SUPREME COURT OF INDIA

Bar Council of India

Vs.

Union of India

W.P(Civil)No.666 of 2002

(R.M.Lodha and Anil R.Dave,JJ.)

03.08.2012

JUDGMENT

R.M. Lodha,J.

1. Bar Council of India by means of this writ petition under Article 32 of the Constitution of India has raised challenge to the vires of Sections 22-A, 22-B, 22-C, 22-D and 22-E of the Legal Services Authorities Act, 1987 (for short, '1987 Act') as inserted by the Legal Services Authorities (Amendment) Act, 2002 (for short, '2002 Amendment Act').

2. By 2002 Amendment Act, in Section 22 of the 1987 Act, the words "Lok Adalat" were substituted by "Lok Adalat or Permanent Lok Adalat" and a new Chapter VI-A entitled "Pre-litigation Conciliation and Settlement" comprising of Sections 22-A to 22-E came to be inserted. In Section 23 of the 1987 Act, the words "members of the Lok Adalats" were substituted by the words "members of the Lok Adalats or the persons constituting Permanent Lok Adalats"

3. The challenge is principally on the ground that Sections 22-A, 22-B, 22-C, 22- D and 22-E are arbitrary per se; violative of Article 14 of the Constitution of India and are contrary to the rule of law as they deny fair, unbiased and even-handed justice to all.

4. We have heard Mr. Manoj Goel, learned counsel for the petitioner and Mr. T. S. Doabia, learned senior counsel for the Union of India. After oral arguments were over, Mr. Manoj Goel, learned counsel for the petitioner has also filed written submissions. Elaborating the vice of arbitrariness in the impugned provisions, in the written submissions, it is submitted that Section 22-C(1) read with Section 22-C(2) provides that a dispute before Permanent Lok Adalat can be raised by moving an application to it unilaterally by any party to the dispute (before the dispute is brought before any court for settlement). The public utility service provider, thus, can play mischief by pre-empting an aggrieved consumer from going to the consumer fora or availing other judicial process for Redressal of his grievance and

enforcement of his rights. Permanent Lok Adalats have been empowered to decide dispute on merits upon failure between the parties to arrive at a settlement under Section 22-C(8). While deciding the case on merits, the Permanent Lok Adalat is not required to follow the provisions of the Civil Procedure Code or the Evidence Act. Section 22- C(8) prevents the courts and the consumer fora to examine the deficiencies in services such as transport, postal and telegraph, supply of power, light or water, public conservancy or sanitation, service in hospital, etc. and renders the provisions under challenge arbitrary and irrational.

5. It has been submitted on behalf of the petitioner that award of the Permanent Lok Adalat on merits is made final and binding and cannot be called in question in any forum or court of law under Section 22-E(1) and (4). No right to appeal has been provided for against the award in any court of law. Since all the public utility services basically relate to the fundamental right to life provided under Article 21 of the Constitution, any adverse decision on merits by Permanent Lok Adalat would immediately impinge upon fundamental right of an aggrieved citizen and, therefore, even absence of one right of appeal makes these provisions unconstitutional as it is against the fundamental principles of fair procedure. To say that an aggrieved person can approach the High Court under Articles 226/227 of the Constitution against awards given by the Permanent Lok Adalats on merits and, therefore, absence of right of appeal does not matter, is completely misplaced. The writ jurisdiction under Articles 226/227 is extremely limited and is no substitute of the appellate jurisdiction.

6. An argument was raised that though Permanent Lok Adalat supplants the civil court, consumer court or motor accident claims tribunal yet its mechanism and delivery of justice are not as effective as the above fora as the Permanent Lok Adalat is not required to follow the procedure contemplated in the Code of Civil Procedure and the Evidence Act. Moreover an award given on merits by Permanent Lok Adalat has to be by majority and since Permanent Lok Adalat consists of one judicial member and two administrative members, there is preponderance of administrative members which is against fundamental principles of justice enshrined in the Constitution.

7. It was strenuously submitted on behalf of the petitioner that the jurisdiction conferred upon Permanent Lok Adalat cannot oust the jurisdiction of the fora created under specialized statutes dealing with the services referred to in Section 22-A(b). In this regard, the provisions contained in three specialized statutes, namely, the Consumer Protection Act, 1986, The Telecom Regulatory Authority of India Act, 1997 and the Insurance Act, 1938 were referred. By relying upon a decision of this Court in The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay and Others[1], in the written arguments it has been submitted that the consumer fora as well as specialized courts/tribunals under the Telecom Regulatory Authority of India Act, 1997 and the Insurance Act, 1938 have exclusive jurisdiction as far as

enforcement of rights under these statutes are concerned and their jurisdiction cannot be taken away by Permanent Lok Adalat. Particularly, with reference to the provisions contained in the Consumer Protection Act, it is submitted that compensatory remedies available under this law are in addition to and not in derogation of any other law and since Permanent Lok Adalats have no jurisdiction to grant compensatory relief, the jurisdiction of the consumer fora remains intact. Reliance has been placed on the decisions of this Court in Fair Air Engineers Pvt. Ltd. and another v. N.K. Modi[2], Skypak Couriers Ltd. v. Tata Chemicals Ltd.[3], Trans Mediterranean Airways v. Universal Exports and another[4] and National Seeds Corporation Limited v. M. Madhusudhan Reddy and another[5]. National Seeds Corporation Limited5 was also pressed into service in support of the submission that consumer protection laws were enacted pursuant to the solemn international obligations of our country and, therefore, the Permanent Lok Adalats cannot oust the jurisdiction of the consumer courts. It is also submitted that the jurisdiction of the consumer courts is protected unless it is expressly barred even in cases where some disputes can be adjudicated in different fora. Two decisions of this Court in this regard, namely, Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha (Dead) through LRs. and Others[6] and Kishore Lal v. Chairman, Employees' State Insurance Corpn.[7] have been relied upon.

8. Mr. T.S. Doabia, learned senior counsel for the Union of India, on the other hand, submitted that the issues raised in the writ petition have already been decided by this Court in S.N. Pandey v. Union of India (Writ Petition (Civil) No. 543/2002; decided on 28.10.2002) and the writ petition deserves to be dismissed on this ground alone. He submitted that the impugned provisions are in conformity with the objectives of Article 39A and intended to provide an affordable, speedy and efficient mechanism to secure justice.

9. As regards decision of this Court in S.N. Pandey (supra), the counsel for the petitioner in rejoinder would submit that the dismissal of the earlier writ petition was in limine and would not be a binding precedent. The decisions of this Court in B. Prabhakar Rao and others v. State of Andhra Pradesh and others[8], Union of India and others v. Jaipal Singh[9] were relied upon. Learned counsel for the petitioner also submitted that in the earlier writ petition, there was no law declared under Article 141 of the Constitution since points now raised in the present writ petition were neither argued nor discussed. In this regard, the learned counsel referred to the two decisions of this Court in B. Shama Rao v. Union Territory of Pondicherry[10], Municipal Corporation of Delhi v. Gurnam Kaur[11] and State of Punjab v. Baldev Singh[12] .

10. Article 39-A came to be inserted in the Constitution by Constitution (42nd Amendment) Act, 1976 with effect from 3.1.1977. It enjoins upon the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity and in particular to

provide free legal aid by suitable legislation or schemes or in any other way and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Equal justice to all and free legal aid are hallmark of Article 39-A. Pursuant to these objectives, the 1987 Act was enacted by the Parliament to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. The statement of objects and reasons that led to enactment of 1987 Act reads as follows:

> "1. Article 39-A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
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> 2.With the object of providing free legal aid, Government had, by Resolution dated the 26th September, 1980 appointed the "Committee for Implementing Legal Aid Schemes" (CILAS) under the Chairmanship of Mr. Justice P.N. Bhagwati (as he then was) to monitor and implement legal aid programmes on a uniform basis in all the States and Union territories. CILAS evolved a model scheme for legal Aid programme applicable throughout the country by which several legal aid and advice boards have been set up in the States and Union territories. CILAS is funded wholly by grants from the Central Government. The Government is accordingly concerned with the programme of legal aid as it is the implementation of a constitutional mandate. But on a review of the working of the CILAS certain deficiencies have come to the fore. It is, therefore, felt that it will be desirable to constitute statutory legal service authorities at the National, State and District levels so as to provide for the effective monitoring of legal aid programmes. The Bill provides for the composition of such authorities and for the funding of these authorities by means of grants from the Central Government and the State Governments. Power has been also given to the National Committee and the State Committees to supervise the effective implementation of legal aid schemes.
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> 3.For some time now, Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration and settlement between the parties, of a large number of cases expeditiously and with lesser costs. The institution of Lok Adalats is at present functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. It has proved to be

very popular in providing for a speedier system of administration of justice. In view of its growing popularity, there has been a demand for providing a statutory backing to this institution and the awards given by Lok Adalats. It is felt that such a statutory support would not only reduce the burden of arrears of work in regular Courts, but would also take justice to the door-steps of the poor and the needy and make justice quicker and less expensive."

11. For about a decade and half, the operation of the 1987 Act was closely watched. It was felt that the system of Lok Adalats provided in the 1987 Act sometimes results in delaying the dispensation of justice where the parties do not arrive at any compromise or settlement in Lok Adalat and the case is returned to the court of law or the parties are advised to pursue appropriate remedy for redressal of their grievance. Accordingly, amendment in the 1987 Act was felt by the Parliament to be necessary. The statement of objects and reasons of the 2002 Amendment Act, inter alia, reads as under:

"The Legal Services Authorities Act, 1987 was enacted to constitute legal services authorities for providing and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice were no denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity. The system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the Court.

2. However, the major drawback in the existing scheme of organisation of the Lok Adalats under Chapter VI of the said Act is that the system of Lok Adalats is mainly based on compromise or settlement between the parties. If the parties do not arrive at any compromise or settlement, the case is either returned to the Court of law or the parties are advised to seek remedy in a Court of law. This causes unnecessary delay in the dispensation of justice. If Lok Adalats are given power to decide the cases on merits in case parties fails to arrive at any compromise or settlement, this problem can be tackled to a great extent. Further, the cases which arise in relation to public utility services such as Mahanagar Telephone Nigam Limited, Delhi Vidyut Board, etc., need to be settled urgently so that people get justice without delay even at pre-litigation stage and thus most of the petty cases which ought not to go in the regular Courts would be settled at the pre-litigation stage itself which would result in reducing the workload of the regular Courts to a great extent. It is, therefore, proposed to amend the Legal Service Authorities Act, 1987 to set up Permanent Lok Adalats for

providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services.

3. The salient features of proposed legislation are as follows :-

(i) to provide for the establishment of Permanent Lok Adalats which shall consists (sic) of a Chairman who is or has been a District Judge or Additional District Judge or has held judicial officer (sic) higher in rank than that of the District Judge and two other persons having adequate experience in public utility services;

(ii) The Permanent Lok Adalat shall exercise jurisdiction in respect of one or more public utility services such as transport services of passengers of goods by air, road and water, postal, telegraph or telephone services, supply of power, light or water to the public by any establishment, public conservancy or sanitation, services in hospitals or dispensaries, and insurance services;

(iii) The pecuniary jurisdiction of the Permanent Lok Adalat shall be up to Rupees Ten Lakhs. However, the Central Government may increase the said pecuniary jurisdiction from time to time. It shall have no jurisdiction in respect of any matter relating to an offence not compoundable under any law;

(iv) It also provides that before the dispute is brought before any Court, any party to the dispute may make an application to the Permanent Lok Adalat for settlement of the dispute;

(v) Where it appears to the Permanent Lok Adalat that there exist elements of a settlement, which may be acceptable to the parties, it shall formulate the terms of a possible settlement and submit them to the parties for their observations and in case the parties reach an agreement, the Permanent Lok Adalat shall pass an award in terms thereof. In case parties to the dispute fail to reach an agreement, the Permanent Lok Adalat shall decide the dispute on merits; and

(vi) Every award made by the Permanent Lok Adalat shall be final and binding on all the parties thereto and shall be by a majority of the persons constituting the Permanent Lok Adalat."

12. With the above objectives, 2002 Amendment Act was enacted by the Parliament and thereby Chapter VI-A (Sections 22-A to 22-E) was brought in with few other consequential amendments elsewhere.

13. The title of Chapter VI-A is "Pre-litigation Conciliation and Settlement". Section 22-A(a) defines "Permanent Lok Adalat" to mean a Permanent Lok Adalat established under

sub-section (1) of Section 22-B. "Public utility service" is defined in Section 22-A(b). It means (i) transport service for the carriage of passengers or goods by air, road or water; or (ii) postal, telegraph or telephone service; or (iii) supply of power, light or water to the public by any establishment; or (iv) system of public conservancy or sanitation; or (v) service in hospital or dispensary; or (vi) insurance service. If the Central Government or the State Government declares in the public interest, any service to be a public utility service for the purposes of Chapter VI-A, such service on declaration is also included in the definition of 'public utility service' under Section 22-A(b).

14. The establishment of Permanent Lok Adalat is done under Section 22-B. The Central Authority and every State Authority, as the case may be, have been mandated to establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be notified. The composition of Permanent Lok Adalat is provided in Section 22-B (2). Accordingly, every Permanent Lok Adalat shall consist of (a) a person who is or has been a District Judge or Additional District Judge or has held judicial office higher in rank than that of a District Judge and (b) two other persons having adequate experience in public utility service to be nominated by the Central Government or by the State Government, as the case may be on the recommendation of the Central Authority or by the State Authority (as the case may be). The judicial officer, namely, the District Judge or Additional District Judge or the Judicial Officer higher in rank than that of a District Judge shall be the Chairman of the Permanent Lok Adalat.

15. Section 22-C provides for the procedure for raising dispute before the Permanent Lok Adalat. Sub-section (1) provides that any party to a dispute may make an application to the Permanent Lok Adalat for the settlement of dispute before the dispute is brought before any court. However, Permanent Lok Adalat has no jurisdiction to deal with any matter relating to an offence not compoundable under any law. The second proviso puts a cap on the pecuniary jurisdiction inasmuch as it provides that the Permanent Lok Adalat shall not have jurisdiction in a matter where the value of the property in dispute exceeds ten lakh rupees. The Central Government, however, may increase the limit of ten lakh rupees in consultation with the Central Authority by notification.

16. Sub-section (2) of Section 22-C puts an embargo on the parties to a dispute after an application has been made by any one of them under sub-section (1) in invoking jurisdiction of any court in the same dispute.

> 16.1.Sub-section (3) of Section 22-C provides for the procedure to be followed by the Permanent Lok Adalat once an application is made before it by any party to a dispute under sub-section (1). This procedure includes filing of a written statement by each

party to the application stating therein the facts and nature of the dispute and highlighting the points or issues in such dispute and the documents and other evidence in support of their respective written statement and exchange of copy of such written statement together with copy of documents/other evidence. The Permanent Lok Adalat may require any party to the application to file additional statement before it at any stage of the conciliation proceedings. Any document or statement received by Permanent Lok Adalat from any party to the application is given to the other party. On completion of the above procedure, the Permanent Lok Adalat proceeds with conciliation proceedings between the parties to the application under sub-section (4) of Section 22-C. During conduct of the conciliation proceedings under sub-section (4) of Section 22-C, the Permanent Lok Adalat is obliged to assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner. Every party to the application has a duty to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

16.2.On satisfaction that there is likelihood of settlement in the proceedings, the Permanent Lok Adalat may formulate the terms of possible settlement of the dispute and give to the parties for their observations and where the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement/agreement and Permanent Lok Adalat then passes an award in terms thereof and furnishes a copy of the same to each of the parties concerned.

17. Upto the above pre-litigation conciliation and settlement procedure, there is no problem or issue. The petitioner is seriously aggrieved by the provision contained in Section 22-C(8) which provides that where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute. This provision followed by Section 22-D which, inter-alia, provides that while deciding a dispute on merit the Permanent Lok Adalat shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 and Section 22-E which accords finality to the award of Permanent Lok Adalat under sub-section (1) and the provision made in sub-section (4) that every award made by the Permanent Lok Adalat shall be final and hence shall not be called in question in any original suit, application or execution proceedings form mainly bone of contention. Are these provisions violative of Article 14 of the Constitution of India and contrary to rule of law, fairness and even- handed justice? are the questions to be considered.

18. Chapter VI-A inserted by the 2002 Amendment Act in 1987 Act, as its title suggests, provides for pre-litigation conciliation and settlement procedure. The disputes relating to public utility service like transport service for carriage of passengers or goods by air, road or water or postal, telegraph or telephone service or supply of power, light or water or public conservancy system or sanitation or service in hospital or dispensary or insurance service, etc., in the very scheme of things deserve to be settled expeditiously. Prolonged dispute in respect of the above matters between the service provider and an aggrieved party may result in irretrievable damage to either party to the dispute. Today, with increasing number of cases, the judicial courts are not able to cope with the heavy burden of inflow of cases and the matters coming before them. The disputes in relation to public utility service need urgent attention with focus on their resolution at threshold by conciliation and settlement and if for any reason such effort fails, then to have such disputes adjudicated through an appropriate mechanism as early as may be possible. With large population in the country and many public utility services being provided by various service providers, the disputes in relation to these services are not infrequent between the service providers and common man. Slow motion procedures in the judicial courts are not conducive for adjudication of disputes relating to public utility service.

19. The statement of objects and reasons itself spells out the salient features of Chapter VI-A. By bringing in this law, the litigation concerning public utility service is sought to be nipped in the bud by first affording the parties to such dispute an opportunity to settle their dispute through the endeavours of the Permanent Lok Adalat and if such effort fails then to have the dispute between the parties adjudicated through the decision of the Permanent Lok Adalat. The mechanism provided in Chapter VI-A enables a party to a dispute relating to public utility service to approach the Permanent Lok Adalat for the settlement of dispute before the dispute is brought before any court.

20. Parliament can definitely set up effective alternative institutional mechanisms or make arrangements which may be more efficacious than the ordinary mechanism of adjudication of disputes through the judicial courts. Such institutional mechanisms or arrangements by no stretch of imagination can be said to be contrary to constitutional scheme or against the rule of law. The establishment of Permanent Lok Adalats and conferring them jurisdiction upto a specific pecuniary limit in respect of one or more public utility services as defined in Section 22-A(b) before the dispute is brought before any court by any party to the dispute is not anathema to the rule of law. Instead of ordinary civil courts, if other institutional mechanisms are set up or arrangements are made by the Parliament with an adjudicatory power, in our view, such institutional mechanisms or arrangements cannot be faulted on the ground of arbitrariness or irrationality.

21. The Permanent Lok Adalats under the 1987 Act (as amended by 2002 Amendment Act) are in addition to and not in derogation of For a provided under various statutes. This position is accepted by the Central Government in their counter affidavit.

22. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to Permanent Lok Adalats only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat. It is for this reason that sub-section (1) of Section 22-C states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, the Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service upto a specific pecuniary limit, if they do not relate to any offence, as provided under Section 22-C(8), be said to be unconstitutional and irrational? We think not. It is settled law that an authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Chapter VI-A has been enacted to provide for an institutional mechanism, through the establishment of Permanent Lok Adalats for settlement of disputes concerning public utility service before the matter is brought to the court and in the event of failure to reach any settlement, empowering the Permanent Lok Adalat to adjudicate such dispute if it does not relate to any offence.

23. The difference between “courts” and “tribunals” has come up for consideration before this Court on more than one occasion. Almost five decades back, this Court in M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala and others[13] stated that by “courts” the courts of civil judicature is meant and by “tribunals” those bodies of men who are appointed to decide controversies arising under certain special laws. All tribunals are not courts though all courts are tribunals. It was further observed that in the exercise of judicial power, a clear division was noticeable between courts and tribunals, particularly, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their

procedures may differ, but the functions are not essentially different. Both courts and tribunals act "judicially".

24. In Associated Cement Companies Ltd. v. P. N. Sharma & Anr.[14], the Constitution Bench of this Court observed that under our Constitution, the judicial functions and powers of the State have been primarily conferred on the ordinary courts; the Constitution recognises a hierarchy of courts and they are normally entrusted to adjudicate all disputes between citizens and citizens as well as between the citizens and the State. The powers which the courts exercise are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions. The tribunals decide special matters entrusted to them for their decision. The procedure which the tribunals have to follow may not always be so strictly prescribed but the approach adopted by both the courts and tribunals is substantially the same; it is State's inherent judicial function which they discharge.

25. In Kihoto Hollohan v. Zachillhu & Ors.[15], it has been stated by this Court that where the authority is called upon to decide a lis on the rights and obligations of the parties, there is an exercise of judicial power. The authority is called a tribunal if it does not have all the trappings of a court.

26. In a comparatively recent decision in Union of India v. R.Gandhi, President, Madras Bar Association[16] (Civil Appeal No. 3067 of 2004); decided on May 11, 2010, a Constitution Bench of this Court was concerned with the matters wherein the constitutional validity of Parts I-B and I-C of the Companies Act, 1956 inserted by Companies (Second Amendment) Act, 2002 providing for the Constitution of National Company Law Tribunal and National Company Law Appellate Tribunal was under challenge. The Court while examining the difference between the courts and tribunals, inter alia, referred to earlier decisions of this Court, some of which have been noted above. The Court summarized the legal position as follows:

> "(a) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.
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> (b) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal. This means that such Tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters

and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.

(c) Whenever there is need for 'Tribunals', there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all tribunals will dilute and adversely affect the independence of the Judiciary.

(d) The Legislature can re-organize the jurisdictions of Judicial Tribunals. For example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (A standard example is the variation of pecuniary limits of the courts). Similarly while constituting Tribunals, the Legislature can prescribe the qualifications/eligibility criteria. The same is however subject to Judicial Review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of the judiciary or the standards of the judiciary, the court may interfere to preserve the independence and standards of the judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive."

27. The competence of the Parliament to make a law creating tribunals to deal with disputes arising under or relating to a particular statute or statutes or particular disputes is, thus, beyond question.

28. Sine qua non of taking cognizance of a dispute concerning public utility service by the Permanent Lok Adalat is that neither party to a dispute has approached the civil court. There is no merit in the submission of the petitioner that the service provider may pre-empt the consideration of a dispute by a court or a forum under special statute by approaching the Permanent Lok Adalat established under Chapter VI-A of the 1987 Act and, thus, depriving the user or consumer of such public utility service of an opportunity to have the dispute adjudicated by a civil court or a forum created under special statute. In the first place, the jurisdiction of fora created under the Special Statutes has not been taken away in any manner whatsoever by the impugned provisions. As noted above, the Permanent Lok Adalats are in addition to and not in derogation of for a provided under Special Statutes. Secondly, not a

single instance has been cited where a provider of service of public utility in a dispute with its user has approached the Permanent Lok Adalat first. The submission is unfounded and misplaced.

29. The alternative institutional mechanism in Chapter VI-A with regard to the disputes concerning public utility service is intended to provide an affordable, speedy and efficient mechanism to secure justice. By not making applicable the Code of Civil Procedure and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in deciding a dispute on merit.

30. Insofar as composition of Permanent Lok Adalat is concerned, Section 22- B(2) provides that every Permanent Lok Adalat shall consist of a person who is or has been a District Judge or Additional District Judge or has held judicial office higher in rank than that of a District Judge and two other persons having adequate experience in public utility service to be nominated by the Central Government or the State Government, as the case may be, on the recommendation of the Central Authority or the State Authority, as the case may be. Of the three members, the judicial officer is the Chairman of the Permanent Lok Adalat. The Central Authority under Section 3 of the 1987 Act, inter alia, consists of the Chief Justice of India, a serving or retired Judge of the Supreme Court to be nominated by the President in consultation with the Chief Justice of India and the other members to be nominated by the Central Government in consultation with the Chief Justice of India. The Chief Justice of India is the Patron-in-Chief of the Central Authority while a serving or retired Judge of the Supreme Court is the Executive Chairman. Similarly, the State Authority under Section 6 consists of the Chief Justice of the High Court, a serving or retired Judge of the High Court to be nominated by the Governor in consultation with the Chief Justice of the High Court and such number of other members to be nominated by the State Government in consultation with the Chief Justice of the High Court. It would be, thus, seen that the two members other than the judicial officer of a Permanent Lok Adalat can be appointed by the Central Government or the State Government, as the case may be, on the recommendation of the Central Authority or the State Authority only. The composition of Central Authority and the State Authority has been noted above. In the above view, it is misconceived to say that the judiciary has been kept out in the appointment of members of the Permanent Lok Adalats. The independence of Permanent Lok Adalats does not seem to have been compromised at all as even the non-judicial members of every Permanent Lok Adalat have to be appointed on the recommendation of a high powered Central or State Authority headed by none other than the Chief Justice of India or a serving or retired Judge of the Supreme Court where the

nomination is made by the Central Government or by the Chief Justice of the State High Court or a serving or retired Judge of the High Court where the nomination is made by the State Government.

31. It is not unusual to have the tribunals comprising of judicial as well as non-judicial members. The whole idea of having non-judicial members in a tribunal like Permanent Lok Adalat is to make sure that the legal technicalities do not get paramountcy in conciliation or adjudicatory proceedings. The fact that a Permanent Lok Adalat established under Section 22-B comprises of one judicial officer and two other persons having adequate experience in public utility service does not show any abhorrence to the rule of law nor such composition becomes violative of principles of fairness and justice or is contrary to Articles 14 and 21 of the Constitution of India.

32. It is true that the award made by the Permanent Lok Adalat under 1987 Act has to be by majority of the persons constituting the Permanent Lok Adalat. In a given case, it may be that the two non-judicial members disagree with the judicial member but that does not mean that such majority decision lacks in fairness or sense ofjustice.

33. There is no inherent right of appeal. Appeal is always a creature of statute and if no appeal is provided to an aggrieved party in a particular statute, that by itself may not render that statute unconstitutional. Section 22-E(1) makes every award of the Permanent Lok Adalat under 1987 Act either on merit or in terms of a settlement final and binding on all the parties thereto and on persons claiming under them. No appeal is provided from the award passed by the Permanent Lok Adalat but that, in our opinion, does not render the impugned provisions unconstitutional. In the first place, having regard to the nature of dispute upto a specific pecuniary limit relating to public utility service and resolution of such dispute by the procedure provided in Section 22-C(1) to 22- C(8), it is important that such dispute is brought to an end at the earliest and is not prolonged unnecessarily. Secondly, and more importantly, if at all a party to the dispute has a grievance against the award of Permanent Lok Adalat he can always approach the High Court under its supervisory and extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. There is no merit in the submission of the learned counsel for the petitioner that in that situation the burden of litigation would be brought back on the High Courts after the award is passed by the Permanent Lok Adalat on merits.

34. The challenge to the validity of the impugned provisions came up before this Court in S.N. Pandey (supra). A three-Judge Bench of this Court was not persuaded by the challenge and held as under:

> "We have gone through the provisions of the said Chapter which contemplated the setting up of permanent Lok Adalats, for deciding disputes in which public utility services is one of the matters involved. It is quite obvious that the effort of the legislature is to decrease the work load in the Courts by resorting to alternative disputes resolution. Lok Adalat is a mode of dispute resolution which has been in vogue since over two decades. Hundreds of thousands of cases have been settled through this mechanism and is undisputedly a fast means of dispensation of justice. The litigation is brought to a quick end with no further appeals or anguish to the litigants. The constitution of the permanent Lok Adalats mechanism contemplate the judicial officer or a retired judicial officer being there alongwith other persons having adequate experience in the public utility services. We do not find any constitutional infirmity in the said legislation. The act ensures that justice will be available to the litigant speedily and impartially. We do emphasis that the persons who are appointed on the Permanent Lok Adalats should be person of integrity and adequate experience. Appropriate rules, inter alia in this regard, no doubt will have to be framed, if not already in place. We upheld the validity of the said Act and hope the Permanent Lok Adalats will be set up at an early date. The Lok Adalats are enacted to Primarily bring about settlement amongst the parties. The parties are normally required to be present in person and since the impugned provisions are in the interest of the litigating public, the Lok Adalats shall perform their duties and will function; even if members of the Bar choose not to appear."

35. Learned counsel for the petitioner submitted that the disposal of the writ petition filed by S.N. Pandey was in limine and the order passed therein cannot be construed as a binding precedent. It was also submitted that the said decision does not declare any law under Article 141 of the Constitution since points now raised in the present matter, were neither argued nor discussed.

36. We are not persuaded by the submission of the learned counsel for the petitioner. Although the disposal of writ petition in S.N. Pandey was in limine and the order is brief but the court has disposed of the same on merits. In B. Prabhakar Rao8 , O. Chinnappa Reddy ,J. did observe in para 22 that the dismissal in limine of a writ petition cannot possibly bar the subsequent writ petitions but at the same time he also observed that such a dismissal in limine may inhibit the discretion of the Court. V. Khalid, J. in his supplementing judgment in para 27(6) exposited the position that normally this Court would be disinclined to entertain or to hear petitions raising identical points again where on an earlier occasion, the matter was heard and dismissed. Not that this Court had no jurisdiction to entertain such matters, but would normally exercise its discretion against it. We are in complete agreement with the above view of V. Khalid, J. It is against public policy and well defined principles of judicial

discretion to entertain or hear petitions relating to same subject matter where the matter was heard and dismissed on an earlier occasion.

37. Independent of the view of this Court in S.N. Pandey, for the reasons that we have indicated above, we find no merit in the challenge to the impugned provisions of Chapter VI-A brought in the 1987 Act by 2002 Amendment Act.

38. We, accordingly, dismiss the writ petition with no order as to costs.

Judgment Referred

[1](1976)(1) SCC 0496
[2](1996) 6 SCC 0385
[3](2000) 5 SCC 0294
[4](2011) 10 SCC 0316
[5](2012) 2 SCC 0506
[6](2004) 1 SCC 0305
[7](2007) 4 SCC 0579
[8]1985 (Supp) SCC 0432
[9](2004) 1 SCC 0121
[10]AIR 1967 SC 1480
[11](1989) 1 SCC 0101
[12](1999) 6 SCC 0172
[13]1962 (2) SCR 0339
[14](1965) 2 SCR 0366
[15]1992 Supp (2) SCC 0651
[16](2010) 11 SCC 0001