquiry-authority on that date and the subsequent dates to which the proceedings may stand adjourned. Appellant's lawyers shall be entitled to cross-examine these witnesses and to address arguments. The inquiry-officer shall be at liberty to refuse any prayer for adjournment which he thinks unreasonable and which is in his opinion is intended to protract the proceedings. The inquiry shall be completed within one month from 20th of October 1990. The appeal is disposed of accordingly. No costs."

22. In the above two judgments, in the facts and circumstances of the case, the Courts have set aside the inquiry proceedings with a direction to permit the aggrieved party to engage a counsel. The courts went on to hold that the discretion must have been exercised in a wise manner as per the rules. But in the case on hand, no discretionary power is vested with the arbitrator.

23. Regulation 15.22 at page 68 of the bye-laws reads as follows:-

"15.22 Appearance by Counsel, Attorney or Advocate not permitted: in arbitral proceedings, the parties to the dispute shall not be permitted to appear by counsel, attorney or advocate."

24. Under the bye-laws, both the parties are prevented from engaging a counsel. If the bye-laws permitted only the respondent to engage a counsel, then it can be held to be against the public policy. But in this case, not only does the bye-laws provide for such a clause, the claimant has also not sought for any legal assistance. Hence the above judgments are not applicable to the facts of the case and neither the arbitration agreement nor the award are contrary to section 23 of the contract act and public policy. Obviously, if the claimant had contended that the agreement is void as it is contrary to section 23, he would not be in a position to initiate arbitration proceedings. Therefore it is evident that just to overcome the award, such a plea has been made for the first time. Hence this court finds no illegality in the award and hence the petition is dismissed. No costs.

Sd/-R.M.D.J
20.03.2015

//Certified to be a true copy//
Dated this the day of 2015

R.s/08.06.2015 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.