Final Word on Property Attachment Now a Law Expert's: Supreme Court's Big Ruling on PMLA Authority

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Why in the news

On 26 November 2026, the Supreme Court of India delivered an important judgment in **Union of India v. J. Sekar** (2026 INSC 1277). A three-judge Bench of Chief Justice Surya Kant, Justice Joymalya Bagchi and Justice V. Mohana held that the final adjudication confirming an attachment of property under the **Prevention of Money Laundering Act, 2002 (PMLA)**, that is, the process under **Section 8(2)** and **Section 8(3)**, must be undertaken only by a Bench of the Adjudicating Authority that includes the **Judicial Member**. The ruling matters because it concerns the independence and judicial quality of the body that decides the fate of property attached by the Enforcement Directorate (ED), and it connects directly with exam themes such as tribunal independence and due process.

What the case was

The lead matter: The lead case concerns J. Sekar. In Income Tax searches in December 2016, over Rs. 132.73 crore in cash and 128.495 kg of gold were recovered from his firm's premises. Treating the CBI's FIR as the predicate offence, the ED registered a case and, in May 2017, passed a Provisional Attachment Order (PAO) under

Section 5(1) attaching movable properties worth Rs. 8.57 crore.

How the dispute began: At that time the Adjudicating Authority consisted only of a Technical Member officiating as its Chairperson; no Judicial Member was in office. This single, non-judicial Member issued the show-cause notice under **Section 8(1)**. Sekar challenged its validity before the Delhi High Court, which held on 11 January 2018 that a Judicial Member is not required for any function of the Authority. The Calcutta and Telangana High Courts adopted the same view in later decisions. A batch of appeals against these decisions, along with a writ petition under Article 32, came before the Supreme Court.

The three questions: Before the Court were three principal questions: can the Authority discharge its functions through a single, non-Judicial Member? Must every Bench include a Judicial Member? And must the Chairperson necessarily be a Judicial Member?

What are the PMLA and the Adjudicating Authority

PMLA: The Prevention of Money Laundering Act, 2002, a central law, in force since 1 July 2005, to prevent money laundering (the process of making crime proceeds appear lawful) and to provide for attachment and confiscation of property involved in it.
ED: The Directorate of Enforcement, the central agency that investigates, attaches property and makes arrests under the PMLA.
PAO: Provisional Attachment Order: under **Section 5**, an ED officer can provisionally attach property for up to 180 days; confirming or dropping it is the Authority's final call.
Adjudicating Authority (AA): A quasi-judicial body constituted under **Section 6**, with a Chairperson and two Members. One Member each must have experience in law, administration, and finance or accountancy. The Member from the field of law is the 'Judicial Member', a person qualified to be a District Judge or who has held a Grade I post in the Indian Legal Service.
Bench: Under **Section 6(5)**, the Chairperson may constitute Benches of one or two Members. Before the 2009 Amendment there could be several Authorities; after it, there is only one Authority for the whole country.
Appeal chain: An order of the Authority can be appealed first to the Appellate Tribunal (**Section 26**) and then to the High Court (**Section 42**).

What the Supreme Court said

1. Judicial Member mandatory for final adjudication: Adjudication under **Section 8(2)** (hearing the parties) and **Section 8(3)** (the order confirming or rejecting the attachment) involves interpreting the statute and weighing evidence; it must therefore be undertaken only by a Bench that consists of, or includes, the Judicial Member.

2. No Judicial Member needed for a show-cause notice: Issuing a notice under **Section 8(1)** is an initial stage; the Authority forms only a prima facie view on the ED's complaint, which causes no final consequence to the noticee. A Judicial Member is therefore not essential for issuing it.

3. Single-Member Bench valid, if the Member is judicial: The Court upheld **Section 6(5)(b)** and **Section 6(7)**: a Bench may have one or two Members. Adjudication may be listed before a single Member, provided that Member is the Judicial Member.

4. Chairperson need not be a Judicial Member: The Chairperson's role is chiefly administrative; there is no mandate that the Chairperson be the Member from the field of law.

5. Ancillary determinations go to the same Bench: Determinations under **Section 9** (encumbrance or leasehold interest on attached property) and **Sections 20(4)** and **21(4)** (retention of property and records) are bound up with Section 8 adjudication; they too must be decided by a Bench that includes the Judicial Member.

6. Direction: The Chairperson of the Authority must issue an administrative circular under the **Section 6** powers to ensure that every order under Section 8(3) is passed by a Bench including a Judicial Member. Six judgments and orders of the Delhi, Calcutta and Telangana High Courts, which had allowed a single non-judicial Member to discharge all functions, stand modified on these terms.

The reasoning

Two distinct roles: The Court divided the Authority's functions into two. The first, acting as custodian of the ED's sealed 'reasons to believe' reports, is administrative, and the absence of a Judicial Member does not impair it. The second, actual adjudication under Section 8, involving assessment of facts, standards of proof, the statutory presumptions in the PMLA, and the interpretation of expressions such as 'property' and 'money laundering', is akin to the work of a regular court, because **Section 41** excludes the jurisdiction of civil courts from this field.

Grave consequences: Once attachment is confirmed under Section 8(3), **Section 8(4)** is attracted and possession of the property passes to the Government, a situation that can last until the trial ends. A person can thus be deprived of property before guilt is proved. A determination with such consequences must be made by a person trained in law; that is the assurance of judicial objectivity.

Appeal is no cure: The Union argued that since appeals lie up to the High Court, a Judicial Member at the original stage is unnecessary. The Court rejected this; an appellate forum may correct errors in a decision, but it cannot supply what the original forum lacked.

Support from precedent: The Court relied on the Madras Bar Association cases (Constitution Bench, 2010), L. Chandra Kumar (1997) and Utility Users' Welfare Association (2018): bodies that replace courts or interpret statutes must sit with at least one Judicial Member. The Court used the technique of 'reading down' (construing a law so that it remains valid and workable) and found the enabling means already present in sub-sections (6) and (7) of Section 6, striking down no provision.

Parity with other laws rejected: The Union's comparison with authorities under the NDPS Act, SAFEMA, the Benami law and the Customs Act was held misplaced: those laws do not mandate a legally qualified member, whereas Sections 6(2) and 6(3) of the PMLA expressly do; and the consequences of attachment under the PMLA are far more far-reaching.

Impact on past orders

Prospective operation: The Court clarified that orders passed before the date of this judgment (26 November 2026) by a Bench of a single, non-Judicial Member under Section 8(2), Section 9 or Sections 20 and 21 are not automatically invalid. This judgment, by itself, will not be a ground to question the jurisdiction of the Bench that passed them.

Merits appeals remain open: Parties aggrieved by such past orders remain free to challenge them on merits through the statutory appeal available in law.

Recommendation for multiple Authorities

Rising pressure: According to figures placed on record by the ED through an affidavit, the number of PAOs issued has risen steadily: 262 in 2021-22, 283 in 2022-23, 321 in 2023-24, 461 in 2024-25 and 712 in 2025-26; a total of 3,639 PAOs had been issued since 2005 (position up to 31 August 2026). At the same time, Section 8 adjudication must conclude within 180 days.

Review of the 2009 Amendment suggested: The 2009 Amendment replaced the original scheme of multiple Authorities with a single Authority, creating a lock-jam of cases. The Court refrained from directing new Authorities under Article 142 (since the 2009 Amendment was not under challenge), but **recommended** that the Union consider repealing the 2009 Amendment and reverting to the original framework of multiple, possibly regional, Adjudicating Authorities.

Provisional Attachment Orders (PAOs) issued, year-wise

Year	Number of PAOs
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**

Source: ED affidavit, as reproduced in the Supreme Court's judgment (para 72).

Exam relevance

GS-2 link: This ruling connects with the independence of tribunals and quasi-judicial bodies, administrative adjudication, and the right to property (**Article 300A**).

Due process: Amid a harsh provision that takes away property before guilt is proved, the judicial competence of the decision-maker becomes the guarantee of due process, usable in answers on judicial review and separation of powers.

The tribunal-reform chain: From Madras Bar Association and L. Chandra Kumar to this ruling runs a continuing chain on the necessity of judicial members in tribunals, quotable in any question on tribunal reform.

Judiciary-legislature balance: The Court struck down nothing, used 'reading down' to restore balance, and left structural change (multiple Authorities) to Parliament and the Government as a recommendation, an example of judicial restraint.

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Prelims practice questions

Question 1. Consider the following statements about the Adjudicating Authority under the PMLA:

Statement 1: The Authority consists of a Chairperson and two other Members, one of whom has experience in the field of law

Statement 2: The Supreme Court has declared Section 6(5)(b) and Section 6(7) unconstitutional

Statement 3: The presence of a Judicial Member is not mandatory for issuing a show-cause notice under Section 8(1)

Which of the statements given above are correct?

(a) 1 and 2 only

(b) 1 and 3 only

(c) 2 and 3 only

(d) 1, 2 and 3

▼ **Answer and explanation**

Correct answer: (b)

Statement 1 is correct: under Section 6(2), the Authority has three Members including the Chairperson, with one Member each from law, administration and finance/accountancy.

Statement 2 is incorrect: the Court upheld Sections 6(5)(b) and 6(7) as valid and used 'reading down' to accommodate the Judicial Member requirement within them.

Statement 3 is correct: issuing a notice is an initial stage; the Judicial Member is mandatory only for final adjudication (Sections 8(2)/8(3)).

Question 2. Consider the following statements:

Statement-I: Orders passed by a single, non-Judicial Member's Bench before the 26 November 2026 judgment will not be invalid on that ground alone

Statement-II: Parties aggrieved by such orders may challenge them on merits through the statutory appeal available in law

Which one of the following is correct in respect of the above statements?

(a) Both Statement-I and Statement-II are correct and Statement-II is the correct explanation of Statement-I

(b) Both Statement-I and Statement-II are correct, but Statement-II is not the correct explanation of Statement-I

(c) Statement-I is correct, but Statement-II is incorrect

(d) Statement-I is incorrect, but Statement-II is correct

▼ **Answer and explanation**

Correct answer: (a)

Statement-I is correct: the Court clarified that the new rule will not be a ground to question the jurisdiction behind past orders.

Statement-II is correct and explains Statement-I: the remedy against past orders is a challenge on merits through statutory appeal, which is precisely why the orders are not automatically invalid.

Question 3. Consider the following statements about adjudication by the Adjudicating Authority under the PMLA:

Statement 1: Determinations under Section 9, Section 20(4) and Section 21(4) have been treated as ancillary to adjudication under Section 8

Statement 2: A single-Member Bench may undertake adjudication only if that Member is the Judicial Member

Statement 3: The Chairperson of the Authority must necessarily be the Judicial Member

Which of the statements given above are correct?

(a) 1 and 2 only

(b) 2 and 3 only

(c) 1 and 3 only

(d) 1, 2 and 3

▼ **Answer and explanation**

Correct answer: (a)

Statement 1 is correct: these determinations are intrinsically bound up with adjudication, so a Bench including the Judicial Member must decide them.

Statement 2 is correct: the Section 6 framework permits a single-Member Bench, but for adjudication that Member must be the Judicial Member.

Statement 3 is incorrect: the Chairperson's role is administrative; there is no mandate that the Chairperson be the Judicial Member.

Mains practice question

Question 1. Discuss the Supreme Court's recent ruling on the composition of the Adjudicating Authority under the PMLA. How does it strengthen judicial independence and due process in quasi-judicial bodies? (250 words, 15 marks)

Answer Outline

Introduction: The 26 November 2026 ruling (Union of India v. J. Sekar): Judicial Member mandatory for final adjudication under Sections 8(2)/8(3) of the PMLA; a brief introduction to the Authority's role.

Main body: - The Authority's dual role: administrative (custodian of sealed reports) versus adjudicatory (assessment of evidence, statutory interpretation).
- Grave consequences of Section 8(4): dispossession before guilt is proved; the need for judicial training.
- The line of Madras Bar Association, L. Chandra Kumar and Utility Users' cases; the 'reading down' technique.
- The balance: exemption for show-cause notices, no bar on a non-judicial Chairperson, single judicial Bench valid; past orders protected, merits appeals open.

Conclusion: The ruling balances judicial restraint with citizen protection; with the recommendation for multiple Authorities, it points the way for tribunal reform.

Frequently asked questions

In short: On 26 November 2026 the Supreme Court held that the final decision confirming a property attachment under the PMLA (Sections 8(2)/8(3)) must come from a Bench that includes the Judicial Member; a Judicial Member is not needed for the show-cause notice, and past orders are not automatically invalid.

▼ **Q1: Will every Bench of the Adjudicating Authority now include a Judicial Member?**

No. A Judicial Member is mandatory only for the Bench undertaking final adjudication (Sections 8(2)/8(3)) and the ancillary determinations under Sections 9, 20(4) and 21(4). Other administrative functions, such as issuing the Section 8(1) notice or keeping sealed reports in custody, can be discharged without one.

▼ Q2: Must the Chairperson of the Authority now be a judge or a law expert?

No. The Court held that the Chairperson's role is chiefly administrative, so it is not mandatory for the Member from the field of law to be appointed Chairperson.

▼ Q3: What happens to people whose property was earlier attached by a non-Judicial Member's Bench?

Orders passed before 26 November 2026 cannot be challenged merely on the ground that the Bench lacked a Judicial Member. Aggrieved parties can still appeal on merits before the Appellate Tribunal and the High Court.

Related reading

IBC Is Not a 'Holy Ganga': The NCLAT Ruling

Sources

1. Supreme Court of India - Union of India v. J. Sekar, 2026 INSC 1277, 26 November 2026: Full judgment (PDF)
2. Prevention of Money Laundering Act, 2002 - full text (India Code, Department of Revenue): indiacode.nic.in
3. Department of Revenue - PMLA Act and Rules: dor.gov.in

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