

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 4927 of 2023

NCLT Advocates Bar Association, Kolkata Bench & Ors.

Vs.

Union of India & Ors.

For the writ petitioners	:-	Mr. Joy Saha, Sr. Adv. Mrs. Manju Bhuteria, Sr. Adv. Mr. Patita Paban Bishwal, Adv. Ms. Urmila Chakraborty, Adv. Ms. Namrrataa Basu, Adv. Mr. Kanishk Kejriwal, Adv. Ms. Rashhmi Singhee, Adv. Ms. Janvi Luhariwala, Adv. Ms. Arundhuti Burman, Adv. Ms. Aishwarya Chowdhury, Adv. Mr. Dripto Majumdar, Adv.
For Union of India	:-	Mr. Dhiraj Trivedi, Adv. Mr. Avinash Kankani, Adv.
Hearing concluded on	:-	07.03.2025
Judgment on	:-	25.03.2025

Amrita Sinha, J.:-

1. The instant writ petition has been filed challenging the act of the respondent authority in taking steps to shift the National Company Law Tribunal ('NCLT' for short), Kolkata bench from its present location at 5, Esplanade Row West, B.B.D. Bag, Kolkata 700001 to Corporate Bhawan at New Town, Akandakeshari, Kolkata 700135.

2. The petitioner no. 1, Bar Association of the learned advocates practicing in NCLT, claims to have its registered office at 6, Old Post Office Street, ground floor, room no. 36, Kolkata 700001; the petitioner no. 2 claims to be a litigant whose matters are pending adjudication before the Tribunal and the petitioner no. 3 claims to be a clerk of an advocate who practices in NCLT.
3. It has been submitted that the building where NCLT is currently located is in the vicinity of the Hon'ble High Court and it has enough space to house the benches that are presently functioning. The present location is easily accessible by all stakeholders including the learned advocates, their staff and the litigants. The place where NCLT is sought to be shifted is in an extremely remote area approximately twenty-eight kilometres away from the High Court. The place is not properly accessible. There is lack of supportive infrastructure in and around the new site. None of the stakeholders will be able to avail the facility for which the Tribunal has been set up.
4. It has been submitted that NCLT has been sought to be made an extended limb of the Ministry of Corporate Affairs. The independence of the judiciary will be highly impaired if the department is permitted to set up the Tribunal. NCLT ought to have been set up by the Ministry of Law and Justice and not by the Ministry of Corporate Affairs. There is high chance of the judiciary being influenced if the corporate affairs department is permitted to set up the infrastructural facility of NCLT.

5. The importance of Article 50 of the Constitution of India relating to separation of judiciary from the executive has been heavily relied upon. It has been submitted that the State is bound to take steps to separate the judiciary from the executive in the public services of the State. If a particular department is permitted to lend infrastructural support to the judiciary, there is high possibility that the judiciary may not be in a position to function independently.
6. It has been submitted that neither public opinion nor the opinion of the stakeholders was sought for prior to taking a decision to shift NCLT. No advertisement or notification was published disclosing the shift of the venue of NCLT.
7. It has been argued that there is enough space in the building from where NCLT is currently functioning and there is absolutely no necessity to shift the Tribunal from its present location. Apart from NCLT there are other departments in the said building and if the said departments are shifted to the Corporate Bhawan, then the additional space that will be available can be utilized for functioning of NCLT.
8. Prayer has been made to issue writ of Mandamus commanding the respondents not to shift NCLT from its present location and to permit the Tribunal to function from its present address.
9. In support of the submission that the building from where NCLT is currently functioning is not a heritage building and necessary repairs and changes can be made therein to meet the standard of NCLT,

reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatrantrik Nagarik Samity & Ors.** reported in **(2010) 3 SCC 732**.

10. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **Swiss Ribbons Private Limited & Anr. Vs. Union of India & Ors.** reported in **(2019) 4 SCC 17** and **Union of India vs. R. Gandhi, President, Madras Bar Association** reported in **(2010) 11 SCC 1** wherein the Court clearly held that the administrative support for all Tribunals should be from the Ministry of Law and Justice. Neither the Tribunals nor their members shall secure or provided for facilities from the respective sponsoring or parent ministries or department concerned. The same is for the purpose of maintaining independence and security in service.
11. Learned Deputy Solicitor General of India appears on behalf of the Union of India and opposes the prayers of the petitioners. It has been submitted that the pleading relating to interference with the independence of judiciary if the Corporate Bhawan is set up under the aegis of the Ministry of Corporate Affairs is not incorporated in the writ petition. Only oral submission has been made at the bar by the learned advocate for the petitioners. The respondents did not get any opportunity to controvert the said allegation in the opposition.

12. It has been submitted that the writ petition has not been filed in the form of a public interest litigation. The petitioners cannot claim themselves as aggrieved parties. The decision to shift the venue of NCLT is a policy decision and the Court ought not to interfere with the same. Access to justice will not be hampered in any manner if NCLT is shifted from its current location to the proposed site.
13. Pecuniary jurisdiction of the Tribunal being one crore and above there are several matters which are pending adjudication. Due to scarcity of space and proper infrastructure, the litigants are faced with delay in getting justice in a timely manner. All the vacancies cannot be filled up because of the space crunch as all required facilities cannot be provided to the members and the staff.
14. Distance from the High Court cannot be a relevant factor for stalling the shift of the venue of NCLT. Huge sum of money has been invested for construction of the new building and making it ready with modern infrastructure for functioning of the same. All the required support system will be made available in the Corporate Bhawan.
15. It has been submitted that irrespective of the fact as to whether NCLT functions from the old site or the new one, all infrastructural facilities of the Tribunal are provided by the Ministry of Corporate Affairs all through. Because of scarcity of space, additional benches of NCLT cannot be set up. The process to shift the venue of NCLT was initiated

long back and the shifting ought not to be stalled after the entire project is over.

16. It has been denied that there will be any interference with the independence of the judiciary if the venue of NCLT is shifted as alleged or at all. The members of NCLT always functions independently and their activities are not interfered with either by the department or the Ministry in any manner whatsoever.
17. The National Company Law Tribunal Rules have been placed before the Court in support of the submission that NCLT has complete authority to decide the place of sitting. The present location from where NCLT is functioning is an old heritage building and doesn't have the adequate infrastructure to meet the present and future needs of the institution. Interest of all the stake holders including the members of the ICSI, ICAI, ICMA, the litigants and advocates dealing with company law and Indian Bankruptcy Code matters have been kept in mind.
18. Out of the six sanctioned posts of members, only two posts are functional as there is no space for accommodating additional benches or for storing the case records. From the new building at least four benches of the Tribunal will be able to function, which in turn, will speed up the process of the judicial proceeding. The Court rooms in the proposed building have been provided with good internet

connectivity and it will not be any problem for any of the stake holders to utilize the facility of virtual proceeding of NCLT.

19. The new building has state of art offices and the offices of the Ministry of Corporate Affairs, the Registrar of Companies, the Kolkata Official Liquidator attached to the High Court and the Serious Fraud Investigation Offices which are all scattered at different places would be brought in the same building for administrative convenience and also for the convenience of the public at large. The stakeholders will be able to utilise various facilities under one roof. The same will also enable in speedy and timely dispensation of justice resulting in an improvement in the ease of doing business in the State.
20. It has been submitted that once the infrastructure is set up, the connecting facilities will develop within a short period of time. It has been argued that the location where NCLT is proposed to be shifted is a developing area, extended part of the city of Kolkata and various new offices of IT, non-IT, PSU banks, private banks, Government organisations are shifting and building new office spaces in the same area to combat space crunch within the city. New Town is a sustainable neighbourhood and there is immense prospect of growth in the area in the near future.
21. It has been argued that the distance from the old site to the new one can be easily traversed by various means and it is not that the area is very difficult to reach. For the purpose of overall development of the

matters related to company affairs and for encouraging setting up of new companies in the State, the shifting is urgently required.

22. In support of their stand the respondents rely on the judgment delivered by the Hon'ble Supreme Court in the matter of **Allahabad University etc. -vs- Gitanjali Tewari (Pandey) and Ors.** reported in **2024 SCC OnLine SC 3776** wherein the Court held that while deciding a writ petition on the basis of affidavits, the writ courts enquiry ought to be restricted to the case pleaded by the parties and the evidence that have been placed on record as part of the writ petition or the counter/reply affidavit, as the case may be. Findings of the Court have to be based on the pleadings and the evidence produced before it by the parties. It is impermissible for the writ court to conjecture and surmise and make out a third case, not pleaded by the parties, based on arguments advanced in course of hearing.
23. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **Federation of Railway Officers' Association and Ors. -vs- Union of India** reported in **(2003) 4 SCC 289** wherein the Court took note of an earlier decision of the Hon'ble Supreme Court in the matter of **Union of India -vs- Kannadapara Sanghatanejala Okkutala and Kannadigara** reported in **(2002) 10 SCC 226** wherein the Court held that it is not the function of the Court to decide the location or the situs of the headquarters, it is the function of the Government. If benefit of a zonal headquarters in a particular place is more suited than any other place

in the zone, it would not affect the ultimate efficient functioning of the administration.

24. Reliance has also been placed on the judgment delivered by the Hon'ble Division Bench of the High Court of Gujarat at Ahmadabad on 17th January, 2017 in writ petition (PIL) no. 178 of 2016 (***Railway Claims Tribunal Advocates' Association & Anr. -vs- Union of India & 11 others***) wherein the Court was of the opinion that the decision taken by the respondent authorities to shifting the Tribunal from one place to the other is purely an administrative decision and unless it involves some legal mala fide or arbitrariness in the decision making process, it is beyond challenge. The Special Leave Petition challenging the judgment passed in the said matter stood dismissed by the Hon'ble Supreme Court on 24th July, 2017 in Petition for Special Leave to Appeal (C) diary no. 17940 of 2017.
25. It has been brought to the notice of the Court that vide gazette notification of the Ministry of Corporate Affairs dated 7th January, 2025 new members were appointed in NCLT and a new judicial member is due to join the Kolkata Bench of NCLT in terms of the order of the National Company Law Tribunal dated 3rd March, 2025. It has been submitted that in view of the pendency of the instant writ petition the shifting cannot take place which is hampering the functioning of the Tribunal.
26. Prayer has been made to dismiss the writ petition.

27. I have heard and considered the submissions made on behalf of both the parties and have perused the materials on record.
28. The primary reason for resisting the shifting from its old location to the new one is the distance between the two places. The petitioners have tried to contend that current location of NCLT in the vicinity of the High Court is beneficial and advantageous to the litigants, the advocates and the staff attached to the advocates.
29. It has been highlighted that the distance of the Corporate Bhawan is far away from the railway station, the metro station and also from the High Court. The new site, not being well connected, cannot be accessed on regular basis by the above group of persons for which there will be hindrance in access to justice. The subject location has been alleged to be not accessible for the common people through public mode of transportation and the litigants, the staff and the advocates will face a lot of difficulty in attending NCLT. Non-availability of public conveniences namely eateries, shops, facilities for printing, photocopy, typing, binding will cause delay in dispensation of justice.
30. A concern has been raised in the writ petition that the quality of the submissions/arguments, research work may not be done effectively and proper assistance may not be given to the NCLT Bench for arriving at a just and fair decision as senior learned members of the

Bar will be reluctant to leave High Court for addressing NCLT. This will affect the career growth of many junior members of the Bar.

31. The allegation of interference with the administration of justice if the Tribunal is permitted to be set up by the Ministry of Corporate Affairs, has not been pleaded in the writ petition. The said argument has been developed at the time of making submission. Nevertheless, since such an argument has been advanced, the Court will address the same.
32. NCLT is functioning from its present location for quite some time. The infrastructure has been made available by the Ministry of Corporate Affairs all along. It is not the case that the Ministry of Corporate Affairs will be providing the infrastructure for the first time at the new site. Objection was never raised by any of the parties that there has been interference in the administration of justice so long as NCLT was functioning at its old place. There is no reason as to why there will be interference in the administration of justice if the location of NCLT is changed from one place to the other.
33. The apprehension of the petitioners that it will be difficult to access the new place, lack of infrastructural facilities, remote distance may be proper. These are the initial birth pangs which occur whenever a new site or a place is tried to be developed. One has to overcome these factors to achieve anything new. Over a period of time the subject place will definitely be bustling with life.

34. The submission of the petitioners that senior advocates will not be readily agreeable to leave the High Court to argue a matter before NCLT cannot be a ground to hold on to an old structure where there is minimum opportunity of growth or future development. In my opinion, it will be a great opportunity for the junior members of the bar to get themselves prepared for arguing the matter before NCLT. By this way the juniors will also get equal opportunity to prosper and flourish. The senior advocates will always be available to guide the juniors. Facility of conducting virtual proceedings can be availed of.
35. The fact that most of the related departments have been sought to be brought under the same roof will be an added advantage to both the litigants and the staff. The records will be readily available and valuable time and energy can be saved in moving from one place to the other to collect information or get hold of a file.
36. It has been submitted by the respondents that all modern infrastructural facilities have been provided in the new building. It ought to be a pleasure for all stake holders to avail the benefits that will be provided and to make best use of the same so that justice can be administered in a time bound manner. The litigants will reap the most benefit from the shift and there is no reason to deny such facility to the citizens.
37. The Supreme Court in the matter of Swiss Ribbons (supra) and Madras Bar Association (supra) held that the functioning of NCLT and

NCLAT under the Ministry of Corporate Affairs needs to be corrected immediately. The administrative support for all Tribunals should be from the Ministry of Law and Justice. Neither the Tribunals nor their members shall seek or be provided with facilities from the respective sponsoring or parent ministries or department concerned.

38. True, in the instant case also the new building is being set up by the Ministry of Corporate Affairs. The Union of India ought to take reformative step in this regard. The same, however, cannot be a ground to stall the shift from the old building to a new one at a different location.
39. From time immemorial people have resisted to change and shift from one place to the other. Relocation is painful. Adjusting to a new place may not be easy always. There may be difficulties and challenges in the process. The initial logistic issues, financial uncertainties, time adjustments and various other factors may crop up. None is strong enough to stall or stop the process of relocation for the sole reason that the shift is for the public purpose. The shift of the location of the High Court to New Town is also in the pipeline, and may be, over a period of time, both the institutions will again be in the vicinity of the other.
40. I am of the considered opinion that the petitioners have not been able to make out a case, far less a strong case, requiring stalling the shift of NCLT from its existing place to the new one. The Tribunal has

already notified setting up of a new bench. It is expected that all stakeholders will accept the shifting of NCLT to the new building without any grudge or ill feeling and work harmoniously in aid of proper and speedy dispensation of justice.

41. The writ petition stands dismissed. The interim order stands vacated.
42. No costs.
43. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)