

AFRHIGH COURT OF CHHATTISGARH, BILASPURWP227 No.265 of 2017

Branch Manager, Cholamandam M.S. General Insurance Company,
Raipur, Address- 2nd Floor, Simran Tower, Opp. Bhartiya Jeevan Beema
Nigam, Pandri, Police Station-Pandri, Civil and Revenue Dist. Raipur
(CG) (INSURER)

----Petitioner

Versus

Smt. Manju Manjesh Rathore Wd/o Late Radheshyam Rathore, R/o
Near Vidhyoday School, Bodhghat Colony, Jagdalpur Thana-Dist.Bastar
(CG)

---- Respondent

WP227 No.123 of 2014

1. Cholamandlam MS G.I.Co. Ltd. Through Manager, Above Axix
Bank Nayapara, Jagdalpur PS Jagdalpur Civil and Revenue Dist.
Jagdalpur C.G.

2. Cholamandlam MS G.I.Co. Ltd. Through Manager, Branch office,
First Floor, Hinduja Complex, Near Chhoti Line, Devendra Nagar,
Raipur, At present-in-front of L.I.C. near Railway Line, PS Pandri,
Civil and Revenue Dist. Raipur C.G.

----Petitioners

Versus

M/s Ashoka Engineers & Contractor Aroraj Premniwas, Vrandawan
Colony, Jagdalpur Dist. Bastar, C.G. Through- Partner Shri Ashok Arora
S/o Late Vajir Chand aged 61 years, R/o Aroraj Premnivas, Vrandawan
Colony, PS Jagdalpur Civil & Revenue Dist. Jagdalpur Civil & Revenue
Dist. Jagdalpur Dist. Bastar, C.G.

---- Respondent

And

WP227 No.03 of 2013

Royal Sundaram Alliance Insurance Company Limited, Through Branch Office Millennium CTIT Park, Unit No. T-2-2A Tower Second, Plot No. DN-62, Sector-5, Salt-Lake, Kolkata-700 091, At present Near Vanijya Bhawan, P.S. Devendra Nagar, Devendra Nagar Road, Raipur (CG)

----Petitioner

Versus

Ramkumar Soni W/o Rajkumar Soni aged about 22 years, R/o Rajkumar tent House No.4, Main Road, Bacheli, P.S. Bacheli, Dist Dantewada (CG)

---- Respondent

 For Petitioners : Mr.Bhaskar Payashi, Advocate
 For Respondents/Claimants : Mr.Paveen Kumar Tulsyan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

24/01/2019

1. Taking exception to the order passed by the Permanent Lok Adalat (PLA) (Public Utility Services) (PUS), Bastar at Jagdalpur constituted under Section 22B of the Legal Services Authorities Act, 1987 (hereinafter called as "the Act of 1987") by which the said PLA (PUS) has passed the award directing payment of compensation, this batch of writ petitions under Article 227 of the Constitution of India have been filed by the petitioners herein.
2. Since common question of fact and law is involved in these writ petitions, they were heard analogously and are being decided by this common order.

(For the sake of convenience, the facts mentioned in WP227 No.265 of 2017 are being taken up as lead case:-)

2.1 The claimant/respondent herein filed an application under Section 22A of the Act of 1987 before the PLA (PUS) stating inter-alia that husband of the respondent namely Radheshyam Rathore has got a Group Personal Accident Insurance Policy issued from the petitioner/Insurance Company for the period commencing from 1.2.2011 to 31.1.2012, he died during which the insurance policy was in force as he was murdered on 2.10.2012 and offence under Sections 302 and 120B/34 of the IPC was registered against the accused persons. Claim was made by the respondent/claimant to the petitioner-Insurance Company, which was denied to her leading to filing of the application. The PLA (PUS) on 22.8.2014 directed the other side to file reply. Ultimately, reply was filed and case was directed to be placed for compromise on 13.10.2014. On 18.11.2014 the PLA (PUS) directed that the matter be placed before the National Lok Adalat and if no settlement is arrived at between the parties, then the matter will be taken up for hearing on 9.12.2014. The matter was not settled in the National Lok Adalat and ultimately, the impugned award was passed on 17.8.2016, which has been questioned by the petitioner-Insurance Company in the instant writ petition.

3. Mr. Bhaskar Payashi, learned counsel for the petitioners, would submit that the PLA (PUS) has committed legal error in not undertaking any conciliation proceedings for settlement of the

dispute after written statement/reply is filed by other side and only done the formality by sending the matter to the National Lok Adalat in name of conciliation and after receipt of the record, straightway considered the matter on merits and passed the award, which runs contrary to the provisions contained in Section 22C (8) of the Act of 1987 which provides that where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

Therefore, the impugned award is liable to be set aside and the writ petitions be allowed.

4. Mr. Praveen Kumar Tulsyan, learned counsel for the respondent/claimant, would support the impugned award and submit that twice the matter was sent for conciliation before the National Lok Adalat, but the matter could not be settled in the National Lok Adalat, therefore, the award was passed by the PLA (PUS), as such, the writ petitions deserve to be dismissed.

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

6. Before considering the rival submissions made by the parties, it would be appropriate to notice introduction of Chapter VIA i.e. pre-litigation, conciliation and settlement introduced in the Legal Services Authorities Act, 1987. Chapter VIA including Sections 22A, 22B and 22C of the Act of 1987 was brought into statutory

book in the Legal Services Authorities Act, 1987 (Amendment) Act, 2002 w.e.f. 11-6-2002. The statement of object and reasons appended with the Amendment Act, 2002 to set up Permanent Lok Adalat for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services. Section 3 (i) states as under:-

“3. The salient features of proposed legislation are as follows:-

(i) to provide for the establishment of Permanent Lok Adalats which shall consist of a Chairman who is or has been a district judge or additional district judge or has held judicial office higher in rank than that of the district judge and two other persons having adequate experience in public utility services;”

7. It would be appropriate to notice Section 22A of the Act of 1987 which states as under:-

“**22A. Definitions.**- In this Chapter and for the purpose of sections 22 and 23, unless the context otherwise requires,-

(a) “Permanent Lok Adalat” means a Permanent Lok Adalat established under sub-section (1) of section 22B.

(b) “public utility service” means any-

(i) transport service for the carriage of passengers or goods by air, road or water; or

(ii) postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service,

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.”

8. Section 22C of the Act of 1987 was considered by the Supreme Court in the matter of Interglobe Aviation Limited v. N. Satchidanand¹ and the distinction between Lok Adalat constituted under Section 19 of the Act of 1987 and Permanent Lok Adalat established under Section 22B (1) of the Act of 1987 was noticed and it has been held that Lok Adalat constituted under Section 19 of the Act of 1987 has no adjudicatory functions and powers and which discharges purely conciliatory functions and further held that the PLA has been established under Section 22B (1) of the Act of 1987 to exercise jurisdiction in respect of public utility services, having both conciliatory and adjudicatory functions. Highlighting the nature of proceeding before the PLA, the Supreme Court observed as under:-

“27. The nature of proceedings before the Permanent Lok Adalat is initially a conciliation which is non-adjudicatory in nature. Only if the parties fail to reach an agreement by conciliation, the Permanent Lok Adalat mutates into an adjudicatory body, by deciding the dispute. In short, the procedure adopted by Permanent Lok Adalats is what is popularly known as ‘CON-ARB’ (that is, "conciliation-cum-arbitration") in United States, where the parties can approach a neutral third party or authority for conciliation and if the conciliation fails, authorize such neutral third party or authority to decide the dispute itself, such decision being final and binding. The concept of ‘CON-ARB’ before a Permanent Lok Adalat is completely different from the concept of judicial adjudication by courts governed by the Code of Civil Procedure. The Permanent Lok Adalat not being a “court”, the provision in the contract relating to exclusivity of jurisdiction of courts at Delhi will not apply. ”

¹ (2011) 7 SCC 463

Their Lordships while taking cognizance of the provisions contained in Section 22C(1) of the Act of 1987 held that the PLA is required to conduct conciliation proceedings between the parties, taking into account, the circumstances of the dispute and assist the parties in their attempt to reach an amicable settlement of the dispute. It was observed as under:

“24. Section 22-C of the LSA Act provides that:

“22-C. **Cognizance of cases by Permanent Lok Adalat.**-(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute.”

(emphasis supplied)

When the statement, additional statements, replies etc., are filed in an application filed before it, the Permanent Lok Adalat is required to conduct conciliation proceedings between the parties, taking into account, the circumstances of the dispute and assist the parties in their attempt to reach an amicable settlement of the dispute. If the parties fail to reach an agreement, the Permanent Lok Adalat is required to decide the dispute. The Permanent Lok Adalats are authorized to deal with and decide only disputes relating to service rendered by notified public utility services provided the value does not exceed Rupees Ten Lakhs and the dispute does not relate to a non-compoundable offence”

Thus, the Supreme Court has emphasized the need that the PLA (PUS) constituted under Section 22B (1) of the Act of 1987 is initially a conciliation which is non-adjudicatory in nature. Only if the parties fail to reach an agreement by conciliation, then it will have jurisdiction to decide the dispute on merits.

9. Again, the Supreme Court in the matter of Bar Council of India v. Union of India² has held that where despite efforts of Permanent Lok Adalat settlement between parties is not arrived at, to avoid delay in adjudication of disputes relating to public utility services, Parliament has conferred power of adjudication upon Permanent Lok Adalat as well. It was observed as under:-

“26. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to Permanent Lok Adalats only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat. It is for this reason that sub-section (1) of Section 22-C states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services. Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat.

² (2012) 8 SCC 243

27. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service up to a specific pecuniary limit, if they do not relate to any offence, as provided under Section 22-C(8), be said to be unconstitutional and irrational? We think not. It is settled law that an authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Chapter VI-A has been enacted to provide for an institutional mechanism, through the establishment of Permanent Lok Adalats for settlement of disputes concerning public utility service before the matter is brought to the court and in the event of failure to reach any settlement, empowering the Permanent Lok Adalat to adjudicate such dispute if it does not relate to any offence.”

10. This Court speaking through Manindra Mohan Shrivastava, J. in the matter of Superintending Engineer CSEB Bilaspur Division & Another v. Public Utility Permanent Lok Adalat, Bilaspur & Others³ has held that Permanent Lok Adalat do not possess any plenary jurisdiction to adjudicate upon

³ 2011 (4) C.G.L.J. 460

disputes relating to claim based on tortious liability. His Lordship held as under:-

“20. The upshot of aforesaid discussions is that the Permanent Lok Adalats can exercise the jurisdiction in the matter of disputes arising out of services relating to public utility service and do not possess any plenary jurisdiction to adjudicate upon disputes relating to claim based on tortious liability merely because one of the party to the dispute is one who is engaged in operating a public utility service.”

11. Now the question for consideration would be whether in the instant case, the PLA (PUS) is justified in granting the award without undertaking conciliation proceedings effectively between the parties after filing of reply by other side ?

12. Section 22C of the Act of 1987 provides as under:-

22C. Cognizance of cases by Permanent Lok Adalat.- (1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent LokAdalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section (1), it--

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section(4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent LokAdalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent LokAdalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section(7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.”

13. A careful perusal of the aforesaid provisions would show that if settlement is arrived at between the parties following the procedure laid down in Section 22C(1) to 22C(7) of the Act of 1987 with the assistance of the PLA (PUS), award shall be passed by the PLA (PUS) as per terms and conditions of settlement between the parties, but if reference is made by any party at pre-litigation stage under Section 22C of the Act of 1987 and settlement is not arrived at, the PLA (PUS) can decide the dispute on merits by invoking sub-section (8) of Section 22C of the Act of 1987 in the event conciliation fails.

14. Reverting to the facts of the present case, it is quite vivid that in the instant case, the PLA (PUS) has called reply of other side on merits, which is the right course adopted by the PLA (PUS), but thereafter it appears that the matter was sent to the National Lok Adalat constituted under Section 19 of the Act of 1987 for conciliation and thereafter though the PLA (PUS) repeatedly

mentioned in the order-sheet that the matter is fixed for conciliation, but the PLA (PUS) did not take any effort to get the matter settled by conciliation and did not assist the parties in their attempt to reach an amicable settlement of the dispute, which the PLA (PUS) was obliged to do under the provisions contained in Section 22C (5) of the Act of 1987 and did not conduct any conciliation proceeding between the parties effectively as provided in Section 22C(4) of the Act of 1987 and therefore, the PLA (PUS) was not empowered to invoke adjudicatory jurisdiction conferred under Section 22C(8) of the Act of 1987 and the award passed without undertaking the procedure for conciliation prescribed under Section 22C (4) of the Act of 1987 is vitiated, and said awards deserve to be and are liable to be quashed and the matters are required to be remitted to the PLA (PUS) to strictly follow the provisions contained in Section 22C (3) to (7) of the Act of 1987 and thereafter if the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat will have jurisdiction to deal with the matter on merits under Section 22C (3) to (8) of the Act of 1987.

15. In WP227 No.123 of 2014, on 16.10.2012 and 16.11.2012 the PLA (PUS) recorded on the basis of submission made by the parties that there is no possibility of settlement. On 20.1.2013 the PLA (PUS) recorded that effort for settlement failed and fixed the

case for evidence, as such, there is total non-compliance of the provisions contained in Section 22C (3) to (7) of the Act of 1987.

16. In WP227 No.3 of 2013, the PLA (PUS) recorded that compromise/settlement between the parties is not possible and fixed the matter for evidence, as such, again there is full non-compliance of the provisions contained in Section 22 (3) to (7) of the Act of 1987.

17. As a fallout and consequence of the above-stated discussion, the impugned awards passed by the PLA (PUS), Bastar at Jabdalpur in the aforesaid three writ petitions are hereby set aside. The matters are remitted to the PLA (PUS), Bastar at Jagdalpur to follow the procedure as indicated hereinabove and to proceed strictly in accordance with law. Parties are directed to appear before the PLA (PUS) on 18.2.2019. No further notice is required. The PLA (PUS) shall consider and decide the matters within two months from 18.2.2019.

18. The writ petitions are allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No.265 of 2017

Petitioner

Branch Manager, Cholamandam
M.S. General Insurance Company

Versus

Respondent

Smt. Manju Manjesh Rathore

(Head-note)

(English)

In accordance with object of the Legal Services Authorities Act, 1987 the Permanent Lok Adalat has to conduct conciliation between the parties before deciding the dispute on merits under Section 22C (8) of the Act of 1987.

(हिन्दी)

विधिक सेवा प्राधिकरण अधिनियम, 1987 के उद्देश्य के अनुसार, अधिनियम, 1987 की धारा 22C (8) के अंतर्गत स्थायी लोक अदालत को गुणागुण के आधार पर विवाद का निर्णय करने के पूर्व, पक्षकारों के मध्य सुलह का संचालन करवाना चाहिए।