

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-14947-2016 (O&M).
Date of Decision: 22.08.2023.

Municipal Corporation, Rohtak Through its Executive Officer

...Petitioner

Versus

Permanent Lok Adalat and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. R.D. Bawa, Advocate,
Mr. Randhir Bawa, Advocate, and
Mr. Samuel Gill, Advocate, for the petitioners.

Mr. Lokesh K. Sharma, Advocate, for respondent No.2.

Respondent No.3 ex parte.

VINOD S. BHARDWAJ. J (ORAL)

Challenge in the present petition is to the award dated
10.02.2016 (Annexure P-8) passed by the Permanent Lok Adalat (Public
Utility Services), Rohtak

As per the facts noticed in the impugned award, the
respondents-applicants filed an application under Section 22 C of the
Legal Services Authorities Act, 1987 (for short 'the Act of 1987) against

Municipal Corporation, Rohtak i.e. the petitioner herein claiming that the Government had notified a Rajiv Awas Yojna Scheme and conducted survey in the village Pehrawar. The names of the respondents-applicants had been included in the final list by survey team. Accordingly, the total receipts were given to the respondents-applicants and they had deposited all the necessary documents with the authorities for processing their claim. An assurance had been given by the petitioner-Municipal Corporation, Rohtak that the cheques of financial assistance will be given very soon as per the Scheme. However, the cheques were never delivered despite the respondents-applicants approaching the Competent Authority on numerous occasions. The respondents also did not respond to any request whereupon the application was preferred before the Permanent Lok Adalat (Public Utility Services), Rohtak.

The Municipal Corporation, Rohtak, filed its response to the complaint, *inter alia*, raising the objection of maintainability of the above said complaint. However, the Permanent Lok Adalat (Public Utility Services), Rohtak upon consideration of the submissions advanced and after failure of conciliation proceedings, adjudicated the application and directed that the respondents-applicants are entitled to the benefits under the Rajiv Awas Yojna Scheme and that they had been illegally ignored in the said list of beneficiaries. The Municipal Corporation, Rohtak was directed to include their names and to provide benefits under the said scheme.

Aggrieved thereof the present petition has been filed.

Learned counsel for the petitioner has argued that Permanent Lok Adalat (Public Utility Services), Rohtak, has been conferred with the powers to examine the disputes pertaining to the Public Utility Services, as defined under Section 22 A (b) of the Act of 1987. The Government Welfare Schemes/concessions and the financial assistance rendered by the Government is not amenable to the jurisdiction of the Permanent Lok Adalat (Public Utility Services), under Chapter VI A of the Legal Services Authorities Act, 1987 as the same does not fall falling within the definition of the Public Utility Services. Hence, Permanent Lok Adalat (Public Utility Services), Rohtak had no authority to adjudicate the issue.

Learned counsel for the respondents-applicants, on the other hand, has argued that the respondents-applicants are marginalized persons and they were found eligible by the petitioner in their own survey. No satisfactory explanation has been furnished by the petitioner for non-release of the benefits under the Welfare Scheme formulated by the Government. Consequently, an application had been preferred by the respondents-applicants before the Permanent Lok Adalat (Public Utility Services), Rohtak, which has allowed the same in accordance with the Scheme approved by the petitioner itself.

He however, could not refer to any provisions where under the prayer for seeking benefits under the Rajiv Awas Yojna/Social Welfare Scheme could be adjudicated upon by the Permanent Lok Adalat (Public Utility Services), Rohtak.

I have heard learned counsel for the respective parties and have gone through the documents appended along with the present petition.

As this Court is examining the maintainability of the application before the Permanent Lok Adalat (Public Utility Services), Rohtak, under the Legal Services Authorities Act, 1987, hence, the merits of the present case are not being tested lest it may prejudice the respective rights of the parties.

Section 22 A of the Legal Services Authorities Act, 1987 defines the Public Utility Services qua which the Permanent Lok Adalat is entitled to take cognizance. The same is reproduced as under:-

“22 A. Definitions.—In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,—

(a) “Permanent Lok Adalat” means a Permanent Lok Adalat established under sub-section (1) of section 22B;

(b) “public utility service” means any—

(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,

and includes any service which the Central Government or the State Government, as the case may be, in the public interest, by notification, declare to be a public utility services for the purposes of this Chapter

22D. Procedure of Permanent Lok Adalat.—*The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872)."*

Evidently, the enforcement of social welfare schemes notified by the State Government is not stipulated as the Public Utility Services amenable to the jurisdiction of the Permanent Lok Adalat (Public Utility Services), under the Act of 1987.

The aspect of jurisdiction would go to the root of a case and such a defect cannot be validated. It has been held by the Hon'ble Supreme Court in the judgment of **Balwant N. Vishwamitra and others Vs. Yadav Sadashiv Mule and others, reported as 2004 SCC Online SC 811**. The relevant part of the same reads as under:-

"9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by

such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.

10. Five decades ago, in *Kiran Singh v. Chaman Paswan* this Court declared: (SCR p. 121) "It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

(Emphasis supplied)

11. The said principle was reiterated by this Court in *Hiralal Patni v. Kali Nath*. The Court said: (SCR pp 75152) "Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction."

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14. Suffice it to say that recently a Bench of two Judges of this Court has considered the distinction between null and void decree and illegal decree in a **Rafique Bibi v. Sayed Waliuddin**. One of us (R.C. Lahoti, J., as His Lordship then was), quoting with approval the law laid down in *Vasudev Dhanjibhai Modi*³ stated: (SCC pp. 291-92, paras 6-8)

"6. What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognisance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

7. Two things must be clearly borne in mind. Firstly, 'the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be "a nullity" and "void" but these terms have no absolute sense their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce, unacceptable results. (Administrative Law, Wade and Forsyth, 8th Edn., 2000 p308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. 'The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.' (ibid. p. 312)

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

(emphasis supplied)

The issue of jurisdiction being an incurable defect, exercise of any such power that has not been so conferred upon an authority would vitiate the award and also all the consequential proceedings arising therefrom.

Hence, the question as regards eligibility of respondent is inconsequential for this case. The respondent ought to have preferred his claims before a Forum competent to examine the issue and award the relief. Having opted an incompetent forum, the respondent cannot seek approval or validation of a fundamental illegality from the High Court.

A power not conferred upon the Permanent Lok Adalat (Public Utility Services), cannot be approved as rightly exercised. The guiding factor under Section 22 D of the Legal Services Authorities Act, 1987 protect an action which is otherwise passed on exercise of a lawful authority and not otherwise.

In view of aforesaid settled position of law, the present petition is allowed. The award dated 10.02.2016 (Annexure P-8) passed by the Permanent Lok Adalat (Public Utility Services), Rohtak is set aside. However, setting aside of the award passed by the Permanent Lok Adalat (Public Utility Services), Rohtak would not stand in the way of the respondents-applicants to seek redressal of their grievance in accordance with law.

The period during which the petition has remained pending before this Court shall be taken into consideration while computing limitation, in the event of any other proceedings initiated by the respondents-applicants.

Petition stands allowed.

Pending, misc. applications, if any shall also stand disposed of accordingly.

August 22, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No