HIGH COURT OF ANDHRA PRADESH

AMARAVATI

WRIT PETITION No.20458 OF 2019

Between:

Badugu Panduranga Rao, S/o. Subba Rao, resident of Krishnapuram Village, Pamidimukkala Mandal, Krishna District.

....Petitioner.

And:

1. The Legal Services Authority, rep. by its Secretary, Krishna District at Machilipatnam and 6 others.

....Respondents.

DATE OF JUDGMENT PRONOUNCED:24.03.2022.

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

&

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

C. PRAVEEN KUMAR,J

RAVI NATH TILHARI,J

***HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**
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! Counsel for the petitioner : Sri Narasimha Rao Gudiseva

^ Counsel for the 1st respondent : Sri S. Lakshmi Narayana Reddy

Counsel for the respondents 2 to 5 : Sri K. Venkatesh

Counsel for the respondents 6 to 9:Sri Y. Nagi Reddy, standing counsel

< Gist:

> Head Note:

? Cases referred:
[1] 2011 (1) ALD 174 (DB)
[2] AIR 2017 Supreme Court 4428
[3] AIR 2008 Supreme Court 1209
4(2005) 6 SCC 478
[5]2020(1) Andhra LD 527
[6] 2010 SCC OnLine AP 925
[7] (2005) 6 SCC 478
[8] AIR 2008 Supreme Court 1209
[9] AIR 2017 Supreme Court 4428
[10] 2000 SCC OnLine AP 462
[11](2020) 13 SCC 285
12(2019) 14 SCC 526
[13]AIR 1954 SC 340
[14] (2005) 7 SCC 791
[15] (2020)6 Supreme Court Cases 557
[16] AIR 1964 SC 477
[17] (2019) 10 SCC 695
[18] (2015) 10 SCC 1
[19] 2020 SCC OnLine SC 887
[20] (1984) 2 SCC 244
[21] (2008) 9 SCC 413
[22] (2011) 7 SCC 463
[23] 2021 SCC OnLine SC 898
[24] 1990(1) SCC 193
[25] AIR 2011 SC 514
[26] 2020(1) Andhra LD 527

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

&

HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.20458 OF 2019

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

1. Heard Sri Narasimha Rao Gudiseva, learned counsel for the petitioner, Sri S. Lakshmi Narayana Reddy, learned counsel for the 1st respondent-Legal Services Authority, Sri K. Venkatesh, learned counsel for the respondents 2 to 5 and Sri Y. Nagi Reddy, learned standing counsel for the respondents 6 to 9.

2. By means of this writ petition under Article 226 of the Constitution of India, the petitioner-Badugu Panduranga Rao is challenging the award dated 02.11.2017 passed in Pre Litigation Case P.L.C.No.636 of 2017 by Lok Adalat Bench, Machilipatnam, Krishna District presided over by Additional Senior Civil Judge, Machilipatnam.

3. The facts of the case are that the petitioner who worked as Assistant Line Man in A.P.Transoco was married on 24.08.2000 with one Padmaja, daughter of the respondents 2 and 3, and out of their wedlock, the respondents 4 and 5 were born, who are minors and studying in junior classes. On 06.09.2012, Padmaja committed suicide and the respondents 2 and 3 lodged FIR in Crime No.67 of 2012 dated 06.09.2012 under Section 304-B Indian Penal Code (IPC) against the petitioner in Banthumilli Police Station, but finally, in S.C.No.165 of 2013 the petitioner was acquitted by the court of VI Additional District and Sessions Judge, Machilpatnam at Krishna District, vide judgment dated 26.06.2018.

4. The minor children respondents 4 and 5 filed P.L.C.No.636 of 2017 through respondents 2 and 3, before the 1st respondent the District Legal Services Authority, Machilipatnam (Lok Adalat Bench) against the petitioner and the petitioner's superior officers, in which the respondents 2 and 3 and their relatives and followers pressurized and

threatened the petitioner to settle the issue. Consequently under pressure and threat the petitioner signed illegal and improper settlement. Even the terms and conditions of such settlement were neither shown to the petitioner nor to his superior officers to which they had not consented. The Lok Adalat at Machilipatnam, passed the award on 02.11.2017, on such settlement with as many as eleven conditions, as under:-

"Award

At the intervention of the members of Lok Adalat, this matter between both the parties with the following conditions:

"1. Both the parties agreed to withdraw the cases filed against each other.
2. The 1st respondent agreed to pay the arrears amount during the period i.e from September, 2012 to December, 2017 (Suspension period of 1st respondent). Out of the said arrears amount 75% of the amount shall be kept in a fixed deposit in any Nationalised Bank in the name of Badugu Venu Gopal till attaining his majority. The remaining 25% of the arrears amount shall be kept in any nationalized bank in the name of Minor Badugu Dindi Akshita till attaining her majority. The maternal grand mother by name Rajulapati Gopi Kumari will act as a guardian and nominee for those amounts. She shall not misappropriate the said amount. During the said period if the nominee will expire, the maternal uncle Rajulapati Venkateswara Rao will act as a guardian.
3. The 1st respondent has executed gift deed in favour of Minor girl Dindi Akshitha, an extent of 291 sq. yards situated at Movva Village, vide document No.2603 on dt. 25.10.2017. The said gift deed kept in the name of maternal grand mother, in case the maternal grand mother will expire the maternal uncle R. Venkateswara Rao will act as guardian, the said property shall not be alienated to anybody till the minor attains majority.
4. Petitioners agreed not to object the 1st respondent to marry any person at his wish.
5. The 1st respondent agreed to pay half of his salary amount in the name of Minors by name Badugu Venugopal and B. Dindi Akshita. The respondent agreed to pay the said

amount till the marriage of Dindi Akshitha. The 1st respondent also agreed to pay the said amount till the minor by name B. Venu Gopal attaining majority, for the said amount the maternal grand mother R. Gopi Kumari will act as a guardian, in case of her death the maternal uncle R. Venkateswara Rao will act as guardian. The said person shall not miss-appropriate the said amount and the same will be deducted from the salary of 1st respondent by R3 to the account of guardian R. Gopi Kumari vide A/c No.6268887866, Indian Bank, Movva Branch with IFSC Code No.IDIB000MO43. the maternal grand mother agreed to deposit the remaining maintenance amount in the FDR in the name of minors.

6. The 1st respondent shall pay an amount of Rs.4,00,000/- to the in-laws of the 1st respondent by name R. Nageswara Rao and R. Gopi Kumri.
7. The 1st respondent has got every right to see the minors at the house of petitioners and at school.
8. The 1st respondent is willing to pay 50% of the retirement benefits to the 1st minor ward B. Venu Gopal.
9. In event of any death of 1st respondent the job under compassionate grounds will be given to the 1st minor ward B. Venu Gopal.
10. The petitioner received all the silver and gold articles from the 1st respondent.
11. The petitioners and respondent No.1 shall not claim any right or dispute over the movable or immovable property against each other in future."

Accordingly, an Award is passed."

5. The petitioner's further case is that as per the terms of the award, the petitioner has paid an amount of Rs.4,00,000/- to the respondents 2 and 3 and has executed a registered gift deed in favour of the minor daughter respondent No.5, for an area of 291 sq. yards worth of Rs.20,00,000/-; and 50% of his salary is being paid to the account of the 2nd respondent through petitioner's Disbursing Officer, regularly. The petitioner submitted that he shall not claim any right or dispute over the movable or immovable property against each other in terms of the Award.

6. Learned counsel for the petitioner submitted that as per the terms of the award, the respondent No.2, petitioner's mother-in-law was appointed to act as guardian and incase of her death, her son R. Venkateswara Rao was to act as guardian of the minor children. However, the respondent No.2 utterly failed to pay the school fees, to provide medical aid and other basic amenities to the minor children. The petitioner being the natural guardian is the only person to take good care of the minor. The petitioner's son is staying with the petitioner and he is looking after his welfare. The petitioner filed G.W.O.P.No. Nil in 2019 in G.L.No.6769 of 2019, under Section 7 read with Section 10 of the Guardian and Wards Act, 1890, for his appointment as guardian of the minor children, but the learned District Judge rejected the same by order dated 17.09.2019, in view of the Lok Adalat Award in P.L.C.No.636 of 2007.

7. Learned counsel for the petitioner submitted further that the Lok Adalat Bench, passed the Award without jurisdiction, as the matter of appointment of guardian of the minor is governed by the Guardian and Wards Act, 1890 (for short, "the Act") under which it is the learned District Judge which has the jurisdiction to appoint guardian of the person or property or both, of the minor. The Lok Adalat in the present case was presided over by the Additional Senior Civil Judge, and was not even presided by the learned District Judge, or Additional District Judge. He submitted that apart from the fact that the award not having signed by the petitioner voluntarily but under threat deserves to be quashed, but even if the settlement was entered voluntarily and was signed by the petitioner, the award is not binding and is open to challenge, being nullity and void *abinitio* for want of jurisdiction in the Lok Adalat.

8. Learned counsel for the petitioner placed reliance on the judgments in the cases of 1) **Karuturi Satyanarayana and another vs.**

K. Krishnaveni Durga Kumari[1], 2) **Bhargavi Construction and another vs. Kothakapu Muthyam Reddy and others[2]**, 3) **State of Punjab and another vs. Jalour Singh and others[3]** and 4) **P.T. Thomas vs. Thomas Job[4].**

9. Learned counsel for the respondents 2 and 3 has submitted that the writ petition is not maintainable as the award was passed by the Lok Adalat on the settlement arrived at between the parties which was signed by the petitioner and his advocate being fully aware of the terms and conditions of the settlement. The award was passed way back in the year 2017 and it is only after the rejection of the petitioner's application for his appointment as guardian, by the Principal District Judge, Machilipatnam on 17.09.2019 that the petitioner has filed the writ petition and that too without challenging the order dated 17.09.2019. He has further submitted that except the allegation, that the petitioner was forced to sign the award, there is no evidence/material to substantiate such a plea. He has placed reliance in the case of **Balla Veera Venkata Satayanarayan @ Sathi Babu v. State of Andhra Pradesh[5].**

10. Sri S. Lakshmi Narayana Reddy, learned counsel for the Legal Services Authority, submitted that the respondents 4 and 5, the minor children of the petitioner, filed application seeking maintenance through respondents 2 and 3, against the petitioner, upon which in P.L.C.No.636 of 2017, the parties entered into settlement and thereupon the award was passed. He submitted that since it was a case for grant of maintenance and not a case for appointment of guardianship, the submission of the petitioner's counsel that the award was without jurisdiction, as the Lok Adalat was not presided over by the learned District Judge or Additional District Judge, is misconceived. The Lok Adalat had the jurisdiction. He further submitted that the award of the

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[1] 2011 (1) ALD 174 (DB)
[2] AIR 2017 Supreme Court 4428
[3] AIR 2008 Supreme Court 1209
[4] (2005) 6 SCC 478
[5] 2020(1) Andh LD 527

Lok Adalat based on the settlement, is final and binding and cannot be challenged in writ petition under Article 226 of the Constitution of India and particularly when signing of the award by the petitioner is not in dispute. He has placed reliance on the judgments in the cases of **Kataru Anjamma vs. Chairman Lok Adlaat Bench-cum-I Additional Senior civil Judge, Guntur and others[6] and P.T. Thomas vs. Thomas JOB[7].**

11. Respondents 6 to 9 have filed counter affidavit submitting that they are duly complying with the terms of the Award without any deviation and primarily the dispute is between the petitioner and the other respondents. They are in no way concerned with their personal allegations.

12. We have considered the submissions advanced by the learned counsel for the parties and perused the material on record.

13. The points which arise for our consideration are:

i) Whether the writ petition challenging the Award of the Lok Adalat is maintainable?

ii) Whether the Lok Adalat had the jurisdiction in the present mater and whether the award under challenge is null and void for want of jurisdiction?

14. We first proceed to consider the point of maintainability of the writ petition challenging the award of the Lok Adalat.

15. The point is no more *res-integra*.

16. In **State of Punjab vs. Jalour Singh and others[8]** , the Hon'ble Supreme Court held that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, which is duly signed by parties and annexed to the award of the Lok Adalat, it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can

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[6] 2010 SCC OnLine AP 925
[7] (2005) 6 SCC 478
[8] AIR 2008 Supreme Court 1209

be done only by filing a petition under Article 226 and/or Article 227 of the Constitution of India and that too on very limited grounds.

17. It is apt to refer paragraph No.12 of **Jalour Singh** (supra) as under:-

> "12. It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. **If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds.** But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise....."

18. In **Bhargavi Construction and another vs. Kothakapu Murthyam Reddy and others**[9]**,** the Hon'ble Supreme Court held that the law laid down in **Jalour Singh** (supra) is binding on all the courts by virtue of Article 141 of the Constitution of India and the only remedy available to the aggrieved person is to file a writ petition under Article 226/227 of the Constitution of India in the High Court for challenging the award passed by the Lok Adalat and it is then for the writ court to decide as to whether any ground is made out by the writ petitioner for quashing the award and, if so, whether those grounds are sufficient for quashing the award.

19. It is apt to reproduce paragraphs 26 to 28 of **Bhargavi Construction** (supra) as under:-

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[9] AIR 2017 Supreme Court 4428

26) This is what Their Lordships held in Para:

"12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits."

27) In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. **This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.**

28) In the light of clear pronouncement of the law by this Court, we are of the opinion that **the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 227 of the Constitution of India in the High Court for challenging the award** dated 22.08.2007 passed by the Lok Adalat. **It was then for the writ Court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.**

20. Thus, it has been well settled in law that the award of the Lok Adalat passed on the settlement can be challenged only by way of filing writ petition under Article 226/227 of the Constitution of India, on limited grounds and when writ petition is filed it is for the writ court to

decide whether any sufficient ground is made out or not for quashment of the Lok Adalat award.

21. However, on this point learned counsel for the respondents 1 to 5 have vehemently placed reliance on paragraph No.23 of **P.T. Thomas** (supra) to contend that the award of the Lok Adalat passed on settlement cannot be challenged by any of the regular remedies available under law, including by inviting Article 226 of the Constitution of India challenging the correctness of the award on any ground.

22. In **P.T. Thomas** (supra), the Honb'le Supreme Court held that the Lok Adalat will pass the award with consent of the parties, therefore, there is no need either to reconsider or review the matter again and again, as the award passed by the Lok Adalat shall be final and permanent which is equal to a decree executable and the same is an ending to the litigation among parties. Therefore, an appeal shall not lie from an award of the Lok Adalat under Section 96(3) CPC. It is apt to reproduce paragraphs 20 and 24 of **P.T. Thomas** (supra) as under:-

> "20. The Lok Adalat shall proceed and dispose the cases and arrive at a compromise or settlement by following the legal principles, equity and natural justice. Ultimately the Lok Adalat passes an award, and every such award shall be deemed to be a decree of Civil Court or as the case may be, which is final".
>
> "24. The award of Lok Adalat is final and permanent which is equivalent to a decree executable, and the same is an ending to the litigation among parties."

23. In paragraph 23 of **P.T. Thomas** (supra), the Hon'ble Supreme Court only referred to what was held by the Andhra Pradesh High Court in the case of **Board of Trustees of the Port of Visakhapatnam vs. Presiding Officer, District Legal Service Authority, Visakhapatnam and another**[10]. Paragraph 23 of **P.T. Thomas** (supra) reads as under:

> "23. The High Court of Andhra Pradesh held that, in Board of Trustees of the Port of Visakhapatnam vs. Presiding Officer,

[10] 2000 SCC OnLine AP 462

> Permanent, Lok Adalat-cum-Secretary, District Legal Services Authority, Visakhapatnam and another reported in 2000(5) ALT 577, " The award is enforceable as a decree and it is final. In all fours, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court in a regular trial, however, it is as equal and on par with a decree on compromise and will have the same binding effect and conclusive just as the decree passed on the compromises cannot be challenged in a regular appeal, the award of the Lok Adalat being akin to the same, cannot be challenged by any regular remedies available under law including invoking Article 226 of the Constitution of India challenging the correctness of the award on any ground. Judicial review cannot be invoked in such awards especially on the grounds as raised in this writ petition."

24. We also reproduce paragraph No.10 of **Board of Trustees** (supra) to show that in Para No.23 of **P.T. Thomas** (Supra), part of para 10 of **Board of Trustees** (supra) was only referred, as under:-

> "10. Under this provision, the Lok Adalat is vested with jurisdiction in respect of any case pending before a Court or any matter which is not before the Court. The expressions used and the purposes behind are very clear and distinct. This is in consonance with the objects which are intended to be achieved and furthering the aims under Article 39-A of the Constitution of India. Thus, it has all the powers not only to take up the dispute pending before the Court but also in pursuance of the applications filed before it during the proceedings. In fact the 'Legal Services' as defined Under Section 2(c) of the said Act includes rendering of any service in the conduct of any case or other legal proceeding before any Court or other authority or Tribunal and the giving of advice on any legal matter, the object being to provide free legal aid service which is also the one enshrined under Article 39-A. Therefore, the assistance as contemplated is at all levels, not restricted to only those on approaching the Court of law or authority or Tribunal. Further it is not only with a view to settle pending cases but to settle any impending matters and to provide such assistance, this Legislation has stepped in. As per Section 22 of the Act, the procedure vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of the matters provided thereunder have been made fully applicable, apart from enabling to frame its own procedure. Under Section 21 of the said Act, an award of Lok Adalat shall be deemed to be a decree of a civil Court and the same shall be final and binding on all the parties and no appeal shall lie against the

> said award. Therefore, the award is enforceable as a decree and it is final. In all fours, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court on a regular trial, however, it is as equal and on par with a decree on compromise and will have the same binding effect and conclusive. Just as the decree passed on compromise it cannot be challenged in a regular appeal, the award of the Lok Adalat being akin to the same, it cannot be challenged by any regular remedies available under law including invoking Article 226 of the Constitution of India challenging the correctness of the award on any ground. Judicial review cannot be invoked in such awards especially on the grounds as raised in this writ petition."

25. It is thus evident that in **P.T. Thomas** (supra), it was not held that the award of the Lok Adalat cannot be challenged invoking Article 226 of the Constitution of India on any ground. What was held, is in paragraphs 20 & 24 of the judgment as mentioned above. Reliance placed on para 23 in **P.T. Thomas** (supra) by the respondents' counsel is misplaced.

26. Learned counsel for the petitioner submitted that as per Regulation 12(3) of the National Legal Services Authority (Lok Adalats) Regulations, 2009 ("the Regulations, 2009"), writ petition is maintainable to challenge the award of the Lok Adalat.

27. Replying to the above submission, the learned counsel for the respondents, submitted that, then, the challenge can be only on the ground of violation of the procedure prescribed in Section 20 of the Legal Services Authorities Act, 1987 (the Act, 1987), but any such procedural violation has not been established by the petitioner.

28. The Regulations, 2009, have been framed by the Central Authority, in exercise of the power conferred by Section 49 of the Act, 1987.

29. Regulation 12, of the Regulations, 2009 provides as under:-

"12. Pre-Litigation matters:-

> (1) In a Pre-litigation matter it may be ensured that the court for which a Lok Adalat is organised has territorial jurisdiction to adjudicate in the matter.
>
> (2) Before referring a Pre-litigation matter to Lok Adalat the Authority concerned or Committee, as the case may be, shall give a reasonable hearing to the parties concerned.
>
> Provided that the version of each party, shall be obtained by the Authority concerned or, as the case may be, the Committee for placing it before the Lok Adalat,
>
> **(3) An award based on settlement between the parties can be challenged only on violation of procedure prescribed in Section 20 of the Act by filing a petition under Articles 226 and 227 of the Constitution of India".**

30. A reading of the Regulation 12(3) shows that the only ground to challenge the award of the Lok Adalat, based on the settlement between the parties, by way of writ petition under Article 226/227 of the Constitution of India, is, violation of the procedure prescribed in Section 20 of the Act, 1987. In other words, any challenge to the Lok Adalat award based on settlement, cannot be made on any ground other than the ground of violation of the procedure prescribed in Section 20 of the Act, 1987, as per this regulation which uses the expression 'only'.

31. In view of Regulation 12(3), it requires consideration if the jurisdiction of the High Court under Article 226/227 of the Constitution of India can be restricted to a particular ground by such a Regulation.

32. Recently, in **Maharashtra Chess Association vs. Union of India**[11]**,** the Hon'ble Supreme Court has held that the role of the High Court under the constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transactional goals, the powers of High Court under its writ jurisdiction

[11] (2020) 13 SCC 285

are necessarily broad. They are, in aid of justice. No limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. The nature of power exercised by the High Court under its writ jurisdiction is inherently depending on the threat to the rule of law arising in the case before it. The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law. It has been reiterated that there are two clear principles which emerge with respect to when a High Court's writ jurisdiction may be engaged; firstly, the decision of the High Court to entertain or not to entertain a particular action in its writ jurisdiction is fundamentally discretionary; and secondly, the limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self imposed. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.

33. It is apt to refer paragraphs 11 to 15 of **Maharashtra Chess Association vs. Union of India** (supra) as under:-

> 11. Article 226 (1) of the Constitution confers on High Courts the power to issue writs, and consequently, the jurisdiction to entertain actions for the issuance of writs. The text of Article 226 (1) provides that a High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or "for any other purpose". A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider **Article 226.** (1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus,

prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose] array of situations. Lord Coke, commenting on the use of writs by courts in England stated:

"The Court of King's Bench hath not only the authority to correct errors in judicial proceedings, but other errors and misdemeanors [...] tending to the breach of peace, or oppression of the subjects, or raising of faction, controversy, debate or any other manner of misgovernment; so that no wrong or injury, public or private, can be done, but that this shall be reformed or punished by due course of law...."6 Echoing the sentiments of Lord Coke, this Court in Uttar Pradesh State Sugar Corporation Limited v Kamal Swaroop Tondon7 observed that:
"35...It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found."

12. The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. **This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction**. In A V Venkateswaran, Collector of Customs, Bombay v Ramchand Sobhraj Wadhwani8 a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it:
"10...We need only add that the broad lines of the general principles on which the court should act having been clearly James Bagg's Case (1572) 77 ER 1271 7 (2008) 2 SCC 41 8 (1962) 1 SCR 753, laid down, **their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the court." The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.**

13. While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ

jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self- imposed. It is a well settled principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. **If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged.** Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.

14. These principles are set out in the decisions of this Court in numerous cases and we need only mention a few to demonstrate the consistent manner in Minerva Mills v Union of India (1980) 3 SCC 625; L Chandra Kumar v Union of India (1997) 3 SCC 261, which they have been re-iterated. In State of Uttar Pradesh v Indian Hume Pipe Co. Limited, this Court observed that the High Court's decision to exercise its writ jurisdiction is essentially discretionary:

"4…It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably, or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court."

15. The principle was dwelt upon even prior to this. In Sangram Singh v Election Tribunal, Kotah11 the court highlighted the discretionary nature of the High Court's writ jurisdiction. The court added that courts had themselves imposed certain constraints on the exercise of their writ jurisdiction to ensure that the jurisdiction did not become an appellate mechanism for all disputes within a High Court's territorial jurisdiction. The court stated:
"14… The High Courts do not, and should not, act as courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, **though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be**." (Emphasis supplied) 10 (1977) 2 SCC 724 11 (1955) 2 SCR 1. The intention behind this self-imposed rule is clear. If High Courts were to exercise their writ jurisdiction so widely as to regularly override statutory appellate procedures, they would themselves become inundated with a vast number of cases to the detriment of the litigants in those

> cases. This would also defeat the legislature's intention in enacting statutory appeal mechanisms to ensure the speedy disposal of cases....."

34. In **Jalour Singh** (supra), the Hon'ble Supreme Court clearly laid down that the challenge to the award of the Lok Adalat can be done only by filing the writ petition under Article 226/227 of the Constitution of India but on limited grounds. Simultaneously, it has been laid down that it is for the writ court to decide as to whether any ground is made out by the writ petitioners for quashing the award and if so whether those grounds are sufficient for its quashing.

35. Thus, the writ jurisdiction of the High Court under Article 226 of the Constitution of India being in aid of justice and to ensure rule of law is of wide scope. The limitations on the High Court's power in exercise of writ jurisdiction cannot be circumscribed by any statute. In every case this court, considering various factors would determine its exercise of discretionary power.

36. The interference in the exercise of writ jurisdiction, with an award of the Lok Adalat based on settlement between parties, would certainly be on limited grounds, but whether a particular ground of challenge falls within the 'limited grounds' or not, and whether on such ground the award is to be interfered or not is to be determined only by the High Court when the matter comes before it. Any limitation, that the power will be exercised only on a specified ground can not be placed by a statute. Similarly, a statute cannot provide that on existence of a particular ground the power is to be exercised necessarily by the High Court in the exercise of writ jurisdiction. Therefore, Regulation 12(3) of the Regulations, 2009 providing that the award of the Lok Adalat can be challenged by way of writ petition under Article 226/227 of the Constitution of India only on the ground of violation of the provisions of Section 20 of the Legal Services Authorities Act, 1907, cannot place such

restriction on the power of the High Court under Article 226 of the Constitution of India, to quash the award of the Lok Adalalat on other grounds as well, which the High Court may determine to be one of the 'limited grounds'.

37. Procedural violation under Section 20 of the Act, 1987, may be one of the limited grounds to quash the award of the Lok Adalat, in a particular case, but it does not mean that merely because such a ground is provided by Regulation 12(3), the High Court is bound to interfere. If, in totality of various factors, the High Court determines that inspite of procedural violation it is not proper to invoke the discretionary jurisdiction, the High Court may also refuse to invoke its jurisdiction.

38. The exercise of discretion is guided by the judicial principles, observing the self imposed restrictions. In a challenge to the Lok Adalat award based on settlement, the Court will certainly keep in mind that such awards are final and binding between the parties and are at par the consent decree, executable as a decree of the civil court, against which legislature did not provide for any statutory remedy of appeal or revision and therefore would not act while exercising of writ jurisdiction, as an appellate or the revisional court.

39. The ground of challenge here is the inherent lack of jurisdiction in the Lok Adalat to appoint guardian of the minor.

40. In **Om Prakash Agarwal vs. Vishan Dayal Rajpoot and another**[12] referring to the judgment in the case of **Kiran Singh v. Chaman Paswan**[13] followed in various later decisions, the Hon'ble Apex Court reiterated that a decree passed by a court lacking in inherent jurisdiction is a nullity. It was held that the jurisdiction as to subject matter, is totally distinct and stands on a different footing than no objection to the lack of pecuniary or territorial jurisdiction. Where a court has no

[12] (2019) 14 SCC 526
[13] AIR 1954 SC 340

jurisdiction at all over the subject matter by reason of any limitation imposed by the statute it cannot take up that matter and an order passed by such a court having no jurisdiction is a nullity.

41. It is apt to reproduce Paragraph 61 of **Om Prakash Agarwal** (supra) as under:-

> "61. In **Harshad Chiman Lal Modi vs. DLF Universal Ltd.,**[14] this court had again considered Section 21 and other provisions of Code of Civil Procedure. In paragraph 30, following has been laid down:
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> "30.....The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter.
>
> **An order passed by a court having no jurisdiction is a nullity."**

42. In **Nusli Neville Wadia vs. Ivory Properties and others**[15] the Hon'ble Supreme Court held that the jurisdiction is the authority of law to act finally in a particular matter in hand. It is the power to take cognizance and decide the cases. Jurisdiction is the foundation of judicial proceedings. If the law confers a power to render a judgment or decree then the Court has jurisdiction. The test of having no jurisdiction by the court is that its judgment is amenable to attack in collateral proceedings. If the court has inherent lack of jurisdiction, its decision is

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[14] (2005) 7 SCC 791
[15] (2020)6 Supreme Court Cases 557

open to attack as a nullity. When there is want of general power to act the court has no jurisdiction. Judgment within a jurisdiction is to be immuned from collateral attack on the ground of nullity.

43. It is apt to refer paragraph 88 of **Nusli Neville Wadia** (supra) which reads as under:-

> "Given the discussion above, we are of the considered opinion that the jurisdiction to entertain has different connotation from the jurisdictional error committed in exercise thereof. There is a difference between the existence of jurisdiction and the exercise of jurisdiction. The expression jurisdiction has been used in CPC at several places in different contexts and takes colour from the context in which it has been used. The existence of jurisdiction is reflected by the fact of amenability of the judgment to attack in the collateral proceedings. If the court has an inherent lack of jurisdiction, its decision is open to attack as a nullity. While deciding the issues of the bar created by the law of limitation, res judicata, the Court must have jurisdiction to decide these issues."

44. In **Yakoob vs. K.S. Radhakrishnan[16],** the Constitution Bench of the Hon'ble Supreme Court laid down that a writ of Certiorari under Article 226 of the Constitution of India can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals and these are the cases where orders are passed without jurisdiction or in excess of jurisdiction or as a result of failure to exercise jurisdiction In **General Manager, Electrical Rengali Hydro Electric Project, Orissa and others vs. Giridhari Sahu and others[17],** it has been reiterated that the writ of Certiorari is intended to correct jurisdictional excesses which are clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction, or procedure adopted by the body after validly assuming jurisdiction or violation of principles of natural justice.

45. Therefore, in our considered view lack of inherent jurisdiction in Lok Adalat, is one of the limited grounds to challenge its award .

46. Now we proceed to consider the second point i.e if the impugned award of the Lok Adalat suffers from inherent lack of jurisdiction. In other words, if the

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[16] AIR 1964 SC 477
[17] (2019) 10 SCC 695

Lok Adalat has jurisdiction in the matter of appointment of guardian of minor by way of settlement between parties.

47. The brief look at the provisions under the Guardian & Wards Act, 1890 is necessary:-

Section 7 of the Act, 1890 provides for power of the court to order for guardianship. It reads as under:

"7. Power of the Court to make order as to guardianship.—
(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made-- (a) appointing a guardian of his person or property or both, or (b) declaring a person to be such a guardian the Court may make an order accordingly.
(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.
(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

48. Section 9 of the Act, 1890 provides for the jurisdiction of the Court to entertain application.

49. Section 4(5) of the Act defines 'Court' as under:-

4. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

(5) "the Court" means—
(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; or
(b) where a guardian has been appointed or declared in pursuance of any such application—
(i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or
(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or
(c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred."

50. Section 10 provides for form of application, which reads as under:—

> "10. Form of application.—
> (i) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure, 1882 (14 of 1882)1, for the signing and verification of a plaint, and stating, so far as can be ascertained,--
> (a) the name, sex, religion, date of birth and ordinary residence of the minor;
> (b) where the minor is a female, whether she is married and if so, the name and age of her husband;
> (c) the nature, situation and approximate value of the property, if any, of the minor;
> (d) the name and residence of the person having the custody or possession of the person or property of the minor;
> (e) what near relations the minor has and where they reside;
> (f) whether a guardian of the person or property or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;
> (g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property or both, of the minor and if so, when, to what Court and with what result;
> (h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;
> (I) where the application is to appoint a guardian, the qualifications of the proposed guardian;
> (j) where the application is to declare a person to be a guardian, the grounds on which that person claims;
> (k) the causes which have led to the making of the application; and
> (l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.
> (2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub□section (1).
> (3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses."

51. Section 11 of the Act, 1890 provides for the procedure, on admission of application, which reads as under:—

"11. Procedure on admission of application.-

(1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof and cause notice of the application and of the date fixed for the hearing—

(a) to be served in the manner directed in the Code of Civil Procedure, 1882 (14 of 1882)1 on—

(i) the parents of the minor if they are residing in 2[any State to which this Act extends];

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor;

(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and (b) to be posted on some conspicuous part of the Court-house and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The State Government may, by general or special order, re-quire that when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2)."

52. Section 12 provides for power to make interlocutory order for production of minor and for interim protection of person or property of minor. Section 13 provides for hearing of the application and evidences on the date fixed before making an order.

53. Section 17 of the Act, 1890 provides for the matters to be considered by the Court in appointing or declaring the guardian.

54. Section 17 of the Act, 1890 reads as under:—

"17. Matters to be considered by the Court in appointing guardian.—

(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by

> what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.
> (2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.
> (3) If minor is old enough to form an intelligent preference, the Court may consider that preference.
> (4) The Court shall not appoint or declare any person to be a guardian against his will."

55. Thus, from the aforesaid legal provisions of the Act, 1890, it is clear that as per Section 7, where the Court is satisfied that it is for the welfare of a minor that an order should be made appointing a guardian of his person or property or both, or declaring a person to be such a guardian, the Court may make an order accordingly. Section 8, however, specifically provides that an order shall not be made under Section 7, except on the application of (a) the person desirous of being, or claiming to be the guardian of the minor or (b) any relative or friend of the minor; or (c) the Collector of the District or other local area within which the minor ordinarily resides or in which he has property; or (d) the Collector having authority with respect to the class to which the minor belongs. Section 8, therefore, clearly provides that no order under Section 7 shall be passed except on an application by the person or authority as mentioned in clause (a) to (d). It shows the legislative intent to make the provision mandatory. In the case of **Lachmi Narain v. Union of India**, [(1976) 2 SCC 953], the Hon'ble Supreme Court held that if the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory. In **Nasiruddin v. Sita Ram Agarwal,** [(2003) 2 SCC 577], the Hon'ble Supreme Court held that when negative words are used, the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

56. The form of the application is to be as per Section 10, according to which if the application for appointment is not made by the Collector, it shall be by petition signed and verified in the manner prescribed by the Code of Civil Procedure, for the signing and verification of a plaint, and stating, so far as can be ascertained, the points/information as mentioned in Clauses (a) to (l). As per sub Section (3) the application must be accompanied by a declaration of the willingness of the proposed guardian to act, which declaration must be signed by the proposed guardian and attested by at least two witnesses. In the view of this Court, the above requirements of the application are with an object i.e, in the interest of the child, to secure his welfare. In Dhaninder Kumar v. Deep Chand, [1991 ALJ 25], the High Court of Allahabad followed the Division Bench in **Narottam v. Tapesra**, [1934 ALJ 652] and held that "a Judge is not authorized by law, in the absence of an application for appointment of a guardian to pass an order appointing the guardian of a minor. But, once an application has been filed in accordance with the provisions of Section 10, the jurisdiction of the court comes into play".

57. In the exercise of guardianship or custody jurisdiction, the welfare of the minor and minor alone is of paramount consideration. Its neither the rights of parents nor of anyone even under a statute. The court shall be guided generally by Section 17 of the Act, 1890 i.e. guided by what consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor, having regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property and if minor is old enough to form an intelligent preference, the Court will also give due weight to such preference.

58. In **ABC v. State (NCT of Delhi)**[18], the Hon'ble Supreme Court has held that in the matter of appointment or declaration of guardian of the minor, the Court is called upon to discharge its parens patriae jurisdiction. Upon a guardianship petition, being laid before the Court, the child concerned ceases to be in the exclusive custody of the parents; thereafter, until the attainment of majority, the child continues in curial curatorship. In **Smriti Madan Kansagra v. Perry Kansagra**[19], the Hon'ble Supreme Court held that it is a well-settled principle of law that the courts while exercising parens patriae jurisdiction would be guided by the sole and paramount consideration of what would best subserve the interest and welfare of the child, to which all other considerations must yield. The welfare and benefit of the minor child would remain the dominant consideration throughout. In **Laxmi Kant Pandey v. Union of India**[20]**,** the Hon'ble Supreme Court held that the welfare of the child takes priority above all else, including the rights of the parents.

59. In **Nil Ratan Kundu v. Abhijit Kundu**[21], it was held that it is the welfare of the minor and of the minor alone, which is the paramount consideration. In paragraph 52 of the case of **Nil Ratan Kundu** (supra), the Hon'ble Supreme Court summarised the principles of the custody of minor children, which reads as under:—

> "Principles governing custody of minor children:
> 52. In our judgment, the law relating to custody of a child is fairly well settled and it is this : in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well -being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health,

[18] (2015) 10 SCC 1
[19] 2020 SCC OnLine SC 887
[20] (1984) 2 SCC 244
[21] (2008) 9 SCC 413

> education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

60. In **ABC** (supra), the Hon'ble Supreme Court has further held that as the intention of the Act is to protect the welfare of the child the applicability of Section 11 which is procedural would have to be read accordingly. There is no harm or mischief in relaxing its requirements to attain the intendment of the Act, if the child's welfare is in peril. Thus, it is also settled that the purely procedural provisions can be relaxed or even dispensed with, to attain the intendment of the Act, if there is no harm or mischief in relaxing those requirements, in the welfare of the child, which takes priority above all else. If by relaxing the procedural provision, the welfare of the child would be undermined or if the procedural law itself is intended for the welfare of the minor, such provisions are not to be relaxed.

61. The welfare of the minor is to be considered and determined by the Court with the proposed guardian; the factors under Section 17 of the Act, 1890 are to be considered generally. It involves adjudication by Court. In a pre litigation case, the Lok Adalat can pass an award only on the basis of settlement. It has no adjudicatory role and cannot decide the cases on merits. In **Interglobe aviation Limited vs. N. Satchidanand[22],** the Hon'ble Apex Court held that the Lok Adalat constituted under Section 19 of the Act has no adjudicatory functions or powers and it discharges purely conciliatory functions. In **Estate Officer vs. Colonel H.V. Mankotia (Retired)[23],** the Hon'ble Supreme Court held that as per Sub Section (5) of Section 19 of the Act, 1897, the Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute. The Lok Adalat has no jurisdiction at all to decide the matter on merits. Consequently, in our

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[22] (2011) 7 SCC 463
[23] 2021 SCC OnLine SC 898

view, Lok Adalat cannot pass award on settlement in cases which necessarily involves adjudication. The law therefore, does not contemplate appointment of guardian of minor by agreement between parties.

62. Further, the jurisdiction to appoint guardian of a minor is parens patriae jurisdiction, which literally means parent of the country and refers traditionally to the role of the State as a sovereign and guardian of persons under legal disability. When the court exercises the power as **parens patriae, it means that the court has to act as parent or guardian** of the person under legal disability. In the case of Charan Lal Sahu v. Union of India, [(1990) 1 SCC 613], the Hon'ble Supreme Court has held as under:—

> "35. There is the concept known both in this country and abroad, called parens patriae. Dr. B.K. Mukherjea in his "Hindu Law of Religious and Charitable Trust", Tagore Law Lectures, Fifth Edition, at page 404, referring to the concept of parens patriae, has noted that in English law, the Crown as parens patriae is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. Thus the position is that according to Indian concept parens patriae doctrine recognized King as the protector of all citizens and as parent. In **Budhkaran Chaukhani v. Thakur Prosad Shah**, [AIR 1942 Cal 331 : (1941-42) 46 CWN 425] the position was explained by the Calcutta High Court at page 318 of the report. The same position was reiterated by the said High Court in **Banku Behary Mondal v. Banku Behary Hazra,** [AIR 1943 Cal 203 : (1942-43) 47 CWN 89] at page 205 of the report. The position was further elaborated and explained by the Madras High Court in **Medai Dalavoi T. Kumaraswami Mudaliar v. Medai Dalavoi Rajammal,** [AIR 1957 Mad 563 : (1957) 2 Mad LJ 211] at page 567 of the report. This Court also recognized the concept of parens patriae relying on the observations of Dr. Mukherjea aforesaid in **Ram Saroop v. S.P. Sahi**, [1959 Supp (2) SCR 583 : AIR 1959 SC 951] at pages 598 and 599. In the "Words and Phrases" Permanent Edition, Vol. 33 at page 99, it is stated that parens patriae is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words parens patriae

meaning thereby “the father of the country’, were applied originally to the King and are used to designate the State referring to its sovereign power of guardinaship over persons under disability. (emphasis supplied) Parens patriae jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term parens patriae differs from country to country, for instance, in England it is the King, in America it is the people, etc. The Government is within its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and takes into custody the rights and the privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The Preamble to the Constitution, read with the Directive Principles, Articles 38, 39 and 39-A enjoin the State to take up these responsibilities. It is the protective measure to which the social welfare state is committed. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principles of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further. Reference may be made to Alfred L. Snapp & Son, Inc. v. Puerto Rico, [73 L.Ed.2d 995 : 458 US 592 (1982) : 102 SCR 3260] in this connection. There it was held by the Supreme Court of the United States of America that Commonwealth of Puerto Rico have standing to sue as parens patriae to enjoin apple growers' discrimination against Puerto Rico migrant farm workers. This case illustrates in some aspect the scope of parens patriae. The Commonwealth of Puerto Rico sued in the United States District Court for the Western District of Virginia, as parens patriae for Puerto Rican migrant farmworkers, and against Virginia apple growers, to enjoin discrimination against Puerto Ricans in favour of Jamaican workers in violation of the Wagner-Peyser Act, and the Immigration and Nationality Act. The District Court dismissed the action on the ground that the Commonwealth lacked standing to sue, but the Court of Appeal for the Fourth Circuit reversed it. On certiorari, the United States Supreme Court affirmed. In the opinion by White, J., joined by Burger,

C.J. and Brennan, Marshall, Blackmun, Rehnquist, Stevens, and O'Connor, JJ., it was held that Puerto Rico had a claim to represent its quasi-sovereign interests in federal court at least which was as strong as that of any State, and that it had parens patriae standing to sue to secure its residents from the harmful effects of discrimination and to obtain full and equal participation in the federal employment service scheme established pursuant to the Wagner-Peyser Act and the Immigration and Nationality Act of 1952. Justice White referred to the meaning of the expression parens patriae. According to Black's Law Dictionary, 5 edn. 1979, page 10003, it means literally “parent of the country’ and refers traditionally to the role of the State as a sovereign and guardian of persons under legal disability. Justice White at page 1003 of the report emphasised that the parens patriae action had its roots in the common law concept of the “royal prerogative”. The royal prerogative included the right or responsibility to take care of persons who were legally unable, on account of mental incapacity, whether it proceeds from nonage, idiocy or lunacy to take proper care of themselves and their property. This prerogative of parens patriae is inherent in the supreme power of every state, whether that power is lodged in a royal person or in the legislature and is a most beneficent function. After discussing several cases Justice White observed at page 1007 of the report that in order to maintain an action, in parens patriae, the State must articulate an interest apart from the interests of particular parties, i.e. the State must be more than a nominal party. The State must express a quasi-sovereign interest. Again an instructive insight can be obtained from the observations of Justice Holmes of the American Supreme Court in the case of State of Georgia v. Tennessee Copper Co., [51 L.Ed. 1038 : 206 US 230 (1906) : 27 SCR 618], which was a case involving air pollution in Georgia caused by the discharge of noxious gases from the defendant's plant in Tennesee. Justice Holmes at page 1044 of the report described the State's interest as follows: “This is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power.... ... When the States by their union made the forcible abatement of outside nuisances impossible to each,

they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests…"

63. Now it is apt to refer Section 19 of the Act, 1987 which provides for organization of Lok Adalat and reads as under:

Section 19 in The Legal Services Authorities Act, 1987

19. Organisation of Lok Adalats.—

(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit."

(2) Every Lok Adalat organised for an area shall consist of such number of—

(a) serving or retired judicial officers; and

(b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

64. Section 19(5) of the Act, 1987 clearly provides for the jurisdiction of the Lok Adalat in respect of any case pending before any Court for which the Lok Adalat is organized and also with respect to any matter

which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized. The dispute in respect of second kind of cases before the Lok Adalat is the pre-litigation case. However, there is no jurisdiction in Lok Adalat in respect of any case or matter relating to an offence not compoundable under any law.

65. In **Karuturi Satyanarayana** (supra), this court, held that Section 19(5)(ii) requires a pre-litigation case to be heard by Lok Adalat organized for the court which had jurisdiction to hear the matter had it been instituted. The reference of a case which is yet to be brought before the Court can only be to a Lok Adalat which is organized for such Court. In **Karuturi Satyanarayana** (supra)**,** the subject matter of the complaint before the Lok Adalat was with regard to the declaration of a guardian for the children. This Court held that such declaratory relief did not fall within the realm of the Lok Adalat. However, it was further observed that even if the matter was entertained by Lok Adalat it ought to have been referred to the Lok Adalat constituted for a District Court and as the Lok Adalat passing the award was not organized for a District Court, but was presided over by the IV Additional Junior Civil Judge, the award was held to be *non est* in the eye of law, null and void for want of jurisdiction.

66. It is apt to refer para Nos.38 and 39 of **Karuturi Satyanarayana** (supra) as under:

> "38.In the present case also, the subject matter of the complaint before the Lok Adalat was with regard to the declaration of a guardian for the children. Such a declaratory relief did not fall within the realm of the Lok Adalat and at that, upon a petition filed by the paternal grandparents portraying themselves as the guardians of the children against their natural guardian. This aspect was completely overlooked by the Lok Adalat.
>
> 39. Even if entertained, the case ought to have been referred to the Lok Adalat constituted for a District Court. Though such a Lok Adalat was constituted and heard MVOPs the present case was referred to the other Bench which was not organized for a District Court, Ergo, the Lok Adalat presided over by the IV

> Additional Junior Civil Judge, Rajahmundry, had not jurisdiction as per Section 19(5)(ii) of the Act of 1987 and the Award passed by the said Lok Adalat is *non est* in the ye of law. It is null and void for want of jurisdiction."

67. In the present case there was no application for appointment of the guardian. The application was only for maintenance. In view of Sections 7 and 8 of the Act, 1890, no order for appointment of a guardian can be passed without an application by the proposed guardian which application must comply with the conditions of Section 10. Infact, the matter for appointment of guardian was not the subject matter before the Lok Adalat. The Lok Adalat was not presided over by the District Judge/Additional District Judge. No award could be passed on the basis of the settlement or compromise between the parties for appointment of guardian.

68. The submission of the learned counsel for the petitioner that the compromise/settlement was not signed voluntarily but was under threat and compulsion, deserves rejection. The signing of the settlement is admitted to the petitioner. Whether there was threat or compulsion is a disputed question of fact which cannot be gone into in the writ proceedings. The settlement is signed by the petitioner, the other parties, the petitioner's superior officers and the respective counsel of the parties. The award is not open to challenge on this ground.

69. Learned counsel for respondents submitted that the petitioner by signing the award before the Lok Adalat without raising any objection to its jurisdiction, consented to the jurisdiction of the Lok Adalat and now he cannot challenge the award as without jurisdiction. This submission deserves rejection. It is well settled that consent cannot confer jurisdiction when there is lack of inherent jurisdiction. In **Sushil Kumar Metha vs. Gobind Ram Bohra**[24], the Hon'ble Apex Court held that if the court inherently lacks jurisdiction consent cannot confer jurisdiction.

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[24] 1990(1) SCC 193

Further, reference is to the case of **Sarup Singh and others vs. Union of India (UOI) and others[25],** wherein the Hon'ble Apex Court held in para No.20, as under:

> "20. The aforesaid position is well-settled and not open for any dispute as the **defect of jurisdiction strikes at the very root and authority of the court to pass decree which cannot be cured by consent or waiver of the parties.** This court in several decisions has specifically laid down that validity of any such decree or order could be challenged at any stage. In Union of India v. Subbe Ram and ors., reported in MANU/SC/1433/1997: (1997) 9SCC 69 this Court held thus:
>
> 5. (...) here is the case of entertaining the application itself; in other words, the question of jurisdiction of the court. Since the appellate court has no power to amend the decree and grant the enhanced compensation by way of solatium and interest under Section 23(2) and proviso to Section 28 of the Act, as amended by Act 68 of 1984, it is a question of jurisdiction of the court. Since courts have no jurisdiction, it is the settled legal position that it is a nullity and it can be raised at any stage."

70. In **Balla Veera Venkata Satyanarayana @ Sathi Babu vs. State of Andhra Pradesh (DB)[26]**, upon which learned counsel for the respondents placed reliance is of no help to them as in that case, this Court found that the award was perfectly valid under law and was passed by Lok Adalat having jurisdiction. Whereas, in the present case, we find that the Lok Adalat has passed the award without jurisdiction with respect to appointment of the guardian of the minor.

71. **Kataru Anjamma** (supra), upon which reliance is placed by the respondents' counsel is also not a case of the Award having been passed by Lok Adalat without jurisdiction and is of no help to the respondents.

72. We, therefore, hold as under:

> 1) The award of the Lok Adalat can be challenged only by way of writ petition under Article 226/227 of the Constitution of India on limited grounds.

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[25] AIR 2011 SC 514
[26] 2020(1) Andh LD 527

2) When such a challenge is made, it is for the High Court to determine if a particular ground of challenge falls within the limited grounds or not and if on such a ground, the discretionary writ jurisdiction should or should not be invoked, on consideration of various factors also keeping in view that the Lok Adalat award is final and binding between the parties, at par the consent decree and is executable as a decree of the Court against which the legislature did not provide for any statutory remedy.

3. The exercise of writ jurisdiction of the High Court under Article 226/227 of the Constitution of India cannot be restricted to a particular ground only. The award of the Lok Adalat can be challenged by way of writ petition, also on a ground, other than violation of the procedural provisions under Section 20 of the Legal Services Authorities Act, 1987 and then it is for the High Court to determine if such a ground is one of the limited grounds or not.

4. Regulation 12(3) of the Regulations, 2009 is to be considered in the above manner, as no limitation can be placed on the power of the High court in exercise of its writ jurisdiction by regulations.

5. The inherent lack of jurisdiction in the Lok Adalat to pass the award is one of the limited grounds of challenge.

6. The Lok Adalat has no jurisdiction in the matters of appointment of guardian of a minor as it involves the determination of the welfare of the minor with the proposed guardian, keeping in view various factors, including those in Section 17 of the Guardians and Wards Act, 1890, and as the Lok Adalats do not have adjudicatory power to determine such an issue on merits.

7. In the matter of appointment of guardian of a minor, the court exercises its *parens patriae* jurisdiction which cannot be left in the hands of the litigating parties to settle or compromise. Even if there is an agreement between parties such an agreement would require adjudication by the court to satisfy if the welfare of the minor is secured by such

agreement on the ambit of Section 17 of the Act, 1890 and other settled principles.

73. The award of the Lok Adalat to the extent of appointment of guardianship of the minors in favour of the 2nd respondent and after her in favour of R. Venkateswara Rao is without jurisdiction and is also not as per the provision of law under the Act, 1890. It is a nullity and not binding on the petitioner to that extent. The impugned award of the Lok Adalat only to the extent of appointment of guardian of respondents 4 and 5 is hereby quashed.

74. The petitioner is the natural guardian being father of the minor respondents 4 and 5. However, the parties are at liberty, if so require, to seek the remedy for appointment of guardianship of the minors, or for their custody, before competent court of law, in accordance with law.

75. Writ petition is allowed in part. No order as to costs.

Consequently, Miscellaneous Petitions, if any pending shall stand closed.

C. PRAVEEN KUMAR,J

RAVI NATH TILHARI,J

Date:24.03.2022.

Note:

L.R copy to be marked.

B/o.

Gk

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

&

HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.20458 OF 2019

Date:24.03.2022.

Gk.