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Finding Truth: Rendering Justice – A Myth or Reality

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Abstract: *The present family of Advocate's profession is failing in its duty to understand the actual dispute involved in the case handled by them on the guise of defending their clients and the advocate's are totally forgetting the main principles to be followed by an advocate. Similarly, the judicial officers are hearing what the advocates and consider the judgments submitted by them and deciding the cases, but when the respective advocates wantonly suppressing the case law which is against them, the judges who are in the high pedestal are also not referring those judgments which are crucial to decide the subject matters. Had the Judges refer this three judge bench decision at the appropriate time, this situation could have been avoided. That is the reason why, the research scholar is of the view that the advocates are failing in their duty to bring it to the notice of the Court both for and against the case, and ignoring the Supreme Court decision, [the Supreme Court has even gone to the extent of saying that the Advocate is duty bound to state the correct position of law, when it is undisputed, even if it does not favour his client.*

Key words: *Finding Truth, Rendering Justice, Myth, Reality, Professional integrity*

I. Introduction

1.1 Indian High Courts Act, 1861 (commonly known as the Charter Act) passed by the British Parliament enabled the Crown to establish High Courts in India by Letters Patent and these Letters Patent authorised and empowered the High Courts to make rules for advocates and attorneys (commonly known as Solicitors). The law relating to Legal Practitioners can be found in the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (17 of 1920) and the Indian Bar Councils Act, 1926 (38 of 1926).

1.2 After Independence it was deeply felt that the Judicial Administration in India should be changed according to the needs of the time. The Law Commission was assigned the job of preparing a report on the Reform of Judicial Administration. In the mean while the All India Bar Committee went into detail of the matter and made its recommendations in 1953. To implement the recommendations of the All India Bar Committee and after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration in so far as the recommendation relate to the Bar and to legal education, a Comprehensive Bill was introduced in the Parliament.

Enactment of Advocates Act 1961

2.1 The Advocate Bill was passed by both the Houses of Parliament and it received the assent of the President on 19the May,1961 and it become The Advocates Act,1961 (25 of 1961).

2.2 The Act 1961 comprises of seven (7) chapters and 60 Sections. Out of 7 chapters, chapter 4 deals with Right to Practice. Chapter 5 deals with conduct of Advocates.

Professional integrity and high Standard

3.1 Professional integrity and high ethical standards are the badge of honour of a lawyer and his reputation should not be tarnished by disreputable conduct or deviant behaviour. Credibility and reputation of the profession depends upon the manner in which Advocates conduct themselves. An Advocate owes a duty to his client, to his opponent, to the Court, to the society at large, and to himself.

Case Law indicating the duties of Advocates

4.1 In the case of DP Chadha –vs- Triyugi Narain Mishra AIR 2001 SC 457 = 2001 (2)SCC 221, the Supreme Court has even gone to the extent of saying that the Advocate is duty bound to state the correct position of law, when it is undisputed, even if it does not favour his client. [Pages 150 and 151 of Sanjiva Row's - The Advocates Act 1961, LexisNexis Butterworths, by DV Subbarao - Seventh Edition] While an Advocate is free to try, to the best of his ability, to use wit, to persuade the Court to a view of the law which best serves his client, he cannot mislead the Court on a settled position of law. The Supreme Court in the case of Shambu Ram Yadav –vs- Hanuman Das Khatry AIR 2001 SC 2509 [Page 151 of Sanjiva Row's - The Advocates Act 1961, LexisNexis Butterworths, by DV Subbarao - Seventh Edition] observed that society and public are interested in due administration of justice, and hence a lawyer owes a duty to society and the Court and he is not supposed to encourage dishonesty and corruption. The profession of law is noble, and its members are expected to act in an honest and upright manner, and any deviation from these elementary principles is liable to be dealt with severely. An Advocate practicing law is under a triple obligation – (i) an obligation to his clients to be faithful to them till the last, (ii) an obligation to the profession not to besmirch (tarnish) its name by any act done by him, and (iii) and an obligation to the Court to be and to remain a dependable part of the machinery through which justice is administered. The duty of an Advocate is to assist the administration of justice, and not to obstruct or impede it and in the performance of his professional duties he is expected not to be influenced by personal motives, desire of revenge or resentment. He must not hesitate even in appraising the Court with any opposite view of law previously taken by the superior Court of the land on the question arising in his own case at hand. It is an

obligation of the confidence between judge and opposing counsel that the latter should furnish the judge with all information for and against either party. [Page 162 of Sanjiva Row's - The Advocates Act 1961, LexisNexis Butterworths, by DV Subbarao - Seventh Edition]. An advocate is an officer of the Court and his primary duty is to assist the Court in arriving at justice. He is a social engineer and should pay a sentinel role in the administration of justice. He is expected to work like a horse and live like a hermit.

Provisions in Constitution of India

5.1 The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any sovereign country in the world, containing 395 Articles in 22 parts, 12 schedules and 115 amendments. The Constitution was enacted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. The date 26 January was chosen to commemorate the Purna Swaraj declaration of independence of 1930. With its adoption, the Union of India officially became the modern and contemporary Republic of India and it replaced the Government of India Act 1935 as the country's fundamental governing document. The Constitution declares India to be a sovereign, socialist, secular, democratic republic, assuring its citizens of justice, equality, and liberty, and endeavours to promote fraternity among them. The words "socialist" and "secular" were added to the definition in 1976 by constitutional amendment. India celebrates the adoption of the constitution on 26 January each year as Republic Day.

Members of the drafting committee for Constitution of India

6.1 The Constitution was drafted by the Constituent Assembly, which was elected by the elected members of the provincial assemblies. Sanjay Phakey, Jawaharlal Nehru, C. Rajagopalachari, Rajendra Prasad, Sardar Vallabhbhai Patel, Sandipkumar Patel, Dr Ambedkar, Maulana Abul Kalam Azad, Shyama Prasad Mukherjee, Nalini Ranjan Ghosh, and Balwantrai Mehta were some important figures in the Assembly. There were more than 30 members of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H. P. Modi. The Chairman of the Minorities Committee was Harendra Coomar Mookerjee, a distinguished Christian who represented all Christians other than Anglo-Indians. Ari Bahadur Gururng represented the Gorkha Community. Prominent jurists like Alladi Krishnaswamy Iyer, B. R. Ambedkar, Benegal Narsing Rau and K. M. Munshi, Ganesh Mavlankar were also members of the Assembly. Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh, Rajkumari Amrit Kaur and Vijayalakshmi Pandit were important women members. The first president of the Constituent Assembly was Dr Sachidanand Sinha. Later, Rajendra Prasad was elected president of the Constituent Assembly. The members of the Constituent Assembly met for the first time on 9 December 1946.

Independency of Judiciary

7.1 The Judiciary of India is free of control from either the executive or the Parliament. The judiciary acts as an interpreter of the constitution, and as an intermediary in case of disputes between two States, or between a State and the Union. An Act passed by the Parliament or a Legislative Assembly is subject to judicial review, and can be declared unconstitutional by the judiciary if it feels that the act violates the provisions of the Constitution.

Judicial review of laws

8.1 Judicial review is adopted in the Constitution of India from the Constitution of the United States of America. In the Indian constitution, Judicial Review is dealt with under Article 13. Judicial Review refers that the Constitution is the supreme power of the nation and all laws are under its supremacy.

A. In the Constitution of India, an Article 124 has been drafted dealing with the creation of the Supreme Court of India. The said article says as -

B. 'Article 124

C. Article 124 deals with establishment and constitution of Supreme Court.

Supreme Court

9.1 The Supreme Court of India is the highest Court of the land as established by Part V, Chapter IV of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is that of a federal Court, guardian of the Constitution and the highest Court of appeal. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate Court which takes up appeals against judgments of the provincial High Courts. But it also takes writ petitions in cases of serious human rights violations or if a case involves a serious issue that needs immediate resolution.

Composition of the Courts

10.1 The supreme Court of India consist if a Chief Justice and, until parliament may by law prescribed a large number, not more than seven other Judges. Thus parliament increase the number this number, by law. Originally the total numbers of Judges were seven but in 1977 this was increased to 17 excluding the Chief Justice. In 1986 this number has been increased to 25 excluding the Chief Justice. Thus the total number of Judges in the Supreme Court at present is 26 including the Chief Justice. The constitution does not provide for the minimum number of Judges who will constitute a bench for hearing cases.

Qualification of the Judges of the Supreme Court of India

11.1 The qualifications of the Judges are as follows: - Under Article 124(3) of the constitution talk about the qualifications of Judges that are

a) He should be a citizen of India.
b) He should have been at least five year a judge of a high Court or of two or more such Courts in succession; or he should have been for at least 10 years an advocate of high Court or of two or more such Court in succession.
c) He is in the opinion of the president a distinguished jurist.

Appointment of Judges

12.1 The Judges of the high Court are appointed by the president. The Chief Justice of Supreme Court is appointed by the president with the consultation of such of Judges of the supreme and high Court as he deemed necessary for the purpose. But in appointment of the other Judges the president shall always consult the Chief Justice of India. He may consult he may consult such other Judges of the Supreme Court and high Court as he may deemed necessary. It should, however be noted that the power of the president to appoint Judges is purely formal because in this matter he act on the advice of the council of ministers. There was an apprehension that executive may bring politics in the appointment of the Judges. The Indian constitution therefore does not leave the appointment of Judges on the discretion of the executive. The executive under this Article is required to consult persons who are ex-hypothesis well qualified to give proper advice in matters of appointment of Judges.

12.2 Under Article 124(2) the president, in appointment other Judges of the Supreme Court is bound to consult Chief Justice of India but in appointment the Chief Justice of India he is not bound to consult anyone. The word 'may' used in art 124 makes clear that it is not mandatory on him to consult anyone.

12.3 In the preamble of the Constitution of India, it has been specifically mentioned as 'We, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens JUSTICE , social, economic and political ……..' Thus by having the term 'JUSTICE' in the preamble itself, and, in the oath that is being taken by the Judges that they will uphold Constitution of India, they have declared that JUSTICE will be rendered to all citizens of India.

12.4 In third schedule of the Constitution of India, there exists a form of Oath or affirmation to be made by the Judges of the Supreme Court of India which is as follows:

'I, AB, having been appointed Chief Justice(or a Judge) of the Supreme Court of India do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India that, I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill will and that I will uphold the Constitution and the laws.'

12.5 In the Little Oxford English Dictionary (Indian Edition), the term 'JUSTICE' was defined to mean – just behaviour or treatment – the quality of being fair and reasonable'.

12.6 In Stroud's Judicial Dictionary (Seventh Edition)**,** the term 'JUSTICE' is defined to mean 'to do justice', among many other meanings.

13. Removal of Judges

13.1 Impeachment:-Article 124(4) and (5):-

A judge may only be removed from his office by an order of the president on ground of proved misbehavior or incapacity.

14. High Courts

14.1'214. High Courts for States.

There shall be a High Court for each State.

14.2 High Courts of India are at the top of the hierarchy in each State but are below the Supreme Court. These Courts have control over a state, a union territory or a group of states and union territories. Below the High Courts are secondary Courts such as the civil Courts, family Courts, criminal Courts and various other district Courts. High Courts are established under Part VI, Chapter **V.** The High Courts are the principal Courts of original jurisdiction in the state, and can try all offences including those punishable with death.

15.1 India's judicial system is made up of the Supreme Court of India at the apex of the hierarchy for the entire country and twenty-one High Courts at the top of the hierarchy in each State. These Courts have jurisdiction over a state, a union territory or a group of states and union territories. Below the High Courts are a hierarchy of subordinate Courts such as the civil Courts, family Courts, criminal Courts and various other district Courts. High Courts are instituted as constitutional Courts under Part VI, Chapter V, and Article 214 of the Indian Constitution.

15.2 The High Courts are the principal civil Courts of original jurisdiction in the state, and can try all offences including those punishable with death.

Jurisdiction of High Court

15.3 Article 226 states: Power of High Courts to issue certain writs.

15.4 Article 226 (1) states 'Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

16. Writ jurisdiction

16.1 High Courts are having writ jurisdiction to consider and grant writs on Habeas Corpus Mandamus, Quo warranto, Certiorari, and Prohibition.

16.2 Article 227 states: Power of superintendence over all Courts by the High Court. — Article 227 (1) states 'Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.'

16.3 In third schedule of the Constitution of India, there also exists a form of Oath or affirmation to be made by the Judges of the High Court which is as follows

'I, AB, having been appointed Chief Justice(or a Judge) of the High Court at (or of)…….. do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India that, I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear r favour, affection or ill will and that I will uphold the Constitution and the laws.

17. Sub-ordinate Courts:-

17.1 'Article 233. Appointment of District Judges

Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

18. Whether truth is being elicited and/or justice rendered

18.1 From the elaborate discussion about Advocate's Act 1961,and the Constitution of India, it can be seen that the Advocates have a duty to an Advocate practicing law is under a triple obligation – (i) an obligation to his clients to be faithful to them till the last, (ii) an obligation to the profession not to besmirch (tarnish) its name by anything done by him, and (iii) and an obligation to the Court to be and to remain a dependable part of the machinery through which justice is administered and that the Advocate is duty bound to state the correct position of law, when it is undisputed, even if it does not favour his client.

18.2 Further from a perusal of the Constitutional provisions as well as preamble of the Constitution of India, gives a picture that the Courts have to render justice to all the citizens of India.

18.3 The Law controls public power, regulates personal matters, and provides codes for social and commercial interactions. It is premised on prudence and the finding of truth. It stresses on fairness, steadiness and expectedness provides the normative base for individual and community living. From viewing many advocates and cases that are being taken up for arguments before Hon'ble Courts at District Court stage, High Court stage and also at Supreme Court stage, the question that emanates for consideration is that why the law became the subject matter of disrespect and panic. Why do people shun the Courts, and when once visited will swear not to visit again. Why the Advocate's profession (which is supposed to be noble profession) became a disliked profession.

184. If one put a question, where went wrong with the law, we hear the following

1. Legal proceedings are costly. They are time consuming. They are spread in a mass of hopelessly complex and indeterminable procedures.
2. Legal cases are often failed to identify or address the real issues involved in the dispute.
3. Advocates are more concerned with winning than finding the truth or solutions. And
4. The legal process actually increases conflict between the parties who come to have their differences resolved. Conflict is treated with increased doses of conflict to knock out a legal result.

18.5 From out of the four referred to above, it is better if we analyse two of them viz., (i) Legal cases are often failed to identify or address the real issues involved in the dispute; and

(ii) Advocates are more concerned with winning than finding the truth or solutions (otherwise they cannot be treated as a successful advocate).

18.6 When we see that Arbitration is aimed at settlement of disputes quickly without spending huge amounts through private persons selected for this purpose, generally a feeling will come to light that the contracting parties have to choose the proper persons to adjudicate disputes in a fair and reasonable manner in accordance with law by taking the settled principles. The basis for selection of these persons is the contract condition which is called as arbitration clause or arbitration agreement. In most of the cases, it indicates and gives power to one of the contracting parties to nominate the sole arbitrator. In some cases, depending upon the parties' involvement, the forum for nominating arbitrators will be some organisation like Indian Council of Arbitration. Similarly there are some more organisations dealing with the subject of arbitration.

18.7 With great respect to brother Advocates, it may be stated that legal cases are often failed to identify or address the real issues involved in the dispute by understanding the conflict.

19. What is 'conflict?'

19.1 According to Little Oxford English Dictionary (Indian Edition), 'conflict' is defined to mean as – a serious disagreement – a difference of opinions, principles etc.

19.2 In Agrawala's Legal Dictionary the term 'conflict' is defined to mean as Fight, struggle; to clash.

19.3 In general, the said term means 'antagonistic state or action (as of divergent ideas, interests or persons) and/or competitive or opposing action of incompatibles.

19.4 Nature of 'conflict' is required to be understood FIRST before dealing with that. It starts with differences and if the conflict is unresolved, led to disagreements and disputes. When differences reach this stage conflict begins. Disputes when unresolved become wider areas of conflict. Since we are dealing with understanding the conflict, first we have to see the content of the problem or root cause of the conflict, issues or interests of both the parties. Mainly this article concentrates on commercial conflicts. For good resolution of a dispute, one needs to make the parties understand and appreciate the difference between positions of the respective parties where they stand at law on one hand and interests and needs on the other. Negotiation is one of the methods of resolution of dispute. This is a process involving direct contact, dealing and communication between the parties to the contract to the dispute or their representatives. It is voluntary and becomes binding when an agreement is reached. This is the area where most of the parties are ignoring. If they mainly concentrate on understanding the nature of conflict or dispute, they can resolve the conflict or dispute and there may not be any reason for going to the stage of arbitration. Presumably the reason being that, as already stated, that when a party approaches the Advocate, he will always examine the case in the concept of how to win a case but not understanding the real nature of conflict or dispute.

20. Article of Hon'ble Justice V.R.Krishna Iyer

20.1 Recently, I came across an article entitled 'Questions of judicial access' written by Hon'ble Justice V.R. Krishna Iyer to ascertain whether the Supreme Court of India, or the Supreme Court for Indians? In that article published in The Hindu Hon'ble Justice says as:

20.2'Judicial justice is precious to a people. The adversarial system of justice to be successful has to have the bar as an integral part of the system of judicial administration. The Bench and the Bar together operate to dispense competent and sound justice. Justice is the salt of the earth and if the salt loses its savour, wherewith shall they be salted?

20.3 The excellence of justice, the refined process of justice and justicing, make humanity happy, harmonious and a haven (safe place) for peaceful and progressive habitation. Access is negated where the system is expensive; the social philosophy of judges and the lawyers are with the proprietariat, and the poor are priced out of an archaic system whose doors are only open to the opulent (lavish), not to the indigent. Dialectical materialism is the reality in the temporal world, and where purchase of able argument from the Bar is beyond the purse of the litigant he or she is defacto denied justice.

20.4 The Indian legal system is altogether beyond common people. It is so esoteric (mysterious) that it remains alien and unintelligible to a society that is largely illiterate without the aid of the Bar, which has a professional monopoly over jurisprudence. If the Court has to many tiers and the highest Court is too distant from the regions where the proletariat live and struggle for its existence, the right to justice which is quintessence of democracy loses its spiritual value and cipherises the other fundamental rights.' [Bracketed words are supplied by me for better understanding]

21. Case study

21.1 In that view of the matter, with great respect to the brother advocates, I am giving few examples (case studies) where the advocates are not fulfilling their obligations as mentioned above. (Not to embarrass the parties, advocates, and adjudicators I am giving only fictitious names of the cases, by changing the facts of the cases to suit this article.)

22. Case between "A' and B"

22.1. "A' entered a contract with "B" for a specific purpose of execution of some work. The contract value involves Crores of rupees. The said contract conditions have been drafted and finalized by "B" and one of the conditions of the said contract is opposed to the public policy and violates a provision of a Central Act, which in turn attracts Section 23 of the Indian Contract Act 1872. Though "A" pleads the same, counsel for "B" has not budged even an inch (presumably in the guise of supporting his client which is also one of his duties and obligations). Thereby, the 'B' suffered Crores of rupees. Had the Advocate first understands the real conflict or dispute, he would have suggested that such a clause in the contract is opposed to the public policy and also violative of Section 23 of the Contract Act, 1872 and would have advised the contracting party to frame a suitable clause in consonance with the statutory provisions. Or at best, if a practice exists to have such clauses, would have suggested the contracting party to frame such a clause in the contract to see that it is not violative of the Central Act and / or Section 23 of the Contract Act, 1872. With out actually going into the basic conflict or dispute, if the Advocate intends to take up the case on behalf of a party, he will only try to defend his party in deviation of the triple obligation and professional duties as mentioned above. In that process even if some of the judgments (precedents) are not infavour of his client, he is not bring it to the notice of the Judge, which is also an obligation of the confidence between judge and opposing counsel that the later should furnish the judge with all information for and against either party.

23. Case between "C" and "D"

23.1. "C" enters into a contract with 'D' for grant of lease of land and the said transaction was also reduced in writing containing various conditions referring to various obligations to be fulfilled by both the parties to the contract. After paying some installments of rent, as 'C' failed to pay rent 'D' gave a notice in terms of the provisions of the Pubic Premises (Eviction of Unauthorised Occupants) Act 1970 for the realization of rent only. But "D" later on, without following the provisions of the said Act 1970, terminated the lease granted to 'C' and taken possession of the leased premises from the lessee. Here the conflict involved is the step taken by 'D' in issuance of notice under Act 1970 for recovery of rent, but not for eviction of 'C'. Further there are several irregularities on the part of 'D' i.e., exercise of

powers of in the name of Estate Officer under Act 1970 contrary to the provisions of the Act 1970, that is to say no steps were taken to declare the lessee as an un-authorised occupant and no notice was under Section 4 of Act 1970 and order was passed under Section 5 of the Act. Out of all the irregularities, the greatest irregularity is that no Estate Officer was appointed under Section 3 of the Act by a notification of the central Government as required under section 3 of the Act 1970 and as if it is only a delegation of power, the Estate officer's duties were entrusted to an officer by the Head of the organisation by means of an office order. All these irregularities have been brought out before the Arbitral Tribunal comprising of three arbitrators. Without actually going into the basic conflict or dispute, if the Advocate intends to take up the case on behalf of a party, he will only try to defend his party's interests in deviation of the triple obligation and professional duties as mentioned above. In that process even if some of the judgments (precedents) are not in favour of his client, he is not bring it to the notice of the Judge, which is also an obligation of the confidence between judge and opposing counsel that the later should furnish the judge with all information for and against either party.

24. Case between "E" and "F"

24.1. "E" entered into a contract for loan amount with "F" for purchase of mechanical equipment with a condition to repay the loan amount in installments. After paying some installments, "E" failed to pay the installments due to the mechanical breakdown of the equipment. Despite mechanical breakdown of the equipment it is an obligation of "E" to repay the installments. However, the Conditions of contract is unilateral and there are gross violations of the Statutory provisions while finalising the conditions of contract. For example, Statute says that on giving reasonable notice only the mechanical equipment is to seized and sole away. But a condition has been inserted contrary to the statutory provision. Under Law, a notice is required to be given claiming the due amount from "E" and on failure invoke the arbitration clause. But in this case. Further, "F" has not issued any notice claiming the balance amount from "E" and on failure to respond arbitration clause was not invoked. However, in this case, both claiming the amount due from "E" and invocation of arbitration was done by means of a single letter which is contrary to the provisions of the Arbitration and Conciliation Act 1996. In addition to that, the notice said to have been issued for invocation of the arbitration clause was sent to a wrong address, which under law it cannot be said to be a valid service. Despite all the above irregularities, "F" initiated action against "E" for recovering the money unauthorisedly and without any authority of law.

25. Case between "G" and "H"

25.1'G' entered into an agreement with 'H' for execution of the contract and in that process 'H' has to use some minor minerals obtained from quarries. As per the Contract conditions whenever, minor minerals are obtained from a quarry, the said contractor has to pay seigniorage fee to the Government and obtain a receipt in token of payment of that fee and produce before 'G' to clear his bills. It is also a condition in the contract that if so such receipt is produced or mineral revenue clearance certificate obtained from the authorities are not produced, 'G' can deduct the amount corresponding to the minor mineral used in the contract. In this case as many as 5 minor minerals viz., building stones, gravel, ordinary clay, sand, brick earth (for the purpose of this article only these minor minerals were referred) were used but no mineral revenue clearance certificate was produced by 'H'. As such, 'G' recovered the corresponding amount from the bills of 'H' towards seigniorage fee, for which 'H' raised a dispute and referred the matter for adjudication by an arbitrator. Here in this case a person having legal background was appointed as arbitrator. Respective pleas were taken by both the parties and in support of his claim 'H' examined a witness on his behalf to show that they have paid seigniorage fee to the concerned authorities. The said witness deposed that seigniorage fee was paid in respect of only one minor mineral but in respect of the other minor minerals. 'G contested that neither mineral revenue clearance certificate was produced nor the witness said that seigniorage fee was paid in respect of all the minor minerals, the recovery of the seigniorage fee amount towards other minor minerals is in order. But the adjudicating authority by applying the deposition of the only witness in respect of one minor mineral, to all other minor minerals, accepted the contention of 'H' and rejected the contention of 'G'.

26. In respect of the four examples given above, the following have not been observed:

26.1 In the first case:

26.1.1 From the view point of advocate: He has not properly considered the dispute between the parties and even if it is taken into consideration, in order to support his client's case, might have suppressed that same. He has failed to fulfill the triple obligation as narrated above.

26.1.2 From the view point of the Adjudicator/Arbitrator: He has failed to consider the pleadings, witnesses testimony, documentary evidence etc., in adjudicating the claims of the claimant and has not rendered 'Justice', thus he has failed to comply with the constitutional obligation as mentioned above.

27.1 In the second case

27.1.1 From the view point of advocate: He has not properly considered the dispute between the parties and even if it is taken into consideration, in order to support his client's case, might have suppressed that same. He has failed to fulfill the triple obligation as narrated above.

27.1.2 From the view point of the Adjudicator/Arbitrator: He has failed to consider the pleadings, witnesses testimony, documentary evidence etc., in adjudicating the claims of the claimant and has not rendered 'Justice', thus he has failed to comply with the constitutional obligation as mentioned above.

28.1 In the third case

28.1.1 From the view point of advocate: He has not properly considered the dispute between the parties and even if it is taken into consideration, in order to support his client's case, might have suppressed that same. That is to say he has not correctly understood the conflict viz., violation of provisions of the Central enactment. Thus he has considered a void contract between the parties. He has failed to fulfill the triple obligation as narrated above.

28.1.2 From the view point of the Adjudicator/Arbitrator: He has failed to consider the pleadings, witness's testimony, documentary evidence etc., in adjudicating the claims of the claimant and has not rendered 'Justice', thus he has failed to comply with the constitutional obligation as mentioned above.

29.1 In the fourth case

29.1.1 From the view point of advocate: He has not properly considered the dispute between the parties and even if it is taken into consideration, in order to support his client's case, might have suppressed that same. That is to say he has not correctly understood the conflict viz., violation of provisions of the Central enactment. Thus he has considered a void contract between the parties. He has failed to fulfill the triple obligation as narrated above.

29.1.2 From the view point of the Adjudicator/Arbitrator: He has failed to properly examine the jurisdictional aspect for adjudicating claim in this case. He has, thus, failed to consider the pleadings, witness's testimony, documentary evidence etc., in adjudicating the claims of the claimant and has not rendered 'Justice', thus he has failed to comply with the constitutional obligation as mentioned above.

30. In all the above 4 cases, the parties affected lost huge sums of money and some have utilized appellate provisions and some have not for obvious reasons.

30.1 Triple obligations to be followed by the Advocates

30.2 Had the concerned advocates properly understood the conflict and fulfilled the triple obligations cast on them and other duties as narrated in this article, the parties will have a proper adjudication of claims resulting in reduction of number of cases at the higher stages.

30.3 In view of the elaborate discussion of the subject, one question remains unanswered – viz., whether really truth is being elicited in the proceedings and justice being rendered to the affected parties. From looking at the overall situation, the answer is definitely in the negative i.e., a MYTH but not in reality, except in very rarest of rare cases. When the matter will set at rest can only be decided by the participating advocates and adjudicators.

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References

[1] Advocates Act 1961 – Seventh Edition – LexisNexis Butterworths
[2] Constitution of India – Tenth Edition – Revised by Mahendra P Singh
[3] Article of Hon'ble Justice V.R. Krishna Iyer (Retd), Supreme Court of India
[4] Four cases referred to above. (for the purpose of confidentiality, the cases names are not being given to keep up my word to the concerned)
[5] DP Chadha –vs- Triyugi Narain Mishra AIR 2001 SC 457 = 2001 (2)SCC 221
[6] Shambu Ram Yadav –vs- Hanuman Das Khatry AIR 2001 SC 2509

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[1] Chapter 5 at pages 150, 151 of Advocates Act 1961 Seventh Edition
[2] Constitution of India Article 124, 214, 226, 227, 233 by Mahendra P Singh,