Uttarakhand Civil Judge (Mains) 2008

Language · compulsory paper

Time allowed : Three Hours · Maximum Marks : 100

Part-I (भाग - 1) · English Passage

1. Translate into the ordinary language spoken in the courts using Devanagari Script. [30 marks]

Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law.

No Lok Adalat has the power to 'hear' parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In this conciliatory role, the Lok Adalats are guided by principles of justice, equity and fair play. When the Legal Services Authorities Act refers to "determination" by the Lok Adalat and "award" by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by the parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

But it seems that many sitting or retired judges, while participating in Lok Adalats as members, tend to conduct Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through Lok Adalats, will drive the litigants away from Lok Adalats. Lok Adalats should resist their temptation to play the part of Judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strength and weaknesses, advantages and disadvantages of their respective claims.

Part-II (भाग - 2) · Hindi Passage

2. Translate the following Hindi passage into ordinary English language. [30 marks]

लोकहित मुकदमा प्रतिद्वन्द्वी प्रकृति का मुकदमा नहीं है वरन यह सरकार व उसके अधिकारियों को चुनौती का अवसर देता है कि वे मानवीय अधिकारों को समुदाय के वंचित तथा पीड़ित व्यक्तियों के लिए सार्थक बनाए एवं उन्हें सामाजिक व आर्थिक न्याय सुनिश्चित करें, जो संविधान की निहित भावना है। जनहित वाद का सरकार व उसके अधिकारियों को स्वागत करना चाहिए; क्योंकि यह उन्हें इस बात के परीक्षण का अवसर देगा कि क्या गरीब व दबे-कुचले लोगों को उनके सामाजिक व आर्थिक हक मिल रहे हैं या फिर वे समाज के शक्तिसम्पन्न व कठोर वर्गों के हाथों धोखे व शोषण के शिकार बने हुए हैं। जनहित वाद के तहत यदि शिकायत सही पाई जाती है तो न्यायालय अपने सांविधानिक दायित्व के निष्पादन के तहत शोषण व अन्याय को खत्म कर सकते हैं; कमजोर वर्ग के लोगों के अधिकार व हक को सुनिश्चित करा सकते हैं। जब न्यायालय जनहित वाद स्वीकार करता है तो उस समय

वह कार्यपालिका के प्राधिकारियों पर दोषारोपण की भावना से या विवाद पैदा करने की मंशा से काम नहीं करता, न ही उसकी शक्तियाँ अपने हाथ में ले लेने का इरादा रखता है। न्यायपालिका का यहाँ प्रयास होता है वंचितों एवं लाचारों के लाभ हेतु बनाए गए सामाजिक व आर्थिक कार्यक्रमों का समुचित क्रियान्वयन सुनिश्चित कराना एवं उनके मानवाधिकारों को उल्लंघन किए जाने से बचाना, जो कि कार्यपालिका का भी सांविधानिक दायित्व है। अतः न्यायालय केवल सांविधानिक उद्देश्यों को मूर्त रूप देने में सहायता करता है।

गरीब, असहाय एवं जरूरतमन्द व्यक्ति जो स्वयं न्यायालय के समक्ष पहुँचने में किसी विवशतावश समर्थ नहीं हैं, उन्हें किस प्रकार संविधान में निहित आदर्शों, यथा समानता का अधिकार, विधि शासन व सामाजिक न्याय मिल सके इसके लिए जनहित वाद एक नवीन यंत्र है जिसके अन्तर्गत प्रक्रियात्मक औपचारिकताओं व पक्षकारों द्वारा अभिवचन की तकनीकियों पर जोर न देकर समाज के हर वर्ग को उपरोक्त आदर्शों का लाभ प्राप्त हो, न्यायालय इस पर जोर देती है। जनहित वाद के मामलों में न्यायालय इस बात को महत्त्व नहीं देता कि मुकदमा जिसके द्वारा लाया गया है क्या उसके किसी विधिक अधिकार का उल्लंघन हुआ है ? बल्कि न्यायालय का ध्यान इस बात पर होता है कि मामला कितने सार्वजनिक महत्त्व का है। अतः गरीब व असहाय व्यक्तियों की ओर से जो व्यक्ति या संस्था न्यायालय में मुकदमा लेकर पहुँचता है तो न्यायालय उसके सुने जाने के अधिकार को मान्यता देगा। किन्तु जनहित वाद किसी व्यक्ति या व्यक्तियों के समूह द्वारा उनके व्यक्तिगत स्वार्थ या वैमनस्यता अथवा ईर्ष्या की भावना से ओतप्रोत होकर दायर नहीं किया जाना चाहिए। जो लोग व्यक्तिगत उपलब्धि या व्यक्तिगत लाभ के लिए लोकहित वाद का दुरुपयोग करते हैं वे न्यायालय का बहुमूल्य समय व्यर्थ में खराब करते हैं।

Part-III (भाग - 3)

3. Write a précis in English of the following passage. [40 marks]

The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short, the 'TADA Act') have taken note of the reluctance shown by witnesses to depose against dangerous criminals terrorists. In a milder form also the reluctance and the hesitation of witnesses to depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies.

Legislative measures to emphasise prohibition against tampering with witnesses, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair as noted above to the needs of the society. On the contrary, the efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interests of the individual accused. In this Courts have a vital role to play.

The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. The Criminal Procedure Code and the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence gathering process. They have to monitor the proceeding in aid of justice in a manner that something which is not relevant, is not unnecessarily brought into record. The Court

cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency.

De Facto IAS