CAN's vedanam

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ADHIGAM NEWSLETTER

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ABOUT VEDANAM

CAN's Vedanam is an academic wing of the Confederation of Alumni for National Law Universities (CAN Foundation), aiming to provide a platform to increase research-oriented academic writing, for law students and professionals across the nation. We believe that academic and legal discourse on contemporarily relevant topics is an essential aspect of learning, to attain proficiency in any field. The exposure provides individuals with an opportunity to develop critical thought and an analytical outlook towards contemporary legal discourse. One of the dear ideals of the CAN Foundation remains legal literacy and increasing access to the same and it has been working diligently towards realizing the same, since its inception. CAN's Vedanam, thus, not only supplements the legal literature on a range of contemporary issues and fields of Law but also promotes the Object and Vision of the Foundation. CAN's Vedanam is an inclusive space. We welcome submissions from not just Law Students and Legal Professionals, but also from people not directly affiliated with law but who seek to contribute to legal discourse.

Through this newsletter, Vedanam hopes to cover interesting legal updates and also touch upon publications on our website this month. We hope you enjoy reading this edition!

PUBLICATIONS AT A GLANCE

During this month, we, on our website, exclusively featured transcripts of addresses delivered by various invited legal luminaries, as a part of the 1st Justice HR Khanna Memorial National Symposium, which was organized by CAN Foundation in collaboration with National Law University, Jodhpur & Gujarat National Law University, Gandhinagar on 14th August, 2021. Brief snippets of their addresses are as follows:

KEYNOTE ADDRESS BY CHIEF GUEST, HMJ UU LALIT

(JUDGE, SUPREME COURT OF INDIA)

"Today technology has enabled courts and litigants to remain wherever they are and without any physical movement of any stakeholders, it is possible to administer justice."

Justice Lalit stated that Justice HR Khanna in his article had beautifully encapsulated the feelings of a judge while authoring a judgment wherein he said that a judge is often troubled with a lot of uncertainty till he finally pens down his thoughts. Justice Lalit called Justice HR Khanna a "clarion voice in the ingenuity, independence, and impartiality of the judiciary", as evidenced by his majority judgment in **Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 and his dissenting judgment in the ADM Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207.**

Justice Lalit noted that Justice HR Khanna's view in **Ahmedabad Saint Xavier's College v. State of Gujarat & Others, AIR 1974 SC 1389**, has become the leading light for existing and forthcoming judgments on rights of minority educational institutions. He was of the opinion that educational institutions must act as repositories of the nation's ideals and sanctuaries of a country's rich heritage. In light of the same, he had remarked, *"The duty is upon the teachers to keep the torch which the genius of the nation lit up. It is for them to pass on the torch and the banner to the future generations through the students whom they teach."*

The full transcript of Justice Lalit's address can be accessed (here).

KEYNOTE ADDRESS BY CHIEF GUEST, HMJ V RAMASUBRAMANIAN (JUDGE, SUPREME COURT OF INDIA)

"Any discussion on Constitutional law would be incomplete without focusing on Justice HR Khanna's judgement in the Kesavananda Bharati case."

Justice Ramasubramanian elaborated that since the COVID-19 pandemic, legal sanctity was given to virtual courts by a Supreme Court order, **"In Re: Guidelines for Court functioning through**

Video Conferencing during COVID-19 Pandemic", SUO MOTU WRIT (CIVIL) NO. 5/2020 of April 6, 2020. High Courts were granted discretion, Model rules were circulated and District courts had to adhere to the rules formulated by their respective High Courts. The interim report of the Parliamentary Standing Committee, as per Justice Ramasubramanian identified three types of digital divide in our country, namely **(i) access divide which related to equipment and infrastructure; (ii) connectivity divide which related to the internet connectivity; and (iii) skills divide which related to the skills required to participate.** The Report also recommended some types of cases that could be permanently redressed by virtual courts which included cases under the Motor Vehicles Act, traffic challan cases, petty offences under Section 206 of the Indian Penal Code, etc.

Justice Ramasubramanian then drew upon examples of different countries that have recognised the need to move towards virtual courts. He began by relying on the UNHRC 44/9 Resolution, which laid emphasis on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. This Resolution also recognised the need for judiciaries to have sufficient resources for accountability, due process and transparency.

He further discussed the position of developed countries in this regard, placing reliance on The United Kingdom Parliament's passage of a law called Coronavirus Act, 2020, which received royal assent on March 25, 2020. This act had introduced amendments on the use and availability of live links, civil and criminal laws and power on regulating virtual court hearings.

The full transcript of Justice Ramasubramanian's address can be accessed (here).

KEYNOTE ADDRESS BY CHIEF GUEST, HDJ S. MURALIDHAR (CHIEF JUSTICE, ORISSA HIGH COURT)

"We should use technology in the best possible manner, but we can't replace what we do physically with what we do digitally."

According to Justice Muralidhar, there were several challenges that virtual courts faced in justice delivery. These were:

i. **lack of privileged communication when the client was lodged in jail and he/she has to communicate with the lawyer;**

ii. **video remands which allowed prisoners to appear from jail without being brought to court had removed the possibility of court lockups, where prisoners could receive family members; and**

iii. **confidentiality aspect that came with serving notice physically which was not possible digitally.**

Justice Muralidhar further highlighted the differing comfort levels of lawyers arguing physically while referring to the paper as opposed to looking at a screen and arguing. Thereafter, he listed several initiatives he had introduced in the Orissa High Court while trying to promote paperless courts, e-filings, etc. His Lordship observed, "We can't replicate every step of the process. Perhaps, we shouldn't. We should use technology in the best possible manner, but we can't replace what we do physically with what we do digitally."

He concluded his address by asserting that a balance must be struck between physical and virtual proceedings - while some aspects should remain physical, some should go digital. He expressed his gratitude towards the CAN Foundation for inviting him to speak on such a pertinent topic at such turbulent times.

The full transcript of Justice Muralidhar's address can be found (here).

KEYNOTE ADDRESS BY MR. P.S. NARASIMHA

(SENIOR ADVOCATE, SUPREME COURT OF INDIA)

"Justice Khanna stated that equality would be achieved by following the divine trinity of equality, liberty, and fraternity, later adopted and applied by the Hon'ble Supreme Court in numerous judgements."

Mr. P.S. Narasimha stated that there was a lack of substantial and fundamental research in law and legal philosophy in India but that was changing. He acknowledged that the establishment of National Law Universities was creating a sharp difference, and the time had come for law students to pursue post-graduation from Indian universities rather than going abroad.

Mr. P.S. Narasimha substantiated his comment on India growing as an avenue for legal education by expressing his admiration towards the work undertaken by CAN Foundation, especially with respect to providing financial assistance to students achieving 'Excellence Despite Hardships'.

Thereafter, Mr. P.S. Narasimha expressed his appreciation and admiration for the work of Justice H.R. Khanna, highlighting the interpretative choices adopted by the Justice and how such choices by virtue of his courage, conviction, and confidence have led to finding the greatest values, which were followed in future judgments. This interpretative choice was visibly adopted by Justice Khanna in his judgment of **Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225**, wherein he was faced with many compelling arguments advanced by the learned advocates. However, he chose the argument devoid of 'fear'. Justice Khanna's interpretation relied on a question that he posed to himself, *"Is the Constitution a flexible document which permits the parliament to make and modify the changes, when the times come and when there is need to do so?"*

Mr. P.S. Narasimha thereafter proceeded to comment that following Justice Khanna's idea surrounding the interpretation of the Constitution, i.e., the Constitution should provide ample provision to incorporate the ideas of future generations, Justice Venkatachalliah had subsequently laid down in the *Kihoto Hollohan v. Zachillhu, 1992 SCR (1) 686* that the parliament has the power to experiment with the values of the Constitution. The question of what should be done in order to protect individual fundamental rights had led to the evolution of the test of *"But far and no further,"* as had been laid down by Justice Khanna in the aforementioned judgement, thereby providing that one cannot amend the fundamental rights laid down in Part III of the Constitution to the extent of efficacy of taking away or breaching the basic structure of the Constitution and this principle applied to all provisions of the Constitution.

The full transcript of Mr. Narasimha's address can be found (here).

ADDRESS BY MR. NEERAJ KISHAN KAUL

(SENIOR ADVOCATE, SUPREME COURT OF INDIA)

"The Indian judiciary, both in its physical and virtual forms, is looking forward to a future rich in innovation and the resolution of some of its long-standing difficulties."

Mr. Kaul opined that lockdown induced by COVID-19 had given courts a flavour of potential that technology holds in addressing key concerns, access to the judicial system and thereby justice. While commending the adoption of technology, he remarked that unlike a few months ago, the thought of virtual courts in India dispensing justice and aiding dispensation of justice no longer seems far-fetched.

He stated that virtual courts were not a new concept in the Indian judiciary. The E-courts project which was conceptualised as early as 2005, on the basis of the **National Policy and Action**

Plan for Implementation of Information and Communications Technology (hereinafter ICT) in the judiciary, had been submitted by the E-committee of the Supreme Court of India with a vision to transform the Indian judiciary by ICT-enabled courts, according to Mr. Kaul. He further elaborated that, on 7th August 2013, then Chief Justice of India, Justice P. Sathasivam had launched the E-courts National Portal "ecourts.gov.in" of the E-courts projects, by means of which more than 2,852 district and taluka courts' complexes had secured their presence on the National Judicial Database Portal and continue to provide case statuses, cause-lists and orders and judgements online.

Referring to the dissenting opinion of Justice DY Chandrachud in *Santhini vs. Vijai Venkatesh, (2018) 1 SCC 1*, Mr. Kaul recounted how, even in the pre-pandemic era, Justice Chandrachud had favoured the use of technology and video-conferencing and had highlighted the pros of video-conferencing (hence VC). Mr. Kaul also referred to *Swapnil Tripathi vs. Supreme Court of India (2018) 10 SCC 628 (hereinafter "Swapnil Tripathi case")* to highlight the benefits of adopting technology in the judicial system particularly live-streaming of courts proceedings. He noted that the Court in the Swapnil Tripathi case had highlighted the potential tangible and intangible benefits to stakeholders, especially litigants, and the Court observed that *"technology could epitomize transparency, good governance and accountability and more importantly open the vista of courts transcending the four walls of the room to accommodate a large number of viewers to witness the live courts proceedings"*. He remarked that this observation of the Court threw light on another aspect of virtual court, viz. an open court justice delivery system.

The full transcript of Mr. Kaul's address can be found (here).

ADDRESS BY MR. SHYAM DIVAN

(SENIOR ADVOCATE, SUPREME COURT OF INDIA)

"While it is important to intake and move forward with technology, it is also pertinent to note our core values of the justice systems."

Mr. Shyam Divan (hence Mr. Divan) began his address on "Strengthening Doorstep Justice-Augmenting Access to Virtual Courts" by offering a note of thanks to the panellists, guests and participants and expressed gratitude for being granted the opportunity to be a part of this symposium.

Mr. Divan commended the CAN Foundation, Gujarat National Law University and National Law University, Jodhpur for organizing and dedicating the symposium in honour of "one of the finest judges" Justice HR Khanna. He noted that organizing this symposium was a projection of an extremely important value system, that of 'constitutional courage', for which Justice HR Khanna always stood for.

Relying on Mr. Anil Divan's **"On the Front Foot",** a chapter dedicated to Justice HR Khanna, Mr. Shyam Divan highlighted the contribution of Justice HR Khanna in ADM Jabalpur v. Shivkant Shukla, 1976 AIR 1207 (hereinafter "Habeas Corpus case"). He quoted:

"A bench of five judges of the Supreme Court, Chief Justice Ray, Khanna, Beg, YV Chandrachud, DN Bhagwati, heard what was known to be the Habeas Corpus case. The only question before the Court was whether the petition for habeas corpus and other similar petitions under article 226 were maintainable notwithstanding the suspension of fundamental rights on the ground that the orders were beyond the statute or were issued mala fide and were not in accordance with the law.

Shanti Bhushan led the argument. Ram Jethmalani, Soli Sorabjee and I came from Bombay to argue various detenues. NM Ghatate was actively in the fray. We thought our case unanswerable with nine high courts in our favour. We were grievously wrong. On April 28th 1976, four judges decided in the favour of the government, holding that the petitions were not maintainable. Justice Khanna was the lone

dissenter. The argument which was accepted by the majority was that even if a person is tortured or is deprived of his property, his wife is spirited away or members of his family are detained and harassed without legal authority or mala fide, there was no remedy and the courts' doors were closed. This was a complete negation of rule of law which means that no government officer can act against the citizen and his property, unless authorized by some law or rule."

Mr. Divan, remarked that the Bar was an excellent judge of Justices of the Supreme Court. Terming the portrait of Justice Khanna, which adorns Courtroom No. 2 of the Supreme Court, as a 'living monument', Mr. Divan noted that Justice Khanna's encouraging gaze provided an extraordinary reassurance to the arguing counsel. He remarked that the portrait reminds one of the capabilities of the Supreme Court, which had been adorned by great judges from all over the country. He further opined that the Supreme Court was an institution worth preserving and fighting for.

The full transcript of Mr. Diwan's address can be found (here).

Legal Wrap up - February 2022

GENERAL UPDATES

1. **Legislature Cannot Protect Actions Taken Under an Unconstitutional Law by Enacting a Saving Clause: Supreme Court**

The Supreme Court ruled that enacting a saving provision cannot give life to legislation that the legislature has already declared invalid.

The Manipur High Court's order striking down the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 ("Act, 2012") and the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Repealing Act, 2018 ("Repealing Act, 2018") as unconstitutional was being considered by the bench.

The Manipur assembly approved the Repeal Act after a similar law passed by Assam was found unconstitutional, according to the Court. As a result, the legislature acknowledged the 2012 Act's unconstitutionality. In light of this, the legislature could not have passed a saving clause to protect actions taken under the 2012 Act, which it had already declared unconstitutional.

More information about this can be found (here).

2. **Trial Court is bound to enforce the spirit of Section 304 of CrPC and is dutybound to appoint a Legal Aid Advocate for the Accuse.**

In the recent turns of the events, the Karnataka High Court, in the case of Somashekara v. the State of Karnataka, set aside the conviction of the accused by the subordinate court under the provisions of the Protection of Children from Sexual Offences Act ("POCSO") as the counsel for the accused failed to appear during the trial.

The court further held that where the accused's advocate abandons the proceedings, the trial court must refer the matter to the District Legal Services Authority for providing free legal aid to the accused and appointing an advocate. In the words of the court:

"In view of Section 304, CrPC, and aforesaid other provisions, it was mandatory for the Trial Court to refer the matter to the District Legal Services Authority for providing free legal aid to

the appellant. That is evident from Section 304, CrPC as the word 'shall' is used in the said provision".

In response, the prosecution contended that given Section 33(5) of the POCSO Act and the Act's objective, the trial court had no option but to proceed with the matter.

The High Court noted that Article 21 of the Constitution clarifies that the life and personal liberty of a person can be deprived only per a procedure established by law.

Procedural law concerning trials as enumerated in Sections 303 (right of the person against whom proceedings are instituted to be defended) and 304 of the CrPC show that an accused has a right to be defended by a pleader of his choice.

Referring to Article 39A of the Constitution, the Court noted that the Legal Services Authority Act had been enacted to achieve the said objective.

The court did not accept the contention that the trial court was mandated to reject the prayer of the accused to grant time for cross-examination due to Section 33(5) of the POCSO Act, observing that such an interpretation is contrary to Article 13(2) (state not to make any law which takes away or abridges rights conferred by the fundamental rights) of the Constitution.

More information about this can be found (here).

3. Calcutta HC Allows The termination of 34-Week-Old Fetus, citing a remote chance of surviving.

On October 12, 2021, the Central government had notified the Medical Termination of Pregnancy (Amendment) Rules, 2021, allowing certain categories of women to terminate their pregnancy even after the existing gestational limit of 20 weeks but not beyond 24 weeks. Interestingly, the High court of Calcutta, in its order, passed in the case of Smt. Nivedita Basu v. The State of West Bengal & Ors., WPA 2513 of 2022, citing the remote chances of survival or being born healthy of the child, allowed termination of 34 weeks and six days old fetus of a woman.

The court noted the medical report which stated that there are risks to the health of both the mother and the child if medical termination of the pregnancy is not permitted. It observed that:

"The medical report is clear and explicit, that there are remote chances of the child being born out of the instant pregnancy surviving or leading

ay normal life. The risks to the mother and the child are also highlighted in no uncertain terms. Considering the entire gamut of facts and circumstances, this Court permits the petitioner to medically terminate her pregnancy at an authorized hospital and/or medical facility."

The High Court relied on the decision of the Supreme Court in Sarmishtha Chakrabortty and another v. Union of India Secretary, (2018) 13 SCC 339 wherein, the Supreme Court allowed termination of a 26-week old foetus observing that the continuation of pregnancy poses risk to the health of the mother and even if the child is born alive, which is a remote possibility, complex corrective surgeries would be required with high mortality and morbidity risk.

Hence, on the facts of the present case, the high court allowed termination of pregnancy and ordered the couple to file an affidavit that they shall not hold any medical practitioner or any of the advocates, including their own, liable for any consequences that may arise out of the procedure of medical termination of pregnancy.

More information about this can be found (here).

4. **Mere misinterpretation of substantive law would not constitute a violation of the fundamental public policy of India: Bombay HC**

The Bombay High Court, in the case of Aircon Beibars FZE v. Heligo Charters Private Limited, 2022 LiveLaw (Bom) 40, while enforcing a foreign arbitral award, has held that violation of a statute would not necessarily violate the fundamental policy of Indian law and the fundamental policy test must be applied according to the circumstances and facts of each case.

The poor reasoning to reject a claim would not attract any public policy ground, unless the most basic notion of justice is offended, J. A.K. Menon held that to lead to a violation of the fundamental public policy of India, a high threshold of 'egregious circumstances' like bribery, corruption or fraud and like circumstances that tamper with the most basic notions of morality and justice would apply.

Referring to the contentions submitted by the parties, the court while clarifying the difference between incorrect invocation of law and inaccurate application of the law, stated that in case a law is invoked correctly but applied erroneously, then it cannot be challenged but if the law is incorrectly invoked while ignoring a binding supreme court precedent, then a challenge would lie, as was asserted in Associate

Builders v. Delhi Development Authority, AIR 2015 SC 620 and Renusagar Power Company Limited v. General Electric, AIR 1994 SC 860.

More information about this can be found (here).

ARBITRATION

1. **Karnataka High Court Constitutes 'Commercial Division' To Entertain Pleas Against International Commercial Arbitral Awards**

The Karnataka High Court has ruled that a challenge to an award in an International Commercial Arbitration can be brought before the High Court of Karnataka under Section 2(e)(ii) of the Arbitration and Conciliation Act. A Commercial Division has been established under Section 4(1) of the Commercial Courts Act, 2015, according to a circular issued by the registrar (Judicial), consisting of a single judge at the Principal Bench in Bengaluru and benches in Dharwad and Kalaburagi.

The circular adds "Proceedings filed under Section 34 of the Arbitration and Conciliation Act, 1996, in relation to a challenge to an International Commercial Arbitral Award before the Commercial Division shall be categorized as COM.S,"

All proceedings filed under Section 34 of the Arbitration and Conciliation Act, 1996 in relation to a challenge to an International Commercial Arbitral Award that is classified as COM.S, all proceedings seeking execution of an International Commercial Arbitral Award that is classified as AP.EFA, and all proceedings seeking Interim Measures in respect of International Commercial Arbitration that is classified as AP.IM shall be posted before the CoA.

More information about this can be found (here).

2. **Court U/s 37 Arbitration Act Has No Jurisdiction to Remand the Matter to Same Arbitrator Unless Consented by Both Parties: Supreme Court**

The Supreme Court stated that under Section 37 of the Arbitration and Conciliation Act, a Court does not have the power to remand a case to the same Arbitrator unless all parties agree.

It was noted that the Court has just two alternatives while evaluating the appeal under Section 37 of the Arbitration Act. The High Court has the option of relegating the parties to a new arbitration or hearing the appeal on the merits based on the evidence on file, within the scope and breadth of its jurisdiction under Section 37 of the Arbitration and Conciliation Act, according to the court.

Kinnari Mullick and Anr. v. Ghanshyam Das Damani (2018) 11 SCC 328 and I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd. (2022) SCC OnLine SC 4 [2022 LiveLaw (SC) 2] were cited by the bench in this regard. In the case of I-Pay Clearing Services Pvt. Ltd., the Karnataka High Court overturned the learned Arbitrator's ruling and returned the case to the Arbitrator for a new decision. This order was challenged in the Apex Court by one of the parties.

The same bench had held in Mutha Construction v. Strategic Brand Solutions (I) Pvt. Ltd. 2022 LiveLaw (SC) 163 that the principle that a court has no jurisdiction to remand a petition under Section 34 of the Arbitration and Conciliation Act to the Arbitrator for a fresh decision applies only when the petition is decided on merits. It was found that this concept is inapplicable when both parties consented to set aside the judgement and remand the case to the Arbitrator for a new reasoned award.

More information about this can be found (here).

3. Delhi High Court Issues Notice on Plea Challenging Provisions of Arbitration Act, Interest Act & 'Interest Barring' Clauses in Govt Contracts

The Delhi High Court issued a notice on a petition challenging the constitutional validity of Section 31(7)(a) of the Arbitration and Conciliation Act, 1996, Section 3 (a)(ii) of the Interest Act, 1978, and 'interest barring' clauses engrafted in contracts by government bodies and public sector undertakings. The Centre and NTPC Limited, an Indian PSU engaged in the business of generating electricity and related operations, were expected to respond by a division bench led by Chief Justice DN Patel and Justice Jyoti Singh.

The petition filed by Patel Engineering Limited claims that government agencies, such as NTPC Limited, are abusing interest barring clauses to avoid paying compensation to contractors for which they are solely accountable. Furthermore, it claims that the challenged sections and clauses infringe on a party's substantive right to an interest award by allowing the parties to

integrate or abolish the award of interest by contract.

More information about this can be found (here).

4. **'Request NCLAT To Decide Appeal Against CCI Order': Supreme Court Tells Amazon, Future; Plea Against HC Stay on Singapore Arbitration Deferred to March**

The Supreme Court postponed Amazon's challenge to the Delhi High Court's stay on the Singapore arbitration proceedings against Future Group until next week, pending the outcome of Amazon's appeal to the National Company Law Tribunal against the Competition Commission of India revoking its sanction for the Future Retail deal. The Court delayed the hearing after learning that the NCLAT will hear the appeal the next day and that the stay order issued by the High Court was based on the CCI's actions.

Amazon had filed a special leave plea against the Delhi High Court's ruling halting further arbitration proceedings before the Singapore Tribunal against Future Group. The bench consisted of CJI NV Ramana, Justice AS Bopanna, and Hima Kohli. Respondents Future Retail Ltd and Future Coupons Private Ltd have already been served with notice by the Bench.

More information about this can be found (here).

COMPETITION LAW

1. **Can the Bar Council of India fall within the definition of 'enterprise' under S. 2(h) of the Competition Act?**

In the case of Thupili Raveendra Babu v. BCI, 2021 SCC OnLine CCI 1, the CCI held deliberated upon as to whether the Bar Council of India ("BCI") is an 'enterprise' as per Section 2(h) of the Competiton Act.

The information has been filed under Section 19(1)(a) of the Competition Act, 2002 ("Act") alleging Abuse of Dominant Position by the BCI, which is a contravention of Section 4 of the Act.

The Informant submitted before the Competiton Commission of India ("CCI/Commission") that BCI enjoys the dominant position in managing and controlling all the affairs regarding legal education and legal practice in India.

The term 'enterprise' has been defined under Section 2(h) of the Act, "enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity…"

The CCI considered the definition of the enterprise by taking into consideration various precedents, wherein the commission broadly interpreted the scope of the term enterprise. In Case No. 39 of 2014, In Re: Dilip Modwil and Insurance Regulatory and Development Authority, Commission observed that any entity could qualify within the definition of the term 'enterprise' if it is engaged in any activity relatable to the economic and commercial activities specified therein. It was further observed that regulatory functions discharged by a body are not per se amenable to the jurisdiction of the Commission.

The CCI, after noting the objective and functions of the BCI, noted that BCI appears to carry out tasks that are regulatory in respect of the legal profession, hence cannot be said to be an 'enterprise' within the meaning of Section 2(h) of the Competition Act, 2002.

Therefore, considering the above discussion, dismissed the complaint under the provisions of Section 26(2) of the Act.

More information about this can be found (here).

2. CCI dismissed the complaint regarding Abuse of Dominance filed under Section 4 against Information Systems Audit and Control Association, Inc.

In the case of In Re: Rajendra Khare v. Information Systems Audit and Control Association, Inc., Case No. 42 of 2021, the Information has been filed under Section 19(1)(a) of the Competition Act, 2002 ("Act") by Rajendra Khare ("Informant") alleging contravention of the provisions of Section 4 of the Act by Information Systems Audit and Control Association, Inc. ("ISACA Inc").

The global community of ISACA ("Information Systems Audit and Control Association") members and certified individuals cover a variety of professional IT-related positions, information systems or IT auditors, internal auditors, governance, security and risk professionals, consultants, educators, and C-suite executives.

The CMMI Maturity Model Certification, despite being owned by ISACA, a private organization, is being used by the Government of India as an eligibility criterion for bid/tender requirements for high-value bids.

The purchase of CMMI by ISACA has allegedly led to a monopoly situation, and ISACA is using this monopolistic position to carry out abuse of dominance.

As per the Informant, ISACA is operating independently of the competitive forces in the relevant market called CMMI Licensing Business because no other organization in the world, except ISACA, owns the CMMI Maturity Model Certification, the CMMI Model Document, and the CMMI Trademark. This enables ISACA to impact the consumer and the Indian market completely in its favor.

The Commission, after noting the facts alleged by the Informant, recorded the following observation, with regards to the operations of ISACA in the relevant market:

- ISACA is involved in economic activities and, thus, it falls within the definition of the term 'enterprise' under Section 2(h) of the Act.
- ISACA, the owner of the CMMI model and having sole control over the imparting of training and certification, appears to be dominant in the 'market for providing solutions for process improvement and certification for benchmarking performance in India,' devised by the Commission as the relevant market.

However, the Commission, in the end, notes the Informant has not established how the ISACA's

functioning and CMMI maturity model certification is leading to any anti-competitive outcome.

The informant could not sufficiently prove the initial burden of proof of making out a case. Given the preceding, the Commission believes that there exists no prima facie case, and the information filed is directed to be closed immediately against ISACA under the provisions of Section 26(2) of the Act.

More information about this can be found (here).

ENVIRONMENTAL LAW

1. **Will there be a chance for India Environment Service - IES in parallel to IAS/IFS?**

The Supreme Court of India, in the case of Samar Vijay Singh v. Union of India & Ors., Writ Petition(s)(Civil) No.1137/2021, *prima facie* observed that it is doubtful whether any mandamus can be issued for the creation of an independent 'Indian Environment Service' as an all-India Service, as recommended by the T. S. R. Subramanian Committee. Though, it was suggested that an inquiry may be made as to whether the Government proposes to act in pursuance of the recommendation of the said committee or not. The T. S. R. Subramanian committee was set up in 2014 to review the country's green laws and the procedures followed by the Ministry of Environment, Forest and Climate Change. Apart from the one mentioned, the committee had also made recommendations such as establishing Environment Management Authorities at both National and State levels; expanding Environment Protection Act; and evaluating Environmental Reconstruction Cost.

More information about this can be found (here).

2. **Water and Air Pollution: The Appellate Authorities to be manned by former High Court Judges**

The principal bench of the National Green Tribunal (NGT), in the case of Shamsher Singh Vs State of Haryana has directed the State of Haryana that the Appellate Authorities under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 have to be manned by former High Court Judges. This direction was following the enforcement of an order of the Supreme Court in the case of APPCB v. Prof. M.V. Nayudu (Retd.) & Ors., AIR 1999 SC 812 and NGT's order O.A. No. 868/2019, dated 06.04.2021. NGT has also directed Central Pollution Control Board to ascertain compliance status on the subject from all States/UTs and place the same on record by e-mail to be filed with the Registrar General of the Tribunal, within three months. In case found necessary, the same can be placed before the Bench for further directions.

More information about this can be found (here).

3. **Joint monitoring committee to verify the greenery and the survival of the transplanted trees in the commercial complex project of Delhi Metro Rail Corporation**

The principal bench of the National Green Tribunal (NGT), in the case of Shobha Agarwal v. Delhi Metro Rail Corporation & Ors., has directed that there is a need for maintaining adequate greenery and mitigating the adverse impacts of the commercial complex project of Delhi Metro Rail Corporation. The same has to be monitored by a joint Committee of Central Pollution Control Board (CPCB), Delhi Pollution Control Committee (DPCC), Delhi Development Authority (DDA), and the Principal Chief Conservator of Forests (PCCF), Delhi. DDA has to be the nodal agency for coordination and compliance. The Committee has to also evolve a plan for mitigation measures against air pollution on account of traffic and traffic congestion based on authentic and realistic data.

More information about this can be found (here).

4. **States to set up Treatment, Storage, and Disposal Facilities for hazardous waste**

The principal bench of the National Green Tribunal (NGT), in the case of Rajiv Narayan & Anr. v. Union of India & Ors., M.A. No. 12/2022 In Original Application No. 804/2017, noted that TSDF (Treatment, Storage, and Disposal Facilities) with adequate capacity has to be set up by the States and to enforce the direction, the Tribunal required recovery of compensation for failure to comply with the Rules, which results in damage to the environment. The mentioned application had sought the waiver of the requirement to pay environmental compensation for failure to set up requisite TSDF in Goa which has been disposed of. The Tribunal has also dealt with the issue of non-compliance of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Earlier order in this regard had asked the States to set up TSDF before 31.03.2020, which is necessary for the interest of the environment and public health, otherwise to pay environmental compensation of Rs. 10 lakh per month.

More information about this can be found (here).

CALL FOR BLOGS

SUBMISSION GUIDELINES

- We prefer an article that is between 1200-2000 words. However, flexibility is allowed if the content so requires, and the quality is ensured. Co-authorship of up to two authors is allowed.
- Author(s) must write a small (50-75 words) brief of the article at the beginning of the manuscript. Authors may also mention 3-5 keywords at the end of such a brief.
- Vedanam welcomes articles which fall within the vast universe of Law and Interdisciplinary research is highly encouraged. Entries which present creative and enriching perspective on contemporary legal issues will be much appreciated.
- All the relevant sources must be duly acknowledged and hyperlinked in the text of the manuscript itself. Endnotes will be accepted if the said reference cannot be accommodated through hyperlinks, and must be formatted in accordance with OSCOLA (Latest Edition).
- All works submitted must be original and unpublished. Any form of plagiarism will lead to disqualification from publication on the Blog (Vedanam).
- We request the author(s) to kindly refrain from mentioning the name, institutional affiliation or any other detail of the author(s) in the document and the title of the document to facilitate the double-blind review process.
- The author(s) is also required to attach a suitable image to accompany the blog in a separate document. Please mention the source of the image in the email. It should be of high quality with a width of 1080 pixels and a height of 540 pixels.

FORMATTING GUIDELINES

- The content (including endnotes, if any) should be written in Garamond font with a size of 13. The font size of the Heading and any sub-headings should be 14. Line Spacing is to be maintained at 1.5.
- The content of the writing should be Justified. Use Centre Alignment for the main heading as well as for sub-headings.

- The author(s) is recommended to use Headings and Sub-headings in order to allow readers to navigate the article with ease.

HOW TO CONTRIBUTE

- All manuscript shall be sent to vedanam@canfoundation.in with the subject 'Submission of manuscript for Vedanam'.
- Articles should be submitted in Microsoft Word format (.docx) only.
- Details of the author(s) should not be mentioned in the file containing the article.
- Author(s) must include their full name, institution/organisation, email address, photograph and a bio not exceeding 100 words in a separate cover letter.
- Authors are also required to submit a declaration of originality.

NOTE

- Any queries regarding the submission or review process may be addressed to the Editorial Board at vedanam@canfoundation.in.

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