

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

+ WRIT APPEAL No.611 of 2023

% Date:12.02.2024

Directorate of Enforcement, rep. by Assistant Director,
Department of Revenue, Hyderabad.

... Appellant

vs.

\$ M/s.Karvy India Realty Limited,
rep. by its Authorised Signatory, and others

... Respondents

! Counsel for the appellant : Mr. A.R.L.Sundaresan,
learned Additional Solicitor General for
Mr. Anil Prasad Tiwari, learned Standing
Counsel for Enforcement Directorate

^ Counsel for the respondents : Mr. T.Niranjan Reddy, and
Mr. Avinash Desai
Learned Senior Counsels

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (2020) 19 SCC 10
2. (2008) 14 SCC 107
3. (2010) 11 SCC 1
4. (2013) 10 SCC 359
5. (2018) 6 SCC 21
6. 2018 SCC OnLine Del 13481
7. 2023 SCC OnLine Cal 2391 : AIR 2023 Cal 326
8. (2023) 8 SCC 745
9. AIR 1950 SC 222
10. (2010) 11 SCC 1
11. (2020) 6 SCC 1
12. (2015) SCC OnLine Sikk 217
13. 2022 SCC OnLine SC 929
14. 1923 AllER 150
15. (2019) 6 SCC 604
16. AIR OnLine 2019 SC 157 : LL 2021 SC 84
17. (1989) 3 SCC 709
18. (2017) 14 SCC 663

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WRIT APPEAL No.611 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

This intra court appeal emanates from an order dated 13.03.2023 passed by the learned Single Judge in I.A.No.1 of 2022 in W.P.No.41133 of 2022.

2. Facts giving rise to filing of this appeal briefly stated are that the respondent Nos.1 to 29 in the writ appeal are the companies registered under the provisions of the Companies Act, 1956. On the basis of a complaint made by the Housing Development Finance Corporation Bank (hereinafter referred to as 'the HDFC Bank'), First Information Reports (FIRs) bearing FIR No.78 of 2021, dated 22.04.2021 and F.I.R.No.86 of 2021, dated 01.05.2021 were registered against M/s.Karvy Stock Broking Limited (KSBL) and its directors and M/s.Karvy Comtrade Limited and its Directors respectively for the offence under Section 420 IPC. A provisional order of attachment dated 18.07.2022 was

issued under Section 5(1) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') by the Deputy Director, Enforcement Directorate. Thereafter, a show cause notice dated 19.09.2022 was issued by the Union of India.

3. The validity of the aforesaid provisional order of attachment dated 18.07.2022 and show cause notice dated 19.09.2022 was assailed in a writ petition *inter alia* on the ground that a single member cannot pass an order of attachment, as Section 6 of PMLA contemplates the constitution of adjudicating authority by a chairperson and two members. Another ground attack is that the adjudicating authority was not a judicial member and therefore, act of passing of the provisional order of attachment which is a quasi-judicial function can only be performed by a member who is experienced in the field of law.

4. The learned Single Judge by a common order dated 13.03.2023 while deciding the interlocutory application i.e., I.A.No.1 of 2022 in W.P.No.41133 of 2022, from which the

instant appeal emanates, decided other three writ petitions, i.e., I.A.No.1 of 2022 in W.P.No.44343 of 2022, W.P.No.34627 of 2022 and W.P.No.34238 of 2022 and *inter alia* held as under:

(1) Under the proceeding under Section 8 of the PMLA, the adjudicating authority performs quasi-judicial function as it decides the *lis* between two contesting parties and therefore, the quasi judicial bodies should consist of members having requisite qualification in the field of law and should be appointed instead of members having no experience in the field of law.

(2) The decision in ***In Re: Cognizance for Extension of Limitation***¹ is applicable to the proceeding initiated under the PMLA for computing period of 180 days and the adjudicating authority becomes *functus officio* after the lapse of 180 days if the provisional order of attachment is not affirmed.

Accordingly, the impugned provisional order of attachment and show cause notice were quashed. In the

¹ (2020) 19 SCC 10

aforesaid factual background, this intra court appeal has been filed.

5. The learned Additional Solicitor General of India submitted that the learned Single Judge ought to have appreciated that the *vires* of the provision was not under challenge and therefore, it was not possible for him to read down a statutory provision. It is contended that the learned Single Judge erred in inserting a condition in Section 6(5)(b) of the PMLA to provide that every Bench of the adjudicating authority shall invariably have a member having experience in the field of law. It is further contended that the adjudicating authority under Section 6 of the PMLA is not a judicial tribunal which performs the function which is performed by the Court and is also not a tribunal constituted either under Article 323A and 323B of the Constitution of India.

6. It is also contended that the adjudicating authority constituted under Section 6 of the PMLA discharges the function under Section 8(1) and 8(3) of the PMLA which is internal review of provisional order of attachment passed by

the Deputy Director of the Enforcement Directorate. It is urged that it is an interim arrangement and not a final adjudication. It is pointed out that even against the aforesaid interim arrangement, remedy of appeal is provided under Section 25(1) of PMLA before the appellate authority which is presided over by a retired Chief Justice of the High Court. It is contended that against the aforesaid order, further appeal lies before the High Court under Section 42 of the PMLA. In support of his submissions, learned Additional Solicitor General of India has placed reliance on **Pareena Swarup vs. Union of India**², **Union of India vs. Madras Bar Association**³, **Namit Sharma vs. Union of India**⁴, **State of Gujarat vs. Utility Users' Welfare Association**⁵, **J.Sekar vs. Union of India**⁶, **R.P.Infosystems Limited vs. The Adjudication Authority**⁷ and **Arup Bhuyan vs. State of Assam**⁸.

² (2008) 14 SCC 107

³ (2010) 11 SCC 1

⁴ (2013) 10 SCC 359

⁵ (2018) 6 SCC 21

⁶ 2018 SCC OnLine Del 13481

⁷ 2023 SCC OnLine Cal 2391 : AIR 2023 Cal 326

⁸ (2023) 8 SCC 745

7. On the other hand, learned Senior Counsel for respondent Nos.1 and 2 submitted that the adjudicating authority constituted under Section 6 of the PMLA is a quasi judicial authority as it satisfies the tests laid down by the Supreme Court in **Province of Bombay vs. Khushaldas S.Advani**⁹. It is further submitted that Section 3(2) of the PMLA provides that the adjudicating authority shall consist of a chairperson and two other members and one member each shall be a person having experience in the field of law, administration, finance or accountancy. It is contended that the adjudicating authority has the trappings of a judicial function and therefore, has to be constituted with a member having experience in the field of law.

8. It is pointed out that the judgment of the Division Bench of Delhi High Court in **J.Sekar vs. Union of India** (supra) has been stayed by the Supreme Court in **Union of India vs. J.Sekar** vide order dated 04.07.2018 passed in Special Leave to Appeal (C) No.12865 of 2018. It is therefore submitted that the decision of the Division Bench of

⁹ AIR 1950 SC 222

Calcutta High Court, which is based on a decision rendered by a Division Bench of Delhi High Court is of no assistance to the appellant. It is argued that learned Single Judge has stayed the adjudication of the show cause notice till adjudicating authority is duly constituted. It is, therefore, submitted that the order passed by the learned Single Judge does not call for any interference in this intra court appeal.

9. Learned Senior Counsel for respondent Nos.3 to 29 submits that the adjudicating authority under Section 6 of the PMLA has been established to adjudicate on the matters concerning confirmation of provisional order of attachment order and confiscation of property. It is further submitted that in the light of mandate contained in Section 6(2) of the PMLA, the primacy has to be given to the member to be appointed from the field of law. Attention of this Court has also been invited to the regulations framed in exercise of powers under Section 6(15) of the PMLA, namely Adjudicating Authority (Procedure) Regulations, 2013, which clearly indicate that the adjudicating authority has trappings of the Court. It is further submitted that in

Section 8 of the PMLA, the word “adjudication” has been used which contemplates that adversarial process of hearing should be followed by the tribunal. It is submitted that if the tribunals are to be vested with judicial powers which are exercised by the Courts, such tribunals should have judicial members. In support of his submissions, reference has been made to decisions in **State of Gujarat vs. Utility Users’ Welfare Association** (supra), **Union of India vs. Madras Bar Association**¹⁰, **Rojer Mathew vs. South Indian Bank Limited**¹¹ and **Eastern Institute for Integrated Learning in the Management University vs. Government of India**¹².

10. We have considered the submissions made on both sides and have perused the record. PMLA is an Act to prevent money laundering and to provide for confiscation of the property derived from, or involved in, money laundering and for matters therewith or incidental thereto. In **Vijay Madanlal Choudhary and others vs. Union of India and**

¹⁰ (2010) 11 SCC 1

¹¹ (2020) 6 SCC 1

¹² (2015) SCC OnLine Sikk 217

others¹³, the Supreme Court while dealing with the issue of constitutional validity of the provisions of the Act has held that it is neither a pure regulatory legislation nor a pure penal legislation. It has further been held that it is an amalgam of several facets essential to address the source of money laundering, as such in one sense is a *sui generis* legislation. The Act also provides for punishment for offence of money laundering as well as to provide for measures for prevention of money laundering. The object is achieved by providing for provisional attachment of proceeds of crime which are likely to be concealed or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of proceeds under PMLA. Section 2(1)(a) defines the expression 'Adjudicating Authority' to mean an Adjudicating Authority appointed under Section 6(1) of PMLA. Section 2 (na) provides that 'investigation' includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under PMLA for collection of evidence. Section 3 defines expression 'offence of money laundering'. Chapter III deals

¹³ 2022 SCC OnLine SC 929

with attachment, adjudication and confiscation. Section 6 deals with adjudicating authority, composition and powers, whereas Section 8 provides for adjudication. Section 11 deals with powers of the Adjudicating Authority regarding summons, production of documents, evidence etc.

11. The solitary issue which arises for consideration in this intra court appeal is whether the power under Section 8 of PMLA conferred on an Adjudicating Authority can be exercised only by a member having experience in the field of law. Before proceeding further, it is apposite to take note of relevant extract of Section 6 and Section 8 of PMLA, which are extracted below for the facility of reference:

6. Adjudicating Authorities, composition, powers, etc.—(1) The Central Government shall, by notification, appoint an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act.

(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority,—

(a) in the field of law, unless he—

(i) is qualified for appointment as District Judge;

or

(ii) has been a member of the Indian Legal Service and has held a post in Grade I of that service;

(b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

(5) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(6) Notwithstanding anything contained in subsection (5), the Chairperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson

or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

8. Adjudication.—(1) On receipt of a complaint under sub-section (5) of Section 5, or applications made under sub-section (4) of Section 17 or under sub-section (10) of Section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under Section 3 or is in possession of proceeds of crime], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of Section 5, or, seized or frozen under Section 17 or Section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

- (a) considering the reply, if any, to the notice issued under sub-section (1);
- (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of Section 5 or retention of property or record seized or frozen under Section 17 or Section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

- (a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and
- (b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58-B or sub-section (2-A) of Section 60 by the Special Court.

Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) Where the provisional order of attachment made under sub-section (1) of Section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under Section 5 or frozen under sub-section (1-A) of Section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1-A) of Section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any

other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offences of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

12. Section 6 of PMLA deals with composition and powers of the Adjudicating Authority, whereas Section 8 deals with Adjudication. Section 8(1) provides that on receipt of a complaint under Section 5(5), or on an application made

under Section 17(4) or under Section 18(10), if the Adjudicating Authority has reason to believe that any person has committed an offence, it may issue a show cause notice as to why all or any of the properties be not declared to be properties involved in money laundering and confiscated by the Central Government. The Adjudicating Authority under Section 8(2) is enjoined with a duty to consider the reply to the notice, hear the aggrieved person and after taking into account all relevant materials placed on record before him, pass an order recording a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money laundering. Under Section 8(3), the Adjudicating Authority has the power to confirm the order of the attachment of property. Section 8(4) provides that where a provisional order of attachment is confirmed, the Director or any other person authorised by him shall forthwith take the possession of the property attached under Section 5 or frozen under sub-section (1A) of Section 17, in such manner as may be prescribed.

13. The modern Government has undertaken many functions and it regulates several activities. New laws are being enacted to create new rights and obligations. Under the law created by the legislature, a citizen may be at issue with regard to his rights and obligations, with the administration or with another citizen or a body. Thus, the said disputes are required to be adjudicated. Therefore, the technique of administrative adjudication has been involved. The statute which provides for an administrative adjudication can also prescribe the manner in which such adjudication shall be undertaken as well as the authority by whom it shall be undertaken.

14. The Supreme Court after taking note of decisions in **R vs. Electricity Commrs**¹⁴ and decision of six-Judge Bench of Supreme Court in **Province of Bombay vs. Kushaldas S.Advani** (supra) held in paras 24 and 25 as under:

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these:

¹⁴ 1923 ALLER 150

Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no *lis* or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

25. Applying the aforesaid principle, we are of the view that the presence of a *lis* or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a *lis* before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.

The aforesaid view was reiterated with approval in **Abdul Kuddus vs. Union of India**¹⁵.

15. Thus, if the functions of Adjudicating Authority under Section 8 of PMLA, which is a creature of statute under Section 6 of PMLA, are considered, it is evident that it has authority to determine the questions which affects the rights of the persons and is required under PMLA to comply

¹⁵ (2019) 6 SCC 604

with the mandate contained in Section 8(2) of PMLA, undoubtedly performs quasi-judicial function.

16. Now we may advert whether the aforesaid quasi-judicial function under Section 8 of PMLA can be performed by an Adjudicating Authority, which can be exercised only by a member having experience in the field of law. The Adjudicating Authority, as stated supra, is an authority constituted by a statute, namely PMLA, which confers the power on it under Section 8 of PMLA. An adjudication is a function which is performed by several statutory authorities under different enactments, namely under the Foreign Exchange Regulation Act, 1973; the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976; the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Foreign Exchange Management Act, 1999. Thus, when legislature confers the function of adjudication on an authority under the statute, the same can be performed by such authority within the four corners of the power conferred on it. It is pertinent to note that under PMLA, the Adjudicating Authority neither has power to decide on the

criminality of offence nor does it have power to impose punishment.

17. At this stage, it is apposite to take note of the decisions of Supreme Court. In **Pareena Swaroop** (supra), the Supreme Court noticed that judicial powers have to be exercised by the Appellate Tribunal under PMLA and in order to protect the constitutional guarantee of independence of judiciary, the persons who are qualified to be Judges be appointed as members of the Appellate Tribunal. In **Madras Bar Association** (supra), a Constitution Bench of Supreme Court dealt with the issue of constitutional validity of parts I-B and I-C of the Companies Act, 1956 inserted by Companies Second Amendment Act, 2002 which provided for constitution of National Company Law Tribunal and National Company Law Appellate Tribunal *inter alia* on the ground that the Parliament does not have legislative competence to vest judicial functions which have been performed by the High Court in any Tribunal outside the judiciary. In para 106, the conclusions are summarised as under:

106. We may summarise the 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.

(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 reorganise 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.

18. In **Rojer Mathew** (supra), another Constitution Bench dealt with the challenge made to the constitutional validity of Part XIV of Finance Act, 2017 and Rules made thereunder and held that whenever Parliament decides to divest the traditional courts of their jurisdiction and transfer the same to other analogous court/tribunal, the qualification and acumen of member in such a tribunal must be commensurate with that of court from which adjudicatory function is transferred.

19. Thus, it is evident that whenever the traditional Court is divested of its jurisdiction and the same is transferred to any other analogous Courts/tribunal, the qualification and acumen of such a member in the tribunal must be commensurate with that of the court from which such an adjudicatory function is transferred. In the instant case, it is noteworthy that Adjudicating Authority is neither a tribunal constituted under Article 323A or under 323B of the Constitution of India. None of the adjudicatory functions which are being performed by the Court had been transferred to the Adjudicating Authority.

20. It is also pertinent to mention that against an order passed under Section 8 of PMLA, an appeal is provided under Section 25(1) of PMLA before the appellate authority which is presided over by a retired Chief Justice of a High Court. Against the order passed in an appeal, a further appeal lies before the High Court under Section 42 of PMLA. Thus, sufficient checks and balances have been provided under PMLA.

21. In **International Association for Protection of Intellectual Property (India Group) vs. Union of India**¹⁶, provisions of Sections 84 and 85 of the Trademarks Act, 1999 were challenged on the ground that technical member who has no judicial background cannot act as Chairperson of the authority in his absence and pass quasi-judicial orders adjudicating the dispute. The Supreme Court repelled the challenge and held that technical members are the persons having practical experience. Therefore, the contention that the technical members cannot function without a Chairperson is unsustainable. In the absence of any provision in PMLA that function under Section 8 of PMLA conferred on the Adjudicating Authority have to be performed by Adjudicating Authority having a member of experience in the field of law only, no such inference can be drawn. For yet another reason, it is required to be held so.

22. It is well settled rule of statutory interpretation that the courts should strongly lean against any construction which reduces the statutory provision to a futility (see

¹⁶ AIR OnLine 2019 SC 157 : LL 2021 SC 84

Tinsukhia Electric Supply Company Limited vs. State of Assam¹⁷). In **Mukund Dewangan vs. Oriental Insurance Company Limited**¹⁸, it has been held that every word and expression which the legislature uses has to be given its proper and effective meaning as the legislature does not use an expression without purpose and meaning. Therefore, the principle that the statute must be read as a whole is equally applicable to different parts of the same section. Section 6(2) of PMLA provides that an Adjudicating Authority shall consist of a Chairperson and two other persons. However, various sub-sections of Section 6 of PMLA have to be read in conjunction. Section 6(5)(a) provides that jurisdiction of Adjudicating Authority may be exercised by the Benches thereof, whereas Section 6(5)(b) empowers the Chairperson of Adjudicating Authority to constitute the Benches consisting of one or two members. Section 6(7) of PMLA provides that if a Chairperson or a member during the course of hearing feels that matter should be heard by a Bench of two members, he/she may transfer the matter to a Bench consisting of two members.

¹⁷ (1989) 3 SCC 709

¹⁸ (2017) 14 SCC 663

23. Thus, powers under Section 6 can be exercised by an Adjudicating Authority comprising single member. Therefore, the proposition that powers under Section 8 of PMLA can be exercised by the Adjudicating Authority comprising only from member in the field of law does not deserve acceptance as the same would render provisions of Section 6(5) and 6(7) of PMLA nugatory and ineffective.

24. Insofar as decision in **Utility Users' Welfare Association** (supra), on which reliance has been placed, it is noteworthy that the Supreme Court in aforesaid decision dealt with Section 86(1)(f) of the Electricity Act, 2013 and held that Commission has the option of adjudicating the disputes between the licensees and generating companies or refer the same to arbitration. In the aforesaid context, the Supreme Court dealt with the issue whether the State Regulatory Commission constituted under Electricity Act which necessarily performs the function of adjudication is required to have one member who was or is holding a judicial office or is a person possessing professional qualification with substantial experience in the practice of

law. The aforesaid decision is of no assistance to the respondents.

25. It is also pertinent to note that the validity of Sections 6(2), 6(3)(a)(ii) and 6(5)(b) of PMLA was challenged before the Madras High Court. A Division Bench of Madras High Court in **Pay Perform India Private Limited vs. the Union of India** (judgment dated 31.01.2024 passed in W.P.No.12925 of 2023 and batch) has upheld the validity of the aforesaid provisions and has held that composition of Adjudicating Authority in the absence of judicial officer is not bad in law. A Division Bench of Calcutta High Court in **R.P.Infosystems Limited** (supra) has also held that Adjudicating Authority can comprise of a single member bench. We are in agreement with the view taken by the Division Benches of Madras High Court and Calcutta High Court.

26. For the aforementioned reasons, the order dated 13.02.2023 passed by the learned Single Judge in I.A.No.1 of 2022 in W.P.No.41133 of 2022 is set aside.

27. In the result, the appeal is allowed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

12.02.2024

Note: LR copy be marked.
(By order)
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