IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CM-12181-2022 in/and
204 **CWP-17899-2011 (O&M)**
Date of Decision: 10.01.2024

VIVEK NARULA

... Petitioner

VERSUS

PERMANENT LOK ADALAT AND ANOTHER

... Respondents

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

Present: Dr. Anand Kumar Bishnoi, Advocate and
Mr. Pardeep and Mr. Neeraj, Advocates
for the petitioner.

Mr. Ram Bilas Gupta, Advocate
for respondent No.2.

None for respondents No.3 and 4.

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<u>VINOD S. BHARDWAJ, J. (ORAL)</u>

The above CM-12181-2022 had been filed by the petitioner for releasing the amount of Rs. 2,00,000/- that had already been deposited with the Permanent Lok Adalat as per order dated 22.09.2011. Notice had been issued in the above application whereupon respondent had put an appearance. He was granted various opportunities to reply. On resumed hearing, counsel for the parties are ad-idem that as the writ petition is itself on board of this Court, the same may be taken up for hearing and be finally decided.

On joint request of the parties, the main case is thus being taken up for hearing today itself.

Challenge in the present petition is to the Award dated 26.08.2011 which is alleged as having been passed beyond the powers conferred on the

Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh.

Briefly summarized, the facts of the present case are that the respondent No.2-applicant, who is a partner in the firm under the name and style of "M/s Sachin Traders" is engaged in the business of sale and purchase of mobile and accessories etc. An application under 22-C of the Legal Services Authorities Act, 1987 was filed by the respondent No.2-applicant before the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh averring there that he had good business relations with the petitioner, who is a dealer of respondents No.3 and 4-Company namely M/s Aroma Telecom Pvt. Ltd. The respondent No.2-applicant had purchased 259 mobile phone handsets Make Aroma from the petitioner on 31.07.2010, however, there were various defects in the said mobile phone handsets manufactured by respondents No.3 and 4 and had been procured by the respondent No.2-applicant from the petitioner who is the Agent/Distributor of the abovesaid company. It is further contended that the petitioner had undertaken to replace the abovesaid mobile phone handsets and/or to refund the amount of sale consideration of the defective mobile phone handsets to the respondent No.2-applicant. Several complaints were submitted by the respondent No.2-applicant to the petitioner even in January 2011. The defects having been noticed in 32 mobile phone handsets, the same were returned to the petitioner. The receipt of the said mobile phone handsets was issued by the petitioner. However, despite lapse of a considerable time, the mobile phone handsets were neither replaced nor the amount returned despite numerous visits by the respondent No.2-applicant namely M/s Vivek Sales. Hence, the application was preferred before the

Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh.

The petitioner entered an appearance in the proceedings and filed his reply, wherein it was contended that the Permanent Lok Adalat had no jurisdiction to try and adjudicate the said application. It was averred that various mobile phone handsets had been sold by the petitioner (respondent No.2 therein) and only the defective mobile phone handsets were to be replaced, however, there was no promise to refund the billed amount under any circumstances. The billing amount of 32 mobile handsets was Rs.51,989/- approximately. It was also set out thereunder that the said mobile phone handsets were received as per the company policy and the petitioner was ready and willing to replace the same with the other and/or new Models of the mobile phone handsets. The manufacturers i.e. respondents No.3 and 4 also filed their reply wherein they denied any relationship with the petitioner – M/s Sachin Traders since there was no privity of contract between them and the petitioner, who is claiming himself to be the distributor/retailer of the said respondents No.3 and 4. It was denied that the mobile handset were defective.

Consequent upon failure of the conciliation proceedings, the matter was adjudicated by the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh in accordance with the provisions contained in Section 22-C(8) of the Legal Services Authorities Act, 1987.

Upon consideration of the pleadings and respective evidence, Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh allowed the said application and directed the petitioner herein to refund a sum of Rs.2,00,000/- to the respondent No.2-applicant and to receive all his stock i.e. mobile phone handsets etc. supplied by respondents No.3 and 4; and to make payment simultaneously, failing which the petitioner was held liable to pay interest @ 9% per annum. The operative part of the impugned Award reads thus:

> *"5. We have heard Ld. Counsel for the parties and have gone through the pleadings and the documents. It is revealed from the pleadings and the documents that there was no privity of contract direct between the applicant and the respondent no. 1 & 2. The applicant had taken the handsets from respondent no.3. Applicant had dealing with respondent no.3. Applicant has returned 32 handsets/mobiles to the respondent no.3. It has transpired that the respondent no.3 is not replacing the defective mobiles and is not cooperating with the applicant. The applicant is suffering loss. It is submitted that the applicant is ready to return all the material stocks and mobiles etc. lying in his shop as provided by respondent no.3 to the applicant and a sum of Rs.2,00,000/- is claimed. There is no justification for rejecting the claim of the applicant.*
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> *6. So we direct the respondent No.3 to pay a sum of Rs.2,00,000/- (Rs. Two Lacs Only) to the applicant within 30 days and to receive all his stocks i.e. mobiles etc. supplied by respondent no. 3 from him and then to make the payment simultaneously failing which respondent no.3 will be liable to pay interest at the rate of 9% per annum from the date of institution of the application till payment. The petition is allowed accordingly against respondent no.3. File be consigned to record room."*

Aggrieved thereof, the present writ petition has been filed.

Counsel for the petitioner has contended that the Award passed by the Permanent Lok Adalat is liable to be set aside *inter alia* on the following grounds:

(i) That the dispute in question pertains to sale and purchase of mobile phone handsets and/or replacement thereof. The same being a commercial transaction between the petitioner vis-a-vis the respondent No.2-applicant, the same does not fall within the definition of "Public Utility Services" as defined under Section 22-A(b) of the Legal Services Authorities Act, 1987. Consequently, the proceedings could not have been instituted before the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh. The plea of lack of jurisdiction was duly raised, however, the same was neither considered nor adjudicated upon by the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh. The lack of jurisdiction being a fundamental and incurable defect would vitiate the final Award passed by Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh; and

(ii) that the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh also failed to appreciate that the controversy in question pertained only to 32 mobile phone handsets, however, notwithstanding the dispute having been confined to 32 mobile phone handsets only, the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh has directed return of the entire material and stocks and directed the petitioner to pay a sum of Rs.2,00,000/- within a period of 30 days.

Counsel for the respondent No.2-applicant, on the other hand, fairly concedes that the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh did not have the jurisdiction to examine the said dispute being a private dispute *inter se* amongst the supplier and the buyer of the mobile phone handsets. Hence, the same cannot be equated with the Telecom Service.

With respect to the second issue as regards the dispute only being in relation to 32 mobile phone handsets, learned counsel for the respondent No.2-applicant contends that he would concede that the defect was reported only w.r.t. 32 mobile phone handsets and that he would be satisfied at this juncture in case the petitioner is directed to refund the invoice value of the said 32 mobile phone handsets worth Rs.51,989/- as is evident in paragraph No.5 of the reply submitted by the petitioner herein before the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh.

Counsel for the petitioner fairly concedes to the abovesaid request of refund of the invoice value of 32 mobile phone handsets that had been received by the petitioner and valued at Rs.51,989/- as acknowledged in the reply.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

In view of the above, it remains undisputed that the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh has exercised a jurisdiction which was not conferred upon it and had adjudicated upon a dispute which was not amenable to the jurisdiction of the Permanent Lok Adalat

(Public Utility Services), Gurugram, Camp Court at Nuh under the Legal Services Authorities Act, 1987.

Jurisdiction and competence to adjudicate a lis is conferred by a statute and exercise of any authority not conferred upon such Authority is clearly a defect which goes to the root of the case and would vitiate the final outcome as well. Even a final decree, passed by an Authority/Court, which is not vested with any power, is rendered unenforceable. A Division Bench of this Court in the matter of ***"Union Territory Versus Permanent Lok Adalat"*** reported as ***(2009) 1 RCR (Civil) 410*** had specifically held that where the decision is beyond the scope of Permanent Lok Adalat, such an order is liable to be set aside since the avenue of Permanent Lok Adalat is not an alternative Court but is intended to provide immediate relief to the aggrieved citizen within and for the purposes defined thereunder.

It has further been held by the Hon'ble Supreme Court in the matter of ***Balwant N. Vishwamitra and others Vs. Yadav Sadashiv Mule and others, reported as (2004) 8 SCC 706*** that jurisdictional error is an incurable defect. 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 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 cognizance 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 position in law is hence well settled that a defect of jurisdiction is fundamental and it goes to the root and destroys the very foundation of the case. An exercise of jurisdiction not conferred on an authority vitiates the final outcome.

The exercise of an equitable jurisdiction under the garb of Section 22D of the Legal Services Authorities Act, 1987, which travels beyond the contours of the power conferred upon the Permanent Lok Adalat (Public Utility Services), cannot be protected by the High Court under the cloak of an equitable jurisdiction. An exercise of equity must be in consonance with the powers conferred upon the Permanent Lok Adalat (Public Utility Services), and the view adopted should be one probable view, on a meaningful reading of the evidence/controversy brought before it. Where the above said test is not satisfied, any exercise of discretion, which travels beyond the law, cannot be protected or be safeguarded by this Court.

Even otherwise, the Permanent Lok Adalat (Public Utility Services), has over-ruled the objection as regards maintainability of the application by relying on Section 22 D of the Legal Services Authorities Act, 1987. The justification is misconceived. The powers of the Permanent Lok Adalat (Public Utility Services), are derived from Section 22 C with respect to the subject matter. 'Public Utility Services' has been defined under Section 22 A (b) of the Legal Services Authorities Act, 1987. Section 22 D only provides the procedure and guiding principles to be kept in mind while exercising jurisdiction. The said Section is thus not the source of authority and jurisdiction but only a guideline to exercise a jurisdiction.

Hence, it is evident that the Award passed by the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh was without Authority and jurisdiction. The same thus being beyond the scope of powers conferred upon the Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh, renders the Award dated 26.08.2011 liable to be set aside.

While holding that the said Award is bad and vitiated on account of lack of jurisdiction and is liable to be set aside, this Court is also conscious of the fact that the dispute in question pertains to the year 2010-11 and the same has remained pending before Courts over a considerable period of time. Taking into consideration the fair stand adopted by the petitioner as also the fact that the receipt of 32 sealed mobile phone handsets is not disputed coupled with the offer of the petitioner that he would be willing to pay the invoice value of the said mobile phone handsets, I deem it appropriate that instead of relegating the parties to reinitiate their grievance before any other Court/Forum, the amount of Rs.51,989/-, being the invoice value of 32 mobile phone handsets is ordered to be returned. It has also been pointed out by the learned counsel appearing on behalf of the petitioner that pursuant to the order dated 22.09.2011, passed by this Court, an amount of Rs.2,00,000/- was deposited by the petitioner on 04.10.2011 with the Treasury of Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh. He thus contends that the amount which has already been deposited by the petitioner, in compliance of the order dated 22.09.2011, may be released to the extent of Rs.51,989/- alongwith proportionate interest accrued thereupon, if any, in favour of the respondent

No.2-applicant and the balance amount and proportionate interest may be ordered to be released in favour of the petitioner. The above said statement seems to be fair.

The present writ petition is accordingly disposed of setting aside the Award dated 26.08.2011 passed by Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh and with a further direction that the Executing Court/Permanent Lok Adalat (Public Utility Services), Gurugram, Camp Court at Nuh shall release a sum of Rs.51,989/- alongwith proportionate interest, if any, in favour of the respondent No.2-applicant and shall release the remaining amount of Rs.1,48,011/- alongwith proportionate interest in favour of the petitioner.

Petition stands disposed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JANUARY 10, 2024 **JUDGE**
rajender

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