

NATIONAL JUDICIAL ACADEMY



NATIONAL WORKSHOP FOR HIGH COURT JUSTICES [P-1264]

23RD & 24TH OCTOBER, 2021

PROGRAMME REPORT

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OVERVIEW OF THE PROGRAMME

The National Judicial Academy (NJA) organized a two-day *online* National Workshop for High Court Justices on 23rd & 24th October, 2021 at the NJA on virtual platform. The objective of the workshop was to provide a platform for justices to share experiences, insight and suggestions with a panel of distinguished resource persons from the judiciary, Bar and experts from legal field on contemporary themes: Impact on Litigation Post-Covid 19; Exercise of *Suo Moto* Power in Civil and Criminal Cases; Developments in Insolvency and Bankruptcy Laws; and Land Reforms and Courts: Amendments to the Land Acquisition Act. About 24 Justices of different High Courts participated in the workshop.

DAY 1

Session 1 - Impact on Litigation Post-Covid 19

Session 2 - Exercise of *Suo Motu* Power in Civil and Criminal Cases

DAY 2

Session 3 - Developments in Insolvency and Bankruptcy Laws

Session 4 - Land Reforms and Courts: Amendments to the Land Acquisition Act

DAY – 1

Session 1

Theme - Impact on Litigation Post-Covid 19

Speakers - Justice A. Muhamed Mustaque & Mr. Yadunath Bhargavan

The session provided opportunities to learned participants to share experiences and discuss effectiveness of virtual courtrooms, challenges faced, managing pendency of matters and efficient utilization of limited resources. It rolled out with a quote by Napoleon Hill: “Every adversity, every failure, every heartache carries with it the seed of an equal or greater benefit”. Citing the quote, it was stressed that the present adversity (Covid-19) should guide us to monitor and map the judiciary’s competencies and effectiveness and exploring innovation. Deliberating upon the background of Covid-19, it was pointed out that coping with the pandemic was a challenge and raised critical managerial issues. The pandemic also raised a great deal of concern about the effect on ongoing litigation as there was no system in place in most part of the country and litigators including other stakeholders had limited experience of conducting virtual courtrooms & procedures. Terming Access to Justice as basic Human Right, it was stressed that it cannot be denied even during extraordinary situation. The contribution of E-committee on building ICT infrastructure was also discussed during the session. It was pointed out that e-Committee had already realised the overwhelming need for reforming the judicial sector by adopting new technology and a National Policy and Action Plan to implement ICT in courts was already in place. A statistical analysis of fund allocations from the central government and pending cases in India was also presented during the session. Citing judgement of *Swapnil Tripathi v. Supreme Court of India and others*,¹ wherein the Supreme Court highlighted the openness function of the court with respect to web casting the court proceeding, Critical managerial issues such as access, openness, creating a virtual platform and stress factors were discussed and pondered during the session. The case management system as adopted by Kerala High Court during pandemic was discussed and presented in detail. It was stressed that while developing any digital platform in order to access justice, consultation with all stakeholders is necessary.

¹ 2018 Indlaw SC 891

Adapting with existing courtroom procedures for virtual courtrooms such as etiquettes and court decorum were also highlighted. Steps taken in ensuring continued working of the judiciary such as Establishing access in E-sewa kendras, mobile video conferencing vehicles, broadcasting daily proceedings online on social media, serving notices e-post office, interlinking police stations during filing of bails, digitally signed certified copies were pointed out. A virtual tour of *Vconsol Court* (Created by Kerala High Court) was demonstrated & presented in the session, its potential functions such as options to conduct the court efficiently, facilities available to advocates, facilities available to the judges, facilities available to the court officers, chat options and other salient features were also presented. Other tools at the disposal of Court such as online ADR Lok Adalat, relying on AI tools to schedule, hybrid system and building of Infrastructure were stressed upon during the session. While discussing way forward, it was pointed out that creating a broad foundation for bringing changes is necessary. It was also stressed that everything begin with an idea and a state of mind and we need to embrace the new changes. Making structural reforms was also pointed out as a way forward in the end. The evolving jurisprudence post Covid 19 with respect to vulnerable section of the society was also pointed out. Other key issues such as health, lack of economic support, Immunization, lack of legislative support, Right to Demand Digital Services as a Fundamental Right were discussed. Provisions under International Covenant on Economic Social and Cultural Rights and Guiding Principle under UDHR were also highlighted in the session. Cause & effect of behavioral science and its impact during Covid 19 were pondered upon. Citing various examples, the importance of consumer centric justice was also stressed upon during the session. Initial resistance of technology by lawyers and gradual adoption by all stakeholders of administration of justice was highlighted.

Session 2

Theme - Exercise of *Suo Motu* Power in Civil and Criminal Cases

Speakers - Justice C.K. Thakker & Justice Akil Kureshi

The session examined the practices of the higher courts in India taking up matters *Suo Moto*. The concept and scope of *Suo Moto* powers with the Higher Courts under Article 32 and 226 of the Constitution of India were deliberated upon. The recent intervention initiated by the Supreme Court and High Courts through various orders in response to the unprecedented humanitarian crisis in the country due to Covid-19 were also discussed. It was pointed out that final goal of judiciary is to

administer Justice and to provide justice to all. The latin maxim *Ubi jus ibi remedium* in context of justice was elaborated and discussed. It was stressed that *suo moto* interventions are not just powers with the Higher Courts but also duty of the court, if the court finds that injustice has been done. Citing exercise of revisional jurisdiction by the High Court and other inherent powers, it was pointed out that court confer with various powers in order to do complete justice. While explaining the scope of exercise of *Suo moto* powers, it was stressed that Separation of powers under the scheme of Constitution must be kept in mind. While discussing various landmark judgements of the Supreme Court, the scope of PIL was deliberated upon. The recent intervention initiated by the Supreme Court through various orders with respect to contagion of covid 19 virus in prisons and protecting fundamental rights, guidelines for court functioning through video conferencing during covid-19 pandemic, cognizance for extension of limitation and problems and miseries of migrant labourers in response to the unprecedented humanitarian crisis in the country due to Covid-19 were also discussed. The scope of writ jurisdiction in awarding compensation was also discussed in the session.

DAY – 2

Session 3

Theme - Developments in Insolvency and Bankruptcy Laws

Speakers - Mr. N. Venkataraman & Mr. R. Venkatavaradan

The session broadly dealt with the nature of the insolvency and bankruptcy laws in its current form in contrast to its earlier version and whether it has achieved the objective for which it was brought. It was asserted that the laws governing the insolvency and bankruptcy regime (SICA, 1985; BAFRA, 1993; and SARFAESI, 2002) prior to 2015 were working under cross interests and currents which eventually prompted the reexamination of these legislations so as to benchmark into global standards. The law under the old regime was “*Debtor in Possession Framework*” whereas the new Insolvency and Bankruptcy Code, 2016 (IBC) attempts to strive towards “*Creditor in Control Model*”. The nexus between public money and the economy is the fulcrum in which the law must propel and ascertained while adjudicating issues under IBC. It was stressed that since this law is based on economic principles, the sovereign right to collect a dues takes a backseat and the priority is revival of business/economy in addition to maximization of the value of assets.

It was pointed out that High Court will have occasion to entertain matters in this regard only under Article 226/227 which nevertheless is of critical importance. However, in *Embassy Property Developments Private Limited v. State of Karnataka and Others*² the Supreme Court held that decision taken by a government or statutory authority in relation to a matter which is in the realm of public law cannot be brought within the fold of Section 60(5) of the Code and NCLT will have no jurisdiction. The correctness of such decision can be questioned only in a superior court which is vested with the power of judicial review over administrative action.

The discussion highlighted upon the difference between Financial Creditors (FC) and Operational Creditors (OC) while referring to *Swiss Ribbons Private Limited and Another v. Union of India and Others*³, *Innoventive Industries Limited v. ICICI Bank and Another*⁴ and *Mobilox*

² (2020) 13 SCC 308

³ (2019) 4 SCC 17

⁴ (2018) 1 SCC 407

*Innovations Private Limited v. Kirusa Software Private Limited*⁵. The major issue focused was whether the law is right in differentiating between a financial creditor and operational creditor or ought the law to have benchmarked them together. In *Swiss Ribbons*⁶ it was held that if ‘arbitrariness’ can be shown in a plenary legislation then it is also susceptible to challenge under Article 14. On the issue of whether OC and FC constitute the same class the court held that they constitute a separate class and therefore the FC is entitled to a preferential treatment in terms of disbursement, constitution of Committee of Creditors etc.

It was further remarked that the time period for completion of the Corporate Insolvency Resolution Process (CIRP) has been extended to 330 days vide recent amendment to the Code. If the process is not completed within the time framework the company goes into liquidation and the moratorium is available to the corporate debtor during this period. However, the Supreme Court in *Arcelormittal India Private Limited v. Satish Kumar Gupta and Others*⁷ opined that in exceptional cases where the CIRP could not be completed within the sanctioned time frame due to delays in judicial process the NCLT can grant extension beyond 330 days. It was also pointed that Section 29 A which ensures that the benefits of the Code are available only to persons who are genuinely interested in the revival of the corporate debtor was brought pursuant to the decision in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*⁸.

The discussion further pertained to the issue of finality to the resolution plan. The ‘Clean Slate Theory’ propounded by the Supreme Court in *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company*⁹ was noted wherein while considering amendment to Section 31 it was categorically stated that that the resolution plan which is approved by the adjudicating authority is final and no further claims can be made.

The session delved into the powers of adjudicating authority under Section 30(2) of the Code. The approved resolution plan will be submitted to the NCLT for its approval under Section 31. The adjudicating authority must record analytical subjective satisfaction which is a precondition for according approval to the resolution plan. The approval of the resolution plan is to be judged with

⁵ (2018) 1 SCC 353

⁶ Supra Note 3

⁷ (2019) 2 SCC 1

⁸ (2020) 8 SCC 531

⁹ (2021) SCC OnLine SC 313

utmost care, caution, circumspection and diligence. The NCLT must ensure that the resolution plan is in accordance with the provisions of Section 30(4) and can be effectively implemented. The commercial wisdom of the Committee of Creditors cannot be interfered with by the NCLT. In this regard, the decision of the Supreme Court in *K. Sashidhar v. Indian Overseas Bank*¹⁰ was referred to. It was further asserted that if the adjudicating authority finds that the requirements of Section 30(2) have not been fulfilled it may send the resolution plan back to the Committee of Creditors to re submit such plan after satisfying the parameters.

In relation to powers of the RBI it was stated that even after the enactment of the IBC the RBI stands expressly conferred with the authority to issue directions to banking companies on the subject of resolution of stressed assets. In *Reserve Bank of India v. Dewan Housing Finance Corporation Limited* the adjudicating authority, while confirming the name of the administrator as proposed, directed to perform all functions of Resolution Professional to complete the CIRP. Further, the aforesaid circular provided that where default occurs in respect of the accounts with aggregate exposure of Rs. 20 billion and above, resolution plan shall be implemented within 180 days. In case it is not implemented the lenders shall file insolvency application under IBC within 15 days. However, the Supreme Court in *Dharani Sugars and Chemicals Limited v. Union of India and Others*¹¹ held that the circular was ultra vires and had no effect in law.

Session 4

Theme - Land Reforms and Courts: Amendments to the Land Acquisition Act

Speakers - Dr. Justice B.S. Chauhan & Mr. Gopal Sankaranarayanan

The session commenced with tracing the history of land acquisition from the regime of East India Company to the enactments of 1894 and 2013 while briefly touching upon the Crown Grants Act, 1895, Government of India Act, 1935, U.P. Tenancy Act, 1939, views expressed by the Constituent Assembly, abolition of *zamindari* post-independence, insertion of Article 31 A, 31 B and 9th Schedule to the Constitution, deletion of Article 19(1) (f) and consequent insertion of Article 300 to the Constitution. It was remarked that land is the most priceless, perpetual possession from

¹⁰ (2019) 12 SCC 150

¹¹ (2019) 5 SCC 480

which people obtain their economic independence, social status and permanent means of occupation.

The discussion further pertained to Article 21 of the Constitution while referring to *Tukaram Kanaji Joshi & Ors. v. MIDC & Ors.*,¹² wherein the Supreme Court rejected the contention of the tenure holders that a compulsory acquisition violates the fundamental right guaranteed under Article 21. It was pointed through a series of decisions that since Article 300-A is not a basic feature of the Constitution, the provisions of Article 21 of the Constitution would not be attracted. [*Jilubhai Nanbhai Khachar & Ors. v. State of Gujarat & Anr.*¹³; *Chamel Singh & Ors. v. State of U.P. & Anr.*¹⁴; and *Amarjit Singh & Ors. v. State of Punjab & Ors.*¹⁵]. In *Ramji Veerji Patel v. Revenue Divisional Officer*¹⁶ the Supreme Court found fault with the Act 1874 as it did not adequately protect the interests of the land owners nor did it provide for rehabilitation/resettlement of persons displaced, which affected their livelihood. Similarly, in *Brij Mohan & Ors. v. HUDA & Anr.*,¹⁷ it was observed that it is the duty of the authorities to explore the avenues of rehabilitation and resettlement by way of employment, housing, investment opportunities and identification of alternative land.

The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013) was discussed at length with special reference to Section 3, 4, 9, 10, 11, 14, 15, 16, 19, 23, 24, 25, 26, 30, 36, 60, 69, 70 and 101. The Act of 2013 links land acquisition and the accompanying obligations for resettlement and rehabilitation. Over five chapters and two entire Schedules have been dedicated to outlining elaborate processes and entitlements for resettlement and rehabilitation. The Second Schedule in particular outlines the benefits such as land for land, housing, employment and annuities that shall accrue in addition to the one-time cash payments etc. Also, the Act applies retrospectively to cases where no land acquisition award has been made.

Elaborating upon Section 24 of the Act it was stated that where the land was acquired five years ago but no compensation has been paid or no possession has taken place the land acquisition

¹² AIR 2013 SC 565

¹³ AIR 1995 SC 142

¹⁴ AIR 1996 SC 1051

¹⁵ (2007) 10 SCC 43

¹⁶ (2011) 10 SCC 643

¹⁷ (2011) 2 SCC 29

process will start afresh in accordance with the provisions of this Act. The benefits however shall continue even if the possession could not be taken or compensation could not be paid because of interim order of the Court [*Pune Municipal Corporation & Anr. v. Harakchand Misrilal Solanki*¹⁸] This view held ground until the Constitution Bench decision in *Indore Development Authroity v. Manoharlal*¹⁹ was delivered. The issue in the case was whether deposit of compensation by the Government in treasury can be regarded as “paid” within the meaning of Section 24(2) of the Act of 2013 so as to save proceedings taken under the 1894 Land Acquisition from being lapsed. Consequently, the decision explored interpretation of Section 24(2) which was discussed in detail. The session further delved into Chapter V of the Act of 2013 which deals with rehabilitation and resettlement award. In this regard, a number of judgments such as *Collector of 24 Pargana v. Lalit Mohan Mullick*²⁰; *State of U.P. v. Pista Devi*²¹; *N.D. Jayel v. Union of India*²²; *State of Kerala v. Peoples Union for Civil Liberties*²³; *Mahanadi Coalfields Ltd. v. Mathias Oram*²⁴; and *State of M.P. v. Narmada Bachao Andolan*²⁵ were referred during the course of the session.

Finally, the discussion enlisted certain drawbacks of the 2013 legislation: (i) no policy for rehabilitation and resettlement in cases where land is temporarily acquired; (ii) Forcible acquisition by the government for its own use, hold and control, including for PSUs and for public purpose under Section 2(1) where prior consent of the affected families is not required; (iii) difficulty in determination of market value by the Collector under Section 26(b); and (iv) Chapter III of the Act 2013, dealing with acquisition of agricultural land, infringes the right of transfer and alienation of agricultural land, accorded to States under the “State List”- Entry 18.

¹⁸ AIR 2014 SC 982

¹⁹ (2020) 8 SCC 129

²⁰ AIR 1986 SC 622

²¹ AIR 1986 SC 2025

²² AIR 2004 SC 867

²³ (2009) 8 SCC 46

²⁴ (2010) 11 SCC 269

²⁵ AIR 2011 SC 1989