

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Apurba Sinha Ray

MAT 469 of 2025

With

CAN 1 of 2025

NCLT Advocates Bar Association & Ors.
-Vs-

Union of India & Ors.

For the Appellants	: Mr. Joy Saha Ms. Manju Bhuteria Mr. Sidhartha Sharma Mr. Patit Paban Bishwal Ms. Namrrataa Basu Ms. Shreya Chowdhury Mr. Barnik Ghosh Mr. Kanishk Keiriwal Mr. Dripto Majumdar Ms. Kirann Sharma Ms. Madhu Jana Ms. Rashmi Bothra Mr. Udit Agarwal Ms. Tanvi Luhariwala Ms. Arundhati Barman Roy Ms. Sohini Dey Ms. Pallavi Gogoi Mr. Avik Chowdhury Mr. Arkadeb Sinha Mr. Rishav Banerjee Mr. Aman Kataruka Mr. Amandeep Singh Mr. Riyanshu Agarwal
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For the Respondents : Mr. Dhiraj Trivedi
Mr. Avinash Kankani

Reserved On : 07.05.2025

Pronounced On : 15.05.2025

Rajarshi Bharadwaj, J.:

1. By this appeal, the correctness of the judgement of the learned Single Judge dated 25.03.2025 passed in W.P.A. No 4927 of 2025 (NCLT Advocates Bar Association, Kolkata bench & Ors v. Union of India Ors) has been questioned by the appellant herein, who were the petitioners in the writ petition.

2. The genesis of the dispute lies in the alleged denial of basic facilities to the members of the National Company Law Tribunal (hereinafter referred to as 'NCLT') Advocates Bar Association at the Kolkata Bench. The appellant/petitioner association had approached the Hon'ble High Court by filing a writ petition under Article 226 of the Constitution of India, contending that despite repeated representations made to the concerned authorities, including the Union of India and other stakeholders, there was a persistent failure to provide fundamental infrastructural support and basic amenities such as chambers, seating arrangements, washrooms and other necessary facilities essential for the smooth functioning and dignity of legal professionals practicing before the NCLT.

3. The Learned Single Judge, upon consideration of the pleadings and materials on record, allowed the writ petition and issued certain directions to the respondent authorities. Aggrieved by the same, the present appeal has been preferred by the appellant primarily on the ground that the directions passed by the learned Single Judge were not sustainable in law and had the effect of

interfering with administrative and policy matters which were within the domain of the executive.

4. The Learned counsel appearing for the appellant submits that the judgment dated 25th March, 2025, passed by the Learned Single Judge, is untenable in law and liable to be set aside as the Learned Single Judge failed to appreciate that the proposal of the Ministry of Corporate Affairs (MCA) to shift the National Company Law Tribunal (NCLT), Kolkata Bench, to the newly constructed Corporate Bhawan is arbitrary, devoid of cogent reasons and lacks transparency. The proposal seeks to house the Tribunal alongside various executive offices under the MCA, including the Regional Director, Registrar of Companies, Official Liquidator and Serious Fraud Investigation Office. Such a move undermines the fundamental doctrine of separation of powers and the independence of the judiciary, thereby defeating the constitutional mandate laid down in Article 50 of the Constitution of India.

5. The Learned Single Judge erred in ignoring the constitutional mandate and binding precedents, particularly the landmark judgment in ***Union of India v. Madras Bar Association*** reported in **(2010) 11 SCC 1**, where the Hon'ble Supreme Court categorically held that Tribunals must function independently and remain free from executive control or influence.

6. The Learned counsel for the appellant further submits that the respondents have failed to comply with the order of the Constitutional bench of the Hon'ble Supreme Court in ***Swiss Ribbons Private Ltd. & Anr. v. Union of India*** reported in **(2019) 4 SCC 17**, wherein the Apex Court held:

"2. ...the administrative support for all tribunals should be from the Ministry of Law and Justice. However, even today, NCLT and NCLAT are functioning under the Ministry of Corporate Affairs. This again needs to be corrected immediately..."

7. The judgment also wrongly presumed that the grievance was rooted in inconvenience due to distance. The real concern lies in the erosion of judicial

autonomy, with the Tribunal being reduced to a mere appendage of its parent Ministry. Therefore, the appellants submit that the impugned order deserves to be set aside in the interest of justice and constitutional propriety.

8. The Learned Counsel for the respondents submits that writ petitioners herein the appellants are neither aggrieved nor have demonstrated any violation of their fundamental rights, which is a precondition to invoking the Writ Jurisdiction under Article 226 of the Constitution of India. The petition is solely based on the decision of the Ministry of Corporate Affairs to shift the NCLT, Kolkata Bench, from its current location near the Calcutta High Court to Corporate Bhawan, New Town. The appellants merely allege inconvenience to advocates, clerks and litigants, which cannot constitute legal injury or *locus standi* to maintain the writ petition.

9. The writ petition, in substance, seeks to indirectly assert a public interest, which is impermissible in the guise of a personal writ. Furthermore, the location and functioning of a tribunal fall within the domain of policy decisions of the executive and are not subject to judicial review unless shown to be arbitrary or malafide, which is not the case here.

10. It is further submitted that the petition is inherently malafide and suffers from internal contradictions. While the prayer seeks continued functioning of the NCLT from its present premises under the Ministry of Corporate Affairs, the appellants simultaneously argue that all tribunals must come under the Ministry of Law and Justice, citing the judgment in ***Swiss Ribbons Private Ltd. & Anr. (supra)***. These contradictory positions render the writ untenable. Additionally, in light of the Hon'ble Supreme Court's ruling in ***Allahabad University etc. v. Gitanjali Tewari (Pandey) and Ors*** reported in **(2024) SCC Online SC 3776**, no mandamus can be issued to direct the functioning of a tribunal from a particular location. Hence, the appellants are not entitled to relief.

11. Having heard the learned counsel for the parties and perusal of the records this Court is of the view that matters relating to the allocation of infrastructure, including the location of judicial forums such as the NCLT, fall squarely within the domain of administrative discretion and policy formulation by the appropriate executive authorities. The judiciary, while vested with the power of judicial review, must exercise restraint in interfering with such decisions in the absence of demonstrable illegality, arbitrariness or violation of constitutional or statutory rights.

12. As reiterated by the Hon'ble Supreme Court in ***Madras Bar Association (supra)***:

"46. Impartiality, independence, fairness and reasonableness in decision making are the hallmarks of the judiciary. If 'Impartiality' is the soul of the judiciary, 'Independence' is the lifeblood of the judiciary. Without independence, impartiality cannot thrive... Independence is not the freedom for Judges to do what they like. It is the independence of judicial thought..."

13. Judicial independence includes, inter alia, the discipline to refrain from intruding into spheres explicitly reserved for the executive and legislature. The Court is conscious of the doctrine of separation of powers, which has been firmly upheld by the Hon'ble Apex Court in several decisions. As observed in ***Madras Bar Association (supra)***:

"The constitution of the National Company Law Tribunal and transferring the entire company jurisdiction of the High Court to the Tribunal which is not under the control of the judiciary, is violative of the doctrine of separation of powers and independence of the judiciary which are parts of the basic structure of the Constitution."

14. In the present case, the demands raised by the appellant/ petitioner association pertain primarily to infrastructural deficiencies and facilities at the NCLT, Kolkata Bench and the distance of NCLT from Calcutta High Court. While the concerns of the legal fraternity are not insignificant, but both the

NCLTs are developed and maintained by the Ministry of Corporate Affairs. This Court is equally conscious of the fact that the new premises are equipped with improved facilities, better infrastructure and are in many ways, more suited to meet the evolving demands of modern judicial administration.

15. The question, however, is not whether the shift in location is beneficial or detrimental per se, but whether this Court can, in the exercise of its writ jurisdiction, intervene in such matters of administrative discretion. The answer to that must be in the negative. It is a well-settled principle of constitutional law that the judiciary must maintain institutional boundaries and refrain from trenching upon the domain of the executive. Matters relating to the selection of premises, allocation of infrastructure and logistical decisions regarding the functioning of tribunals fall squarely within the realm of policy formulation and administrative convenience. Courts are not equipped, nor are they mandated, to undertake such evaluations or substitute their own judgments in place of that of the competent authorities.

16. It is also pertinent to note that the appellant association is a voluntary body and as such, does not possess a statutory right to demand specific infrastructural arrangements. While the grievances may be genuine and representations to the appropriate authorities for redressal are certainly permissible, this Court cannot issue directions that would, in effect, amount to micro-managing policy decisions. The respondent-authority, in relocating the tribunal, appears to have acted in the interest of efficiency and functionality and there is no material on record to indicate any mala fides or arbitrariness in such decision-making.

17. This Court, therefore, deems it appropriate to exercise judicial restraint and abstains from issuing any directive that would interfere with the executive's domain. If the competent authorities, in their administrative wisdom, have concluded that the relocation is appropriate and beneficial for the

functioning of the tribunal, then this Court finds no ground to interfere with the same.

18. For the foregoing reasons, the appeal is dismissed. All pending applications connected with this appeal also stand disposed of. However, this dismissal shall not preclude the concerned authorities from taking appropriate steps in future to address the issues raised by the appellant. Specifically, the Ministry of Law and Justice is directed to make efforts, as and when feasible, to consider shifting the National Company Law Tribunal (NCLT), Kolkata Bench, from Corporate Bhawan, New Town to a more suitable and independent premises, in a manner that upholds the autonomy and efficient functioning of the Tribunal.

19. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

[Rajarshi Bharadwaj, J.]

I Agree.

[Apurba Sinha Ray, J]