

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.33663 and 33383 of 2018
W.M.P.No.39071 of 2018

W.P. No.33663 of 2018

A.K.Athiban Vijay

... Petitioner

vs.

1. Union of India
Represented by its Secretary
Ministry of Corporate Affairs
Shastri Bhawan
Dr.Rajendra Prasad Road
New Delhi - 110 001

2. Union of India
Represented by its Secretary
Ministry of Law and Justice
Shastri Bhawan, A-Wing
Dr.Rajendra Prasad Road
New Delhi - 110 001

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Declaration, to declare that the provision of Rule 8 of National Company Law Appellate Tribunal Rules, 2016, is in violation of Articles 14 and 21 of the Constitution of India, and consequently direct the respondents to establish a Southern Regional Bench of the National Company Law Appellate Tribunal.

W.P. No.33383 of 2018

CA V.Venkata Siva Kumar

... Petitioner

vs.

1. Union of India
Rep. by Hon'ble Secretary
Ministry of Corporate Affairs (MCA)
Garage No.14, "A" Wing
Shastri Bhawan, Rajendra Prasad Road
New Delhi - 110 001
2. Union of India
Rep. by Hon'ble Secretary
Ministry of Finance (MOF)
North Block
New Delhi - 110 001
3. The Hon'ble NCLAT
Rep. by the Hon'ble Registrar
3rd Floor, Pt. Deen Dayal Antyodaya Bhawan
CGO Complex, Lodhi Road, New Delhi - 110 003
4. The Insolvency and Bankruptcy Board of India
Rep. by the Hon'ble Chairperson
7th Floor, Mayur Bhawan
Shankar Market, Connaught Circus
New Delhi - 110 001 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the 1st respondent to issue notification for establishment of Regional Bench of National Company Law Appellate Tribunal in the State of Tamil Nadu, at an appropriate place, taking into consideration the availability of infrastructure, within a period as this Hon'ble Court deems fit and proper and till the issuance of Notification of Regional Bench, the Circuit Bench shall hold the proceedings every month at Chennai immediately.

For Petitioner : Mr. Satish Parasaran, Sr. Counsel
in W.P.33663/18 for M. Sricharan Rangarajan

For Petitioner : Mr. CA.V. Venkatasivakumar
in W.P.33383/18 Party-in-person

For Respondents : Mr. K. Srinivasa Murthy,
SPCGSC

COMMON ORDER

(Order of the Court was made by S.MANIKUMAR, J)

As prayers in both the writ petitions are common, they were heard together and disposed of by this common order.

2. Mr.A.K.Athiban Vijay (Petitioner in W.P. No.33663/2018), a practising advocate in Madras High Court and Mr.V.Venkata Sivakumar (Petitioner in W.P. No.33383/2018), a Chartered Accountant and Professor, have filed these writ petitions as Public Interest Litigation praying for a direction to constitute a Southern Regional Bench of the National Company Law Appellate Tribunal.

3. The Bench of the National Company Law Appellate Tribunal has been constituted in accordance with Section 410 of the Companies Act, 2013 read with Rule 8 of the National Company Law Appellate Tribunal Rules, 2016.

4. Rule 8 of the National Company Law Appellate Tribunal Rules, 2016 states that the Appellate Tribunal shall hold its sitting at its headquarters in New Delhi. The aforementioned Rule is challenged as violative of the fundamental rights guaranteed under the Constitution of India and denies access to judicial remedies available for aggrieved persons. Contentions have been made that the petitioners are deprived of their statutory right to approach an appellate forum on the ground of place of location of the appellate forum at New Delhi and thus, access to justice is denied.

5. Further contention of the petitioners is that since there is only one NCLAT, that too in Delhi, speedy disposal of cases by the Tribunal seldom occurs. This is due to the inability of the parties from the Southern States to regularly appear before the Tribunal. This would further lead to stagnation of cases in the Tribunal, which results in inordinate delay of cases being disposed of and rests with the cases already pending before the Tribunal.

6. Further contention of the petitioners is that the two-tier appellate system in the Companies Act, 2013 has been advantageous for various reasons. However, forum at New Delhi is not easily accessible for the aggrieved persons hailing from Southern states of the country. According to the petitioners, this is denial of right to access justice, which is guaranteed under Articles 14 and 21 of the Constitution of India.

7. Petitioners have contended that it must be borne in mind that NCLAT is the final appellate body that could delve into questions of both law and facts. Moreover, National Company Law Tribunal and National Company Law Appellate Tribunal are both quasi-judicial tribunals dealing with a wide spectrum of cases emerging from the Companies Act, 1956, Companies Act, 2013, Indian Bankruptcy Code, 2015 and Companies Act, 2002. Therefore, a geographically challenged litigant, namely litigants from Southern States, would have to suffer hardship to

travel all the way to New Delhi, in order to move the NCLAT against an order of NCLT.

8. It is the further contention of the petitioners that for conducting a case at New Delhi they would also have to spend huge amount of money for travel, lawyer's fees, till the appeal is finally disposed of by the NCLAT, which may go on for many hearings.

9. Further contention of the petitioners is that Rule 8 of the National Company Law Appellate Tribunal Rules, 2016, which states that the Appellate Tribunal shall hold its sittings at its Headquarters in New Delhi, is violative of right to equality and right to life, guaranteed under Articles 14 and 21 of the Constitution of India.

10. Petitioners have sent representations to the 1st respondent on more than one occasions, for constituting a Southern Regional Bench of NCLAT, New Delhi. In support of their contentions, they have also filed important news reports, articles, orders and opinions concerning the Insolvency and Bankruptcy Code, 2013 in the typed set of papers.

11. Based on the averments made in the writ petitions, Mr.Satish Parasaran, learned Senior Counsel appearing for Mr.M.Sricharan Rangarajan, counsel on record for the petitioner and Mr.CA.V.Venkatasivakumar, Party-in-person, contended that there is a need to amend/alter Rule 8 of NCLAT Rules, 2016, in order to facilitate the establishment of a Regional Bench of the NCLAT in Southern Region, with jurisdiction to entertain appeals, against orders issued by NCLTs in Southern States of India.

12. It is the further submission of the learned Senior counsel that Article 130 of the Constitution of India that provides for the seat of Hon'ble Supreme Court states that the Hon'ble Supreme Court shall sit in Delhi or such other place or places, as the Hon'ble Chief Justice of India may, with the approval of the President, from time to time, appoint, but Rule 8 of the NCLAT Rules, 2016 strictly confines the seat of NCLAT Bench only at New Delhi, leaving no other alternative.

13. Further contention of the learned Senior counsel is that by establishing a Regional Bench of NCLAT in South of India, spirit of the principles contained Articles 14 and 21 can be upheld; that the statutory right of appeal guaranteed under the Companies Act, 2013 should not be denied to a person who is geographically disadvantaged; that the statutory right of appeal guaranteed under the Companies Act, 2013 should be made available to all persons and not only to the people hailing from

the neighbouring States of New Delhi; that establishment of a Southern Regional Bench, will make the appellate procedure more simple and easily accessible for persons aggrieved by the order of the National Company Law Tribunals.

Heard the learned Senior counsel and perused the materials available on record.

14. National Company Law Appellate Tribunal, has been established by Government of India, under the Companies Act, 2013, having its headquarters at New Delhi. Rule 8 of the National Company Law Appellate Tribunal Rules, 2016, states that the Appellate Tribunal shall hold its sitting only at its headquarters in New Delhi. From the reading of the abovesaid Rules, it is clear that the sitting of the Appellate Tribunal would be at Delhi.

15. Judicial notice can be taken that many of the Appellate Forums, like Cyber Appellate Tribunal, Appellate Tribunal for Electricity, Telecom Disputes Settlement and Appellate Tribunal, National Environment Appellate Tribunal, etc., are located/established only at New Delhi. Sitting of an Appellate Forum is different from location of the Appellate Forum. Appellate Forum is established only based on the policy decision of the Government and therefore, this Court cannot and shall not sit over such Policy.

16. It is settled law that Courts cannot interfere with the decisions of the Government, unless such action is unconstitutional or contrary to the Statutory provisions or arbitrary and irrational. It is the domain and wisdom of the Government to take a policy decision, as to where, a forum has to be located and sitting of such forum. Useful reference can be made to following decisions,

(i) In *Kanhaiya Lal Sethia v. Union of India* reported in 1997 (6) SCC 573, at Paragraphs 2 and 3, held as follows:

"Generally speaking, the courts do not, in exercise of their power of judicial review, interfere in policy matters of the State, unless the policy so formulated either violates the mandate of the Constitution or any statutory provision or is otherwise actuated by mala fides. No such infirmity is present in the instant case.

3. The petitioner is not vested with any fundamental right to compel the Union of India to bring forth a particular legislation or to exercise its discretion in Parliament in a particular manner."

(ii) In *Narmada Bachao Andolan etc. v. Union of India and Ors.*, reported in AIR 2000 SC 3751, the Hon'ble Apex Court, while dealing with the question of judicial review of policy

decision by the Government on a PIL, expressed the views that if a policy decision is taken by the Government, after due care and consideration, unless the same is in conflict with any law or mala fide, it will not be in the public interest to require the Court to go into and investigate those areas which are the function of the executive. At Paragraphs 232 to 234, the Hon'ble Supreme Court observed as hereunder:

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL

alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision".

(iii) In *Balco Employees Union (Regd.) v. Union of India* reported in 2002 (2) SCC 333, the Hon'ble Supreme Court, at Paragraphs 97 and 98, held as follows:

"97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties. None of these contingencies arise in this present case.

98. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgement of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."

(iv) In *State of M.P., v. Narmada Bachao Andolan* reported in (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875, at Paragraphs 36 and 37, the Hon'ble Supreme Court, held as follows:

"36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See *Ram Singh Vijay Pal Singh v. State of U.P.* [(2007) 6 SCC 44], *Villianur Iyarkkai Padukappu Maiyam v. Union of India* [(2009) 7 SCC 561] and *State of Kerala v. Peoples Union for Civil Liberties* [(2009) 8 SCC 46].)

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions."

17. Petitioners have access to justice. They can always file appeals in the National Company Law Appellate Tribunal. Merely because, the appellate forum holds sitting at New Delhi, which according to the petitioners, is situated at a far away place for the litigants from southern part of the country, have to incur litigation expenses and time, the same cannot be valid reasons to strike down Rule 8 of the National Company Law Appellate Tribunal Rules, 2016, as unconstitutional and violative of Articles 14 and 21 of the Constitution of India and this Court must exercise restraint to sit over the decision.

18. Judicial notice can be taken that that when a similar plea was made to set up a Southern Bench of the Hon'ble Supreme Court in Writ Petition(s) (civil) No.409 of 2015 [A.M.Krishna v. Union of India] the same was declined by the Hon'ble Supreme Court, after hearing the both parties.

19. In the light of the above discussion and decision, both the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

DM

To

1. The Secretary
Ministry of Corporate Affairs (MCA)
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2. The Secretary
Ministry of Finance (MOF)
Union of India,
North Block
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3. The Registrar,
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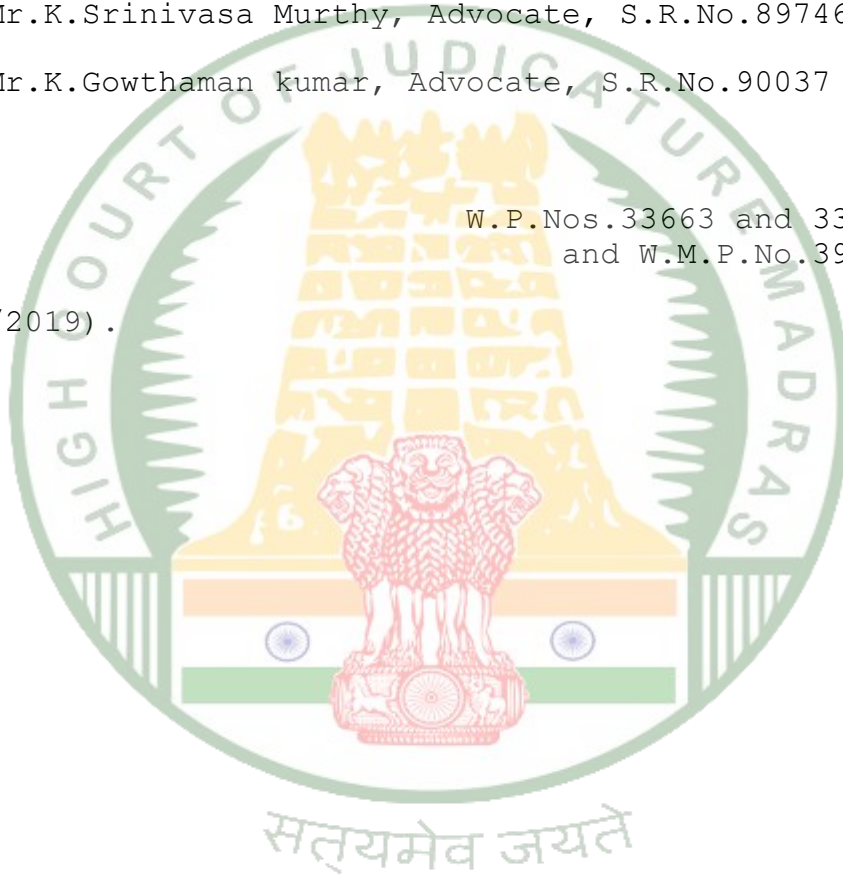
+1 cc to Mr.V.Venkata Sivakumar, Advocate, S.R.No.89524

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W.P.Nos.33663 and 33383 of 2018
and W.M.P.No.39071 of 2018

VSN-II (CO)
SSM(15/04/2019) .



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