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Appointment of Arbitrators Simplified: SC's decision in Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company

- by Aryan Chowdhury

The Arbitration and Conciliation Act, 1996 is generally viewed as having given pre-eminence to party autonomy over judicial interference in the arbitration process, and the same has been re-emphasised in a catena of decisions by the courts. However, in certain cases, the Supreme Court has felt that judicial interference is required, especially those involving appointments of arbitrators, as there lies scope for prejudice.

The Law Commission's 246th Report led to the Parliament inserting a new clause vide Arbitration and Conciliation (Amendment) Act, 2015 which made the appointment of a person related to the parties, counsel or subject matter to the dispute, an ineligible appointment. However, the parties were simultaneously given the right to waive such ineligibility by mutual consent. In the same breath, the Supreme Court has delivered an opinion on this issue in the context of arbitrators being appointed from a cadre of officers/persons and in unilateral appointments.

The Case

In *Union of India v Tantia Constructions Ltd*, the Supreme Court had interpreted the arbitration clause between the Central Organisation for Railway Electrification and the private party–a joint venture company–in favour of the Railways. The bench decided that there shall be three arbitrators, two of whom were to be appointed by the Railways. The appointment of the third was left to a choice between two persons chosen by the private party, who were in turn, to be chosen from a panel of four maintained by the Railways. Hence, the judgment gave major leeway to the Railways in the process of appointment of arbitrators. This judgment was upheld by a three-judge bench of the Court, after relying on *Voestalpine Schienen GmbH v DMRC*, where the bench had held that former employees were not barred from being appointed as arbitrators. The reasoning was that the predominance of the Railways in the appointment process was counterbalanced by the private party's right to choose two names out of the panel maintained by the Railways. Ultimately, the case was referred to a larger bench.

Issues

The main issues were:

- Whether the unilateral appointment of an arbitrator is legally valid.
- Whether such appointment is constitutional, especially in PSU contracts and PPP contracts,
- Whether the principle of equal treatment of parties extends to the appointment of arbitrators vis-a-vis Article 14?

Judgement

In a 3:2 majority, while overruling *Tantia Constructions*, Justice Chandrachud noted that an arbitration clause that provides one party with the power to unilaterally decide matters in the arbitration proceedings, especially in the appointment of arbitrators, is contrary to the fundamental principles governing the arbitration process. He observed that there must be equal participation between both parties for the process to be impartial and independent, as held in *TRF Ltd v. Energo Engineering Projects Ltd.* and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*

The majority concluded that a unilateral clause where one party is given pre-eminence over the other in such appointments is violative of Article 14. However, the Court also held that PSUs could curate their own panel of arbitrators, provided the other party was not restricted in its selection exclusively from such a panel. The Court also held that the Arbitration and Conciliation Act made no distinction between public-private arbitrations and private arbitrations except that in a public-private contract, the State must act in a fair, just and reasonable manner.

There were two separate opinions, one by Justice Hrishikesh Roy and the other by Justice PS Narasimha. While Roy J. expressed doubts over the application of constitutional law principles in arbitration proceedings, Narasimha J. held that the overriding power to waive the ineligibility proviso in the appointment of arbitrators must also be taken into consideration while deciding on such issues. He further noted that Article 14 could not apply to the arbitration proceedings at the stage of appointment. Hence, he dissented from the

majority opinion

What does it mean for future arbitration proceedings?

The judgment serves as a positive step towards the application of public law and constitutional principles in arbitration proceedings, which will hopefully decrease the instances of arbitral awards being contested in the Courts. The decision will also compel parties to revisit their arbitration agreements, especially in PPP contracts and make necessary amendments so that the other party, usually the private party, does not stand prejudiced. It is hoped that judgments like these will push the government to come up with an institutional framework for arbitration, just as it did for mediation.

No Collateral Required: Cabinet Clears Student Loan Scheme-PM-Vidyalaxmi

- by Mridula Singh Bhatti

In the July 2024 edition of Kautilya Society's monthly newsletter, we briefly discussed the highlights of the 2024 Union Budget. One of the major topics discussed was the government's investment in the education sector by extending loans.

Loans up to Rs. 7.5 lakh were to be provided to 25,000 students each year with a guarantee from a government-promoted fund. Additionally, loans up to Rs.10 lakh were to be available for higher education in domestic institutes, issued as an e-voucher to 1 lakh students, with an annual interest subvention of 3%. In extending the aim, developments in the field are noted, as the Cabinet clears the PM-Vidyalaxmi scheme which provides for collateral-free loans to students.

The scheme provides students who get admitted to Quality Higher Education Institutions (QHEIs), collateral-free and guarantor-free education loans. The government calls it a significant step towards empowering the "Yuva Shakti" and building a brighter future for the nation.

The list of Quality Higher Education Institutions (QHEIs) will be determined by the NIRF rankings. The scheme is said to take under its purview both government as well as private institutions, including the top 100 overall, and in other domain-specific rankings, state government institutions ranked 101 to 200, and all Centre-run institutions. This list will be updated based on NIRF ranking each year. Students from all courses, not just technical or professional ones, will be eligible under the scheme.

An outlay of Rs. 3,600 crores has been made for the scheme for the 2024-25 to 2030-31 period, wherein students will be provided a 75% credit guarantee by the Central Government for loans up to Rs 7.5 lakh. Students, whose family income is above Rs 8 lakh per annum and who are ineligible for benefits under any other government scholarship or interest subvention schemes, are to be provided 3% interest subvention for a loan amount of Rs. 10 lakhs during the moratorium period. It is estimated that around 7 lakh students are to benefit from the interest subvention offered under the scheme.

Further interest subvention support will be given to 1 lakh students every year. The government intimated that preference will be given to students who are enrolled in government institutions and have opted for professional and technical courses. This is in addition to an existing central government scheme known as the Central Sector Interest Subsidy (CSIS) scheme which provides full interest subvention on loans up to Rs. 10 lakh to students with an annual family income of up to Rs 4.5 lakh, pursuing professional and technical courses. Students can avail benefits under the PM-Vidyalaxmi scheme for loan and interest subvention on the "PM-Vidyalaxmi" portal.

With such benefits to offer, the government remains steadfast in its aim of empowering Indian youth through its diverse skill development programs, strategically subsidized education, and robust support in helping students finance their educational journey.

The PM-Vidyalaxmi scheme emerges as a game-changing initiative in India's education landscape, making higher education dreams more attainable for countless students. By eliminating the need for collateral and guarantors while offering substantial financial support through government guarantee on loans, the scheme removes significant barriers to educational financing. The scheme's inclusive approach, covering all courses across approved institutions, coupled with its user-friendly online portal, marks a significant step toward democratizing access to quality education. This progressive initiative not only eases the financial burden on students and their families but also reinforces the government's commitment to nurturing India's youth and building a more educated, empowered future generation.

Haryana's new bill for contractual employees

- by Shruti Sriram

In August, 2024, the Haryana cabinet approved The Haryana Contractual Employees (Security of Service) Ordinance, 2024 which laid the groundwork for improved conditions for contractual workers. Pursuant to the approval of the Ordinance The Haryana Assembly had taken steps to enact The Haryana Contractual Employees (Security of Service) Bill, 2024. This bill was passed in November 2024. The bill ensures job security for contractual employees till the age of superannuation. However, it is restricted to employees hired by the Haryana Government organisations.

One of the major issues faced by contractual employees is lack of job security. They are hired for a fixed period of time and as soon as the objective for which the contract was initiated is fulfilled, their employment ends. There is also income uncertainty as their share of payment may be delayed due to unforeseen circumstances. Little to no social security benefits such as health insurance, maternity benefits, paid leave, and retirement plans are received. The career prospects are also limited. Some of these issues faced by the contractual employees are sought to be addressed by the enactment of the bill.

Some of the key provisions of the Bill as mentioned in the First Schedule are:

- Consolidated Monthly Remuneration as well as Additional remuneration on the basis of the years of service rendered in the Government Organization,
- Healthcare benefits notified under the Pradhan Mantri-Jan Arogya Yojana (PM-JAY) CHIRAYU Extension Scheme (This health scheme provides coverage for families of contractual employees. It aims to improve health security and access to medical services for low-income households) or as revised by the government,
- Death-cum-retirement Gratuity at equivalent rates specified in the Code on Social Security, 2020,
- Maternity Benefit as per provisions of the Code on Social Security, 2020,
- Benefit of ex-gratia compassionate financial assistance or compassionate appointment in Haryana Kaushal Rojgar Nigam (This scheme focuses on skill development and employment for youth in Haryana. It plays an important role in enhancing job opportunities for contractual workers)

The Act will be applicable on those contractual employees

1. Who are engaged on contract by a Government Organisation on the appointed date and are receiving remuneration upto Rs. 50,000/- per month or deployed by the Haryana Kaushal Rojgar Nigam(HKRN);
2. Who have completed at least five years of service in a Government Organisation on a full time basis as on appointed date.

However, the act will not be applicable to contractual employees who

1. have been engaged on honorarium basis or,
2. have been engaged under centrally sponsored scheme or,
3. have attained the age of fifty-eight years as on the date of appointment.

While many employment schemes have been started in the country, this scheme takes a distinct step toward ensuring job security until the age of superannuation. In comparison, even the notable MGNREGA scheme guarantees only a fixed number of days of employment. One of the significant features of the bill is that it also extends to Guest Teachers in Haryana Government Schools and Universities. This inclusion is reassuring , as only a few years ago, Delhi University's Ad-hoc professors were concerned about the status of their jobs and remuneration as they did not have job security.

Although the motive with which the Bill was enacted is appreciated, the Opposition on the other hand, has expressed concerns regarding the effectiveness of this scheme. One such concern is with respect to higher-income workers . This concern is highlighted considering the fact that the act will be applicable only to contractual workers who earn less than Rs. 50,000/-.The State Government in its reply stated that a separate legislation will be formulated for higher-income workers . Another concern is the lack of reservations in the process of recruitment of contractual employees provided under the bill. This clearly violates Article 14 of the Constitution. Further, since the Bill heavily relies on the Haryana Kaushal Rojgar Nigam(HKRN) for contractual appointments, the Opposition parties allege that this reliance may promote favoritism and arbitrariness in the selection process, potentially leading to biases and political influence in recruitments. The Opposition suggests that a Selection Committee be formed to scrutinize the bill and suggest changes for its effective implementation.

The bill comes as a ray of hope to the contractual employees hired in the public sector in the state of Haryana. However, the ever persistent problem of violation of labour laws by the private sector seems unresolved by passing of the bill. While the Haryana Government has taken a step in the right direction, a large number of problems still persist even with the enactment of the bill. Nevertheless, the bill can hopefully serve as a guiding light for the enactment of a central scheme to protect the contractual employees working in the private and the public sector.

National Mission for Natural Farming

- by Adrija Dey

The Central Government launched the National Mission for Natural Farming (NMNF) on 25th November 2024. This initiative was undertaken to promote natural farming practices.

NMNF is the upgraded version of the Bharatiya Prakritik Krishi Paddhati (BPKP), which aimed at promoting indigenous and on-farm inputs to be utilized for farming, and preventing farmers from depending upon chemical farm inputs. The total budget outlay for this project is approximately Rs. 2481 crore, involving 1 crore farmers and 7.5 lakh hectares of land. The scheme aims to reach out to 15,000 Gram Panchayat clusters by setting up 10,000 Bio-input Resource Centres (BRCs), to provide easy access to the necessary inputs for practicing natural farming.

NMNF will educate and encourage farmers to undertake steps to enhance biodiversity in their farms and build crop resilience through various cropping patterns. These arrangements are synonymous with the ancient practices adopted for natural farming in India, such as crop-rotation, multi-cropping, agroforestry, etc. which had been fading away due to a rise in popularity of chemical farming inputs.

Thus, the NMNF, inspired by ancient Indian farming knowledge, will help revive the practice of natural farming in India, without using chemical fertilizers and other pesticides. In terms of inputs, the project's main focus will be on utilizing on-farm by-products such as biomass and cow dung-urine formulations to maintain the health of the soil.

NMNF will also oversee the setting up of around 2000 Modern Demonstration Farms all over India to provide assistance to farmers regarding the practices they must adopt to fully switch to natural farming. Additionally, under the scheme, local and indigenous farming knowledge and practices will be placed on an equal footing with modern scientific techniques, as the former will be better suited to local geographical conditions. Natural farming is considered to have countless benefits.

For instance, it enhances soil quality over a period of time, thereby increasing the chances of high-quality yield. This yield, in return, can prove to be a healthy alternative for consumers over inorganically grown crops. In other words, natural farming benefits the producers as well as the consumers.

The aim of NMNF is to promote natural farming practices. However, one of the most prominent challenges to natural farming is that it requires much more effort to organically grow crops, since there is no use of chemical pesticides and fertilizers to ease the whole process. As a result, it leads to low yields during the initial years, and fails to meet the bulk quantity benchmark which is usually sold by farmers in the market to earn profits. This is the reason why farmers started utilizing modern chemical equipment in the first place.

Therefore, formulating a solution to address this difference in the quantity of produce is necessary, particularly for low-income farmers. The assistance provided by the NMNF to switch to natural farming may be easily implemented in small and medium-sized farms where making changes in inputs and cropping patterns is more convenient. However, making similar changes in large-scale and commercial farms, where the farming practices are more commercial and profit-driven, could prove to be a mammoth task.

Moreover, farming practices involving chemical inputs have been deeply entrenched in the Indian agricultural industry, particularly since the Green Revolution. This has also given rise to the agrochemical industry, which manufactures such chemical inputs.

Haryana, for instance, is the fifth largest user of pesticides in India, where it is estimated that chemical fertilizers are sprayed on farms once every week. Many other Indian states are grappling with the same challenges created by the thriving agrochemical manufacturers. Thus, promoting the revival of natural farming will require challenging these agrochemical industries, who in turn might use their power and influence to resist such changes. In order to prevent such a scenario from arising, it must be ensured through the NMNF that a balanced approach is adopted to undergo a smooth transition into natural farming, free of any roadblocks.

The NMNF provides a wholesome approach that benefits both farmers and consumers through healthier produce and improved farming practices. The scheme contains ambitious targets, which, if met, will provide a much-needed boost to natural farming in India. Nevertheless, there are quite a few hurdles along the way of such a transition, including the initial low yield, the challenge of transition in large-scale farms, and the influence of the agrochemical industries.

To ensure the success of NMNF,, it will be essential for the government to provide continuous support to farmers, especially small and medium-scale producers to ensure a hassle-free and sustainable transition. Additionally, fostering a synergy between local knowledge and modern agricultural science will be key in making natural farming a viable and scalable option across India. With careful planning and a phase-based implementation, the NMNF has the potential to transform India's agricultural landscape, creating a more resilient, environmentally-friendly, and economically viable future for farmers and consumers alike.

Redefining minority educational institutions: The AMU judgement

- by Ashwasti Shravani

Introduction

On November 8, 2024, a seven-judge Constitutional bench overruled the five-judge bench judgement of *Azeez Basha v. Union of India* (***Azeez Basha***) with a 4:3 majority, holding that the decision in Azeez Basha was incorrect in stating that an "institution" cannot claim minority status, if it is created by statute. Having laid down the broad principles to be followed to determine whether the Aligarh Muslim University ("AMU") qualifies as a minority institution within the meaning of Article 30 of the Constitution, the bench left it for the regular bench to determine such status in light of the parameters laid down.

Historical Background

In 1875, the AMU was initially founded as the Mohammedan Anglo-Oriental College ("MAO College") by Sir Syed Ahmad Khan. Thereafter, the MAO College was transformed into AMU by the Aligarh Muslim University Act, 1920 ("Act"), passed by the Central Legislature of British India. The Act regulated the University's governance, defining its bodies and their functions. The amendments made in 1951 and 1965 defined AMU's administration, leading to constitutional disputes.

Legal Precedents and Legislative Intervention

AMU's minority status was first brought into question in the landmark case of *Azeez Basha v. Union of India* (1967) ("*Azeez Basha*"). A five-judge constitution bench of the Supreme Court declared that AMU did not qualify as a minority institution under Article 30(1) of the Constitution of India. It held that AMU was established by an Act of Parliament in 1920 and not by the Muslim Community, despite their efforts leading to its creation.It was observed that the institution must be both "established" and "administered" by the minority community to claim protection under Article 30(1) of Constitution.

In 1981, a two-judge bench in *Anjuman-e-Rahmaniya v. District Inspector of Schools* questioned the correctness of *Azeez Basha* and referred the matter to a larger, seven-judge Bench. In the same year, the AMU Amendment Act redefined the term "University" and omitted the words “establish and” from its Act. This Act declared AMU as an institution established by Indian Muslims with an aim to promote their educational and cultural advancement.

However, this legislative intervention faced a challenge in Dr. Naresh Agarwal v. Union of India (2005) when the university decided to implement a 50% medical seat reservation policy for Muslim students. The Court declared the reservation policy unconstitutional and directed the cancellation of admissions made under this policy. In 2019, a three-judge bench presided over by Chief Justice Ranjan Gogoi noticed that the correctness of the question arising from the decision in *Azeez Basha* was unanswered and referred the matter to a seven-judge bench.

Key Issue

Whether AMU satisfies the test of ‘establish’ and ‘administer’ and is thus entitled to the protection under Article 30?

The Court’s Decision

Justice D.Y. Chandrachud, delivering the majority judgement, elaborated on the scope of Article 30 of the Constitution, which guarantees the right of minorities to establish and administer educational institutions. Article 30 protects the cultural, linguistic, and religious identity of minorities, enabling them to establish institutions that reflect their values and traditions without excessive state interference. This right extends to both religious and secular education, allowing minorities to teach in a way that aligns with their beliefs and traditions, even if religious instruction is not included in the curriculum. Further, Article 30(1) ensures equality for minorities and upholds their autonomy in educational matters. The Court highlighted that the protections under Article 30 are not absolute and subject to reasonable state regulation in areas related to public interest, national security, and morality. However, such regulation must not compromise the minority character of the institution. For instance, while the state can set standards for education, it cannot interfere with the internal governance of a minority institution. The right of minorities to choose their governing body, appoint staff, and admit students from their community are key elements of the autonomy guaranteed by Article 30.

The Court rejected the idea that incorporating an educational institution into the legal framework or granting state recognition would lead to the loss of its minority status. The founding community's intention in establishing the institution is the defining factor, not the legal formalities of incorporation. The protection of these institutions under Article 30 ensures that the institution's purpose, character, and identity as a minority establishment are preserved, even when it becomes legally recognized by the state.

The Court makes a distinction between 'incorporation' and 'establishment' and they cannot be used interchangeably. 'Incorporation' signifies the legal existence of the institution. In contrast, 'establishment' signifies the founding or bringing into existence of the institution. The word 'establish' as used in Article 30(1) cannot and should not be understood in a narrow and legalistic sense. The words used in clause (1) of Article 30 have to be interpreted in view of the object and purpose of the article, and the guarantee and protection it confers. The guarantee and protection are not dependent on the basis or the manner in which the legal requirements were/are complied with, rather it concerns the persons who have founded and created the establishment. The minority character of the institution is not ipso facto surrendered upon the incorporation of the University.

The test of administration for determining a minority institution should be assessed as of the commencement of the Constitution. To qualify, an institution must demonstrate minority administration at that time and minority status at its formation. Even if initially established for the minority community, subsequent events altering its character before the Constitution's commencement must be considered.

While statutory incorporation does not automatically negate an institution's minority character, the Court must examine whether the institution was genuinely established by a minority for the community's benefit. A holistic interpretation of statutory provisions governing its administration can reveal if its minority character or purpose was relinquished upon incorporation. The key question then, is whether regulatory measures have deprived the founders of administrative control.

EDITORS

Abhishek Rath (Editor-in-Chief)
Mandar Prakhar
Siddharth Melepurath
Shruti Sriram
Tinashree J.

DESIGN

Vibha Vaikuntanath

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