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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 29.08.2023**

% **W.P.(C.) No. 9971/2021 and C.M. No. 2001/2022**

R P AGRAWAL

..... Petitioner

Through: Mr. R. P. Agarwal and Ms. Reema Mishra, Advocates.

versus

THE UNION OF INDIA THROUGH THE SECRETARY
DEPARTMENT OF FINANCIAL SERVICES
& ORS.

..... Respondent

Through: Mr. Ravi Prakash, CGSC with
Mr. Varun Agarwal, Advocates for
Respondent No.1/ UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT (ORAL)

SATISH CHANDRA SHARMA, CJ.

(For himself and Sanjeev Narula, J. concurring)

1. The Petitioner before this Court filed the present writ petition under Article 226 of the Constitution of India in the nature of a Public Interest Litigation (“PIL”) challenging *inter alia* the vires of certain identified provisions of the Recovery of Debt and Bankruptcy Act, 1993 (the “RDB Act”). In this context, the Petitioner prays for the following:

“a. Pass an order in the nature of a Writ/Order declaring the provisions of Recovery of Debts and Bankruptcy Act, 1993 relating to Appointment of the Recovery Officers namely Sections 2(k), 7(1), 7(2), 7(3)



contained in Chapter II (titled as " Establishment of Tribunal and Appellate Tribunal") and Sections 25 to 30A contained in Chapter V (titled as "Recovery of Debts determined by Tribunal") as well as all other provisions contained in the said Act having any reference to "Recovery Officer" as ultra vires to the Doctrine of Separation of Powers & Independence of Judiciary which are part of the basic structure of the Constitution of India.

b. Pass an order in the nature of a Writ/Order directing the Respondent No. 1 to make necessary provisions in Recovery of Debts and Bankruptcy Act, 1993 for execution of the Recovery Certificates by the Presiding Officers only;

IN THE ALTERNATIVE

Pass an order in the nature of a Writ/Order directing the Respondent No. 1 to make appropriate amendments in the Recovery of Debts and Bankruptcy Act, 1993 with regard to eligibility criteria for appointment of Recovery Officers with judicial/practice at bar experience only and regarding the composition of Selection Board for the post of Recovery Officers which should have adequate representation from the Judiciary; and

c. Issue any other and further order and/or directions as the nature and circumstances of the case may require.

2. The Ld. Senior Counsel appearing on behalf of the Petitioner has submitted that the RDB Act had been enacted to *inter alia* establish a subject specific tribunal i.e., the Debt Recovery Tribunal (“**DRT**”) equipped to expeditiously adjudicate and recover debts due to banks and / or financial institutions. In this regard it has been submitted that, the pecuniary jurisdiction of the DRT was established with a minimum threshold of INR



20,00,000 (Indian Rupees Twenty Lakh); and as on 31.03.2023 a total of 1,25,395 (one lakh twenty-five thousand three hundred ninety-five) Original Applications (“OAs”) with claims extending to the tune of INR 15,15,146,00,00,000 (Indian Rupees Fifteen Lakh Fifteen Thousand One Hundred Forty Six Crore) pending before various DRTs.

3. In this background it has been submitted that Recovery Officers (“ROs”) appointed under the provisions of the RDB Act are generally persons who have worked in an administrative capacity for the Government of India sans judicial experience. It is submitted that this manner of appointment of ROs has resulted in the failure of the regime constituted under the RDB Act on account of drawn-out recovery proceedings, and the erosion of value of security in case of secured facilities on account of delays in execution proceedings.

4. It is further submitted that the well-entrenched legal principle i.e., execution of a decree by the same court or another court of the equivalent rank as enshrined under the Code of Civil Procedure, 1908 (the “CPC”) has been disregarded under the RDB Act whereunder a Recovery Certificate (as defined under the RDB Act) is executed by a RO who is a member of the staff of the DRT and 3 (three) grades lower than the authority issuing the Recovery Certificate i.e., the Presiding Officer of the relevant DRT. Accordingly, it is submitted by the Ld. Senior Counsel that the manner of execution is contrary to the system provided for under the CPC; and in stark contrast to the object of the RDB Act.

5. The Ld. Senior Counsel submitted that the eligibility criteria for appointment as a RO for the DRT has been drawn up by Respondent No. 1



vide an Office Memorandum dated April 27, 2021, whereunder a degree in law has been listed as merely a desirable qualification (the “**Eligibility Criteria**”). Further, the Court’s attention was also drawn to the fact that essentially two categories of persons were eligible for appointment as ROs, namely (i) section officers under the central government or state governments or courts or tribunals; and (ii) scale-III or scale-IV officers of public sector banks. It was pointed out that under the Eligibility Criteria neither did prospective applicants have to possess any prior experience in their parent organizations’ law department, nor were judicial officers eligible to apply for the post of ROs under the DRT.

6. The Ld. Senior Counsel has also placed before this Court, the composition of the selection board for the post of a RO which comprises of the following persons (the “**Selection Board**”):

<i>Sr. No.</i>	<i>Particulars</i>	<i>Designation</i>
1.	<i>Joint Secretary (DRT) - Department of Financial Service, Ministry of Finance, Government of India (the “DFS”)</i>	<i>Chairperson</i>
2.	<i>Presiding Officer, DRT (nominated by the DFS)</i>	<i>Member</i>
3.	<i>Director or Deputy Secretary, DFS</i>	<i>Member</i>
4.	<i>Joint Legal Advisor, Reserve Bank of India (“RBI”)</i>	<i>Member</i>

7. In this regard it has been submitted that, the Selection Board features no representation from either the judiciary or the Ministry of Law and Justice, Government of India, which according to the Petitioner is the reason for the appointment of administrative officers as ROs. Moreover, it has been



submitted that the duties discharged by ROs are judicial in nature as many questions in relation to the execution, discharge and satisfaction of the underlying Recovery Certificate are to be decided by the RO including *inter alia* powers to adjudicate questions of title of property and even powers to arrest Recovery Certificate Debtors.

8. The Ld. Senior Counsel has contrasted the procedure of execution of decrees under the Commercial Courts Act, 2015 (the “CC Act”) vis-à-vis the procedure laid down under the RDB Act and underscored that under the CC Act any case with a value of INR 3,00,000 (Indian Rupees Three Lakh) or higher are adjudicated by a District Judge and the decree passed therein are also executed by a District Judge. On the other hand, under the RDB Act, claims to the tune of thousands of crores are executed by ROs who lack competence on account of no judicial experience and unfamiliarity with basic principles of law in relation to the execution of money decrees. The Ld. Senior Counsel has placed reliance on an order of this Court dated July 14, 2021, in *International Asset Reconstruction Company Limited v. Anoop Bishnoi & Ors.*, W.P. (C) 3708 of 2021 to substantiate his aforementioned submission.

9. The Ld. Senior Counsel has underscored that Recovery Proceedings led by ROs form the spine of the system. It is submitted that only through the execution of a Recovery Certificate by an RO does the banking system realize and / or recover its debt. Thus, in the absence of well-equipped and competent machinery, the object of the RDB Act is bound to fail.

10. The Ld. Senior Counsel has vehemently argued before this Court that the entrustment of the responsibility of a RO to persons without any judicial



background; and the composition of the Selection Board is contrary to the ‘*Doctrine of Separation of Powers*’ enshrined under the Constitution of India. In this regard, the Ld. Senior Counsel has drawn the attention of this Court to the decision(s) of the Hon’ble Supreme Court of India (the “**Supreme Court**”) in *Roger Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1; and *Madras Bar Assn. v. Union of India*, (2021) 7 SCC 369 (hereinafter referred to as “**MB-I**”).

11. It is submitted that the Selection Board is entirely dominated by Respondent No. 1 and the judiciary has been denuded of any role in either determining the Eligibility Criteria or the composition of the Selection Board. Furthermore, the Ld. Senior Counsel has submitted that Respondent No.1 continues to hold leeway over ROs on account of matters pertaining to the extension of tenure of ROs laying solely with Respondent No. 1. Accordingly, it is submitted that the all-pervasive control exercised by Respondent No. 1 erodes individual independence as well as institutional independence. Reliance in this regard has been placed on a decision of the Supreme Court in *Madras Bar Assn. v. Union of India & Anr.*, W.P.(C) No. 502 of 2021 (hereinafter referred to as “**MB-II**”).

12. The Ld. Counsel appearing on behalf of the Respondent No. 1 has submitted before this Court that the RDB Act envisages procedures and powers distinct to that under the CPC. It has been brought to the attention of the Court that Presiding Officers under the RDB Act are either District Judges or Retd. District Judges and accordingly, the day-to-day functioning of the DRT including supervising the activities of the ROs under Section



7(2) of the RDB Act are under the general oversight of such Presiding Officers.

13. The Ld. Counsel appearing on behalf of Respondent No. 1 has placed before this Court an order of the Supreme Court in *Union of India v. Debt Recovery Tribunal Bar Association, Chandigarh*, (2013) 2 SCC 574 wherein the Supreme Court issued certain directions in relation to the appointment and qualifications of ROs as more particularly identified under Paragraph 21 of this judgement.

14. In this context, the Respondent No.1 has stated on oath that the aforementioned directions of the Supreme Court in *Debt Recovery Tribunal Bar Association, Chandigarh (Supra)* have been incorporated into the Debt Recovery Appellate Tribunal, and the Debt Recovery Tribunals at Chandigarh, Delhi and Jaipur Recruitment Rules, 2018 (the “**Recruitment Rules**”) whereunder candidates with relevant legal qualifications and / or experience have been desired and the Selection Board has been reconstituted as per the directions of the Supreme Court. Accordingly, the Ld. Counsel for the Petitioners submits that no other irregularity in relation to either the composition of the Selection Board and / or Eligibility Criteria was pointed out by the Supreme Court.

15. Furthermore, it was underscored that in terms of Section 29 of the RDB Act, the Recovery Proceedings must be carried out as per the Second Schedule of the Income Tax Act, 1961 (the “**IT Act**”). However, under the IT Act the recovery proceedings are carried out by officers of the Income Tax Department (the “**IT Department**”) who are not necessarily persons with either judicial or legal experience.



16. The Ld. Counsel for Respondent No. 1 has submitted that ROs are Group 'A' officers with significant administrative/functional experience who are selected after due consideration of their profile and after personal interviews. Further, it is submitted that various interactive sessions are carried out by Respondent No. 1 to refresh and upgrade the knowledge of ROs.

17. It is submitted that the appointment of ROs by Respondent No. 1 has been considered by the Supreme Court in ***Debt Recovery Tribunal Bar Association, Chandigarh (Supra)*** wherein, the Supreme Court itself observed that it would not be possible to appoint judicial officers of a rank below that of an Additional District and Sessions Judge. Moreover, it is submitted that the Petitioners' contention that the procedure and manner of appointment of ROs is contrary to the '*Doctrine of Separation of Powers*' is wholly misplaced. In this regard, the Ld. Counsel for Respondent No.1 placed reliance on the Recruitment Rules whereunder the period of deputation as a RO is limited to a period not exceeding 4 (four) years. Furthermore, it was submitted that even such deputation is regulated under the Recruitment Rules and applicable guidelines of the Department of Personnel and Personnel Training (the "**DOP&T**").

18. It is submitted that the decisions of the Supreme Court relied upon by the Petitioner are in relation to the appointment of persons to post of Presiding Officer and not in the context of appointment of ROs. Furthermore, it is submitted that ***Debt Recovery Tribunal Bar Association, Chandigarh (Supra)*** has comprehensively settled this present issue and thus this Writ Petition is barred by *res judicata*.



19. This Court has heard the parties at length and has perused the record. The matter is being disposed of at the admission stage itself with the consent of the parties.

20. Undoubtedly, the object of the RDB Act is to facilitate and expedite recovery of debts accruing to banks and financial institutions by way of summary proceedings before a statutory Tribunal i.e., the DRT. The Petitioner herein has underscored a practical challenge faced by DRTs in relation to the appointment and selection of ROs and accordingly, has raised a challenge against the constitutionality of certain identified provisions of the RDB Act that *inter alia* outline the role of ROs.

21. In this background, it would be pertinent to note that the ***Supreme Court in Debt Recovery Tribunal Bar Association, Chandigarh (Supra)*** was called upon by the petitioner therein to *inter alia* examine and subsequently issue directions to the respondent therein i.e., the Union of India to frame rules vis-à-vis the selection and appointment of ROs. The Supreme Court called upon the parties therein to collaborate and devise certain guidelines which were subsequently examined and summarized by the Supreme Court in its final judgement. The relevant observations and guideline(s) in relation to the issue at hand are reproduced as under:

“....9.6. Carry out the recruitment of Recovery Officers by promotion, failing which, by deputation, in accordance with the eligibility criteria as defined in the recruitment rules of each DRT. Keeping in mind the profile of the post of a Recovery Officer, it may not be possible to appoint judicial officers of a rank below that of an Additional District and Sessions Judge, as suggested by the learned amicus curiae. However, UoI shall give preference to only those candidates who either have legal experience or hold a degree in law. Further, with respect to



improving the selection procedure of Recovery Officers, the Departmental Promotion Committee (DPC), provided for in the recruitment rules, shall be expanded to include the Presiding Officer of any DRT as a member of DPC to take part in the selection of the Recovery Officers. At the same time, the level of representation of Reserve Bank of India in DPC will also be raised from the rank of Deputy Legal Advisor to Joint Legal Advisor, RBI.

9.7. Hold regular training programmes for Recovery Officers/Assistant Registrars/Registrars to give them minimum working knowledge of the procedures followed in DRTs, the provisions of the RDDBFI Act, the SARFAESI Act, the Rules made thereunder, and the provisions of Schedules II and III of the Income Tax Act, 1961.

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10.1. All the aforementioned proposals and measures agreed upon by UoI in response to the suggestions made by the learned amicus curiae and the Additional Solicitor General shall be implemented expeditiously within a suitable time-frame. In the event that UoI or the authority concerned fails to comply with the aforesaid assurances, it will be open to the learned amicus curiae to bring the same to this Court's notice for appropriate directions...."

22. This Court has perused (i) the Recruitment Rules; and (ii) the composition of the Selection Board and satisfied itself that the observations of the Supreme Court in ***Debt Recovery Tribunal Bar Association, Chandigarh (Supra)*** have been inculcated under the Recruitment Rules. However, in the interest of completeness, this Court must deal with the contentions raised by the Petitioner in relation to subsequent judicial pronouncements by the Supreme Court which would not have been



considered in *Debt Recovery Tribunal Bar Association, Chandigarh(Supra)*.

23. As a precursor to the aforementioned exercise, it would be necessary for this Court to outline the role of a RO under the RDB Act, and the rules framed thereunder. Pertinently, under Section(s) 25 to 30A of the RDB Act *inter alia* (i) the manner and mode(s) of recovery of debt are specified; (ii) the finality of the recovery certificate issued by the Tribunal qua the RO is reiterated;(iii) the procedure of appeal against an order of the RO is outlined; and (iv) the application of the Second Schedule of the IT Act in relation to the process of recovery pursuant to a Recovery Certificate is contemplated.

24. We have taken note of the scheme of the RDB Act and the provisions under challenge herein. Following *Satya Pal Anand v. State of M.P*, (2014) 7 SCC 244; and in light of a ROs' primary responsibility being limited to the execution of a Recovery Certificate issued under Section 19 of the RDB Act, this Court is of the opinion that the role of an RO is essentially administrative in nature as the RO does not decide any *lis* between parties.

25. Additionally, the Supreme Court in *International Asset Reconstruction Co. of India Ltd. v. Official Liquidator*, (2017) 16 SCC 137 has also made a distinction between proceedings before the RO and those before the Tribunal which bolsters the opinion of this Court vis-à-vis the role of the Tribunal i.e., the Presiding Officer exclusively deals with matters of adjudication as against administrative or procedural aspects of the execution of a Recovery Certificate which lie within the purview of the RO.

26. In light of the aforesaid, we must now turn to the judicial precedents relied upon by the Petitioner. Relying upon *Rojer Mathew (Supra)*, the



Petitioner has contended that the lack of judicial dominance in the Selection Board is in direct contravention of the ‘Doctrine of Separation of Powers’ and detrimental to the independence of the judiciary. In the considered opinion of this Court, the observations of the Supreme Court in ***Rojer Mathew (Supra)*** were made in the context of a search-cum-selection committee for the appointment of members, vice-chairman(s) and chairman(s) of tribunals i.e., persons discharging purely judicial or quasi-judicial functions whereas in the case herein the Selection Board is tasked with the selection and appointment of ROs i.e., persons performing administrative functions limited to the execution of Recovery Certificates in a manner prescribed under the RDB Act. Accordingly, ***Rojer Mathew (Supra)*** is distinguishable on facts and does not assist the Petitioner herein.

27. Moreover, relying upon ***MB-II (Supra)***, the Petitioner has contended that by virtue of the manner of appointment, extension of tenure, decision making power in terms and conditions of service i.e., including in the fixation of salary(ies) and allowances, falling within the domain of the executive, the Recovery Officers cannot be said to be individually independent and accordingly, the appointment of ROs by the executive is contrary to the ‘*Doctrine Of Separation Of Powers*’. However, in the considered opinion of this Court, the observations made by the Supreme Court in ***MB-II (Supra)*** cannot be equated to the case herein. ROs play a limited role i.e., execution of Recovery Certificates issued by the Presiding Officer who is undisputedly an independent and impartial judicial character. Furthermore, the composition of the Selection Board has been altered pursuant to judicial pronouncement by the Supreme Court. Accordingly, the



reliance placed on **MB-II(Supra)** by the Petitioners is misdirected on account of (i) the observations made therein were made in relation to judicial appointments; and (ii) the composition of the Selection Board having been tested by the Supreme Court.

28. As outlined above, the reliance placed by the Petitioner on **Rojer Mathew (Supra)**; and **MB-II** is misdirected and misguided. Accordingly, since the Supreme Court has already considered the aforesaid contention in **Debt Recovery Tribunal Bar Association, Chandigarh (Supra)** and did not find in favor of the petitioner therein, this Court does not deem it appropriate to entertain the constitutional challenge in this Writ Petition.

29. Lastly, the direction sought by the Petitioner in relation to (i) appointment of only judicial officers as ROs; and / or (ii) the execution of Recovery Certificates being entrusted to the Presiding Officer is contrary to the observations of the Supreme Court in **Debt Recovery Tribunal Bar Association, Chandigarh (Supra)** wherein the practical difficulties preventing the appointment of judicial officers as ROs were emphasized. Accordingly, this Court finds no reason to interfere in the present Writ Petition.

30. Furthermore, I have gone through the concurring judgment of my esteemed Brother Sanjeev Narula, J. I affirm and endorse the reasoning adopted by him and the conclusions arrived at.

SATISH CHANDRA SHARMA, CJ



Per SANJEEV NARULA, J (Concurring)

31. I have had the advantage of going through the lucid and elaborate judgment authored by Hon'ble the Chief Justice. I respectfully agree with the conclusion drawn by him, and by way of this concurring note, would like to add a few observations of my own.

Whether the Recovery Officer is a judicial body per se

32. The first issue that needs to be determined is whether a Recovery Officer operates as a judicial body while fulfilling their duties. To elucidate this point, it is beneficial to invoke the comprehensive test of functionality as established by the Supreme Court in the landmark case of ***Gullapalli Nageswara Rao & Ors. v. Andhra Pradesh State Road Transport Corporation & Anr.***¹ The pertinent excerpt from the judgment is as follows:

“whether an Administrative Tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially”

33. The question as to whether an Administrative Tribunal is obliged to conduct itself judicially ought to be deduced from the explicit stipulations of the relevant statute and the subsidiary rules formulated thereunder. The Supreme Court's perspective, as outlined in the afore-noted decision, is that when an authority is tasked with adjudicating on the competing rights of

¹AIR 1959 SC 308; 1958 SCC OnLine SC 49.



parties—in other words, when there is a '*lis*', or a dispute before it—it is ordinarily incumbent upon that authority to discharge its duties with a judicial demeanour. Applying the aforementioned judicial test to the statutory framework governing Recovery Officers under the Recovery of Debts and Bankruptcy Act, 1993 [**“RDB Act”**], we shall undertake a meticulous examination of the statutory provisions delineating their role and functions:

- 33.1. Section 7 of the RDB Act mandates that Recovery Officers are appointed by the Central Government as members of the Tribunal's staff, principally charged with executing the Tribunal's recovery certificates as well as its conclusive orders. The procedures pertaining to the execution of these duties are encapsulated in Sections 25 through 30A, within Chapter V, titled 'Recovery of Debts determined by Tribunal'. These provisions illuminate the array of mechanisms available to Recovery Officers for enforcing a recovery certificate.
- 33.2. Specifically, Section 25 authorizes the Recovery Officer to embark on the recovery of the ascertained amounts *via* multiple avenues, which notably include the attachment and auction of the debtor's movable and immovable property, as well as the arrest and detention of the debtor.
- 33.3. Section 27 confers discretionary power upon the Presiding Officer to extend deadlines in certain instances, in which case the Recovery Officer is expected to suspend proceedings in alignment with such extensions.



- 33.4. Furthermore, a supplementary spectrum of recovery methods is articulated under Section 28. Recovery Officers may, for example, direct individuals who owe debts to the debtor to make such payments directly to the Recovery Officer.
- 33.5. The operational functions described above must be harmoniously construed with the procedural guidelines laid out in Schedules II and III of the Income-Tax Act, 1961, thereby ensuring that the Recovery Officer's actions are anchored within a legislative framework.
- 33.6. In culmination, Section 30 introduces an appellate mechanism, allowing any party aggrieved by the Recovery Officer's orders to lodge an appeal with the Tribunal. This is contingent upon compliance with Section 30A, which necessitates that 50% of the disputed debt amount be deposited with the Tribunal as a precondition for entertaining such an appeal.
34. The afore-noted provisions establish a comprehensive procedural edifice within which Recovery Officers operate. The statutory framework affords them only a quasi-judicial *discretion* in the execution of their duties and necessitates adherence to principles of fairness and due process, reflecting the judicial test established by the Supreme Court. This judicial comportment is particularly emphasized by the provision for appeals, underscoring the expectation of a *judicious* exercise of their powers.
35. At this stage, it would be pertinent to note the distinct demarcation that emerges between the roles of Recovery Officers and Presiding Officers when examined within the context of the RDB Act. Section 4(1)



characterizes a Presiding Officer as the singular member of a Tribunal under the RDB Act, endowed with the responsibility of hearing and resolving disputes presented before them. In alignment with Section 5, the qualification criterion for a Presiding Officer is stringently set; only those who are, have been, or are eligible to be a District Judge may assume this role. Further, as per Section 6A, Presiding Officers appointed subsequent to the enactment of the Tribunals Reforms Act, 2021, would be governed by the terms and conditions of service set out in Chapter II therein.

36. This contrast is further crystallized by the vertical stratification of the two roles set out by the statutory framework. Section 7(2) articulates that Recovery Officers shall operate under the broad oversight of the Presiding Officer. Further, Section 26 underscores this distinction by stipulating that Recovery Officers do not have the jurisdiction to consider any objections on any basis to the certificate issued by the Presiding Officer. Thus, the Presiding Officer is vested with judicial authority to adjudicate rights and render determinative orders, whereas the mandate of the Recovery Officers is principally to implement the orders passed by the Presiding Officers.

37. The jurisprudential nuances of this relationship were expounded upon by the Supreme Court in *International Asset Reconstruction Co. of India Ltd. v. Official Liquidator*², where it noted:

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12. A comparative study of Section 30, pre and post-amendment in the year 2000, reveals that the deemed status of proceedings before the Recovery Officer, as a Tribunal, stands denuded. Had

²(2017) 16 SCC 137.



the proceedings before the Recovery Officer deemed to be before a Tribunal, entirely different considerations may have arisen.

<i>Old Section 30 before the 2000 Amendment</i>	<i>Section 30 after the 2000 Amendment</i>
<i>“30. Orders of Recovery Officer to be deemed as order of Tribunal.— Notwithstanding anything contained in Section 29, <u>an order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive), shall be deemed to have been made by the Tribunal</u> and an appeal against such orders shall lie to the Appellate Tribunal.”</i>	<i>“30. Appeal against the order of Recovery Officer.— (1) Notwithstanding anything contained in Section 29, <u>any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.</u> (2) On receipt of an appeal under sub-section (1), <u>the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive).</u>”</i>

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[Emphasis Supplied]

38. The import of aforementioned observation is pivotal, as it delineates the procedural stature of Recovery Officers post-amendment. It now



stands clarified that the imputed characterization of proceedings before the Recovery Officer as proceedings before the Tribunal has been removed – Recovery proceedings no longer carry the 'deemed' judicial status of a Tribunal. This distinction is vital in the context of assessing whether the Recovery Officer's functions are judicial or administrative in nature, influencing the standards and expectations of due process and fairness in their conduct.

39. From the foregoing analysis, it is evident that it is the 'Presiding Officer', functioning in the capacity of the Tribunal, which can be classified as a judicial entity. Recovery Officers are primarily commissioned to execute the recovery certificates issued by the Presiding Officers, thus situating their duties predominantly within the executive domain.

40. We however do acknowledge that despite their duties being chiefly administrative, Recovery Officers are, in the course of their executive functions, called upon to engage in decision-making processes which require a degree of judicial consideration and adherence to judicial norms and procedures. However, this alone would not elevate their actions to the status of a judicial body. This nuance may be elaborated upon by referring to the meaning of 'quasi-judicial', as explicated in ***Gullapalli Nageswara Rao*** (supra):

“The concept of a quasi-judicial act implies that the act is not wholly judicially; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive powers.”



41. The statutory provisions discussed above set out a limited scope for exercise of adjudicatory powers by Recovery Officers. They do not make conclusive determinations of rights, and their orders are subject to judicial oversight, being subject to appeal before the Tribunal. Thus, their adjudicatory powers cannot be said to extend to the adjudication of disputes (*lis*) between contesting parties in the traditional sense. Moreover, Recovery Officers exercising quasi-judicial powers would not metamorphose their primary role as an administrative and executive body. This interpretation is buttressed by jurisprudence of a coordinate Bench of this Court in the case of ***Mahindra Electric Mobility Ltd. & Anr. v. Competition Commission of India & Anr.***,³ wherein — while dealing with a matter concerning the Competition Commission of India, which also possesses a composite of administrative, quasi-legislative, and quasi-judicial powers— the Court held:

“...the fact that some powers under an enactment, which clothe the authorities with a broad range of powers (and jurisdiction) – such as administrative, quasi legislative and quasi-judicial per se would not make that body a judicial or purely administrative one.”

42. In consideration of the duties and authority vested in Recovery Officers under the framework of the RDB Act, it is deduced that although quasi-judicial activities demand an adherence to judicial procedural norms, their intrinsic power exercised remains fundamentally executive in nature. Consequently, despite the quasi-judicial responsibilities imposed by procedural requirements, Recovery Officers maintain their executive

³W.P.(C) 11467/2018; 2019:DHC:2043-DB



essence and, therefore, cannot be classified as judicial entities in the strictest sense.

Whether the scheme of the RDB Act contravenes the Doctrine of Separation of Powers

43. Next, we shall address the second issue at hand — whether the absence of judicial participation in the appointment process for Recovery Officers breaches the doctrine of separation of powers. Here, it is imperative to briefly delve into the theoretical foundations and practical applications of this doctrine in the present context.

44. The principle of separation of powers, as articulated by Montesquieu in 'The Spirit of the Laws', underpins the division of governmental functions into three distinct branches: the Legislature, the Executive, and the Judiciary. This framework serves as a cornerstone for democratic governance by preventing the concentration of power and fostering a system of checks and balances.

45. In the context of Indian Constitution, the doctrine of separation of powers is enshrined as a cornerstone of the Constitution's basic structure. However, it is not enforced with the same level of strictness that characterizes its application in certain other legal systems. Indian jurisprudence has consistently recognized that a degree of functional intermingling is inevitable, and indeed sometimes necessary, for effective governance. This is evidenced by the myriad of judgments that have addressed the doctrine's applicability to India's unique constitutional



structure. In *Bhim Singh v. Union of India*,⁴ the Supreme Court elucidated the nuanced interpretation of this principle within the Indian context by stating:

“A law would be violative of separation of powers not if it results in some overlap of functions of different branches of the State, but if it takes over an essential function of the other branch leading to lapse in constitutional accountability.”

46. Therefore, the mere involvement of the Executive in appointing Recovery Officers, without direct participation of the Judiciary, does not automatically amount to a violation of the separation of powers. The critical inquiry is whether such an appointment process usurps an 'essential function' of the Judiciary. In light of this legal landscape, it is essential to scrutinize whether the method of appointing Recovery Officers leads to a lapse in constitutional accountability or infringes upon the judiciary's fundamental role. Only if it is found to do so, can it be said that there is a transgression of the separation of powers as understood within the Indian constitutional framework. On this issue, the authoritative interpretation provided by the Supreme Court in the landmark case of *Madras Bar Association v. Union of India*,⁵ provides a clear guideline. The relevant excerpt thereof is extracted as under:

“Conclusions:

134. (i) The Parliament has the power to enact legislation, and to vest adjudicatory functions, earlier vested in the High Court, with

⁴ (2010) 5 SCC 538.

⁵ (2014) 10 SCC 1.



an alternative court/tribunal. Exercise of such power by the Parliament would not per se violate the —basic structure of the Constitution.

135. (ii) Recognized constitutional conventions pertaining to the Westminster model, do not debar the legislating authority from enacting legislation to vest adjudicatory functions, earlier vested in a superior court, with an alternative court/tribunal. Exercise of such power by the Parliament would per se not violate any constitutional convention.

136. (iii) The —basic structure of the Constitution will stand violated, if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure, that the newly created court/tribunal, conforms with the salient characteristics and standards, of the court sought to be substituted.

137. (iv) Constitutional conventions, pertaining to constitutions styled on the Westminster model, will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced, are not incorporated in the court/tribunal sought to be created.”

47. Therefore, to determine whether the Executive, through the Recovery Officers' actions, has overstepped into judicial territory, it is imperative to scrutinize the boundaries within which judicial powers may be delegated through legislative instruments like the RDB Act. We have previously deliberated and reached the consensus that Recovery Officers do not impinge upon the fundamental judicial duties. Their mandate is primarily focused on enforcing the Tribunal's decrees rather than engaging in the adjudication or interpretation of laws that would culminate in a definitive



resolution of parties' rights akin to the role of a court. Their statutory functions are consistent with order enforcement, a task traditionally within the ambit of administrative responsibilities. The provision for judicial scrutiny of their decisions by the Tribunal upholds the constitutional principle of checks and balances, thereby preserving the 'basic structure' doctrine, which emphasizes the separation of powers and ensures judicial oversight over executive actions. Accordingly, the operational framework established by the RDB Act does not infringe upon the realm of essential judicial functions. Therefore, we uphold that the role of Recovery Officers, being intrinsically administrative, does not constitute an encroachment on core judicial functions by the Executive. In line with the Supreme Court's rulings, the procedures governing the actions of Recovery Officers do not equate to a takeover of an indispensable judicial role by the Executive. Such an encroachment would only arise if the Executive's involvement in their appointment unduly influenced the Judiciary's independence or interfered with its central judicial responsibilities.

48. The concerns regarding separation of powers relating to RDB Act are further addressed by differentiating the roles of the Presiding Officer/Tribunal and the Recovery Officer. This distinction is essential for evaluating the Act's compliance with the doctrine. The legislation clearly demarcates the Tribunal's jurisdiction, which carries the responsibility for adjudication, from that of the Recovery Officer, whose duty is to execute the Tribunal's orders. When it comes to adjudicative functions and responsibilities, it is the Presiding Officer, who must have qualifications on par with those of a District Judge, that embodies the judicial temperament



and authority necessary for carrying out duties traditionally reserved for the judiciary. The selection process for Presiding Officers, as dictated by the Debt Recovery Tribunal (Procedure for Appointment as Presiding Officer of the Tribunal) Rules, 1998, further embodies a balanced composition accentuating the doctrine of separation of power. The involvement of the Judiciary in the form of representation by the Chief Justice of India, or a Judge of the Supreme Court nominated by the Chief Justice of India, alongside the Secretary, Ministry of Law and Justice, ensures that the appointment process for Presiding Officers retains a judicial character, adhering to the principles underlying the separation of powers. Lastly, the fixed term of office and the defined conditions of service of the Presiding Officer serve to reinforce their independence and impartiality – are essential attributes for a quasi-judicial body functioning within the judicial domain.

49. In light of the above, it is clear that the RDB Act entrusts the Tribunal with a delimited judicial function, preserving the sanctity of adjudication while allowing for specialized and efficient resolution of financial disputes. The role of Recovery Officers does not impinge on core judicial functions, which are the adjudication and final determination of rights that is exclusively undertaken by the Presiding Officers. The appellate mechanism provided under the Act serves as a check on any limited quasi-judicial determinations the Recovery Officer makes, thereby maintaining the Judiciary's supremacy in the final arbitration of disputes. This accords with the criteria outlined in the *Madras Bar Association (supra)*, wherein the Supreme Court acknowledged the Legislature's power to create alternative



adjudicatory mechanisms, provided they adhere to the essential characteristics and standards of the courts they supplant.

50. To sum up, the institutional design under the RDB Act does not breach the separation of powers. Rather, it represents a lawful and constitutionally permissible allocation of functions aimed at streamlining the adjudication of debt recovery cases, all the while maintaining the supremacy of the judiciary and its interpretative guardianship over the essential functions of adjudication and judicial review.

Whether Recovery Officers should mandatorily possess legal qualifications

51. The third point of contention pertains to whether the absence of a mandatory legal qualification for Recovery Officers poses any threat to the integrity of the debt recovery process and the doctrine of separation of powers. The appointment procedure for Recovery Officers is detailed in Schedule II of the 'Debts Recovery Appellate Tribunal, Delhi and Debts Recovery Tribunals at Chandigarh, Delhi and Jaipur Recruitment Rules, 2018' [**"2018 Rules"**]. This appointment procedure and qualifications required for Recovery Officers highlight the fundamental differentiation between administrative and judicial functions within the realm of the RDB Act's implementation.

52. The Petitioner's concern regarding the qualifications of a Recovery Officer suggests an inclination towards a more legally astute appointee, given the quasi-judicial nature of some of the tasks involved. However, as



the role is predominantly administrative—centred on the execution of recovery certificates and ancillary functions—the requisite skill set is arguably more aligned with administrative expertise with legal acumen. The quasi-judicial functions are limited in scope and subject to appellate scrutiny by the Tribunal, which mitigates the risks associated with non-judicial officers performing these roles. Nonetheless, on this issue, the Supreme Court's involvement in reforming the appointment process⁶, leading to the 2018 Rules, is instructive and crucial. The Court's acceptance of these rules indicates a consideration of the balance between efficiency in administrative execution and the preservation of legal propriety in the quasi-judicial aspects of the Recovery Officer's role. The Selection Committee's composition, as derived from these reforms, suggests a deliberate choice to prioritize administrative competence, subject to the oversight of the Tribunal, which safeguards against any potential excesses or errors.

53. The administrative execution of the Tribunal's orders, even with its quasi-judicial facets, does not necessitate a legal background. The inclusion of a law degree as a 'desirable' rather than a 'mandatory' qualification aligns with the nature of the role. Thus, the flexibility in qualifications allows for a wider pool of eligible candidates capable of carrying out the executive functions efficiently, while also leaving the door open for those with legal expertise, who may bring additional competencies to the role.

54. In conclusion, the appointment protocol for Recovery Officers, as upheld by the Supreme Court and outlined in the 2018 Rules, strikes a prudent equilibrium between honouring the principle of separation of

⁶In *Union of India v. Debt Recovery Tribunal Bar Association & Anr.*, (2013) 2 SCC 574.



powers and enabling the efficient administrative implementation of the Tribunal's directives. The established safeguards, including the provisions for appeals, etc ensure accountability and preserve the judiciary's sovereign role in safeguarding rights and adjudicating disputes.

55. For the aforesaid reasons, I concur with the judgment proposed by Hon'ble the Chief Justice.

SANJEEV NARULA, J.

56. With the above observations, the petition is disposed of

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

AUGUST 29, 2023