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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-27309-2015 (O&M)
Date of Decision:23.08.2023

M/s Bonton Tours Pvt. Ltd.

.....Petitioner

Ramesh Kumar Thakur and another

.....Respondents.

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

Present:- Mr. H.S. Ghuman, Advocate for the petitioner.

Mr. Rahul Garg, Advocate for respondent No.1.

VINOD S. BHARDWAJ J.(Oral)

1. Challenge in the present petition is to the award dated 21.10.2015 passed by respondent No.2 i.e. the Permanent Lok Adalat for Public Utility Service, Panchkula, whereby the application preferred by the respondent No.1 under Section 22-C of the Legal Services Authority Act, 1987 has been allowed.

2. Brief facts of the case are that the respondent No.1/applicant-Ramesh Kumar is running a travel agency by the name of RTS Holidays and Conferencing and is involved in ticketing services, visa and accommodation etc.

3. It had been pleaded by the respondent in his application before the Permanent Lok Adalat that a proposal was submitted by the petitioner in the month of November 2013 termed as Dubai Dhamaka wherein transport services were offered by the petitioner. As per the proposal, an assurance was given by the petitioner to provide visa alongwith boarding, lodging and tickets. On the

basis of abovesaid proposal, the respondent-applicant who is also a travel agent received bookings for their customers to Dubai by flight on 12.12.2013. The respondent-applicant got bookings for 14 persons to Dubai for 12.12.2013 and for one person on 13.12.2013. An amount of Rs.6,18,000/- was claimed to have been deposited by the respondent-applicant with the petitioner herein on different dates, however, only six persons were granted visa and that too after the payment of Rs.12,000/- each. On 11.12.2013, a message was received by the respondent-applicant that visa of other travellers is expected to be received on 12.12.2013. On this information and assurance, all the 14 persons travelled to New Delhi on 12.12.2013 expecting to board the flight for Dubai. 08 persons however, could not board the flight for want of visa. Resultantly, the respondent-applicant claimed to have made a refund of Rs.1,32,740/-+Rs.60,000/-to its customers and thus suffering a total loss to the tune of Rs.1,92,740/-.

4. It was pleaded by the respondent-applicant before the PLA that three persons (out of the 14) who boarded the flight had to come back without going anywhere as their visas had not been received. Losses were demanded by the respondent-applicant from the petitioner and on a failure thereof, an application under Section 22 (C) of the Legal Services Authorities Act, 1987, was filed by the respondent-applicant before the Permanent Lok Adalat (Public Utility Services) Panchkula.

5. Written statement on behalf of the petitioner was filed wherein it was submitted that the respondent-applicant had not disclosed the completed particulars. No assurance for any transport service was ever given by the petitioner or for arranging the visas. The same was in fact the responsibility of the travellers/passengers to arrange for themselves and that only the air tickets

had been purchased alongwith all arrangements of boarding etc.from the petitioner. It was not charging anything extra for submission of visa application and that grant/non-grant of visa is sole prerogative of the respective embassy and cannot be said to be within the control and domain of the petitioner. The payment as claimed by the respondent/applicant from the petitioner was also denied.

6. Efforts for re-conciliation were initiated by the Permanent Lok Adalat on 19.10.2014, however, the said proposal failed to fructify in a meaningful settlement. Consequently, adjudication in terms of Section 22 (C) (8) of the Act of 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services) Panchkula.

7. After consideration of the respective contentions and the evidence adduced on record, the Permanent Lok Adalat (Public Utility Services), Panchkula, allowed the application preferred by the respondent-applicant vide the impugned award dated 21.10.2015 and directed the petitioner to refund an amount of Rs.1,92,470/- along-with Rs.30,000/- as compensation on account of unnecessary harassment and mental agony along-with the costs and litigation expenses of Rs.4,000/-. Aggrieved thereof, the present writ petition has been filed.

8. Learned counsel for the petitioners has argued that the Permanent Lok Adalat has failed to appreciate that the tour and Travel services do not fall within the definition of Public Utility Services as defined under Section 22 (A) (b) of Legal Services Authorities Act, 1987. The petitioner was not offering a transport services and therefore cannot be subjected to the jurisdiction of the Permanent Lok Adalat (Public Utility Services) and that it had no authority to take

cognizance and to adjudicate the issue involved therein.

9. He further refers to a judgment of Hon'ble Supreme Court in ***Inter Globe Aviation Ltd. Vs. N. Satchidanand*** reported as 2011 (3) SCC (Civil) 747 wherein delay in flight to take off due to bad weather causing inconvenience and discomfort to the passengers was held to not amount to deficiency of services. He contends that visa being a function of the separate republic, the petitioner cannot be held responsible for non-issuance/denial of visa by such foreign republic/sovereign. It is also argued that the submissions advanced by respondent about the purported assurance given, is misconceived and no assurance was ever given. The only assurance given by the petitioner is to submit the application for visa without claiming any extra charge.

10. Per contra, learned counsel for the respondent-travel agent contends that the respondents had submitted their documents with the petitioner only on the assurance made and that as ticketing, boarding and lodging were to be provided by the petitioner. The same would fall within the definition of transport service for carriage of passengers or goods by air, transport or water, hence the petitioner would fall under public utility services under the Legal Services Authorities Act, 1987. He further submits that they had also paid additional charges for such facilities and as such the contention of the petitioner that no separate amount was demanded by them towards providing those services is misconceived.

11. He further contends that all the issues have been examined by the Permanent Lok Adalat (Public Utility Services) Panchkula, and a reasoned and a well speaking order has been passed. There is thus no occasion for interfering with the said award.

12. I have heard learned counsel on behalf of the respective parties and have gone through the documents available on record.

13. The primary question which arises as to whether the 'tour and travel services' would fall within the definition of 'transport services' for the carriage of passengers or goods by air, road and water or not.

14. In order to understand the aforesaid controversy, it is necessary to refer to the definition of public utility services as provided under the Legal Services Authorities Act, 1987.

22A-Definitions:-

(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,

(vii) services of banking and other financial institution,

(viii) supply of any kind of fuel to the public by any establishment

(ix) education or educational institutions, or

(x) housing and real estate services.”

15. The provision of law is well settled that while interpreting the statutory provision, the plain meaning of the terms used in the statute are to be given.

Primacy and effect, if such expression has not been defined in the statute or the

rules. “Tours and Travels” as well as “transport” are defined under different statutes as under:-

Tour has been defined under The Finance Act, 1994:-

“Tour” means a journey from one place to another irrespective of the distance between such places.

Further Section 90 (A) (8) of The Finance Act, 2008, defines “**Tour Operator**” as- *Tour operator means any person engaged in the business of planning scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act 1988, or the rules made thereunder.”*

16. The Law Lexicon Dictionary, 2nd Edn. p.1915, defines 'Travel' as under:-

Travel-traveller-travelling: “Travel has no precise or technical meaning, when used without limitation; but its primary and general import is to pass from one place to another, whether for pleasure, instruction, business, or health.”

17. Black's Law Dictionary. 7th Edn. p.1505, defined 'Transport' as under:-

“means to carry or carry (a thing) from one place to another”

18. As per Law Lexicon Dictionary, 2nd Edn. p.1914 “**Transport**” defined as under:-

Transport-Transportation Webster defines “transport” as to carry or

convey from one place to another; again to remove from one place to another; and throughout all the deviation of the word "transport", we find the same part of the definition to remove.

19. In commercial and general sense, a tour operator is a person who operates and arranges for transport and other facilities for undertaking tours design by him for any person from public or a group of public or customers who want to undertake the tour. Tour generally include visit of several places and arrangements for boarding and lodging when tour is for many days. Here itinerary of tour is pre-planned by the tour operator. Tour operator may include in his plan the travel by means of transport provided by him **as well as by other agencies**. It is not necessary that the tour operator have his own fleet of vehicles. Tours in case of tour operator can include travel by different modes- rail, road, water or air transport. On the other hand a person providing transport facilities for undertaking travels and other activities, as per plans of the passenger is not regarded as tour operator.

20. The distinction between a tour operator and a transport service are subtle but real. While a tour operator may offer transport service but it may not be correct vice-versa. But even in doing so, the service offered by a tour operator is a 'ticketing service' and not a 'transport service'. The Legal Services Authorities Act, 1987 restricts the jurisdiction only to a transport service which is more like in the nature of the service provided by the "airline, Stage carriage, transport vehicles, shipping and cargo including by Railways. It may also be a taxi operator or such services". A person facilitating availing such service cannot be labelled as providing a transport service, on a plain understanding of the expression.

21. Invariably, the services which is prescribed as Public Utility Service, is the service of transport of passengers/goods by air, road or water and providing of tour and travel packages which may include transportation facility is in its essence and character a service/facilities distinct from providing a transport service. The ancillary services like providing of bookings/ticketing/making appropriate arrangements for boarding and lodging etc. are distinct from providing the transport. The legislator has consciously prescribed only a specified nature of service to be amenable to the jurisdiction of the Permanent Lok Adalat (Public Utility Services) under the Legal Services Authority Act, 1987.

22. The Permanent Lok Adalat has even otherwise, itself recorded in its award that petitioner is running a travel agency which provides services like Visa, accommodation, airline etc. for tourists willing to visit foreign countries. The petitioner does not run any airlines and is at best a ticketing agent for the airlines. The visa is again a facility and being under a sovereign domain, it cannot be guaranteed. Even otherwise, the Permanent Lok Adalat (Public Utility Services) does not refer to any guarantee or promise made by the petitioner. The relevant part of the award reads thus:-

9. *Petitioner is running a travel agency as a proprietor of RTS holidays and conferencing, having its office at Panchkula. Respondents are running a huge travel agency and are involved in providing services like airlines, visa and accommodation etc. in providing services to the tourists who are willing to visit foreign countries. From the pleadings and evidence on the file there appears to be no controversy of any type that in the month of November, 2013 a*

proposal was received from the respondent-company termed as Dubai Dhamaka. The respondent-company offered services as mentioned in the proposal visa and oke to board charges (only Jet Airways). It is evident from the proposal form Ex. P-2 that respondents in their proposal have given assurance of providing visa alongwith boarding, lodging and Jet Airways; tickets; travel insurance free upto sixty years age and free international calling call etc. On the basis of this proposal, petitioner received booking of his customers for travel to Dubai. Petitioner got booking of fourteen persons to Dubai for 12-12-2013 and one person to Dubai for 13-12-2013. In this regard total amount of Rs.6,18,000/- was deposited or paid in cash by the petitioner to the respondent- company on different dates as mentioned in Para No.11 of the petition.

10. *It is admitted fact that the petitioner received visa only for six persons and that is also after extra payment of Rs. 12,000/- each. On 11-12-2013 message was received that visa of other travelers is expected to be received on 12-12-2013. On this assurance petitioner sent fourteen persons to New Delhi Airport on 12-12-2013. Admittedly eight persons could not board the plane for want of visa. In the letter addressed by the petitioner to the respondent-company Ex. P-11 it is mentioned that visa of six persons was received on 11- 12-2013 and of one person Saurabh was received on 12-12-2013 at 5.11PM. Similarly visa of three persons Mr. Harish; Mr. Ajay and Jagjit Singh was received on 12-12-2013 and arrangements were made for providing visa to Mr. Kulbir on arrival at Dubai. In this letter it is also*

mentioned that the visa of four persons was never received. Kulbir had to return back from Dubai as visa could not be arranged in time. In this way except six persons whose visa was received on 11-12-2013 and one Saurabh whose visa was received on 12-12- 2013 the remaining eight persons could not travel to Dubai. The version of the petitioner is that he had to make refund of an amount of Rs. 1,32,740/- plus Rs.60,000/- to its customers and had to suffer losses to the tune of Rs.1,92,740/-. The version of the petitioner is that he is entitled to receive the above mentioned amount with interest.

11. The detail of the services to be provided and payment regarding providing services as per proposal are mentioned in detail in proposal form Dubai Dhamaka Ex. P-4. It is evident from the Performa invoice Ex. P-3 that an amount of Rs.5,02,564/- was paid to the respondent-company by the petitioner regarding foreign tour trip of thirteen persons from 12-12-2013 upto 16-12-2013. It is evident from the Performa Invoice Ex. P-4 that an amount of Rs.27,320/- was deposited to the respondent-company by the petitioner regarding Mr. Saneesh Bansal only one person from 13- 12-2013 upto 16-12-2013. It is evident from the Performa invoice Ex. P-5 that an amount of Rs.38,660/- was deposited on 10-12-2013 mentioning client name as Ritesh Malhotra. Ex. P-7 is the confirmation voucher. In this way petitioner got deposited the total amount of Rs.5,68,544/- against three different invoices. The detail regarding these payments are mentioned in the letter Ex. P-10. Ex. P-10 was the letter addressed to petitioner Ramesh Kumar by the respondent-company. In this document receipt

of payment an amount of Rs.5,68,544/- has been admitted by the respondents. Regarding payment of an amount of Rs.60,000/- there appears to be no controversy in between the petitioner and the respondents. Sh. Vishal Santosh Sharma in his affidavit Ex. R-1 also admitted receipt of payment of an amount Rs.60,00/- mentioning that this amount) was demanded solely on account of the reason that the flight tickets of five passengers had to be re-scheduled at the rate of Rs.12,000/- per passenger. In this way it is admitted fact that respondent- company received an amount of Rs.5,68,644/- as well as an amount of Rs.60,000/- from the petitioner. Now situation is quite clear that visa of six persons was received in time on 11-12-2013 and these six persons performed their air travel. The one person Saurabh received visa on 12-12-2013 and he also performed his journey. Visa of three more persons namely Harish; Ajay and Jagjit was received on 12-12-2013 and assurance was given for making arrangements of visa for Kulbir on arrival at Dubai. Visa of remaining four persons was not received. It is mentioned in the letter Ex. P-11 addressed to Mr. Sanjeev Tiwari that Kulbir also had to return back from Dubai Airport as he could not be provided visa. IN this way four persons were not provided visa and they could not travel to Dubai. Only eleven persons could travel to Dubai on the basis of the arrangements made by the respondent-company and as per calculations expenses of each person was Rs.38,660/-. The petitioner has taken plea that as the four persons could not travel to Dubai, petitioner is entitled for refund of the total amount paid or deposited regarding making arrangements for

traveling of those four person who could not be provided visa by the respondents the total amount Rs. 1,32,740/-. The petitioner is also entitled to refund of an amount of Rs.60,000/- which was paid on 12.12.2013 by the petitioner as the visa was received late and flight had to be rescheduled again.

13. *I have gone through the contents of the offer given by the respondent-company Dubaiu Dhamaka Ex.P-2. In the proposal it is mentioned in clear words that it is the liability of the respondents to provide travel insurance free upto sixty years; international calling call free, economy call return airfare on Jet Airways. Visa and Ok to board chares (Only Jet Airways) etc. The problems arose when the respondent-company could not provide visa to eight persons in time and due to this pay Rs.12,000/- each extra. Version of the petitioner is that all it happened and petitioner had to suffer loss amounting to Rs.1,92,740/- due to faults as well as acts of carelessness and negligence on the part of the respondent-company. The respondent-company should have spend money for purchasing air tickets after insuring that the visa is likely to be received well in time.*

14. *During the course of arguments learned counsel for the respondents stated that it was the responsibility of the respondent-company to purchase air travel tickets to make arrangements of lodging, boarding etc.as mentioned in the Dubai Dhamaka proposal Ex.P-2. Ld. Counsel for the respondents stated that it was not the responsibility and liability of the respondent-company to make arrangements for providing visa to the travelers. In fact it was the*

entire responsibility and duty of the travelers to obtain visa from the concerned Embassy well in time. In fact providing visa to the travelers was prerogative of the Embassy. It will be pertinent to mention here that in the proposal Dubai Dhamaka it is nowhere mentioned that it will be the responsibility of the travelers to obtain visa from the concerned Embassy. The respondent-Tour and Travel Company had undertakes as mentioned in the Dubai Dhamaka Ex.P-2 that liability to provide travel insurance free upto sixty years; international calling call free, economy class return airfare on Jet Airways. Visa and Ok to board charges (only Jet Airways) etc. In fact it was the responsibility and liability of the travelers themselves to make all the arrangements including visa, food hotel etc.if they were willing to go to Dubai or any other country.

23. It is evident even from a perusal of the above that the petitioner has to provide tickets, assist in Visa and lodging etc.. The tickets were to be provided for the Jet airlines. The transport service provider is thus Jet airways and not the petitioner herein. The Permanent Lok Adalat forbid to appreciate the above real and distinct difference.

24. Further, it has been held by the Hon'ble Supreme Court in ***Inter Globe Aviation Ltd. vs. N. Satchidanand, 2011 (7) SCC 463***, that where a flight could not take off for any reason or was delayed, ticketing agent or even airline cannot be held liable. The relevant part is extracted as under:-

“There can be no doubt that the respondent, like any other passenger forced to sit in a narrow seat for eleven hours, underwent considerable physical hardship and agony on account of the delay.

But, it was not as a consequence of any deficiency in service, negligence or want of facilitation by the appellant. Consumer fora and Permanent Lok Adalats can not award compensation merely because there was inconvenience or hardship or on grounds of sympathy. What is relevant is whether there was any cause of action for claiming damages, that is whether there was any deficiency in service or whether there was any negligence in providing facilitation. If the delay was due to reasons beyond the control of the airline and if the appellant and its crew have acted reasonably and in a bona fide manner, the appellant cannot be made liable to pay damages even if there has been some inconvenience or hardship to a passenger on account of the delay."

(Emphasis supplied)

25. The Hon'ble Apex Court in the matter of "**Balvant N. Viswamitra And Ors vs Yadav Sadashiv Mule**" reported as **(2004) SCC Online SC 881** has also held that where a Court lacks inherent jurisdiction in making an order, order so passed by such court would be without jurisdiction, non-est and void ab initio. The relevant part is extracted as under:-

"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 gelativity is bornen 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 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 revocably 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 decige suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the rentedy 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."

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, and 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 Modi³ stated: (SCC pp. 291-92, paras 6-8)

(Emphasis supplied)

26. In view of the aforesaid distinction between 'Tour and Travel' and the 'Transport Services', as well as in view of the judicial pronouncements of Hon'ble Supreme Court about the defects that would go to the root of a case and would invalidate all consequential proceedings, I feel that the Permanent Lok Adalat (Public Utility Services), Panchkula, did not examine the scope of its powers and the services which it could exercise and pass an award. The lack of authority cannot be validated by the Court merely because the respondents/consumer is likely to suffer some inconvenience in approaching any competent forum. A failure by having approached wrong forum for pursuing his remedies cannot be

the basis to ignore and allow the illegality. The Court has an obligation to examine the said issue of jurisdiction as a primary question or such issue can be raised at any stage.

27. Since the present petition is being allowed only on the issue of maintainability, it would thus be not appropriate for this Court to comment any further on the merits of the respective claim, lest it may cause prejudice to the rights of the respective parties in the event of them approaching the competent forum for redressal of their grievances.

28. The present petition is accordingly allowed. The award dated 21.10.2015 passed by the Permanent Lok Adalat (Public Utility Services) Panchkula in case No.11970-2014 is hereby set aside.

29. The parties shall however, be at liberty to take recourse to their remedies in a manner known to law.

30. The period during which the present petition has remained pending before the Courts, shall be taken into consideration while computing limitation.

31. All the miscellaneous application(s), if any, shall also stands disposed of.

(VINOD S. BHARDWAJ)
JUDGE

23.08.2023

shweta

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