2026 INSC 1277

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1548 / 2024

Union of India and others …Appellant(s)

versus

J. Sekar …Respondent(s)

with

Civil Appeal No. 1549 / 2024

Civil Appeal No. _____ / 2026
(arising out of Special Leave Petition (Civil) No. 7795 / 2024)

Criminal Appeal No. _____ / 2026
(arising out of Special Leave Petition (Criminal) No. 11548 / 2024)

Civil Appeal No. _____ / 2026
(arising out of Special Leave Petition (Civil) No. 149 / 2025)

Writ Petition (Civil) No. 186 / 2025

Civil Appeal No. _____ / 2026
(arising out of Special Leave Petition (Civil) No. 9415 / 2026)

Civil Appeal No. _____ / 2026
(arising out of Special Leave Petition (Civil) No. 5308 / 2026)

Civil Appeal No. _____ / 2026
(arising out of Special Leave Petition (Civil) No. 5442 / 2026)

Civil Appeal No. _____ / 2026
(arising out of Special Leave Petition (Civil) No. 6888 / 2026)

Civil Appeal No. _____ / 2026
(arising out of Special Leave Petition (Civil) No. 6540 / 2026)

Civil Appeal No. _____ / 2026
(arising out of Special Leave Petition (Civil) No. 6434 / 2026)

JUDGMENT

Leave granted.

2. The present batch of appeals arises from judgments of the High Courts of Delhi, Calcutta and Telangana. Though the matters spring from distinct factual settings, they converge upon a common question: the composition of the Adjudicating Authority (**AA**) under the Prevention of Money Laundering Act, 2002 (**PMLA**), and its competence to discharge its functions through a single Member, more particularly one who is not a Judicial Member. The same question is raised in Writ Petition (Civil) No. 186/2025, instituted under Article 32 of the Constitution by one Mr. Pavel Aleksandrovich Prozorov.

3. The law against money laundering is, by its nature, a law of pursuit. It follows money through every disguise it is made to wear, across accounts, entities and borders, until the proceeds of crime can be traced back to their source. A law of pursuit must necessarily be a law of reach, and the PMLA does not want for it. Property may be attached, premises searched, assets frozen and persons arrested, often upon a belief recorded in writing by a single officer, and well before any court has had occasion to pronounce upon guilt.

4. A statute that permits the State to reach into a citizen's estate before guilt is proved must, in the same breath, tell the citizen before whom he may answer. The PMLA operates through the AA. A person whose property has been attached first presents their case before the AA. Throughout the investigation or trial, the AA's order determines whether that person retains their property or must surrender possession to the Union. Put simply, the PMLA casts a broad net and the AA must determine what that net may lawfully encompass.

5. The authority of such a forum is conferred by the statute. Its credibility, however, must be earned by the competence of those who sit in it. The present batch asks whether that competence is assured when the AA speaks through a single Member who is not drawn from the field of law. The answer depends on what the AA is actually called upon to do: whether it is merely the keeper of the sealed cover, or whether it must also hold the scales.

6. The present batch tests the second of these aspects. It asks whether the AA may discharge its functions through a single Member who does not have legal background. The answer, as we shall explain, does not lie in the text of Section 6 alone. It turns on a closer understanding of what the AA is actually called upon to do: whether it is merely the keeper of the sealed cover, or whether it must also

hold the scales; and, if it does both, whether the same answer must govern each. It is with these considerations in view that we turn to the facts.

A. FACTUAL MATRIX

A.1 The Lead Matter: Civil Appeal No. 1548/2024

7. At the outset, and for the sake of convenience, we shall advert in some detail to the facts of the lead matter, being Civil Appeal No. 1548/2024.

7.1. The lead case traces its origin to an investigation by the Income Tax Department into the finances of M/s SRS Mining, a partnership firm of which the Respondent is the Managing Partner. On 08.12.2016 and 09.12.2016, Income Tax Officers searched several office premises of the firm, as well as the residential premises of its partners, including the Respondent. The searches yielded cash exceeding Rs. 132.73 crores, comprising currency notes that had then recently been demonetised as well as the newly introduced Rs. 2000 notes, together with 128.495 kg of gold, then valued at Rs. 36.72 crores.

7.2. Independently of the proceedings relating to undisclosed income and the consequent evasion of tax, the Central Bureau of Investigation (**CBI**) registered FIR No. RC-MAI-2016-A-0040 against the partners of the firm and certain unidentified bank officials. It

was alleged that the partner of the firm had, in connivance with those officials, converted large sums of unaccounted demonetised currency into new currency notes, in breach of the guidelines issued by the Reserve Bank of India. Offences under Sections 409 and 420 of the Indian Penal Code, 1860 and Sections 13(2), 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 came to be invoked accordingly.

7.3. Treating the said FIR as the predicate scheduled offence, the Directorate of Enforcement (**ED**) registered Enforcement Case Information Report (**ECIR**) No. 19/2016 dated 19.12.2016, and commenced an inquiry into allegations of money laundering connected with the offences under investigation by the CBI.

7.4. In the course of that investigation, the Deputy Director of the ED, namely Appellant No. 3, issued Provisional Attachment Order (**PAO**) No. 13/2017 dated 29.05.2017 under Section 5(1) of the PMLA, attaching movable properties standing in the name of the Respondent and valued at Rs. 8.57 crores. In compliance with Section 5(5), the Deputy Director thereafter filed Original Complaint (**OC**) No. 780/2017 before the AA on 12.06.2017.

7.5. Acting upon the complaint, the AA issued a notice dated 21.06.2017 to the Respondent under Section 8(1), calling upon him to show cause why the provisionally attached properties should not

be declared to be involved in money laundering, and why the attachment should not, consequently, be confirmed. It bears notice that the AA then consisted only of a Technical Member, officiating as its Chairperson; no Member drawn from a judicial or legal background was then in office.

7.6. Aggrieved by the notice dated 21.06.2017, the Respondent instituted Writ Petition (Civil) No. 5320/2017 before the Delhi High Court, ***(i)*** challenging the *vires* of the second proviso to Section 5(1) of the PMLA; ***(ii)*** assailing the issuance of a show-cause notice by a single-Member AA without any Judicial Member; and ***(iii)*** seeking the quashing of the PAO dated 29.05.2017 as well as the notice dated 21.06.2017.

7.7. The writ petition was heard together with several others, in which the petitioners had laid a similar challenge to the *vires* of the same provisions of PMLA, while also seeking relief on the facts of their respective cases. Given the common questions of law, the batch was placed before a Division Bench of the High Court, which confined itself to those questions and did not enter upon the facts of the individual cases.

7.8. By its judgment dated 11.01.2018, reported as ***J. Sekar v. Union of India***,[1] the Division Bench answered those questions in the following terms:

(i) The writ petitions were maintainable before the Delhi High Court, the AA being located at New Delhi, even though the underlying proceedings under the PMLA arose outside the territorial jurisdiction of that Court;

(ii) The power conferred upon officers of the ED to provisionally attach property under the second proviso to Section 5(1) of the PMLA was upheld, subject to the stipulation that the 'reasons to believe that the non-attachment of the property is likely to frustrate any proceeding under this Act', as recorded by such officer, must be conveyed to the person concerned as part of the show-cause notice issued by the AA;

(iii) There is no statutory bar against a sole Member discharging the functions of the AA, whether sitting as a Bench or in the absence of the other Members;

(iv) A Judicial Member is not required to form part of the AA, or of a Bench thereof, for the discharge of its functions under the PMLA; and

[1] 2018 SCC OnLine Del 6523.

(v) The writ petitions were directed to be placed before a Single Judge of the High Court for adjudication on their individual facts.

7.9. The Union of India, aggrieved by the findings in the judgment dated 11.01.2018 on the maintainability of the writ petitions before the Delhi High Court and on the requirement to communicate the 'reasons to believe', preferred Special Leave Petition (Civil) No. 12865/2018 before this Court. By an order dated 04.07.2018, this Court issued notice and stayed the operation of the said judgment. Leave was subsequently granted on 31.01.2024.

7.10. In the meantime, by an order dated 04.12.2018, the High Court permitted the Respondent to withdraw his writ petition and to pursue the statutory remedy before the AA. This, it appears, is also why the Respondent has not entered appearance in the present appeal, despite service having been effected.

A.2 The Connected Matters

8. The connected matters differ in their particular facts. For the sake of completeness, however, we consider it apposite to notice their salient features briefly.

8.1. The Appellant in Civil Appeal No. 1549/2024 had approached the Delhi High Court by way of Writ Petition (Civil) No. 8521/2017,

challenging the *vires* of the second proviso to Section 5(1) of PMLA, as also a show-cause notice issued by an AA consisting of a single Technical Member. That writ petition, too, was disposed of by the common judgment in ***J. Sekar (supra)***, which is under challenge in the lead case. Unlike the lead matter, however, this appeal has been preferred by a private party, who assails the findings of the High Court on the constitutionality of Section 5(1) and on the validity of an AA functioning through a single, non-Judicial Member.

8.2. The Appellant in the Civil Appeal arising out of Special Leave Petition (Civil) No. 7795/2024 approached the Calcutta High Court by way of a writ petition, seeking the quashing, or in the alternative, to keep in abeyance, the adjudication pending before the AA on an application made by the ED under Section 17(4) of the PMLA. The contention, once again, was that the AA could not adjudicate through a single Member, much less one who was not a Judicial Member. That contention was rejected by a learned Single Judge, and thereafter by the Division Bench in an intra-court appeal, in ***R.P. Infosystems Ltd. v. Adjudication Authority, PMLA***.[2]

8.3. The Telangana High Court, by separate judgments and orders passed in Writ Appeal Nos. 611/2023 and 604/2023 and in Writ

[2] (2023) 2 HCC (Cal) 251.

Petition No. 40454/2025, declined to interfere with show-cause notices issued by the AA under Section 8(1) of the PMLA. The Calcutta High Court, likewise, by a common order dated 28.01.2026, disposed of a batch of writ petitions seeking analogous relief. Each of these decisions substantially follows the reasoning in ***J. Sekar (supra)*** and ***R.P. Infosystems Ltd. (supra)***. The private parties aggrieved thereby have preferred the remaining Special Leave Petitions, which now stand converted into Civil and Criminal Appeals. In the Civil Appeal arising out of Special Leave Petition (Civil) No. 5308/2026, which assails the order dated 28.01.2026, this Court has stayed the proceedings before the AA.

8.4. Lastly, the Petitioner in Writ Petition (Civil) No. 186/2025, mindful that the questions noticed above were already pending before this Court, has invoked Article 32. He seeks the quashing of the PAO dated 03.12.2024 issued in respect of his property, and of the consequential show-cause notice dated 14.01.2025 issued by a single-Member AA. By an interim order dated 17.03.2025, this Court clarified that, the larger question being pending, the petition would be considered only in respect of the latter prayer, namely, the challenge to the show-cause notice. Pursuant to the order dated 30.01.2026, the Petitioner has since amended the writ petition to also challenge the *vires* of Sections 6(5)(b) and 6(7) of the PMLA,

insofar as they permit certain matters before the AA to be heard by a Bench that does not include a Judicial Member.

B. CONTENTIONS OF THE PARTIES

B.1 On behalf of the Private Appellants

9. Mr. Vikram Chaudhri, Mr. Gopal Sankaranarayanan, Mr. S. Niranjan Reddy, and Mr. Siddharth Agarwal, learned Senior Counsel, and Mr. Mahfooz Ahsan Nazki, Mr. Jatin Sehgal, and Mr. Shubhankar Nag, learned counsel, argued on behalf of the Appellants in all matters other than Civil Appeal No. 1548/2024, and for the Petitioner in Writ Petition (Civil) No. 186/2025 (collectively, the **Private Appellants**). Their common refrain was that the AA cannot function without a Judicial Member, and that a single Member without a legal background cannot be permitted to discharge its functions. In support, they urged as follows:

(a) The AA discharges *quasi*-judicial functions. It appreciates the facts and documents placed on record, interprets statutory and penal provisions, and determines whether the property in question constitutes 'proceeds of crime' and is involved in money laundering. Such an exercise calls for a Judicial Member, capable of applying settled legal standards to the facts of each case;

(b) Parliament has established the AA as a necessary safeguard against arbitrary action by officers of the ED, by requiring that the material in their possession and the 'reasons to believe' recorded by them be forwarded to the AA forthwith. Such a process empowers, *inter alia*, the provisional attachment of property, search and seizure, whether of premises or of persons, and arrest of accused persons. Heavy reliance was placed on the decision of a coordinate Bench of this Court in ***Vijay Madanlal Choudhary v. Union of India***,[3] wherein the AA has been identified as the objective custodian of the reasons recorded in writing and the material relied upon by the ED at the stages of provisional attachment, search and seizure, and arrest. Given this role, it was urged, that a Member with a judicially trained mind must participate in such processes if the object of the legislation is to be fully realised;

(c) The decisions of the AA bear gravely upon the civil rights of the persons concerned, particularly their right to the possession of their properties. Once the AA confirms an attachment, the person ceases to enjoy any benefit from the asset, a position that continues for a period of 365 days during investigation, or until a final order of confiscation or detachment is passed by

[3] (2023) 12 SCC 1, para 191 and 193.

the Special Court upon the conclusion of the trial. A decision entailing such civil consequences, it was argued, cannot be entrusted to a body manned only by Administrative or Accounting Members without any judicial background;

(d) Section 11 of the PMLA vests the AA with powers akin to those of a civil court under the Code of Civil Procedure, 1908, so as to ensure a complete record and adherence to the principles of natural justice. Sub-section (3) thereof goes further and stipulates that its proceedings shall be treated as judicial proceedings. This must be read with Section 41, by which Parliament has barred the jurisdiction of civil courts over matters that the AA is empowered to determine. The AA, thus exercising powers which would ordinarily vest in civil courts, cannot function without a Judicial Member;

(e) Further, the Judicial Member must be the Chairperson of the AA, so as to preserve the objectivity and legal integrity of its determinations. This, it was urged, follows from the principles laid down by a Constitution Bench of this Court in ***L. Chandra Kumar v. Union of India***,[4] which mandate judicial

[4] (1997) 3 SCC 261.

independence in Tribunals and other *quasi*-judicial bodies that oust the jurisdiction of the regular courts;

(f) The availability of an appeal against orders of the AA to the Appellate Tribunal (**AT**) under Section 26 of the PMLA, and of a further appeal to High Court under Section 42, does not detract from the adjudicatory character of the functions of the AA, or from the need for judicial objectivity in its decision-making. The mere availability of an appellate remedy before a judicial forum does not displace the *quasi*-judicial duties cast upon the AA; and

(g) Under Section 6(5) of the PMLA, the AA is to exercise its jurisdiction through 'Benches'. Each Bench, it was contended, must consist of the Chairperson together with one or both of the other Members, and not of the Chairperson or a Member sitting alone. In support, reliance was placed on Regulation 26(2) of the Adjudicating Authority (Procedure) Regulations, 2013, which provides that "Every sheet of the order shall bear the signature of the Chairperson and Members constituting the Bench." A Bench without the Chairperson is, therefore, not contemplated. On the same footing, the reference in Section 6(7) to 'a Bench consisting of two Members' was said to denote a Bench of the Chairperson together with both the other

Members, as distinct from a regular Bench of the Chairperson and one Member.

B.2 On behalf of the Union of India and the Directorate of Enforcement

10. Mr. Anil Kaushik, learned Additional Solicitor General of India, and Mr. Zoheb Hossain, learned Senior Counsel, appeared for the Union of India and the ED. Controverting the submissions of Private Appellants, they contended that neither Section 6 nor any other provision of the PMLA forbids the functions of the AA from being discharged by a Bench consisting of a single Member drawn from an administrative or accounting background. In elaboration, they submitted as follows:

(a) The language of Section 6 of the PMLA is plain and admits of no ambiguity. It neither requires the Chairperson to be drawn from the field of law, nor requires every Bench to include the Judicial Member;

(b) On a true construction of clause (b) of sub-section (5), read with sub-section (7), a Bench would ordinarily consist of a single Member, and a matter may be placed before a Bench of two Members where circumstances of the kind contemplated in sub-section (7) arise. The composition of the AA as an

institution must not be conflated with the constitution of its Benches, which would ordinarily consist of one Member alone;

(c) There is no warrant for reading into the provisions a requirement that a Judicial Member must participate in every decision of the AA. Regulation 26 of the Adjudicating Authority (Procedure) Regulations, 2013 is purely procedural, and merely acknowledges that a Bench may consist of the Chairperson and Members. No mandate can be drawn from it; and, in any event, a procedural regulation cannot impose a restriction that the parent enactment does not contemplate;

(d) The functions of the AA are, in essence, administrative, the AA acting as the repository of the material relied upon and the reasons recorded by the officers of ED. The process of adjudication is also inherently an executive function and is entrusted to executive functionaries under various other enactments, such as the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS**), the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (**SAFEMA**), the Prohibition of Benami Property Transactions Act, 1988 (**Benami Act**), and the Customs Act, 1962 (**Customs Act**). The AA cannot, therefore, be equated with ordinary

courts or tribunals so as to require the participation of legally trained members; and

(e) The allocation of cases and functions according to the expertise they require is best left to the wisdom of the Chairperson of the AA, since the demands of each case turn upon its own facts.

C. ***ISSUES FOR CONSIDERATION***

11. We have heard learned Senior Counsel and learned counsel for the parties at a considerable length and have carefully perused the record.

12. We must note at the outset that although the Union of India has preferred Civil Appeal No. 1548/2024 against the judgment in ***J. Sekar (supra)***, specifically on the territorial jurisdiction of the Delhi High Court and on the legal necessity for the AA to forward the 'reasons to believe' recorded under the second proviso to Section 5(1), neither side has advanced substantive submissions on these aspects. This is all the more so because the Respondent in that appeal, J. Sekar, has not entered appearance before this Court. Moreover, since the filing of that Special Leave Petition in 2018, this Court has upheld the *vires* of the second proviso to Section 5(1) in ***Vijay Madanlal Choudhary (supra)***, with specific reference to ***J. Sekar (supra)***. In these circumstances, we consider it appropriate to refrain from expressing any opinion on these

issues in the present batch, while clarifying that the parties shall remain at liberty to raise their contentions thereon in appropriate proceedings.

13. The following principal issues, accordingly, arise for our consideration:

i. Whether the AA can discharge its functions through a single, non-Judicial Member?

ii. Whether every Bench of the AA must include a Judicial Member?

iii. Whether the Chairperson of the AA must necessarily be a Judicial Member?

D. ANALYSIS

D.1 The Legislative Architecture of the Adjudicating Authority

14. Before we construe the provisions of the PMLA in the light of rival contentions, it is necessary to understand the place that the AA occupies within the scheme of the statute.

15. The PMLA was enacted to prevent money laundering and to provide for the confiscation of the monies and properties involved in it. The identification, securing and eventual confiscation of such property is, as the objects of the Act themselves make clear, central to its design. It is to this end that Section 6 constitutes the AA as a civil

adjudicatory authority, entrusted with various functions in relation to the properties, assets and records seized or attached by the ED in exercise of its powers under the same statute.

16. As originally enacted, the PMLA contemplated more than one AA, the Central Government being empowered to appoint 'one or more Adjudicating Authorities'. The legislative design, evidently, was that there could be several AAs, each consisting of a Chairperson and two Members.

17. That design was altered by the Prevention of Money Laundering (Amendment) Act, 2009 (**2009 Amendment**), which replaced every reference to multiple AAs with the singular. There is, therefore, now only one Adjudicating Authority. Section 6, as it presently stands, reads as follows:

> "***6. Adjudicating Authorities, composition, powers, etc.***–
> *(1) The Central Government shall, by notification, appoint an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act.*
> ***(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:***
> ***Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.***
> *(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority,—*
> *(a) in the field of law, unless he—*
> *(i) is qualified for appointment as District Judge; or*
> *(ii) has been a member of the Indian Legal Service and has held a post in Grade I of that service;*
> *(b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.*

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

(5) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(6) Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

(8) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office: Provided that no Chairperson or other Member shall hold office as such after he has attained the age of sixty-five years.

xx xx xx xx

(13) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

xx xx xx xx"

[Emphasis supplied]

18. A plain reading of the above provision discloses the following design. There is to be a single AA, consisting of three Members drawn, one each, from the fields of ***(i)*** law; ***(ii)*** administration; and ***(iii)*** finance or accountancy. The AA thus has a Judicial Member,

an Administrative Member and a Financial Member. It is to function through Benches, which may consist of some or all of these Members, and for which territorial jurisdiction may be specified.

19. One of the three Members is to be appointed as the Chairperson, who exercises administrative superintendence over the functioning of the AA, including by constituting Benches and allocating cases and applications among the Members. Sub-sections (13) and (14) ensure that such superintendence continues uninterrupted where the office of the Chairperson falls vacant, or where the Chairperson is unable to discharge those functions.

20. The appointment of Chairperson and Members is governed by the Prevention of Money-Laundering (Appointment and Conditions of Service of Chairperson and Members of Adjudicating Authorities) Rules, 2007 (**2007 Rules**). Rule 3 thereof restates the eligibility prescribed in Section 6(3)(a) for the Member from the field of law and lays down the qualifications required for the other two Members. Rule 4 constitutes a Selection Committee for the appointment of Members, consisting of ***(i)*** the Revenue Secretary, Government of India, as Chairman; ***(ii)*** the Secretary, Department of Legal Affairs, Government of India; and ***(iii)*** the Chairman, Central Board of Direct Taxes, or the Chairman, Central Board of

Excise and Customs, as Members. Under Rule 5, the Selection Committee is further tasked with recommending one of the Members for appointment as the Chairperson.

D.2 The Text of Section 6: Who May Sit, and in What Number

21. The submissions of the parties proceed on two planes: the textual import of Section 6 of the PMLA, and the necessity of legal objectivity in the functioning of AA. We consider it prudent to address the former first, since it is the text of the statute that marks the outer limits within which any further inquiry must proceed.

22. Nothing in the PMLA or in the 2007 Rules requires the Chairperson of the AA to be drawn from the field of law. The contrast with the provisions that governed the AT is instructive. Section 6(3) merely prescribes the eligibility of the Member from the field of law, and Section 6(4) does not require that such Member alone be appointed as the Chairperson. Section 28(1), on the other hand, as it stood before Sections 27 and 28 were omitted by the Finance Act, 2016, specifically provided that only a person who has been, or is qualified to be, a Judge of the Supreme Court or of a High Court could be appointed as the Chairperson of the AT. Where Parliament intended the head of an adjudicatory body under this very Statute to be a judicially trained person, it has said so in categorical terms. Its silence in the case of the AA is, therefore, not an inadvertent

omission on the part of the draftsman, but a conscious and deliberate legislative choice.

23. As to the constitution of a 'Bench' under Section 6(5)(b), the Private Appellants have strenuously argued that the expression 'one or two Members' refers only to the other Members, and is exclusive of, and in addition to, the Chairperson. The Union of India and the ED, *per contra*, contend that the expression means that a Bench may consist of 'one or two Members' in all, with or without the Chairperson. In essence, the Private Appellants claim and the Official Respondents repel the submission that 'Bench' cannot mean a Single-Member Bench.

24. Such contention of the Private Appellants, however, fails to pass muster, both literally and contextually.

25. On the first count, we must observe that the word 'Bench' does not always signify a panel of judges. It can, in appropriate cases, also refer to a Single-Member Bench. The Oxford Advanced Learners Dictionary,[5] *inter alia*, defines the word as "*a judge in court or the seat where he/she sits; the position of being a judge or magistrate*". It is also described as "*the raised area occupied by the judge in its official capacity*" or "*the court considered in its official capacity*" by

[5] Oxford Advanced Learner's Dictionary (11th edn, OUP 2026).

the Black's Law Dictionary.[6] The import of the term 'Bench', evidently, is towards the position and role of the Court or other adjudicatory body, not to plurality of judges executing such role. Hence, in a lexicographical sense, it cannot be said that the use of the expression 'Bench' would invariably denote multiple members of a Tribunal. This understanding, in the context of the Rules of the High Court at Patna, was approved by a coordinate Bench of this Court *vide* judgement in ***Rajendra Prasad Jain v. Sheel Bhadra Yajee***,[7] holding as follows:

> "***2.*** *… The first is that the word "Bench" used in the referring order cannot be interpreted as necessarily indicating that the case must be laid before two or more Judges. In this connection, the language of Rule 1(xi) and Rule 3 of Chapter II of the Rules of the High Court at Patna is significant. Under Rule 1(xi), a case under the Indian Companies Act is to be heard by a Single Judge; and Rule 3 indicates the nature of one of the orders which can be passed by a Bench hearing the case under Rule 1(xi). Thus, in Rule 3 of the Rules of the High Court at Patna itself a Single Judge is referred to as a Bench. In fact, it is well-known that, when referring to Judges of the High Court sitting to decide a case, the expressions frequently used are Single Bench and Division Bench.* ***The word "Bench" used in the referring order, even in its ordinary connotation, would, therefore, include a Single Judge.*** *…*"
>
> [Emphasis supplied]

26. A contextual reading of Section 6 of the PMLA makes it further clear that the Bench need not necessarily include the Chairperson. The term 'Member' includes the Chairperson. Sub-section (2) of Section 6 provides that the AA shall consist of "a Chairperson and two *other*

[6] Black's Law Dictionary (12th edn, Thomson Reuters 2024).
[7] 1967 SCC OnLine SC 258.

Members," while sub-section (4), read with Rule 5 of the 2007 Rules, makes it clear that the Chairperson is one of the Members, appointed to that office. Sub-section (7), similarly, enables the transfer and assignment of a case to a Bench of at least two Members, leaving no doubt that a 'Bench' may consist of one or two Members. If a Single-Member Bench is of the view that the case assigned to it is required to be heard by a two-Member Bench, the Member may refer the matter to the Chairperson for transfer. The Chairperson may also exercise such power *suo motu*, if he deems fit. This reading also accords with the manner in which the terms 'Chairperson' and 'Member' of the AT are defined in Sections 2(1)(g) and 2(1)(o) of the PMLA.

27. Were the Chairperson to be excluded from the expression 'one or two Members', as urged by the Private Appellants, a Bench of 'two Members' sitting with the Chairperson would mean that the AA sit and hear cases *en bloc*, rending Section 6(5) of PMLA redundant. There is no gainsaying that such could not have been the intention of the legislature. The expression 'one or two Members' cannot, therefore, be read so as to place the Chairperson in a class apart from the Members.

28. We, thus, find greater force in the construction advanced by the Union of India, namely, that a Bench may consist of one Member,

being either the Chairperson or one of the other Members, or of two Members, being either the Chairperson and one other Member, or the two Members other than the Chairperson.

29. Equally, nothing in the text of the PMLA mandates the Member from a judicial or legal background to sit on every Bench.

30. The bare text of the PMLA, therefore, lends no support to the submissions of Private Appellants. That, however, does not conclude the inquiry. The Private Appellants urge, in the alternative, that the nature of the functions entrusted to the AA itself demands the participation of a Judicial Member, and that such a requirement must be read into the statute. It is to this contention that we now turn.

D.3 The Functions of the AA and the Need for a Legal Mind

31. Section 6(1) contemplates that the AA shall exercise the jurisdiction, powers and authority conferred upon it by or under the PMLA. To take a complete view, it is appropriate to enumerate the functions so entrusted:

(i) Under Sections 5(2), 16(2), 17(2), 18(2), 19(2), 20(2) and 21(2), the AA receives a copy of the PAO or other order passed by the officer of the ED, together with the material in the officer's

possession or the reasons recorded by the officer in writing, and preserves the same for the prescribed period;

(ii) Under Section 5(5), the AA receives a complaint from the officer of the ED, setting out the facts that led to the PAO and seeking confirmation of the attachment of the properties concerned;

(iii) Under Sections 17(4) and 18(10), the AA receives an application from the officer of the ED, seeking the retention of property or records seized, or the continuation of the freezing of any asset;

(iv) Under Section 8(1), the AA issues a notice to all persons concerned, calling upon them to indicate the sources of their income in respect of the properties in question, and to show cause why the attachment should not be confirmed; the property or record should not be retained; or the freezing of the asset should not be continued;

(v) Under Section 8(2), the AA affords the parties a full oral hearing and considers their rival submissions, before recording a finding as to whether or not the property in question is involved in money laundering;

(vi) Under Section 8(3), the AA passes an order consequent upon that finding, confirming the attachment, retention, freezing, or

other action regarding the property, record, or asset, as the case may be;

(vii) Under the first proviso to Section 9, the AA determines whether any encumbrance or leasehold interest over attached property was created to defeat the provisions of Chapter III of the PMLA, and, if so, declares such encumbrance or interest to be void; and

(viii) Under Sections 20(4) and 21(4), the AA, if satisfied that the retention of a property or record is necessary for adjudication under Section 8, permits such retention beyond 180 days.

32. On a closer examination, these functions fall into two distinct categories. In the *first*, the AA receives and preserves the reasons recorded, and the material relied upon, by officers of the ED when they attach property, conduct searches and seizures, freeze assets or records, or arrest persons. In the *second*, the AA adjudicates upon the complaints and applications filed by the ED, and determines whether the property in question is involved in money laundering, with consequential orders following upon that determination. In the former, the AA is the keeper of the sealed cover; in the latter, it holds the scales.

33. The Private Appellants rely heavily on both sets of functions to contend that the absence of a Judicial Member would render the objectivity of the AA nugatory. In our considered view, the two roles differ substantially in their nature and consequence, and the submissions must, therefore, be evaluated separately in relation to each.

D.3.1 The Custodial Function: Receiving and Retaining the 'Reasons to Believe' and the 'Material Relied Upon'

34. The PMLA empowers officers of the ED to take a range of investigative and preventive measures in order to combat money laundering, including search and seizure, the search of persons, the freezing of intangible property, the attachment of property and the arrest of persons. Powers of such amplitude must, as a necessary concomitant, be accompanied by adequate safeguards against their misuse.

35. It is for this purpose that the PMLA designates the AA as an objective and independent body, to which officers of the ED must forward the relevant material whenever they exercise these powers. The relevant provisions may usefully be extracted at this stage:

> "***5. Attachment of property involved in money-laundering.***– *(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section,* ***has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession****, that—*

xx xx xx xx

*he may, **by order in writing**, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:*

xx xx xx xx

*(2) **The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope**, in the manner as may be prescribed and **such Adjudicating Authority shall keep such order and material for such period as may be prescribed**.*

xx xx xx xx

***16. Power of survey.**–*

*(1) Notwithstanding anything contained in any other provisions of this Act, where an authority, **on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing)** that an offence under section 3 has been committed, he may enter any place—*

xx xx xx xx

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act ….:

xx xx xx xx

*(2) The authority referred to in sub-section (1) **shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope**, in the manner as may be prescribed and **such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed**.*

xx xx xx xx

***17. Search and seizure.**–*

*(1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, **on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing)** that ….:*

xx xx xx xx

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search …;

(b) break open the lock … where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification …;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person …:

* * * *

(1A) ***Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property*** *whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:*

xx xx xx xx

(2) The ***authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope****, in the manner, as may be prescribed and* ***such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed****.*

xx xx xx xx

18. Search of persons.*–*

(1) If an authority, authorised in this behalf by the Central Government by general or special order, ***has reason to believe (the reason for such belief to be recorded in writing)*** *that any person has …, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act:*

* * * *

(2) The ***authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope****, in the manner, as may be prescribed and* ***such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed****.*

xx xx xx xx

19. Power to arrest.*–*

(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, ***has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing)*** *that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*

(2) ***The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope****, in the manner, as may be prescribed and* ***such Adjudicating Authority shall keep such order and material for such period, as may be prescribed****.*

xx xx xx xx

20. Retention of property.*–*

(1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, ***on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8****, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.*

(2) ***The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope****, in the manner as may be prescribed and* ***such Adjudicating Authority shall keep such order and material for such period as may be prescribed****.*

xx xx xx xx

21. Retention of records.*-*

(1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf has ***reason to believe that any of such records are required to be retained for any inquiry under this Act****, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.*

xx xx xx xx

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen ***unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period****.*

(4) ***The Adjudicating Authority, before authorising the retention or continuation of freezing of such records***

beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

xx xx xx xx"

[Emphasis supplied]

36. A reading of these provisions makes it clear that the procedure for furnishing the reasons to believe, and the material on which that belief rests, calls for no active or overt step on the part of AA. The AA acts, rather, as the custodian of these sealed reports, the object being to instil accountability in the decision-making of the officers of the ED. By requiring that the reports be furnished immediately, Parliament has placed upon the ED the responsibility of committing its reasons, at the very moment of action, to the keeping of an independent body. The reasons so committed then stand as a contemporaneous record, against which the action of the officer may later be tested.

37. Notwithstanding the importance of this safeguard, we may observe that this role of the AA is essentially administrative in nature. In receiving these reports and ensuring their availability when required, the AA is not called upon to undertake any substantive decision-making involving the appreciation of competing submissions or the interpretation of statutes.

38. In respect of this first category of functions, we are, therefore, not persuaded that the absence of a Judicial Member would impair the

performance by the AA of the role assigned to it within the scheme of the PMLA.

D.3.2 The Adjudicatory Function: Where a Legal Mind Becomes Indispensable

39. The AA is, however, plainly more than a custodian of records. As its very name indicates, its principal task is 'adjudication' under Section 8 of the PMLA, the relevant extracts of which read as follows:

> "***8. Adjudication.***–
> *(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18,* ***if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government****:*
> *Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:*
> *Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.*
> *(2) The Adjudicating Authority shall, after—*
> ***(a) considering the reply, if any, to the notice issued under sub-section (1);***
> ***(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and***
> ***(c) taking into account all relevant materials placed on record before him,***

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering*:*

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, ***he shall, by an order in writing, confirm the attachment of the property made under subsection (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect****, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—*

(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;

Explanation.— For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

xx xx xx xx"

[Emphasis supplied]

40. Section 8 thus contemplates a process of adjudication in three stages: ***(i)*** the issuance of a show-cause notice; ***(ii)*** the hearing of the parties and the consideration of the material on record; and ***(iii)*** a final order determining whether the property is involved in money

laundering. At each stage, the AA is required to act positively in order to carry the adjudication to its conclusion.

41. At the first stage, the AA considers only the contents of the complaint or application filed by the ED, for the purpose of ascertaining whether there is reason to believe that the person has committed the offence of money laundering, or that the property in question is involved in money laundering. Any such view is formed solely for the purpose of issuing a notice to the persons concerned and eliciting their version. Since the AA has before it nothing beyond what the ED has supplied, its view at this stage is *prima facie*, and remains subject to the final hearing of the parties. Nor does the mere issuance of a show-cause notice visit any prejudice or other consequence upon the noticee. By its very nature, a notice under Section 8(1) is directed only at securing a response. The application of mind, and the weighing of competing factual claims, at this stage is, therefore, necessarily limited.

42. The same cannot, however, be said of the two stages that follow, which are inextricably intertwined.

43. Section 8(2) mandates that every person interested in the property sought to be attached, retained, or frozen be afforded an adequate opportunity of being heard, and of placing material on record, before the AA takes its final decision. Through Section 6(15),

Parliament has reinforced this requirement by providing that the AA, though not bound by the procedure laid down in the Code of Civil Procedure, 1908, shall be guided by the principles of natural justice. Such an emphasis is not without reason, for three considerations distinguish this stage from the one that precedes it.

44. *First*, the finding that the AA is obligated to record is whether the property in question is involved in money laundering. To arrive at that finding, the AA must evaluate the rival versions, weigh the material placed before it, apply the prescribed standards of proof, including the specific presumptions enacted in the PMLA, and identify the true source of income from which the property was acquired. These tasks necessarily call for the involvement of a legal mind in the process of adjudication, particularly in identifying and applying the correct standards of evidence and the burden of proof.

45. *Second*, the determination will regularly require the interpretation and application of the provisions of the PMLA, notably expressions such as 'property' and the definition of 'money-laundering'. This, in turn, requires an appreciation of judicial precedent, and a discerning reading of a considerable body of pronouncements, in order to arrive at a consistent standard for determining whether the property or record is liable to be attached, retained, or frozen, or ought to be restored to the person interested.

46. *Finally*, the adjudication under Section 8 carries substantial consequences for the civil and constitutional rights of the persons concerned. If AA finds that the property is involved in money laundering, the rigours of Section 8(4) are attracted, and possession of the property is taken over by the Government of India. Such dispossession may well endure until the conclusion of the trial for the offence of money laundering, depriving the person of the fruits of the property for a considerable period before the offence is proved.

47. In our considered opinion, the AA performs, in this role, a function not unlike that of a regular court. At the stage of confiscation, a similar determination is made by the Special Court, albeit upon evidence led in the course of the criminal trial. For the duration of that trial, however, Parliament has entrusted to a specialised body, in the form of AA, the determination whether properties found to be involved in money laundering shall remain under attachment in the interim. In that sphere, Section 41 of the PMLA has also excluded the jurisdiction of civil courts. The AA thus occupies a field from which the ordinary courts have been withdrawn.

48. The determination under Sections 8(2) and 8(3) of the PMLA involves a close analysis of legal provisions, demands the appreciation of facts, and entails considerable civil consequences.

The presence of a Judicial Member on the Bench undertaking the same ensures legal objectivity in the determination recorded by AA. The lifetime of experience of the Administrative and Financial Members in the AA would undoubtedly render them to be exceptional experts in their fields, but impartial and legally sound adjudication necessitates judicial temperament and training.

49. It does not bear reiteration that such requirement is the foundation of various pronouncements by this Court, whether in the context of Tribunals, which essentially replace the jurisdiction of a regular Court,[8] or bodies having both administrative and adjudicatory functions.[9] Most notably, the Constitution Bench's decision in ***Union of India v. Madras Bar Assn.***[10] espoused the principle that a person is entitled to have his rights adjudicated by a forum which exercises judicial power consistent with the recognised principles of adjudication. There is no doubt that these postulates would directly apply to the AA's adjudicatory responsibilities.

50. To the above extent, we are satisfied that the Member drawn from the field of law must comprise or be a part of the Bench of AA

[8] Union of India v. Madras Bar Assn., (2010) 11 SCC 1; Madras Bar Assn. v. Union of India, (2015) 8 SCC 583.
[9] State of Gujarat v. Utility Users' Welfare Assn., (2018) 6 SCC 21.
[10] (2010) 11 SCC 1.

recording a determination under Section 8(2) or issuing an order under Section 8(3) of PMLA.

51. We may also allude, at this juncture, to another submission made by Mr. Anil Kaushik, learned ASG, through his pleadings. He sought to agitate that the application of a judicial mind at the stage of adjudication by the AA may not be necessary, since the PMLA provides for appeals up to the High Court. His specific contention was that an order of the AA, if flawed on a point of law, would in any event be subjected to judicial scrutiny. In our opinion, this submission rests upon a fallacy, namely, that the availability of judicial correction in appeal dispenses with the need for objective decision-making at the original stage.

52. This Court has, in a consistent line of decisions, held that tribunals, particularly when called upon to interpret and apply statutes, must function through Benches that include at least one Judicial Member. The availability of an appeal to the High Court or to this Court affords no ground to dilute that settled requirement; an argument to the contrary was specifically repelled by this Court in ***State of Gujarat v. Utility Users' Welfare Assn.***[11] Under the scheme of the PMLA, once the officers of the ED have taken the initial action, it is the AA that finally decides upon the attachment,

[11] (2018) 6 SCC 21.

freezing or retention of property and records. The AT and the High Court act only as the first and second tiers of appeal, respectively. An appellate forum may correct the errors in a decision; it cannot supply what the original forum lacked. If the proceedings before the AA are defective for want of a Judicial Member, that defect is not cured merely because an appeal lies to a judicial forum.

53. We also find that the Union of India's argument, equating the provisions for an AA under PMLA with those for specialised bodies under the NDPS, SAFEMA, Benami Act, and Customs Act, is misplaced. Though the latter legislations provide statutory mechanisms for attachment, confiscation, and forfeiture of property in their respective fields of operation, the constitution of the authorities under them is not *pari materia* with the AA. These purportedly comparable legislations do not provide that at least one of the members of the subject authority must be a Judicial Member, i.e., a person having experience in the field of law. Section 6(2) and (3) are, on the other hand, express in their mandate for one of the three Members of the AA to have legal background, indicating a conscious decision of the Legislature to ensure the availability of a Judicial Member in the AA. Further, the consequences of attachment of property under the PMLA are much more far-reaching than in the other legislations, even leading to

dispossession from the property upon confirmation of attachment. Given these vital distinctions, we are of the considered view that the Union of India cannot claim any parity with such legislations to justify vesting of adjudicatory powers in a Bench not including the Judicial Member.

54. In light of the above, especially in the interest of protecting legal objectivity in the process of adjudication under Section 8(2) and 8(3) of the PMLA, we find it necessary for a person with judicial or legal background be part of the bench of the AA making the final determination.

D.3.3 Reconciling Textual Silence with the Need for Legal Objectivity

55. This Court is, thus, faced with an apparent dissonance between the legislative text of Sections 6 and 8 of the PMLA and the safeguards necessary for objectivity of determination therein. On one hand, Parliament has lucidly and deliberately refrained from mandating that the Judicial Member sit on specific benches or hold the position of Chairperson. On the other hand, we find that the presence of the Judicial Member to be necessary for objective and legally sound adjudication under Section 8(3).

56. This variance has been the basis of the Private Appellants' arguments challenging the *vires* of Section 6(5)(b) and 6(7),

contending that such provisions are bad in law for permitting the AA to function without the Judicial Member present.

57. It is a settled principle of our jurisprudence that while considering any constitutional defects in a legislation, Courts must firstly attempt to reconcile the applicable principles with the text of the legislation under scrutiny. In other words, the Court must seek to harmonise and inculcate Constitutional rights and safeguards within the existing legislation. Only if such a balancing fails to bear fruit would the Court be inclined to strike down the particular provision or hold it to be completely *ultra vires* the Constitution. The 'reading down' of a provision, involving interpretation of the legislation in a manner which removes the otherwise incurable lacunae and rendering the provision workable and effective, is a well-known judicial innovation.

58. In the case at hand, we are called upon to similarly syncretise Section 6 of the PMLA and accommodate, therein, a mandate for involvement of Judicial Member in the final adjudication under Section 8 of the said Act.

59. This is not the first occasion for this Court to reconcile such provisions. In ***L. Chandra Kumar (supra)***, a Constitution Bench of this Court considered a similar provision in the Administrative Tribunals Act, 1985. It was recognised that the functions of the

Administrative Tribunals would entail the interpretation of the constitutional framework and of the applicable statutes and regulations, which would in turn require the presence and participation of a Judicial Member. The Court, thus, needed to 'read down' the text of the legislation to enable the application of a legally trained mind to such issues.

60. In that context, this Court made use of the enabling power contained in the proviso to Section 5(6) of the Administrative Tribunals Act, 1985, which stipulated that "…***if at any stage of the hearing of any … case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to, such Bench as the Chairman may deem fit.***" The seven-Judge Constitution Bench, thus, held that the above proviso must be brought into action by the Chairman and any case involving the interpretation of statutes be placed before a Bench of at least two Members, one of whom must be a Judicial Member.

61. Section 6 of the PMLA, we find, contains enabling provisions analogous to those put to use in ***L. Chandra Kumar (supra)***. Sub-section (7) of thereof enables the Chairperson to assign cases to

different Benches, while sub-section (6) empowers the Chairperson to transfer Members from one Bench to another. The statute, thus, already furnishes the means by which the requirement we have identified can be given effect. We, therefore, consider it appropriate to issue directions along the lines laid down by the Constitution Bench.

62. Consequently, we hold that while the issuance of a show-cause notice under Section 8(1) does not require the participation of the Judicial Member of AA, the Bench that undertakes the hearing and final adjudication under Sections 8(2) and 8(3) must necessarily include the Judicial Member. It is, therefore, imperative that the Chairperson of the AA issue the necessary administrative circular, in exercise of the statutory powers conferred by Section 6 of the PMLA, to ensure that, hitherto, every Bench passing an order under Section 8(3) shall include a Judicial Member.

D.3.4 Determinations Ancillary to Adjudication: Sections 9, 20 and 21

63. We also take note of two specific functions of the AA which fall outside the general adjudication under Section 8: ***(i)*** the determination, under the first proviso to Section 9 of the PMLA, of the encumbrance or leasehold interest subsisting over attached property; and ***(ii)*** the determination, under Sections 20 and 21 of

the PMLA, of whether specified property and records are necessary for adjudication and ought, consequently, to be retained.

64. Questions of this nature, where they arise in a given case, are intrinsically bound up with the adjudication under Section 8 of the PMLA. They must, therefore, be decided by the same Bench of AA that adjudicates upon the prayer for confirmation of attachment, freezing or retention, that is to say, a Bench which includes the Judicial Member.

65. We hasten to clarify that we do not, by these findings, mandate that adjudication under Section 8 of the PMLA be undertaken only by a Bench of at least two Members. In the light of the express textual framework of Section 6, we reiterate that the Chairperson may list matters for adjudication under Section 8 before a Bench consisting of a single Member, provided that such Member is the Judicial Member of the AA.

D.3.5 Judicial Member being the Chairperson – Not an Adjudicatory Necessity

66. While we have noticed and accepted the need for mandating that the Judicial Member be part of the AA's Bench involved in the adjudicatory process, we are unable to accede to the submission

that for the Chairperson of the AA must have a Judicial Background.

67. We may derive clarity on this aspect from the decision in ***Utility Users' (supra)***, wherein this Court was called upon to interpret Section 84 of the Electricity Act, 2003. Sub-section (1) thereof, *inter alia*, provided that the Members, including the Chairperson, of the State Commission shall be drawn from any of the areas of expertise of engineering, finance, commerce, economics, law, or management, while sub-section (2) stipulated that the Chairperson may be a sitting or retired High Court Judge. Giving a contextual interpretation to sub-section (2) with reference to sub-section (1), this Court accepted the directory nature of the word "may" and held that it was not mandatory to appoint of a sitting or retired High Court Judge as Chairperson. In doing so, this Court expressly rejected the notion that the Chairperson of a composite body performing executive as well as quasi-judicial functions is required to belong to legal background.

68. The application of an independent judicial mind is, in our opinion, adequately ensured by the presence of a Judicial Member in the Bench undertaking adjudication under Sections 8(2) and 8(3) of PMLA. The role of the Chairperson of AA, evidently administrative in nature, does not require similar application of mind by a person

from the legal field. There is, thus, no mandate for the Judicial Member of AA to be appointed as its Chairperson.

E. CONCLUSIONS AND DIRECTIONS

69. In the light of the foregoing analysis, we record our conclusions and issue the consequential directions as follows:

(i) There is no legal mandate that only the Judicial Member be appointed as the Chairperson of the AA;

(ii) Sections 6(5)(b) and 6(7) of the PMLA are valid, and provide that a Bench of the AA shall consist of one or two Members, which may or may not include the Judicial Member. Subject to clauses (iii) and (iv) below, such a Bench may discharge any or all of the functions of the AA;

(iii) The adjudication under Sections 8(2) and 8(3) of the PMLA involves the interpretation of key statutory provisions and the appreciation of evidentiary material, and shall be undertaken only by a Bench of the AA which consists of, or includes, the Judicial Member;

(iv) The determinations under Sections 9, 20(4), and 21(4) of the PMLA are ancillary to the adjudication under Sections 8(2) and 8(3), and shall likewise be assigned to a Bench competent to undertake adjudication in terms of clause (iii) above;

(v) The Civil and Criminal Appeals are disposed of accordingly, and the following judgments and orders stand modified in the above terms:

(a) Judgment dated 11.01.2018 passed by the Delhi High Court in Writ Petition (Civil) No. 5320/2017 and connected cases;

(b) Judgment dated 18.08.2023 passed by the Calcutta High Court in MAT No. 1253/2023;

(c) Judgment dated 12.02.2024 passed by the Telangana High Court in Writ Appeal No. 611/2023;

(d) Judgment dated 13.09.2024 passed by the Telangana High Court in Writ Appeal No. 604/2023;

(e) Order dated 08.01.2026 passed by the Telangana High Court in Writ Petition No. 40454/2025; and

(f) Order dated 28.01.2026 passed by the Calcutta High Court in Writ Petition Application No. 1490/2026 and connected cases;

(vi) Writ Petition (Civil) No. 186/2025 is partly allowed in the above terms; and

(vii) All interim relief, including any stay of the proceedings before the AA granted by this Court, stands vacated, and the

applications and complaints pending before the AA in these cases shall now be decided strictly in accordance with the principles laid down in this judgment.

F. OPERATION OF THIS JUDGMENT

70. Having so held, we consider it necessary to clarify the bearing of this pronouncement upon cases already decided by the AA.

71. The law declared today is not intended to unsettle what has already been done in good faith under the statute as it was then understood. It would serve neither the interests of justice nor the cause of expedition to set aside every order passed under Section 8(2), Section 9, or Sections 20 and 21 by a Bench of the AA consisting of a single, non-Judicial Member. Parties aggrieved by such orders passed before the date of this judgment remain at liberty to challenge them on their merits by way of the statutory appeal available in law. We, therefore, clarify that the law laid down in this judgment shall not furnish a ground to question the jurisdiction of a Bench of the AA in respect of any order passed by it before the date of this judgment.

G. PRESSING NEED FOR MULTIPLE ADJUDICATING AUTHORITIES

72. In the course of hearing these cases on 15.09.2026, we were occasioned to note that there appears to be, over the years, a rising

trend in the number of complaints and applications filed before the AA. While it was orally referred to by the learned counsel for the Private Appellants, the Deputy Director of the ED has placed on record, through an affidavit, the official statistical position regarding the PAOs issued by the ED, which would serve to indicate the number of complaints that were filed under Section 5(5) of PMLA before the AA. For the purpose of completeness, the tabulated data submitted by the ED as to the number of PAOs issued per year, since 01.07.2005, is reproduced below:

"***Year***	***No. of Provisional Attachment Orders (PAOs) issued***
Up to 31.03.2012	*130*
2012-13	*62*
2013-14	*118*
2014-15	*169*
2015-16	*103*
2016-17	*168*
2017-18	*203*
2018-19	*166*
2019-20	*158*
2020-21	*185*
2021-22	*262*
2022-23	*283*
2023-24	*321*
2024-25	*461*
2025-26	*712*
2026-27 (up to 31.08.2026)	*138*
TOTAL	***3,639***"

73. The escalating trend in the number of PAOs issued is clearly evidenced by the above data. Furthermore, with the expansion of offences falling within the Schedule of PMLA and the consequential increase in the scope of PMLA proceedings, the number of PAOs is bound to increase with the passage of time, apart from the concomitant growth in the number of applications to be made under Sections 17 and 18 of PMLA.

74. This expansion in the volume of work being entrusted to the AA is exacerbated by the timeline of 180 days imposed by the provisions of the PMLA for conclusion of adjudication under Section 8(2) and (3), which traces itself from the restriction on officers of the ED to take provisional action only up to that period.

75. Such juxtaposition of the increasing cases and the time-bound nature of adjudication, to our mind, puts an enormous pressure on the Members of the AA, especially those involved in the process of adjudication.

76. In this context, we would like to refer to the PMLA as it was originally enacted, wherein the Parliament had envisaged that there would be more than one AA, with each AA constituted of an Administrative, Judicial, and Financial Member, and a Chairperson from among them. With the passing of the 2009 Amendment,

however, this position was changed and only one AA was provided for.

77. With the experience of an exponential growth in the number of cases being filed before the AA and the fact that the AA would need to complete the proceedings for confirmation of a PAO within 180 days, the 2009 Amendment appears to have created an undesirable, if not unsolvable, lock-jam of cases at the level of the AA. Such circumstances would induce the AA to make hurried and hasty decisions and have a lasting impact on ability of the stakeholders involved to access justice. We are afraid that such conditions create a situation entirely contrary to the scheme and underlying legislative objectives of PMLA.

78. Given the above situation, this Court would ordinarily have exercised its powers under Article 142 of the Constitution and directed the Union of India to notify additional Adjudicating Authorities. Not only would it bolster the timely conclusion of adjudication under Section 8(3) of the PMLA, but it would also enable the creation of Regional AAs.

79. However, we are faced with the deliberate and unequivocal legislative expression contained in the 2009 Amendment, whereby the scheme of multiple AAs was substituted with a singular AA. If, then, this Court were to issue such directions, they would amount

to entirely negating the impact of the 2009 Amendment. We are equally cognisant regarding the fact that we are not considering a challenge to the 2009 Amendment.

80. That being so, we recommend to the Union of India that it appropriately consider the suitability and desirability of repealing the 2009 Amendment and reverting to the original framework of multiple Adjudicating Authorities and take necessary steps for the same.

H. EPILOGUE

81. Before we finally conclude, we take the liberty to pen down that the PMLA, at its very core is a law of exceptional rigour, enacted to meet a mischief of exceptional gravity. Its rigour is tempered, at the very first point of contest, by the requirement that a person whose property has been attached be heard by an authority independent of the agency that attached it. Independence of position is, however, only one half of that assurance. Where the authority is called upon to weigh evidence, apply statutory presumptions and construe the law, the assurance is fully honoured only when the person who decides is trained in the discipline of the law. Our directions are confined to securing that much, and no more.

82. Pending applications, if any, shall also stand disposed of.

.....CJI.
(SURYA KANT)

.....J.
(JOYMALYA BAGCHI)

.....J.
(V. MOHANA)

NEW DELHI;
NOVEMBER 26, 2026