
Before Binod Kumar Roy, C.J., G.S. Singhvi & Hemant Gupta, JJ.

M/S RANBAXY LABORATORIES LTD.,—Appellant

versus

PUNJAB STATE ELECTRICITY BOARD & ANOTHER,—Respondents

R.S.A. No. 103 OF 2001

18th December, 2003

Indian Electricity Act, 1910—Code of Civil Procedure, 1908—S.9—Electricity (Supply) Act, 1948—Ss. 5, 49 & 79—Dispute of a demand of an additional amount raised by Electricity Board—Board framing a scheme under section 79 of the 1948 Act for redressal of grievances—Appellant challenging the demand in Civil Court without approaching the settlement dispute committee established by the Board—Whether the suit is barred & not maintainable—Held, no—No statutory power under the Act for constitution of the alternative dispute settlement mechanism—Alternative dispute settlement mechanism established by the Board by way of regulations is in the nature of departmental remedies which cannot oust the jurisdiction of the Civil Court—Jurisdiction of the Civil Court under section 9 CPC cannot be barred by virtue of such regulations—Jurisdiction of Civil Court can only be barred by creating statutorily adequate and efficacious alternative remedy—Decision of the two Judge Bench of the Supreme Court in ‘P.S.E.B. & another versus Ashwani Kumar’ not binding precedent in view of larger Bench judgments.

Held, that :—

- (1) *Ubi jus ibi remedium* i.e. where there is a right there is a remedy. The jurisdiction of the civil court cannot be said to be impliedly barred in respect of pre-existing common law right i.e. where the dispute has the characteristics of affecting one's right which is not only of civil but of civil nature as well. An exclusion of jurisdiction of the civil court is not readily to be inferred unless the conditions set down apply.

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- (2) Where a right or liability in respect whereof grievance has been made had been created under an enactment and it did not relate to pre-existing common law, the jurisdiction of the civil court can be said to be barred if on inquiry the Court finds that adequate and efficacious alternative remedy is provided under the Act creating right and the liability under that Special Act.
 - (3) When a statute gives finality to the orders passed by the Special Tribunal so constituted, the jurisdiction of the civil court can be said to be barred if there is identical remedy to do what the civil court would do normally in a suit. However, such provision does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
 - (4) Even in those cases where the jurisdiction of a Civil Court can be said to be impliedly barred, the Civil Court will nonetheless retain its jurisdiction and adjudicate the suit provided the order complained of is a nullity.

(Para 29)

Further held, that the jurisdiction of the Civil Court cannot be said to be impliedly barred in terms of Section 9 of the Code on the basis of the scheme framed under section 79 of the Act.

(Para 30)

Further held, that the judgment of the Hon'ble Supreme Court in Punjab State Electricity Board and another *versus* Ashwani Kumar, J.T. 1997(5) S.C. 182 does not lay down a binding precedent as held in a recent Seven Judges Constitution Bench judgment rendered in the case of P. Ramchandra Rao *versus* State of Karnataka, (2002)4 S.C.C. 578. The decision rendered by the Supreme Court in Ashwani Kumar's case is on its own facts and the Civil Court will have the jurisdiction to entertain and try the suit of civil nature against the Board.

(Paras 32 & 33)

Deepak Sibal, Advocate, for the appellant

Sanjeev Sharma, Advocate, for the respondent.

JUDGMENT

Hemant Gupta, J.

(1) FIRSTLY SOME BACKGROUND

- “1. Whether the jurisdiction of the civil Court can be said to be impliedly barred in terms of section 9 of the Code of Civil Procedure on the basis of a scheme framed under section 79 of the Electricity (Supply) Act, 1948 ?
2. Whether the judgment in **P.S.E.B. & another versus Ashwani Kumar (1)**, is to be followed in view of earlier and later judgments of a larger Bench of the Supreme Court, especially when larger Bench judgments have not been brought to the notice of the Court ?

(2) The above questions have been referred for the decision of the larger Bench by one of us (Hemant Gupta, J.) when the argument was raised sitting singly that the scheme of redressal of grievance through Dispute Settlement Committee does not impliedly or expressly oust the jurisdiction of the Civil Court as the jurisdiction of the Court to try all suits of civil nature is very expansive. It is only where cognizance of a suit is specifically barred by statute either expressly or impliedly, the jurisdiction of the Civil Court will be ousted to entertain the suit. Reliance was placed on the constitution Bench judgment of the Supreme Court reported in **M/s Kamla Mills Limited versus State of Bombay (2)**, as well as other judgments reported in **M.P. Electricity Board, Jabalpur versus Vijay Timber Company (3)**, **Sankaranarayan Potti (Dead) by L.Rs. versus K. Sreedevi and others, (4)**, **State of Andhra Pradesh versus Manjeti Laxmi Kanta Rao (Dead) by L. Rs. and others (5)**, and **Dhruv Green Field Ltd. versus Hukam Singh and others, (6)**. By relying on such judgments, it was contended that the jurisdiction of the Civil

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- (1) J.T. 1997 (5) S.C. 182
 - (2) AIR 1965 S.C. 1942
 - (3) 1997 (1) S.C.C. 68
 - (4) 1998 (3) S.C.C. 751
 - (5) AIR 2000 S.C. 2220
 - (6) 2002 (6) S.C.C. 416

Court can be barred only by statute and not by way of Regulations framed under the statute. The subordinate legislation cannot override the provisions of the Central Act. On the other hand, it was the argument of the learned counsel for the Punjab State Electricity Board (hereinafter to be referred as "the Board") that the Dispute Settlement Committee had been established in exercise of the powers conferred on the Board under section 79 of the Electricity (Supply) Act, 1948 (hereinafter to be referred as "the Act") and, thus, the jurisdiction of the Civil Court is barred.

Facts :

(3) The brief facts which led to the filing of the present appeal are that the plaintiff-appellant filed a suit for declaration challenging the demand raised by the defendants to pay an additional amount of Rs. 17,60,006 or to face disconnection. The said amount have been claimed on account of alleged slow running of the meter. One of the issues which was framed by the learned trial Court was issue No. 2-A which reads as under :—

“2-A Whether the plaintiff has not approached the settlement dispute committee for the redressal of its grievance and as such the jurisdiction of the Civil Court is barred on this point and the suit is not maintainable as alleged in the written statement ? OPD

(4) The suit filed by the plaintiff-appellant was dismissed holding that the Civil Court is not justified in entertaining such type of suits and giving the declaration without directing the parties to avail of the remedy under the Act and the instructions issued by the Board. Reliance was placed upon the Supreme Court judgment in the case of **Punjab State Electricity Board and others versus Ashwani Kumar (supra)**. The appeal against the said order was dismissed again holding that the suit before the Civil Court is not maintainable.

Arguments :

(5) Shri Deepak Sibal, learned counsel for the appellant, argued that the Board cannot create Dispute Settlement Committee to adjudicate upon the disputes between the consumers and the Board as there is no statutory provision under which such Dispute Settlement Committee could be established. Reliance was placed upon Supreme

Court judgment in the case of **Indian Aluminium Company versus Kerala State Electricity Board (7)**, wherein it has been held that the Board can frame regulations only if specific power to make regulations is vested by the specific provisions of the statute.

(6) It was further contended by the learned counsel for the appellant that the Dispute Settlement Committee established by the Board is said to be in exercise of the powers conferred under section 79 (j) of the Act. Section 79 of the Act empowers the Board to make regulation not inconsistent with the Act and the rules made thereunder, Section 78 of the Act empowers the State Government to make rules to give effect to the provisions of the Act. Thus, Dispute Settlement Committee can be said to be framed as a subordinate legislation which cannot override the Central Act i.e. Section 9 of the Code of Civil Procedure.

(7) It was argued by the learned counsel for the appellant that there is no express provision under the Act wherein the jurisdiction of the Civil Court has been barred, therefore, the plea of implied bar can be raised only if adequate and efficacious alternative remedy has been established by and under the statute to adjudicate upon *inter se* dispute between the consumer and the Board. The Dispute Settlement Committee consists of officers of the Board and such mechanism is no substitute for Civil Courts. Reliance was placed upon the decisions reported as **Secretary of State versus Mask & Co. (8)** **M/s Kamla Mills Ltd. versus State of Bombay (supra)**; **Dhulabhai etc versus State of Madhya Pradesh and another (9)**, ; **Raja Ram Kumar Bhargava (dead) by L. Rs. versus Union of India (10)**, ; **Shiv Kumar Chadha versus Municipal Corporation of Delhi and others, (11)**; **Most Rev. P.M.A. Metropolitan and others versus Moran Mar Marthoma and another (12)**, **Dhruv Green Field Ltd. versus Hukam Singh and others (supra)**; and **Ramendra Kishore Biswas versus State of Tripura and others (13)**.

(7) AIR 1975 S.C. 1967

(8) AIR 1940 Privy Council 105

(9) AIR 1969 S.C. 78

(10) AIR 1988 S.C. 752

(11) (1993) 3 S.C.C. 161

(12) AIR 1995 S.C. 2001

(13) AIR 1999 S.C. 294

(8) Mr. Sanjeev Sharma, learned counsel for the Board, on the other hand, argued that the regulations have been framed by the Board in exercise of statutory powers under section 79 (j) read with section 49 of the Act. The procedure established by the Board provides complete mechanism for redressal of the grievances of the consumers and, therefore, the jurisdiction of the Civil Court is barred. He has relied upon the orders passed by this Court in the case of **M/s Sadashiv Castings Ltd. Mubarikpur versus Patiala State Electricity Board, Patiala and others**, CWP No. 17932 of 2001 decided on January 13, 2003 and **M/s Quark Media House (India) Pvt. Ltd. Mohali versus Punjab State Electricity Board and others**, CWP No. 7200 of 2002 decided on May 14, 2002.

Statutory Provisions :

(9) Before adverting to the respective arguments raised by the learned counsel for the parties, it would be advantageous to consider the scheme of the Act and the constitution of the Dispute Settlement Committee.

(10) Electricity (Supply) Act, 1948 was enacted to provide for the rationalisation of the production and supply of electricity and generally for taking measures conducive to electrical development. The coordinated development and benefit of electricity was sought to be extended to the entire region transcending the geographical limits of a Municipality, a Cantonment Board or a Notified Area Committee, as the case may be, so as to vest the appropriate Government with the necessary legislative powers to link together under one control electrical development in contiguous areas by the establishment of 'Grid System'. The aforesaid Act was enacted as Indian Electricity Act 1910 was conceived for a different purpose. The Indian Electricity Act, 1910, deals with the supply and use of electrical energy and the rights and obligations of the licensees.

(11) The Scheme of Settlement of Disputes has been framed in exercise of the powers conferred under section 79(j) of the Act. The said scheme, as framed by the Board, has provided for Circle Level Dispute Settlement Committee chaired by the Deputy Chief Engineer/Superintending Engineer (Operation) which includes its other officers as members; Zonal Level Dispute Settlement Committee to be chaired by the Chief Engineer (Operation) concerned with its

other officers as members, whereas the Board Level Review/Appellate Committee is to be chaired by the Chairman of the Board and includes the members of the Board as its members and the convener is Chief Engineer (Commercial).

(12) The relevant extracts of Section 49 and 79 (j) of the Act as well as of the scheme as contained in Sales Regulations For Supply of Electric Energy to Consumers (Updated to 31st March, 1999) read as under :—

- “49. Provision for the sale of electricity by the Board to persons other than licensees.—(1) Subject to the provisions of this Act and or regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions, as the Board thinks fit and may for the purposes of such supply framed uniform tariffs.
- (2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely—
- (a) the nature of the supply and the purposes for which it is required ;
 - (b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;
 - (c) the simplification and standardisation of methods and rates of charges for such supplies ;
 - (d) the extension and cheapening of supplies of electricity to sparsely developed areas.
- (3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person.”

“79. **Power to make regulations.**—The Board may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely—

(a to i) x x x x x x x x x x x

(j) principles governing the supply of electricity by the Board to persons other than licensees under Section 49;.....”

142. Composition of Dispute Settlement Committees/ Authority :

Existing set-up of the various Dispute Settlement Committees as constituted by the Board is as under. However, the Board whenever deemed expedient, may reconstitute the Committees/Authority.

142.1 Circle Level Dispute Settlement Committee :

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|-------------|-------------------------|
| 1. Chairman | Dy. CE/SE/(Op) |
| 2. Member | Dy. CAO/Dy. CA |
| 3. Member | Addl. SE/SR. Xen (Enf.) |
| 4. Member | Dy. Director (Sales) |
| 5. Convenor | Add. SE/Sr. Xen (Ops.) |

142.1.1 Pecuniary Jurisdiction : The Committee is empowered to review the assessment exceeding Rs. 10,000 and upto Rs. 1 Lac arising out of checking conducted by Task Force/Operation/ Enforcement agencies, waiver of irrecoverable amount and amount charged at the behest of audit. However, before putting up cases for review and allowing reconnection

Dy. CE/SE (Ops) concerned shall ensure deposit of 33% of the disputed amount so charged. It will act as an Appellate Authority for amounts exceeding Rs. 3,000 and upto Rs. 10,000.

142.2 Zonal Level Dispute Settlement Committee :

1. Chairman CE (Op) concerned
2. Member Chief Auditor
3. Member Director (Sales for Central Zone)

 Director (Tariff) for North and
 Border Zones

 Director (Billing) for West and South
 Zone

Dy. CE/SE (Ops) concerned will be the Presenting Officer.

142.2.1 Pecuniary Jurisdiction :The Committee is empowered to review the assessment exceeding Rs. 1 Lac and upto Rs. 2 Lacs arising out of checking conducted by Task Force/Operation/ Enforcement agencies, waiver of irrecoverable amount and amount charged at the behest of audit. However, before putting up cases for review and allowing reconnection CE (Ops) concerned shall ensure deposit of 33% of the disputed amount so charged. It will act as an Appellate Authority for amounts exceeding Rs. 10,000 and upto Rs. 1 Lac.

142.3 Dispute Settlement Authority :

1. Chairman Chief Engineer
2. Member Dy. CE/SE (Ops)
3. Member Chief Accounts Officer

Sr. Xen (s) will be the Presenting Officer.

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- 142.3.1 Pecuniary Jurisdiction :** The Authority is empowered to review the assessment exceeding Rs. 2 Lacs arising out of checking conducted by Task Force/ Operation/ Enforcement agencies, waiver of irrecoverable amount and amount charged at the behest of audit. However, before referring cases for review to the DSA and allowing reconnection CE (Ops) concerned shall ensure deposit of 33% of the disputed amount so charged subject to a maximum of Rs. 50 Lacs. It will act as an Appellate Authority for amounts exceeding Rs. 1 Lac and upto Rs. 2 Lacs.
- 142.3.2 The Authority shall function on full time basis. The administrative control of the Authority shall be under the Chairman PSEB.
- 142.3.3. The headquarters of Authority shall be at Patiala. However, the Authority is empowered for site checking and holding of meetings at different stations if situation so warrants.
- 142.3.4 The decision taken by the Authority shall be final so far as PSEB is concerned. An appeal against the decision of the Authority can be allowed by the Chairman PSEB to be made to the Board Level Review Committee subject to the deposit of 50% of the balance unpaid amount.
- 142.3.5 The Authority shall forward the decision to Dy. CE/SE (Ops) alongwith copies to other concerned officers. Monthly detailed report regarding implementation of the decisions shall be submitted by Dy. CE/SE (Ops) to the concerned Presenting Officer.
- 142.4 Board Level Review/Appellate Committee :
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|----|----------|------------------------|
| 1. | Chairman | Chairman PSEB |
| 2. | Member | Member (F & A) |
| 3. | Member | Member (Transmission) |
| 4. | Member | Member (Operations) |
| 5. | Convenor | Chief Engineer (Comml) |
- Chief Engineer (Ops) concerned shall be the Presenting Officer.

142.4.1 **Pecuniary Jurisdiction** : This Committee is empowered to dispose of the appeals arising out of the decisions of Dispute Settlement Authority and also such cases which had been reviewed by the Committee headed by the Member Incharge (Comm) in consultation with MFA.

142.5 **Spot Review Committee** : Dispute Settlement Authority shall decide as to which cases are to be referred to the Spot Review Committee.

(15) Such scheme framed by the Board is to be examined in the context of Section 9 of the Code of Civil Procedure (hereinafter to be referred as "the Code") to the effect whether such scheme bars the jurisdiction of the civil Court. Section 9 of the Code reads as under :—

“9. Courts to try all civil suits unless barred :—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation (1)—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation (II)—For the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

QUESTION NO. 1

(14) It is admitted case of the parties that there is no express bar of jurisdiction of the civil Court under the Act. The jurisdiction of the civil Court is said to be barred in view of the Alternative Dispute Settlement mechanism provided by the Board for settlement of disputes between the consumer and the Board in terms of regulations framed under section 79 (3) read with section 49 of the Act.

(15) There is no provision in the statute creating any authority to adjudicate the disputes pertaining to supply of electricity or its charges, therefore, the alternative dispute settlement mechanism cannot be framed under section 79(j) of the Act as the regulations can be framed in order to carry out all or any of the objectives of the Act. Since there is no statutory power under the Act for constitution of the alternative dispute settlement mechanism, therefore, by virtue of regulations such mechanism cannot be created so as to oust the jurisdiction of the civil Court.

(16) The reliance on Sections 49 and 79(j) of the Act to contend that the Board has the power to frame regulations is misconceived. Section 49 of the Act does not authorise the Board to create alternative dispute settlement mechanism but deals with the provisions for sale of electricity by the Board on agreed terms and conditions. The terms and conditions of the supply cannot and does not include the mechanism for setting the dispute between the consumer and the Board. The implied power to frame regulations so as to oust the jurisdiction of the civil Court is not available under section 49 of the Act.

(17) The provisions contained in section 49 read with section 79(j) of the Act empower the Board to specify the terms and conditions for the supply of electricity. None of the provisions including that contained in Sections 49 and 79 of the Act provide for constituting of any Tribunal for determination of dispute between the consumer and the Board or vice versa. Rather the agreement entered between the parties provide for resolving of the dispute by way of arbitration. Therefore, we are of the opinion that the Act does not create any Tribunal so as to resolve the dispute between the consumers and the Board or vice versa. Since the statute has not constituted alternative dispute settlement mechanism, therefore, such alternative dispute settlement mechanism established by the Board by way of regulations is in the nature of departmental remedies which cannot oust the jurisdiction of the civil Court.

(18) Reference can be made to the decision of the Supreme Court in the case of **Indian Aluminium Company versus Kerala State Electricity Board**, (supra) wherein it has been held that the Board could frame regulations only if specified power to make such

regulations is vested by specific provision in the statute. In the said case, an agreement was entered in exercise of the statutory powers contained in Section 49 (3) of the Act. It was held that the regulations framed by the Board under section 79(j) of the Act can not override the stipulations contained in such agreement entered in terms of section 49 (j) of the Act. The relevant extract of the judgment reads as under :—

“We will take up the second and the third grounds together for consideration. We do not think that the High Court was right in saying that by making regulations under Section 79(j) the Board could confer upon itself power to unilaterally revise the rates for supply of electricity. Section 79(j) empowers the Board to make regulations not inconsistent with the Supply Act to provide for principles governing the supply of electricity by the Board to persons other than the licensees under Section 49.” This power to make regulations must obviously be exercised consistently with the provisions of the Supply Act. If the power to enhance the rates unilaterally in derogation of the contractual stipulation does not reside in any provision of the Supply Act, it cannot be created by regulations made under the Supply Act. Either this power can be found in some provision of the Supply Act or it is not there at all. Regulations in the nature of subordinate legislation cannot confer authority on the Board to interfere with the contractual rights and obligations, unless specified power to make such regulations is vested in the Board by some provision in the Statute, expressly or by necessary implication. No such power is to be found in Section 79(j) or in any other provision of the Supply Act.”

(19) Still further, any person having a grievance that he has been wronged or his right is being affected could approach the ordinary civil Court on the principle of law that where there is a right there is a remedy-ubi jus ibi remedium. The jurisdiction of the Courts to try all the suits of a civil nature is very expansive. It is only where cognizance of a specified type of suit is barred by a statute either expressly or impliedly that the jurisdiction of the civil Court would be ousted to entertain such a suit.

(20) Civil right of an aggrieved person is required to be established before the civil Court. Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948 has not created any alternative remedy under the Act. The remedy of alternative dispute mechanism under the regulations framed is not a statutory remedy. By virtue of such regulations, the jurisdiction of the civil Court under section 9 of the Code of Civil Procedure cannot be barred as the jurisdiction can be barred only by creating statutorily adequate and efficacious alternative remedy. The alternative dispute mechanism is manned by the officers of the Board. Such officers are in whole time employment of the Board. The appeal and revision are also entertained and adjudicated upon by the Zonal Level Dispute Settlement Committee and Board Level Settlement Committee consisting of the officers of the Board alone. Such mechanism is neither adequate nor efficacious remedy which can adjudicate upon civil rights of the parties in the manner contemplated before the civil courts.

(21) The principles to consider whether the jurisdiction of the civil Court is impliedly barred has been explained by the apex Court in a number of judgments. The general principle is that a statute excluding the jurisdiction of civil Courts should be construed strictly. Privy Council in the case of **Secretary of State versus Mask and Co.** (*supra*) has held as under :—

“It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure.”

(22) Seven Judge Bench in the case of **M/s Kamala Mills Ltd. versus State of Bombay**, (*supra*) has dealt with the jurisdiction of the civil Court in the context of the stipulations contained in the

special statute to bar such jurisdiction of the civil Court. It was held as under:—

In every case, the question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose. (Para 30 p. 1951)

Whenever it is urged before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. In case where the exclusion of the civil court's jurisdiction as to the scheme of the statute in question and the adequacy or the sufficiency of remedies provided for by it may be relevant, but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted. It becomes pertinent to enquire whether remedies normally associated with actions in civil court are prescribed by the said statute or not. (Para 32 p. 1952)

(23) The tests which have been laid down to infer implied bar of jurisdiction of civil Court were laid down by the Constitution Bench of the Supreme Court in the case of **Dhulabhai etc versus State of Madhya Pradesh and another (supra)**, the following principles are relevant :—

“(1) Where the statute gives a finality to the orders of the special tribunals the civil courts jurisdiction must be held to be excluded if there is adequate remedy to do

what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

- (2) Where there is an express bar of the jurisdiction of the court an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

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(4) x x x x x x x x x x x x

(5) x x x x x x x x x x x x

(6) x x x x x x x x x x x x

- (7) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions about set down apply.”

(24) In the case of **Raja Ram Kumar Bhargava (dead) by L.Rs. versus Union of India, (supra)** it was held that the implied bar of jurisdiction of Civil Court may arise when a statute provide that wherever a right, not pre-existing, in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created by

the statute the jurisdiction of the Civil Court can be said to be impliedly barred. The Court held to the following effect :—

“Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing, in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then even in the absence of an exclusionary provision in Civil Court’s jurisdiction is impliedly barred, If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Court’s jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving upon an element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the Civil Court’s jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in Dhulabhai’s case.”

(25) In the case of **Shiv Kumar Chadha versus Municipal Corporation of Delhi and others (supra)**, the Court was considering the plea of bar of Civil Court jurisdiction in the context of the provisions of Delhi Municipal Corporation Act and it was held that the Delhi Municipal Corporation Act does not create any right or liability nor does it provide any remedy for enforcement thereof but it purports to regulate the common law right of citizens to erect or construct buildings of their choice. With the urbanisation and development of the concept of planned city, regulations, restrictions, on such common law right have been imposed. The Court examined the plea of bar of jurisdiction contained in Sections 343 and 347-E of the Corporation Act and held that once the Court is satisfied that either the provisions of the Act are not applicable to the building in question or the basic procedural requirements which are vital in nature have not been followed it shall

have jurisdiction to enquire and investigate while protecting the common law rights of the citizens. The Court held to the following effect :—

“With the increase in the number of taxing statutes, welfare legislations and enactments to protect a class of citizens, a trend can be noticed that most of such legislations confer decision making powers on various authorities and they seek to limit or exclude court’s power to review those decisions. The result is that the power of the court under Section 9 of the Code is being denuded and curtailed by such special enactments, in respect of liabilities created or rights conferred. This Court in the judgments referred to above has upheld the ouster of the jurisdiction of the court on examination of two question—(1) whether the right or liability in respect whereof grievance has been made, had been created under an enactment and it did not relate to a pre-existing common law right ? (2) Whether the machinery provided for redressal of the grievance in respect of infringement of such right or imposition of a liability under such enactment, was adequate and complete? The ouster of the jurisdiction of the court was upheld on the finding that the rights or liabilities in question had been created by the Act in question and remedy provided therein was adequate.”

(26) In the case of **Most Rev. P.M.A. Metropolitan and other versus Moran Mar Marthoma and another (supra)**, Supreme Court while considering Section 9 of the Code of Civil Procedure held that earlier part of Section 9 of the Code of Civil Procedure opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The Court held that the provisions of Section 9 of the Code of Civil Procedure structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. All civil suits are cognizable unless barred. It has been explained that scope of Section 9 of the Code of Civil Procedure has been widened by use of the word shall and the expression all suits of a civil nature unless expressly or impliedly barred’. No Court can refuse to entertain a suit if it is of

description mentioned in the section. The word civil nature is wider than the word civil proceeding'. The section would, therefore, be available in every case where the dispute has the characteristic of affecting one's right which are not only civil but of civil nature. In paragraph No. 28 of the judgment, Supreme Court held as under :—

“28. Each word and expression casts an obligation on the Court to exercise jurisdiction for enforcement of right. The word shall makes it mandatory. No Court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of expression, all suits of civil nature; The word civil according to dictionary means, relating to the citizen as an individual; civil rights. In Black's Legal Dictionary it is defined as, relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings. In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc. were added to it later. But they too pertain to the larger family of civil. There is thus no doubt about the width of the word civil. Its width has been stretched further by using the word nature along with it. That is even those suits are cognisable which are not only civil but are even of civil nature..... The word nature has been defined as the fundamental qualities of a person or thing; identity or essential character; sort; kind; character. It is thus wider in content. The word civil nature is wider than the word civil proceeding. The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature.”

(27) Supreme Court in a recent judgment reported as **Dhruv Green Field Ltd. versus Hukam Singh and others (supra)**, laid down the following principles :—

- (1) If there is express provision in any special Act barring the jurisdiction of a civil court to deal with matters

specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

- (2) If there is no express provision in the Act but an examination of the provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a civil court, the court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil court is barred. If, however, no such adequate and effective remedy is provided then exclusion of the jurisdiction of the civil court cannot be inferred.
- (3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly, the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.

(28) In the case of **Ramendra Kishore Biswas versus State of Tripura and others, (supra)** the question before the Supreme Court was whether the departmental remedy of appeal under the Service Rules will debar the jurisdiction of the civil Court. The High Court has held that in view of the departmental remedy, the jurisdiction of the civil Court is barred but the said judgment was reversed by the Supreme Court with the following observations :—

“Again the opinion expressed by the learned single Judge to the effect,

“It is my firm conviction that in the present case the Civil Court cannot make a declaration under Section 34 of the Specific Relief Act as its jurisdiction has been taken away by the special rules i.e. CCS (CCA) Rules, 1965. Under the circumstances, it means a Civil Court does not have jurisdiction in respect of matters which are entertained and decided by the statutory tribunal in conformity with the powers conferred by the enactment.”

Is clearly erroneous and cannot be sustained. Service Rules, neither expressly nor by implication have taken away

the jurisdiction of the Civil Courts to deal with service matter. The opinion of the learned single Judge does violence both to the Code of Civil Procedure, the Specific Relief Act and the Service Rules. As a matter of fact it appears to us that the learned single Judge failed to exercise the jurisdiction vested in him while non-suiting the appellant. It, therefore, appears appropriate to us to allow this appeal, set aside the order of the learned single Judge and remit the matter to the High Court for a fresh decision of the regular second appeal and the cross-objections on their own merits.”

(29) In view of the precedents discussed above, the following principles can be enumerated to determine whether the jurisdiction of the civil Court can be said to be impliedly barred :—

- (1) *Ubi jus ibi remedium* i.e. where there is a right there is a remedy. The jurisdiction of the civil Court cannot be said to be impliedly barred in respect of pre-existing common law right i.e. where the dispute has the characteristics of affecting one's right which is not only of civil but of civil nature as well. An exclusion of jurisdiction of the civil court is not readily to be inferred unless the conditions set down apply.
- (2) Where a right or liability in respect whereof grievance has been made had been created under an enactment and it did not relate to pre-existing common law, the jurisdiction of the civil Court can be said to be barred if on inquiry the Court finds that adequate and efficacious alternative remedy is provided under the Act creating right and the liability under that Special Act.
- (3) When a statute gives finality to the orders passed by the Special Tribunal so constituted, the jurisdiction of the civil Court can be said to be barred if there is identical remedy to do what the civil Court would do normally in a suit. However, such provision does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal

has not acted in conformity with the fundamental principles of judicial procedure.

- (4) Even in those cases where the jurisdiction of a civil Court can be said to be impliedly barred, the civil Court will nonetheless retain its jurisdiction and adjudicate the suit provided the order complained of is a nullity.

(30) In view of the principles of bar of jurisdiction referred to above, we answer question No. 1 referred for the decision of this Bench and hold that the jurisdiction of the civil Court cannot be said to be impliedly barred in terms of Section 9 of the Code on the basis of the scheme framed under section 79 of the Act.

QUESTION NO. 2

(31) In **Ashwani Kumar's case** (supra), two Judges Bench of the Supreme Court has held that the circulars issued by the Board from time to time indicate a fundamental fairness of procedure and, thus, by necessary implication civil court shall not be justified in entertaining the suits. In paragraph No. 10 of the judgment, Supreme Court held as under :—

“The question then arises : Whether the Civil Court would be justified in entertaining the suit and issue injunction as prayed for ? It is true, as contended by Shri Goyal, learned Senior Counsel, that the objections were raised in the written statement as to the maintainability of the suit but the same given up. Section 9 of C.P.C. provides that Civil Court shall try all suits of civil nature, subject to pecuniary jurisdiction, unless their cognizance is expressly or by necessary implication is barred. Such suit would not be maintainable. It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. The statutory circulars adumbrated above do indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By

necessary implications, the cognizance of the civil cause has been excluded. As a consequence, the civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the Instructions issued by the Board in that behalf from time to time as state above.

(32) However, none of the judgments of larger Bench such as **M/s Kamala Mills Ltd. versus State of Bombay (supra)**, **Dhulabai etc. versus State of Madhya Pradesh and another (supra)**, and **Shiv Kumar Chadha and others versus Municipal Corporation of Delhi and others (supra)**, were brought to the notice of the Court. The attention of the Court was also not drawn to the fact that the circulars issued are not in exercise of the powers conferred by the statute on the Board to create alternative dispute settlement mechanism nor the statute itself contemplate settlement of disputes between any of the parties. Therefore, we are of the opinion that the judgment of the Hon'ble Supreme Court in **Ashwani Kumar's case (supra)** does not lay down a binding precedent as held in a recent Seven Judges Constitution Bench judgment rendered in the case of **P. Ramchandra Rao versus State of Karnataka (14)**. In paragraph 28 of the judgment, it was held as under :—

“The other reason why the bars of limitation enacted in Common Cause (I), Common Cause (II) and Raj Deo Sharma (I) and Raj Deo Sharma (II) cannot be sustained is that these decisions, though two-or three-Judge Bench decision, run counter to that extent to the dictum of the Constitution Bench in A.R. Antulay case and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents. The well-settled principle of precedents which has crystallised into a rule of law is that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and cannot take a view in departure or in conflict therefrom.”

(33) Therefore, in respect of question No. 2 it is held that the decision rendered by the Supreme Court in **Ashwani Kumar's case** (*supra*) is on its own facts and the civil Court will have the jurisdiction to entertain and try the suit of civil nature against the Board.

(34) Having answered the referred question, the appeal shall be placed before the learned Single Judge to decide the same in accordance with law.

R.N.R.