



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO.142 OF 2024.

WITH

INTERIM APPLICATION (L) NO.9191 OF 2024

State of Uttar Pradesh Through
Uttar Pradesh Legislative
Assembly Secretariat

.... *Petitioner*

: *Versus* :

Tata Consultancy Services Limited

.... *Respondent*

Dr. Abhinav Chandrachud with Mr. Pranit Kulkarni, Mr. Shailendra Singh,
Mr. Kushal Choudhary & Mr. Ismail Shaikh, for Petitioner.

Mr. Rohan Kelkar with. Ms. Riya Pichaya i/b M/s. India Law LLP, for
Respondent.

CORAM : SANDEEP V. MARNE, J.

Reserved On: 14 November 2025.

Pronounced On: 25 November 2025.

JUDGMENT :-

1) The Uttar Pradesh Legislative Assembly Secretariat has filed the present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) challenging Award dated

24 November 2023 passed by the Learned Sole Arbitrator. By the Impugned Award, the Learned Arbitrator has allowed the claim of the Respondent declaring that termination of Agreement dated 5 December 2015 by the Petitioner as wrong, illegal and has set aside the same. The Arbitrator has directed Petitioner to pay to the Respondent sum of Rs. 5,37,37,154/- along with interest at the rate of 1.5% per month from the date of the arbitration proceedings till its recovery. The Arbitral Tribunal has also awarded costs of Rs.11,00,842/- in favor of the Respondent.

2) In the year 2015, Uttar Pradesh Legislative Assembly (ULPA) Secretariat proposed to conduct examination for recruitment of Review Officers and Assistant Review Officers in the UPLA. Respondent-Tata Consultancy Services Limited (TCS) agreed to provide services for holding of selection for filling up the said post. Accordingly, Agreement for Services dated 5 December 2015 was executed between UPLA Secretariat and Respondent-TCS. The services to be provided by the Respondent-TCS under the Agreement included application management, allocation management, item management, online assessments, evaluation management and results. The compensation payable for providing the services was Rs.350/- per candidate per session. Respondent-TCS was informed that the number of candidates approved for hall tickets in 15 cities was 77804. Respondent-TCS conducted online examination for recruitment of Review Officers and Assistant Review officers on 29 December 2015 and 30 December 2015 for 77804 candidates. On 30 December 2015, TCS raised invoices in the sum of Rs. 3,11,79,953/-.

3) By letter dated 27 June 2016, the Principal Secretary, Vidhan Sabha, Uttar Pradesh informed Respondent-TCS that the

Agreement was terminated and work order issued in respect thereof was cancelled on account of certain anomalies in the online examination conducted by TCS for Railway Recruitment Board. By letter dated 4 August 2016, TCS challenged termination of the Agreement. Petitioner responded by letter dated 27 October 2016 enumerating the facts and circumstances warranting cancellation of examination. By letter dated 22 December 2016, TCS reiterated successful conduct of online examination and demanded payment agreed in the Agreement together with interest. By letter dated 20 January 2017, Petitioner contended that result of the examination could not be processed and announced and hence the work relating to the examination could not be said to be completed. It was further pointed out that the investigations conducted by the Special Task Force (STF) exhibited serious anomalies and irregularities in the examination conducted for Railway Recruitment Board by TCS and that there were serious allegations of connivance between the candidates and Respondent's staff. Petitioner denied responsibility of making any payment. Thereafter certain correspondence took place between the parties.

4) Respondent-TCS invoked Arbitration clause by serving advocates notice dated 11 July 2018. Petitioner objected to reference of disputes to arbitration by letter dated 24 July 2018. Therefore, TCS filed application under Section 11 of the Arbitration Act for appointment of Arbitrator. By order dated 18 November 2019, this Court appointed the learned sole Arbitrator for resolution of disputes between the parties.

5) Respondent-TCS filed its Statement of Claim naming the Petitioner as '*Government of Uttar Pradesh through UP Legislative Assembly Secretariat*'. Statement of Defence was filed by the Petitioner

alleging material breach of the contract by TCS. UPLA filed Application under Section 23(3) of the Arbitration Act claiming that it is not the part of the Government of UP and that therefore claim raised against the Government of UP was not maintainable and objection of *res-judicata* was also raised by citing orders of Allahabad High Court upholding cancellation of the online examinations. The Application for amendment filed by TCS was allowed and Respondent was permitted to be described as '*State of Uttar Pradesh through UP Legislative Assembly Secretariat*'. UPLA filed Special Leave Petition before the Apex Court challenging order dated 18 November 2019 under Section 11 of the Arbitration Act, which was dismissed by order dated 8 July 2021 granting liberty to raise all objections under Section 16 Application. UPLA filed additional Statement of Defence in pursuance of the amendment. Application filed by UPLA under Section 16 of the Arbitration Act was rejected by the Arbitral Tribunal by Order dated 19 March 2022.

6) Based on pleadings, the Arbitral Tribunal framed various issues. UPLA filed Application for recall/review of order dated 3 September 2022 framing issues. The Application was partly allowed by Order dated 4 January 2023 and an additional issue was framed. Parties led evidence in support of their respective claims. By Award dated 24 November 2023, the learned Arbitrator has allowed the claim of TCS holding the termination of the agreement to be illegal and setting aside the same. The learned Arbitrator has also directed Petitioner to Pay to Respondent-TCS amount of Rs.5,37,37,154/- along with interest at the rate of 1.5% per month from the date of arbitral proceedings till recovery. On 25 November 2023, Respondent-TCS made an application for correction of the Award. By order dated 15 December 2023, the Arbitral Tribunal disposed of the Application by clarifying that the

interest would be payable on principal amount claimed and not on the awarded amount of Rs.5,37,37,154/-. Aggrieved by the impugned Award, the Petitioner has filed the present Petition under Section 34 of the Arbitration Act.

SUBMISSIONS

7) Dr. Chandrachud, the learned counsel appearing for the Petitioner would submit that Arbitral Award is challenged primarily on three grounds viz, (i) the arbitral claim was filed and the impugned award is made against State of UP, though the contract was signed with the UPLA Secretariat, which is a distinct entity than State of UP, (ii) failure on the part of the Tribunal to appreciate that the contract between the parties had become void/unenforceable on account of frustration thereof, and (iii) since the Award is void, Respondent can, at the highest, receive only compensation for what is expended by it under Section 70 of the Contract Act, 1872.

8) In support of the first ground of challenge, Dr. Chandrachud would submit that Speaker of UPLA ordered termination of contract and cancellation of examination conducted by the Respondent, which order was never challenged by the Respondent. Cancellation of examination has been upheld by the Allahabad High Court in proceedings, in which the Respondent was impleaded as party. That examination conducted by the Respondent was of no practical use for the Petitioner as fresh examination was required to be conducted through another agency for recruiting Review Officers and Assistant Review Officers. That under Section 56 of the Indian Contract Act, 1872 (**Contract Act**), if contract to do an act, which after the contract is made becomes impossible, is rendered void when the act becomes

impossible. Under Section 2(g) of the Contract Act, an agreement not enforceable by law is said to be void. That under Section 10 of the Contract Act, an agreement is a contract only if it is not expressly declared as void. In other words, when contract becomes void by frustration, it altogether ceases to be enforceable contract. Only claim which can therefore perhaps be made by party aggrieved under the Contract Act is one for compensation under Section 70 of the Contract Act. Dr. Chandrachud would rely upon judgment of the Apex Court in *Energy Watchdog V/s. Central Electricity Regulatory Commission and Others*¹ in support of contention that the word 'impossible' appearing in Section 56 of the Contract Act is not to be taken literally. Though performance of the contract may not be literally impossible, but may be impracticable and useless from point of view of object and purpose of the parties. Since examination conducted by the Respondent was cancelled pursuant to the order passed by the Speaker, the said examination had become impracticable and useless from the point of view of UPLA Secretariat. The cancellation of examination in the instant case constituted 'an untoward event or change of circumstances' which totally upsets the very foundation upon which the party entered their agreement. He would rely upon judgment of the Apex Court in *Satyabrata Ghose V/s. Mugneeram Bangur and Company and Another*².

9) Dr. Chandrachud would further submit that the Arbitral Tribunal has erroneously rejected the doctrine of frustration of contract by holding that same cannot apply to a pure commercial transaction. That by failing to follow binding judgment of the Supreme Court, the

1 (2017) 14 SCC 80

2 (1953) 2 SCC 437

Tribunal faulted fundamental policy of Indian Courts, which is a fit ground for interference in the Award as per the judgment of the Apex Court in *Associate Builders V/s. Delhi Development Authority*³ and *Ssangyong Engineering and Construction Company Limited V/s. National Highways Authority of India (NHAI)*⁴. Dr. Chandrachud would further submit that the Tribunal has erroneously held that the work under the contract was complete and that preparation of result and merit list was only an administrative action. That Schedule II of the contract imposed obligation on the Respondent to complete all stages of examination including evaluation and publication of merit list. That the findings are recorded in ignorance of express agreement between the parties. That since the contract became void and unenforceable, no arbitral claim could have been filed seeking to enforce terms of the contract. That instead of filing claim for compensation for expenses incurred by it in conduct of examination, Respondent has erroneously chosen to file claim for compensation and demanded full contract price alongwith the interest. Now it is impermissible to modify the Award and reduce the amount awarded to the Respondent as no part of Award is severable from the rest and that therefore the ratio of the judgment in *Gayatri Balasamy V/s. ISG Novasoft Technologies Ltd.*⁵ cannot be invoked in the present case. He would submit that ratio of the judgment of the Apex Court in *Boothalinga Agencies V/s. VTC Poriaswanmi*⁶ holding that principle of frustration would not apply in case of 'self-inducement' is inapplicable to the facts of the present case since the examination is not cancelled by UPLA Secretariat but by the Speaker of the Assembly.

3 (2015) 3 SCC 49

4 (2019) 15 SCC 131

5 (2025) 7 SCC 1

6 AIR 1969 SC 110

10) With regard to second ground of challenge of State of UP not being party to arbitration clause, Dr. Chandrachud would submit that State of UP is not a signatory to the contract. That the Respondent chose to apply for adding Government of UP to the application under Section 11 of the Arbitration Act on a mere query by the Court in absence of any definitive finding. That the order passed by the Tribunal under Section 16 of the Arbitration Act erroneously presumed that this Court had rendered a finding while deciding Section 11 Application that UPLA has no separate existence in law. That order passed under Section 16 of the Arbitration Act merges with the final Award and can be challenged by challenging the final Award itself. That therefore mere absence of a specific prayer to challenge Section 16 order is irrelevant. That there are specific grounds raised in the Arbitration Petition questioning Section 16 order. That raising specific prayer in respect of Section 16 order would also give rise to issue of limitation.

11) Dr. Chandrachud would rely upon Article 187 of the Constitution of India in support of his contention that Secretariat of State Legislature has a separate existence in law. He would rely upon judgment of Delhi High Court in *Balwant Singh V/s. Union of India*⁷ and of the Kerela High Court in *Sujith T.G. V/s. State of Kerala*⁸. He would also rely upon Judgment of the Apex Court in *National Textile Corporation Ltd. V/s. Nareshkumar Badrikumar Jagad and Ors.*⁹ in support of the contention that the expression 'Government' denotes Executive and not the Legislature. By relying on judgment of the Apex Court in *Hargovind Pant V/s. Dr. Raghukul Tilak*¹⁰ he would submit

7 (2000) 55 DRJ 22

8 (2020) SCC Online Ker 2830

9 (2011) 12 SCC 695

10 (1979) 3 SCC 458

that employee of a High Court is treated as not employed by Government of India, which principle can also be invoked in relation to Legislative Assembly Secretariat, which is not subordinate/subservient to the Executive Government nor it is amenable to its direction or accountable to it. Lastly, Dr. Chandrachud would distinguish the judgment of the Apex Court in *Union of India V/s. Jyoti Chit Fund*¹¹ contending that the Court has not expressed any opinion that Lok Sabha Secretariat does not have a separate constitutional existence.

12) The Petition is opposed by Mr. Kelkar, the learned counsel appearing for the Respondent-TCS. He would first deal with the second point raised by Dr. Chandrachud about impleadment of the State of UP to the arbitral proceedings. That for the purpose of legal proceedings, UPLA Secretariat is not distinct from State of UP. That it was Petitioner's own case before the Tribunal that the contract was between TCS and UPLA and not merely with its Secretariat. That the issue stood concluded by the order of the Arbitral Tribunal of 7 May 2021 and 19 March 2022, none of which are challenged in the Petition. That mere merging of the said orders in the final Award does not wipe out their separate existence especially when Petitioner has chosen to question correctness of the final Award and when that Award itself got support of those two orders. Mr. Kelkar would further submit that a Speaker is also one of the officers of the State Legislature. That under Article 187 of the Constitution, he is reported to be member of the body. That the Speaker exercises the authority of the House and represents the will of the House. That the House in the present case is UPLA.

11 (1976) 3 SCC 607

13) So far as the argument of frustration of contract and reliance by Petitioner on provisions of Section 56 of the Contract Act is concerned, Mr. Kelkar would submit that Section 56 of the Contract Act cannot be invoked where there is a 'self-induced' frustration by a party to the contract. He would rely upon judgment of the Apex Court in *Boothalinga Agencies* (supra). He would submit that it is an admitted position that examination for recruitment was conducted and no complaints were received with regard to the examination concerned. That for final declaration of results, information was needed from the Petitioner and if such information was supplied immediately after conduct of examination, declaration of result would have been much before the month of April-2016. That therefore, the Arbitral Tribunal has rightly concluded that services to be rendered under the agreement were complete. He would submit that fair reading of the Award would clearly show that cancellation of examination was an act of the party to the contract viz., Petitioner, thereby not attracting provision of Section 56 of the Contract Act. That cancellation occurred after services were rendered. That findings of fact recorded by the Arbitral Tribunal about completion of all the activities by the Respondent under the contract does not warrant any interference in exercise of power under Section 34 of the Arbitration Act. He would pray for dismissal of the Petition.

REASONS AND ANALYSIS

14) Though several grounds are pleaded in the Petition, on behalf of the Petitioner, essentially only three points are argued before me in support of challenge to the impugned Award by the Petitioner, which are as under:-

(i) That there is no arbitration agreement between the Respondent-TCS and State of UP and that therefore the learned Arbitrator could not have made any Award against the State of UP.

(ii) That the case involves the eventuality of 'impossibility' within the meaning of Section 56 of the Contract Act and that therefore since the Agreement is rendered void, no payment was required to be made by the Petitioner under such void contract.

(iii) Assuming that any expenses are incurred by Respondent-TCS in conduct of online examination, its claim ought to have been restricted at the highest under Section 70 of the Contract Act by compensating it in respect of the expenses actually incurred.

15) I now proceed to examine the three challenges raised on behalf of the Petitioner.

AWARD BEING BAD ON ACCOUNT OF IMPLEADMENT OF STATE OF UP

16) It is the contention of the Petitioner that the Agreement for Services is executed with Respondent-TCS by UPLA Secretariat and not by the State of UP, which is a separate entity altogether. It is contended that UPLA Secretariat is a separate constitutional entity from the State of Uttar Pradesh under Article 187 of the Constitution of India, which is akin to the 'Secretariat for Parliament' under Article 98 and that therefore the same interpretation and standards apply to both the provisions. It is contended that the Award is liable to be set aside since it would become executable even against State of UP, with whom there is no arbitration agreement. It is therefore contended that the Award,

made against an entity who had never agreed for arbitration, clearly suffers from the vice under Section 34 of the Arbitration Act.

17) In the present case, a very unique situation is created, possibly on account of this Court's Order, which is now sought to be used to its advantage by the Petitioner. Initially the Petitioner was impleaded to Commercial Arbitration Application No.155 of 2019 filed under Section 11 of the Arbitration Act as 'UP Legislative Assembly Secretariat'. No objection was raised by the Petitioner (*who was Respondent to the said Arbitration Application*) about impleadment of UPLA Secretariat. Thus constitution of Arbitral Tribunal was sought for resolution of disputes between Respondent-TCS and UPLA Secretariat. However, this Court, on its own, raised a query as to whether the Petition could lie only against UPLA Secretariat, even though the signatory on the agreement was the Principal Secretary of UPLA. Attention of this Court was invited to Article 187 of the Constitution of India. This Court held that Article 187 of the Constitution of India merely provides that each House of the Legislature must have separate Secretariat. The Court thereafter did not record any specific finding as any further dispute in that regard was obviated by Respondent-TCS tendering a draft amendment proposing to describe Respondent therein as '*Government of Uttar Pradesh through UP Legislative Assembly Secretariat*'. The amendment was allowed by order dated 18 November 2019, para 4 of which reads thus:-

4. The present petition is brought against the UP Legislative Assembly Secretariat itself. To a question from the Court as to whether, notwithstanding the signature on the document, such a petition would lie, my attention was invited to Article 187 of the Constitution of India. However, this only says that each House of the Legislature must have a separate secretariat. In any case, the question may not arise since on behalf of the petitioner a draft amendment is tendered proposing to name the Government of

Uttar Pradesh through the UP Legislative Assembly Secretariat as the respondent. I will accept this amendment. The draft amendment is taken on record and marked 'X1' for identification with today's date. The amendment is allowed. Amendment is to be carried out within one week from today without need of reverification. The respondent waives service of the amended petition. A copy of the amendment has been given to the learned Advocate for the respondent in Court.

Thus the description of Petitioner was changed from '*UP Legislative Assembly Secretariat*' to '*Government of Uttar Pradesh through UP Legislative Assembly Secretariat*' possibly out of deference to the wishes of this Court.

18) When the proceedings commenced before the Arbitral Tribunal, an application under Section 16 of the Arbitration Act was filed on behalf of the Petitioner raising two objections to the jurisdiction of the Tribunal viz., (i) That claim filed against State of UP through UPLA was not maintainable on account of absence of any agreement with the State of UP and on account of clear separation of powers between State of UP and Legislative Assembly Secretariat (ii) decision for cancellation of examination being taken by constitutional authority i.e. Speaker of UPLA, which was in realm of public law which was incapable of being assailed in private arbitral proceedings. It was further contended that the order cancelling the examination was upheld by the Allahabad High Court and it was beyond the purview of Arbitral Tribunal to reopen the issue concluded by orders passed by the Allahabad High Court.

19) Upon filing of Section 16 Application, TCS was advised to apply for amendment relating to description of the Petitioner. By order dated 7 May 2021, the Tribunal allowed the Application for amendment and permitted the Respondent to describe the Petitioner as '*State of UP*'

through UP Legislative Assembly Secretariat'. Thus, the only amendment brought out by order dated 7 May 2021 was to replace the words '*Government of UP*' with the words '*State of UP*'. This is how the Petitioner continued to remain described as *State of UP, through UP Legislative Assembly Secretariat* throughout the arbitration proceedings. Thus, on account of suggestion made by this Court in Section 11 proceedings, Respondent-TCS was required to amend the description by including initially '*Government of Uttar Pradesh*' and later '*State of Uttar Pradesh*' while describing the party against whom the claim was raised.

20) Petitioner challenged the Order dated 18 November 2019 by filing SLP (C.) No. 8869 of 2021 before the Supreme Court which was dismissed by order dated 8 July 2021 granting liberty to the Petitioner to raise all Objections under Section 16 Application. Before dismissal of the SLP, Petitioner had already filed Application under Section 16 of the Arbitration Act contending that UPLA was not part of the Government of UP as 'Government' meant only Executive and that Executive had not signed the contract. On account of raising of this objection, TCS amended the Statement of Claim to describe the respondent as 'State of Uttar Pradesh through UP Legislative Assembly Secretariat'.

21) By order dated 19 March 2022, the learned Arbitrator rejected Section 16 Application filed by the Petitioner by recording detailed reasons holding *inter-alia* that the Assembly is a constituent of the Government and that therefore description of the Petitioner could not be stated to be incorrect. It was held that the Respondent rightly amended description of the Petitioner from 'Government of UP' to

'State of Uttar Pradesh through the U.P. Legislative Assembly Secretariat' in view of provisions of Section 300 of the Constitution of India and Section 79 of the Code of Civil Procedure, 1908. The Arbitral Tribunal also held that the issue was already decided by it vide order dated 7 May 2021, when the application for amendment was allowed.

22) Mr. Kelkar has objected to raising of objection of erroneous description of the Petitioner contending that the Arbitration Petition does not contain any challenge to orders dated 7 May 2021 and 19 March 2022. On the other hand, Dr. Chandrachud has contended that since no remedy is provided in respect of order passed under Section 16 of the Arbitration Act, the only way the same can be challenged by the Petitioner is after rendering of the Award and by filing Petition under Section 34 for setting aside the Award. I find the objection of non-raising of specific prayer raising challenge to the Order dated 19 March 2022 to be misplaced. Petitioner has raised grounds of challenge to the order dated 19 March 2022. The said Order dated 19 March 2022 passed under Section 16 of the Act has ultimately merged in the Award and that therefore it is not required to be separately challenged in while challenging the Award itself. I accordingly proceed to examine the ground of improper impleadment of Respondent in the arbitral proceedings and passing of Award against non-party to arbitration agreement.

23) The Agreement for Services is executed with the TCS by UPLA Secretariat, who is described as the 'customer' in the Agreement. In the column meant for signature of customer, Mr. Pradeep Kumar Dube, Principal Secretary of Vidan Sabha UP has put his signature.

24) Reliance is placed by the Petitioner on Article 187 of the Constitution of India, which deals with the Secretariat of State Legislature. Article 187 provides that House or each Houses of the Legislature of the State shall have a separate secretarial staff. Clause (2) of Article 187 directs that the Legislature of a State may regulate the recruitment and conditions of service of persons appointed to the secretarial staff of the House or Houses of the Legislature of the State. Article 187 provides thus:-

187. Secretariat of State Legislature.—

(1) The House or each House of the Legislature of a State shall have a separate secretarial staff:

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

By relying on provisions of Article 187 of the Constitution of India, it is contended on behalf of the Petitioners that the State Legislature is not a part of the Executive. Article 187, by itself, does not seek to create the Secretariat of the House of the Legislature a distinct part than the Government itself. It only provides for maintenance of separate staff for Secretariat. However there is nothing to indicate that the secretarial staff

would loose status as government servants. For all practical purposes, they are treated as government servants.

25) Also, it is difficult to accept as an absolute proposition that in every case and for all purposes, the Legislative Assembly Secretariat must be treated as not forming part of Government. In the judgment of *Pashupati Nath Sukul Versus. Nem Chandra Jain and Ors*¹² the Apex Court held in paragraph 12 that the Government connotes three estates - Legislature, Executive and Judiciary though in a narrow sense it is used to connote only the Executive. It is held that the meaning to be assigned to that expression depends on the context in which it is used. The Court further held that all the three organs together constitute the Government at their respective level. Thus the term 'Government' cannot be limited only to Executive and would include even the legislature. In the present case decision to cancel the examination and to terminate the contract is taken by Speaker of UPLA. In that view of the matter, I do not find any serious error in impleadment of UPLA Secretariat through the State of UP. For the purposes of enforcement of the Award, UPLA cannot be treated as a separate entity from State of UP as held by the Apex Court in *Pashupati Nath Sukul* (supra). The Arbitral Tribunal has rightly relied upon the judgment of the Apex Court in *Pashupati Nath Sukul* for holding that the term Government cannot be limited only to Executive and would include even the Legislature.

26) Also, the meaning to be assigned to the expression 'Government' depends on the context in which it is used. The word 'Government' has been treated differently by Courts depending upon the context in which the same is used in a particular statute.

12 AIR 1984 SC 399

27) In *National Textile Corporation Ltd.* (supra) the Apex Court was concerned with the issue of treating the National Textile Corporation (NTC) as 'Government' for extending the protection of Rent Act. The Apex Court ruled that the expression 'Government' is required to be interpreted in the context used in a particular statute. It held that NTC, though an instrumentality of State within the meaning of Article 12 of the Constitution, it still cannot be treated as 'Government'. It is held thus:-

23. Thus, Government Department means something purely fundamental, i.e. relating to a particular government or to the practice of governing a country. It has different Wings. **However, the expression 'Government' may be required to be interpreted in the context used in a particular Statute. The expression denotes the Executive and not the Legislature.** (Vide: State of Rajasthan and Anr. v. Sripal Jain: AIR 1963 SC 1323; *Pashupati Nath Sukul v. Nem Chandra Jain and Ors.*: AIR 1984 SC 399; R.S. Nayak v. A.R. Antulay: AIR 1984 SC 684; and V.S. Mallimath v. Union of India and Anr.: AIR 2001 SC 1455)

(emphasis added)

28) While deciding the issue of departmental canteen, Delhi High Court in *Balwant Singh* (supra) held that canteen of Lok Sabha Secretariat was different than the canteen of Central Government. The Delhi High Court has dealt with the issue of regularization of services of canteen employees engaged in the canteens of the Parliament House. The canteen employees demanded regularization of the services and treatment as employees of Lok Sabha Secretariat on the ground of their services for several years. The demand was opposed by Lok Sabha Secretariat contending that the canteen located in Lok Sabha Secretariat was not a departmental canteen at all and that the same was being run by Lok Sabha Secretariat Club, which was an assembly of employees of

Lok Sabha Secretariat whose office bearers were appointed by election by the members of the club. It was contended on behalf of the Petitioners therein that the concerned canteen needed to be treated as departmental canteen of the Government for the purpose of following the judgment of the Apex Court in. **M.M.R. Khan And Others Versus. UOI**¹³. The Delhi High Court however held that the canteen could not be treated as departmental canteen of the Government by accepting the submission made on behalf of the Lok Sabha Secretariat that it is an independent body from that of Central Government. The said finding is recorded by relying on judgment of the Apex Court in **P.K. Bhandari Versus. Honorable speaker of Lok Sabha and others.**¹⁴. The Delhi High Court held as under:-

In order to decide the present case, one need not indulge into detailed discussion and go into the niceties of the legal character of Lok Sabha Secretariat. The admitted position is that Lok Sabha Secretariat is an independent body, independent of Central Government both administratively or financially. The legal status of Lok Sabha Secretariat now stands concluded by the judgment in the case of P. K. Bhandari's case (supra) and other judgments reference to which have already been made above. Insofar as present canteen is concerned, in view of detailed submissions made by Mr. Kaul which deserve to be accepted, it cannot be treated as departmental canteen of the Govt. It also cannot be said that there is any statutory obligation of Lok Sabha Secretariat to run this canteen. The canteen is being run by Canteen Committee of the Lok Sabha Employees Association and this association is a society registered under the Societies Registration Act. Further, admittedly within the Parliament complex itself railway canteen is operating which in fact is being used by both MPs and staff of the Lok Sabha Secretariat, left to Lok Sabha Secretariat, as per their stand, they in fact do not even need any other canteen. Items sold in the railway canteen are much cheaper than the ones sold in the canteen run by the association. The canteen Therefore cannot be called as departmental canteen.

29) The issue before the Delhi High Court in **Balwant Singh** was about treatment of canteen operated by the Canteen Committee of

13 JT(1990) 3 SC 1

14 CW 4481 of 1996

Lok Sabha Employees Association as departmental canteen of either Lok Sabha Secretariat or of the Government. The Delhi High Court found it unnecessary to go into the issue of treatment of departmental canteen of Lok Sabha Secretariat as Government Canteen as the Court found that there was no statutory obligation on Lok Sabha Secretariat to run the canteen. The Delhi High Court accordingly relied upon judgment of the Apex Court in *State Bank of India and Others Versus State Bank of India Canteen Employees' Union (Bengal circle) and Others*¹⁵ and held that in absence of any obligation on the part of Lok Sabha Secretariat to run a departmental canteen, the canteen employees could not be treated as employees of Lok Sabha Secretariat. In that view of the matter, the judgment in *Balwant Singh* cannot be relied upon in support of the contention of the Legislative Assembly must always be treated as a separate entity than the State Government.

30) In *Hargovind Pant* (supra) the Constitution Bench held that employee of the High Court is not employed in the Government of India and that he is not subordinate /subservient to Government of India in the context of interpreting the expression 'employment under Government of India' under Article 319(d) for upholding appointment of ex-member of State Public Service Commission as the Government. Thus the interpretation is in a different context of the case.

31) In *Jyoti Chit Fund* (supra), the Apex Court did not accept the contention that the Lok Sabha Secretariat was different than Union of India. In that case, Union of India sought to oppose execution of decree passed against Rajya Sabha Secretariat and its opposition was rejected on the ground of *locus standi* holding that Union of India could

15 JT 2000 (SC) 63

not participate in execution proceedings as it was not party to the decree. Upholding the locus of Union of India, the Apex Court held as under:-

14. The argument that the Lok Sabha Secretariat is different from the Union of India is a new gloss which Shri Rohatgi has put upon his contention of locus standi. He has pressed into service Articles 300 and 98(2) of the Constitution of India, neither of which is helpful or applicable. This point has the merit of novelty, little else. Consequentially, we set aside the decision of the High Court and of the executing Court, but this is not the end of the matter.

15. We direct the Court of the Subordinate Judge to go into the merits of the objection raised by the Union of India as to whether the entire amount or any portion thereof held by it on behalf of the Rajya Sabha Secretariat staff, so far as the judgment-debtor in this case is concerned, represents provident fund and compulsory deposits or pensionary benefits, excluded from attachability in execution of civil decrees under the provisions already adverted to. If it is feasible to effect service of notice on the judgment-debtor, well and good, but if it is not, the court cannot absolve itself of the duty to investigate into the merits of the claim or character of the amounts, so long as the Union of India is ready to make good its contention.

32) Thus the word 'Government' has been given different meaning depending on the context in which it is used. Many times, the word 'Government' has been interpreted to include even the Legislature. In the context of enforcement of Arbitral Award passed against UPLA, in my view, State of UP need not be treated as a separate entity than UPLA as the amount awarded by the Arbitrator would ultimately flow through the funds of the UP Government. The State of UP bears the salary burden of secretarial staff of the Houses. The candidates appearing in the examinations would have become government servants, if the selection process, contracted out to Petitioner, was to fructify into recruitment. Therefore, even if some degree of separation between State of UP and UPLA is to be assumed for some other purposes, the same by itself cannot be a ground for

invalidating the Arbitral Award on the ground of jurisdiction. As observed above, initially respondent initiated proceedings under section 11 of the Arbitration Act, only against UPLA Secretariat. It is only out of deference to the query raised by the Court that State of UP has been added to the description of the Petitioner. The arbitration proceedings are defended by the UPLA Secretariat. Even the present Petition is verified by the Principal Secretary of UPLA. In that view of the matter, the hyper-technical objection sought to be raised by the Petitioner about addition of State of UP to the UPLA Secretariat in the arbitration proceedings does not deserve acceptance.

33) Even otherwise, since the Award can be upheld on merits, reasons for which are being discussed in the latter part of the judgment, I am not inclined to interfere in the plausible view taken by the learned Arbitrator while rejection the Application filed under Section 16 of the Arbitration Act. The Award is not rendered invalid by reason of addition of State of UP while describing the UPLA Secretariat during the course of arbitration proceedings. The defence raised by the Petitioner is more of convenience aimed at somehow avoiding payment under the Award. If UPLA Secretariat had absolutely no connection with the State of UP, the Petition ought not to have been filed in the joint name of State of UP and UPLA Secretariat nor the Principal Secretary of the Assembly could have verified the Petition. There is no error in the Award on the count of alleged error in description of Petitioner, which would go to the root of the matter warranting interference in the Award while exercising powers under Section 34 of the Arbitration Act.

CHALLENGE TO THE AWARD ON THE GROUND OF FRUSTRATION OF CONTRACT

34) This is the main ground of attack to the Arbitral Award raised by the Petitioner. It is contended that on account of the order passed by the Hon'ble Speaker on 20 June 2016 cancelling the examination, performance of the contract became impossible and that therefore the contract itself is rendered void. Reliance is placed by the Petitioner on provisions of Section 56 of the Contract Act, which provides thus:-

Section 56 Agreement to do impossible act.

An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.

—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

35) Before going into the issue of contract becoming void on account of occurrence of an impossibility, it would be first necessary to examine whether factually any impossibility has occurred in the present case. It is not the contention of Petitioner that the act agreed under the agreement was rendered unlawful.

36) The Arbitral Tribunal appears to have conducted a factual enquiry into the aspect of 'frustration'. The Tribunal has held that after successful conduct of examination for recruitment, the Respondent was

appreciated by the office of the Principal Secretary. It is further held that the Respondent thereafter repeatedly requested for methodology of result process and for declaration of result, for which no reply was given by the Petitioner. The learned Arbitrator has also recorded a finding of fact that in the examination conducted for the Petitioner, no fault is found against the Respondent. The learned Arbitrator referred to various letters sent by Respondent for payment of its dues. The learned Arbitrator also referred to letter dated 10 November 2017 of Inspector General of Police, In-charge of STF informing the Petitioner that in the malpractices found in the process of recruitment for RRB, no officer of Respondent was found involved either directly or indirectly. The Respondent thereafter renewed its request for payment of the due amount under the Agreement. The Tribunal also went through the FIR filed in relation to allegation of malpractices in RRB examination and held that there was no material against the Respondent. The learned Arbitrator concluded that the recruitment examination of RRB was not at a related event for termination of contract with the Respondent. The learned Arbitrator thereafter went into the issues of breaches of Agreement alleged by the Petitioner against the Respondent and concluded that there was no breach relating to representations and warranty clause. The learned Arbitrator thereafter decided the issue of non-entitlement of Respondent to *quantum merit* claim. It was the case of the Petitioner that since Respondent admitted factum of non-preparation of merit list, Agreement was not executed by it in its entirety. The Tribunal concluded that the work of preparation of result and merit list was only an administrative function to be performed and nothing more. It held that in the month of June-2016 Petitioner had called for data of the candidate, which was immediately furnished by the Respondent. The Tribunal accordingly concluded that there was

nothing left to be done and accordingly rejected contention that the Respondent needed to be paid only for *quantum meruit* and not the entire amount. This is how the learned Arbitrator, after conducting the factual enquiry, has held that all the services under the Agreement were practically completed by the Respondent.

37) The above finding recorded by the Arbitral Tribunal about performance of almost the entire contract by the Respondent is a finding of fact, recorded after appreciating the evidence on record. It is a plausible finding. Examination was conducted on 29 and 30 December 2015. On 18 March 2016, TCS had sent email to UPLA communicating that TCS had already shared result preparation format and was awaiting confirmation from UPLA. On 4 May 2016, a meeting was held between the representatives of UPLA and TCS to work out the modalities of preparation of merit list. However, instead of providing necessary material to TCS for publication of result and preparation of merit list, the Speaker of UPLA proceeded to cancel the examination on 20 June 2016. Thus, for over six months TCS was prevented from declaration of result and preparation of merit list. Therefore, the findings recorded by the Arbitral Tribunal about TCS completing all its services under the Agreement cannot be termed as a perverse finding, which is either contrary to the evidence on record or is not based on no evidence. The view taken by the Arbitral Tribunal is a plausible view not warranting any interference in exercise of power under Section 34 of the Arbitration Act.

38) Since the Arbitral Tribunal has concluded that TCS performed its services under the Agreement, Section 56 of the Contract Act would therefore not apply to the facts of the present case. Section 56

applies to a case where an act, which is agreed to be performed under a contract, is rendered impossible, in which case, the contract itself becomes void on the occurrence of such impossibility. The provision would not apply in a case where act contemplated under Section 56 of the Contract Act is already complete. In the present case, the act of conducting examination was not rendered impossible at the time when Speaker of the Assembly took a decision for cancellation of examination. The examination was already conducted and the Arbitral Tribunal has recorded a finding of fact that all services under the Agreement were performed by the Respondent. The case therefore does not attract Section 56 of the Contract Act.

39) Reliance by the Petitioner on the judgment of the Apex Court in *Energy Watchdog* (supra) is of no avail. In that case, the Apex Court has held that the word 'impossible' appearing in Section 56 of the Contract Act has not been used in the sense of practical or literal impossibility and that Section 56 of the Contract Act gets attracted where the act may be impracticable and useless from the point of view of the object and purpose of the parties. The Apex Court has held in paragraphs 36 to 38 as under:-

36. The law in India has been laid down in the seminal decision of *Satyabrata Ghose v. Mugneeram Bangur & Co.* 1954 SCR 310. The second paragraph of Section 56 has been adverted to, and it was stated that this is exhaustive of the law as it stands in India. What was held was that the word "impossible" has not been used in the Section in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose of the parties. If an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement, it can be said that the promisor finds it impossible to do the act which he had promised to do. It was further held that where the Court finds that the contract itself either impliedly or expressly contains a term, according

to which performance would stand discharged under certain circumstances, the dissolution of the contract would take place under the terms of the contract itself and such cases would be dealt with Under Section 32 of the Act. If, however, frustration is to take place de hors the contract, it will be governed by Section 56.

37. In *M/s. Alop Parshad & Sons Ltd. v. Union of India* : 1960 (2) SCR 793, this Court, after setting out Section 56 of the Contract Act, held that the Act does not enable a party to a contract to ignore the express covenants thereof and to claim payment of consideration, for performance of the contract at rates different from the stipulated rates, on a vague plea of equity. Parties to an executable contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, for example, a wholly abnormal rise or fall in prices which is an unexpected obstacle to execution. This does not in itself get rid of the bargain they have made. It is only when a consideration of the terms of the contract, in the light of the circumstances existing when it was made, showed that they never agreed to be bound in a fundamentally different situation which had unexpectedly emerged, that the contract ceases to bind. It was further held that the performance of a contract is never discharged merely because it may become onerous to one of the parties.

38. Similarly, in *Naihati Jute Mills Ltd. v. Hyaliram Jagannath* : 1968 (1) SCR 821, this Court went into the English law on frustration in some detail, and then cited the celebrated judgment of *Satyabrata Ghose v. Mugneeram Bangur & Co.* Ultimately, this Court concluded that a contract is not frustrated merely because the circumstances in which it was made are altered. The Courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events

40) In the present case, however, the conduct of examination was rendered useless by the Petitioner only after the examination was already conducted and services contemplated under the Agreement were performed by the Respondent. Thus the act agreed under the contract is not rendered impossible or impracticable. Merley because it has become useless for the Petitioner is no answer. Petitioner is responsible for rending the performed act useless, which aspect is discussed below.

SELF-INDUCED FRUSTRATION

41) As observed above, the Speaker of the Assembly took the decision to cancel the examination and the cancellation is not attributed to any conduct of the Respondent. Here reliance on behalf of the Respondent on judgment of the Apex Court in *Boothalinga Agencies* (supra) would be apposite. The Apex Court has interpreted provisions of Section 56 of the Contract Act and has held that the doctrine of 'frustration of contract' is essentially the concept of discharge of contract by reason of supervening impossibility and illegality of act agreed to be done. The Apex Court held that Section 56 of the Contract Act lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties. The Apex Court considered English judgments and ruled that in English law, the question of 'frustration of contract' has been treated by Courts as a question of construction depending on the true intention of the parties. In contrast, the Apex Court held that the statutory provisions contained in Section 56 of the Contract Act lays down the positive rule of law. In case before the Apex Court, the Appellant therein had entered into contract to sell certain goods to the Respondent, which he was importing under a license. Under the license, sale of goods was prohibited and the goods could be utilised only for consumption by the importer. The goods had arrived but not delivered by the Appellant. The Respondent therein filed a Suit, which was contested by the Appellant on the ground that the contract was illegal and therefore *void*. In the light of above factual position, the Apex Court held that the doctrine of frustration of contract could not be attracted where the event, which is alleged to have frustrated the contract, arises from the act or election of a party. The Apex Court however applied the principle of frustration of

contract in case before it as there was positive prohibition imposed by the licensee not to sell imported goods but only to utilise the same for consumption as raw material in the factory of the Appellant. The Apex Court held as under:-

The doctrine of frustration of contract is really an aspect or part of the law of discharge of contract by reason supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of s.56 of the Indian Contract Act. It should be noticed that s.56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties.

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Counsel on behalf of the respondent, however, contended that the contract was not impossible of performance and the appellant cannot take recourse to the provisions of s. 56 of the Indian Contract Act. It was contended that under cl. 1 of the Import Trade Control Order No. 2-ITC/48, dated March 6, 1948 it was open to the appellant to apply for a written permission of the licensing authority to sell the chicory. It is not shown by the appellant that he applied for such permission and the licensing authority had refused such permission. It was therefore maintained on behalf of the respondent that the contract was not impossible of performance. We do not think there is any substance in this argument. It is true that the licensing authority could have given written permission for disposal of the chicory under cl. 1 of Order No. 2-ITC/48, dated March 6, 1948 but the condition imposed in Ex. B-9 in the present case is a special condition imposed, under cl. (v) of paragraph (a) of Order No. 2-ITC/48, dated March 6, 1948 and there was no option given under this clause for the licensing authority to modify the condition of licence that "the goods will be utilised only for consumption as raw material or accessories in the licence holder's factory and that no portion thereof will be sold to any party". It was further argued on behalf of the respondent that, in any event, the appellant could have purchased chicory from the open market and supplied it to the respondent in terms of the contract. There is no substance in this argument also. Under the contract the quality of chicory to be sold was chicory of specific description-"Egberts Chicory, packed in 495 wooden cases, each case containing 2 tins of 56 lb. nett". The delivery of the chicory was to be given by "S. S. Alwaki" in December, 1955. It is manifest that the contract, Ex. A-1 was for sale of certain specific goods as described therein and it was not open to the appellant to supply G chicory of any other description. Reference was made on behalf of the respondent to the decision in *Maritime National Fish. Limited v. Ocean Trawlers, Limited* (1935) A.C. 524. In that case, the respondents chartered to the appellants a steam trawler fitted with an otter trawl. Both parties

knew at the time of the contract that it was illegal to use an otter trawl without a licence from the Canadian government. Some months later the appellants applied for licences for five trawlers which they were operating, including the respondents' trawler. They were informed that only three licences would be granted, and were requested to state for which of the three trawlers they desired to have licences. They named three trawlers other than the respondents'; and then claimed that they were no longer bound by the charter-party as its object had been frustrated. **It was held by the Judicial Committee that the failure of the contract was the result of the appellants' own election, and that there was therefore no frustration of the contract.** We think the principle of this case applies to the Indian law and the provisions of s. 56 of the Indian Contract Act cannot apply to a case of "self-induced frustration". **In other words, the doctrine of frustration of contract cannot apply where the event which is alleged to have frustrated the contract arises from the act or election of a party.** But for the reasons already given, we hold that this principle cannot be applied to the present case for there was no choice or election left to the appellant to supply chicory other than under the terms of the contract. On the other hand, there was a positive prohibition imposed by the licence upon the appellant not to sell the imported chicory to any other party but he was permitted to utilise it only for consumption as raw material in his own factory. We are accordingly of the opinion that Counsel for the respondent has been unable to make good his argument on this aspect of the case.

(emphasis added)

42) In my view, the ratio of the judgment of the Apex Court in *Boothalinga Agencies* (supra) would squarely apply to the facts of the present case. In the present case, cancellation of examination is a matter of fact and election of the Petitioner. The learned Arbitrator has already held that conduct of RRB examination by the Respondent had nothing to do with the conduct of the examination for the Petitioner. In fact, the learned Arbitrator went a step ahead to even enquire as to whether there was any allegation against the Respondent in respect of conduct of RRB examination and concluded that there was no such allegation. Thus, in the present case, the Petitioner has elected to cancel the examination for its own reason. Thus, what is involved in the present case is 'self-

induced impossibility'. Doctrine of frustration under Section 56 cannot be applied when the frustration is 'self-induced'.

43) An attempt is made to escape the ratio of the judgment in ***Boothalinga Agencies*** (supra) by contending that the examination is not cancelled by UPLA Secretariat, but the same is cancelled by the Speaker of the Assembly. Here the Petitioner is clearly blowing hot and cold in the same breath. While raising the issue of jurisdiction, the Petitioner conveniently contends that the State Government and UPLA are two distinct entities. It did not contend that the Speaker of the Assembly is a distinct entity than UPLA for raising objection of jurisdiction. The Legislature with its Secretariat is claimed to be a single entity, distinct from the State Government. However, when it comes to escaping the ratio of the judgment in ***Boothalinga Agencies*** (supra), a convenient stand is taken that the entity of Legislature is to be further subdivided into UPLA and the Speaker. I am therefore not inclined to accept this superfine distinction. The case is squarely covered by the judgment of the Apex Court in ***Boothalinga Agencies*** (supra). The impossibility to fructify the examination to recruitment is a self-induced frustration. The contention with regard to frustration of the contract under Section 56 of the Contract Act therefore does not merit any acceptance.

OBJECTION TO AWARD OF 'ENTIRE PRICE' OF THE CONTRACT

44) Argument of entitlement of Respondent to only compensation under Section 70 of the Contract Act is essentially premised on the main argument that the contract is frustrated under Section 56 of the Contract Act. However, since the claim of frustration of contract under Section 56 itself is rejected, the contention with regard to Section 70 of the Contract Act need not even be considered. Even

otherwise, Section 70 argument was not specifically raised before the learned Arbitrator. What was contended however was that the claim ought to have been allowed by applying the principle of *quantum meruit* i.e. award of compensation for work done.

45) Section 70 is included in Chapter V of the Contract Act, which contains heading '*Of certain relations resembling those created by contract*'. Chapter V thus, applies where there is express contract between the parties, but relationship or conduct is such that existence of contract can be presumed. Section 70 of the Contract Act provides for obligation in respect of a person enjoying benefit of non-gratuitous act. Section 70 of the Contract Act provides thus:-

70. Obligation of person enjoying benefit of non-gratuitous act-

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore the thing so done or delivered.

Thus, a person who lawfully does something for another person and the other person enjoys the benefit thereof, the latter is bound to make compensation to the former. Section 70 thus contemplates a situation where an act is performed for the benefit of other person in absence of express contract and under a hope of receipt of returns and the other person enjoys the fruits of that act. In such case, the person enjoying fruits of that act is made liable to pay compensation in respect of enjoyment of that act.

46) In the present case, Section 70 of the Contract Act would have no application as the services performed by the Respondent are in pursuance of express written contract between the parties. As observed above, provisions of Section 70 of the Contract Act are pressed into service by the Petitioner as sequitur to the main argument of frustration of contract under Section 56 of the Contract Act. Since theory of frustration of contract is rejected, there is no question of applying provisions of Section 70 of the Contract Act to the present case.

47) Though the issue of *quantum meruit* was argued before the learned Arbitrator, no contention in that regard is raised before me while challenging the impugned Award. In that view of the matter, there is no reason to interfere with the findings of the learned Arbitrator about Respondent being entitled to entire contract price under the Agreement.

48) Reliance by the Petitioner on judgment of the Apex Court in *Associate Builders* (supra) is of no assistance. The judgment is pressed into service in support of the contention that if the Award is rendered disregarding any order of superior Court, the same would be treated as contrary to the fundamental policy of Indian law. However, I find that the impugned Award is in accordance with the ratio of the judgment of the Apex Court in *Boothalinga Agencies* and does not ignore any binding precedent of superior Court. For the same reasons, the judgment of the Apex Court in *Ssangyong Engineering and Construction Company Limited* (supra) does not assist the case of the Petitioner as the judgment merely restates the principle of *Associate Builders* after 2015 amendments to the Arbitration Act.

49) Lastly, the judgment of Constitution Bench in *Gayatri Balasamy* (supra) is cited by Petitioner in support of contention of impermissibility for severance of good part of the Award with the bad part. The necessity of examining possible severance does not arise as no part of the award is established as bad part.

CONCLUSION

50) Considering the overall conspectus of the case, I am of the view that no valid ground of challenge is made to the impugned Award in the present Petition. Petitioner has utilised the services of the Respondent-TCS for conduct of recruitment examination. The examination is cancelled by the Speaker of the Assembly as a matter of choice and election without Respondent being responsible for breach of any condition of contract or any malpractices taking place in the examination. Since cancellation of examination was matter of choice exercised by the Petitioner/Speaker of the Assembly, avoidance of contract cannot be resorted to by applying a principle of frustration under Section 56 of the Contract Act. The findings recorded by the learned Arbitrator are well supported by evidence on record. They cannot be treated as perverse in any manner. The view taken by the learned Arbitrator for award of contract price is a plausible view. Award is not rendered by ignoring any provision of law or any judgment of the superior Court. The Award therefore does not suffer from the vice of being in conflict with public policy of the Government. Petitioner has not been able to point out any patent illegality in the impugned Award. In my view therefore, no case is made out for interference in the impugned Award in exercise of powers under Section 34 of the Arbitration Act.

51) The Award is thus unexceptionable and the Arbitration Petition is liable to be dismissed. Arbitration Petition is accordingly **dismissed**.

52) Considering the fact that the transaction between the parties is of commercial nature, this Court would have been justified in awarding costs in favour of the Respondent while dismissing the Petition. It is however seen that the Arbitral Tribunal has already quantified cost at Rs.11,00,842/- in favour of the Respondent. The learned Arbitrator has also awarded interest @ 1.5% per month on the principal amount in favour of the Respondent. Considering this position, I am not inclined to impose any further cost on the Petitioner.

53) With dismissal of the Petition, the Interim Application does not survive. The same also stands disposed of.

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[SANDEEP V. MARNE, J.]