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AIR 2010 Jhar 119

Jharkhand High Court

Case No: None

Branch Manager, Tata AIG General Insurance Co. Ltd. and The Manager (Claims), Tata AIG General Insurance Co. Ltd.	APPELLANT
Vs	
Mrs. Bandana Devi	RESPONDENT

Date of Decision: Feb. 25, 2010

Acts Referred:
Constitution of India, 1950 â€" Article 39A#Legal Services Authorities Act, 1987 â€" Section 22C, 22D, 22E#Limitation Act, 1963 â€" Section 14

Citation: AIR 2010 Jhar 119

Hon'ble Judges: D.N. Patel, J

Bench: Single Bench

Judgement

D.N. Patel, J.
Learned Counsel for the petitioners submitted that the order, passed by the Permanent Lok Adalat, Jamshedpur, dated 2nd

January, 2008 in Permanent Lok Adalat Case No. 132 of 2007, which is at Annexure 6 to the memo of petition, is under challenge, in this writ

petition. Learned Counsel for the petitioners submitted that the Permanent Lok Adalat has not power, jurisdiction and authority to adjudicate the

dispute between the parties and never any consent, much less in writing, has been given by the petitioners for deciding the dispute, on merits by the

Permanent Lok Adalat, Jamshedpur. The role of the Permanent Lok Adalat is of a conciliator and not of a adjudicator. It is also vehemently

submitted by the learned Counsel for the petitioners that the requirements, as per Sub-section (7) of Section 22C of the Legal Services Authority

Act, 1987, has also not been complied with, as per the decision rendered by a Division bench of this Court in the case of Bharat Sanchar Nigam

Limited v. State of Jharkhand and Anr. as reported in 2008(3) J.L.J.R 513. It has also been submitted by the learned Counsel for the petitioners

that there is also a decision, rendered by this Court in the case of Eastern-Central Railway and Anr. v. Ashok Kumar Verma and Ors. as reported

in 2009(4) J.L.J.R. Page-129, wherein also, it has been decided that unless a consent is given in writing by both the parties, the Permanent Lok

Adalat has not power, jurisdiction and authority to decide the dispute between he parties under Sub-section (8) of Section 22C of the Legal

Services Authority Act, 1987. Even otherwise also, in the facts of the present case, right from the written statement, paragraph No. 2 onwards,

filed by the present petitioners in Permanent Lok Adalat Case No. 132 of 2007, the claim of the petitioners has been denied and the jurisdiction of

the Permanent Lok Adalat has also been denied and, therefore, in view of the aforesaid decisions and looking to the provisions of the Legal

Services Authority Act, 1987, the impugned order, passed by the Permanent Lok Adalat Jamshedpur, dated 2nd January, 2008 in Permanent Lok

Adalat Case No. 132 of 2007, deserves to be quashed and set aside.

2. I have heard learned Counsel for the respondents, who has submitted that the present petitioners, who are original respondents in Permanent

Lok Adalat Case No. 132 of 2007, have never objected when the decision, on merits, was given by the Permanent Lok Adalat and, therefore, the

decision, rendered by the Permanent Lok Adalat, Jamshedpur, is in consonance with the provisions of the Legal Services Authority Act, 1987.

Even otherwise also, there is no illegality, pointed out by the petitioners in the impugned order, passed by the Permanent Lok Adalat, Jamshedpur,

and, therefore, this writ petition deserves to be dismissed.

3. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I hereby quashed and set aside the

impugned order, passed by the Permanent Lok Adalat, Jamshedpur, dated 2nd January, 2008 in Permanent Lok Adalat Case No. 132 of 2007,

mainly for the following facts and reasons:

(I) The present petitioners were the original respondents/defendants in Permanent Lok Adalat Case No. 132 of 2007, instituted by the present

respondent before the Permanent Lok Adalat, Jamshedpur. Looking to the written statement, filed by the present petitioners, right from paragraph

No. 2 onwards, it appears that the petitioners have raised an objection about the claim of the petitioner (respondent herein) and it has also been

mentioned that the claim of the petitioner (respondent herein) is not maintainable before the Permanent Lok Adalat. Likewise, there are further

disagreements for decision, on merits, in paragraph Nos. 8, 11 and 18 of the written statement.

(II) It appears from the fads of the case that the Permanent Lok Adalat has never offered the terms of settlement, as required under Sub-section

(7) of Section 22C of the Legal Services Authority Act, 1987. It has been held by a Division Bench of this Court in the case of Bharat Sanchar

Nigam Limited v. State of Jharkhand and Anr. as reported in 2008(3) J.L.J.R. 513, at paragraph No. 18, as under:

...In our opinion, instead of exercising adjudicatory role, the Permanent Lok Adalat ought to have acted in such a manner to bring the parties into a

settlement. The duty of the Permanent Lok Adalat is to bring the parties to a settlement and to pass award instead of adjudicating a dispute and

pass an award without taking notice of the Act and the Rules under which claim was entertainable. In our considered opinion, Permanent Lok

Adalat has no jurisdiction to directly invoke the provision of Sub-section (8) of Section 22C and decide the dispute on merit against the will of the

party. As the basic object and power of enacting Chapter VIA is to get the disputes settled at the pre-litigation stage the provision of Sub-section

(8) become redundant where the Permanent Lok Adalat failed to apply the provisions of Sub-section (4) to (7) of Section 22C of the Act.

(III) In view of the aforesaid decision, it is the duty vested in the Permanent Lok Adalat to offer the terms of settlement under Sub-section (7) of

Section 22C of the Legal Services Authority Act, 1987. Never such terms of settlement has been offered by the Permanent Lok Adalat,

Jamshedpur. Thus, there is a violation of Sub-section (7) of Section 22C of the Legal Services Authority Act, 1987.

(IV) It has also been held by this Court in the case of State Bank of India v. State of Jharkhand and Anr. as reported in 2009(2) J.L.J.R. 684, at

sub-paragraph Nos. (vii) to (x) of paragraph 6, as under:

(vii) Now the question arises how a Permanent Lok Adalat can switch over to Sub-section (8) of Section 22C of the Act, 1987 for playing its

adjudicatory role. It appears from Sub-section (8) of Section 22C of the Act, 1987, that Permanent Lok Adalat can decide the dispute if the

dispute is not relating to any offence and if no settlement has been arrived at, after following the procedure under Sub-section (7) of Section 22C

of the Act, 1987. As per Section 22D of the Act, 1987, neither the provisions of the Code of Civil Procedure, 1908 are applicable, nor the

provisions of Indian Evidence Act, 1872 are applicable. Likewise, the order passed by the Permanent Lok Adalat, as per Section 22E of the Act,

1987, is not an appellable order and, therefore, the Permanent Lok Adalat must make the parties aware of the aforesaid aspect and, even if, they

are giving consent for playing an adjudicatory role by the Permanent Lok Adalat, then only the Permanent Lok Adalat can decide the dispute on

merits. Thus, under Sub-section (7) of Section 22C of the Act, 1987, Permanent Lok Adalat must offer the terms of settlement on its own. If the

settlement is not arrived at, then the Permanent Lok Adalat should inform the parties that whether they wish that dispute may be decided on merits

by Permanent Lok Adalat. This option ought to have been given and there must be a positive answer from both the parties. If ore of the parties to

the dispute is denying the adjudication of the dispute, Permanent Lok Adalat shall not decide the dispute on merits. Permanent Lok Adalat shall

also make the parties aware that it is not bound by the provisions of the CPC and likewise, it is also not boudn by the provisions of Indian

Evidence Act. Permanent Lok Adalat will also make the parties aware before exercising powers under Sub-section (8) of Section 22C of the Act,

1987, that the award, passed by the Permanent Lok Adalat, will be a final one and no appeal shall like and despite this awareness, if both the

parties to the dispute are giving consent that Permanent Lok Adalat can decide the dispute on merits, then only Permanent Lok Adalat shall decide

the dispute on merits, otherwise the matter will again go to the normal course or the parties will be free to take recourse under the law. This

Safeguard is necessary to make the parties aware, because several parties to the dispute may not be agreeable for their matters to be decided by

the Permanent Lok Adalat, where neither the provisions of CPC nor the provisions of Indian Evidence Act is applicable. Even, no appeal is

provided under the Act, 1987 against the award of Permanent Lok Adalat u/s 22E of the Act, 1987.

(viii) Looking to the scheme of the Act, it appears that any of the parties to a dispute can make an application to a Permanent Lok Adalat for

settlement of the dispute, as per Sub-section (1) of Section 22C of the Act. Thus, any complex matter may come to the Permanent Lok Adalat

unilaterally, upon an application by a single party, or without a joint application by the parties to the dispute also, any party can prefer an

application before the Permanent Lok Adalat for settlement of the dispute and, therefore, Permanent Lok Adalat ought to follow, as stated

hereinabove, the procedure and the requirement of Sub-section (7) of Section 22C of the Act, 1987, and if no settlement is arrived at, then again,

option should be given to the parties to the dispute, after make them aware of the non-applicability of the provisions of the CPC and the provisions

of Indian Evidence Act and also that there shall be no appeal against the award, passed by the Permanent Lok Adalat, and even after this

awareness, if both the parties give consent that Permanent Lok Adalat may decide the dispute on merits, then only Permanent Lok Adalat shall

exercise powers under Sub-section (8) of Section 22C of the Act, 1987, but if one of the parties is refusing for adjudication, on merits, of the

dispute by Permanent Lok Adalat, it shall not decide the dispute on merits. The primary role of the Permanent Lok Adalat is settlement and it can

wear a robe of the court for playing adjudicatory role, only upon consent in writing of all the parties to the dispute and not otherwise.

(ix) In the facts of the present case, neither the procedure, as stated hereinabove, under Sub-section (7) of Section 22C of the Act, 1987, has

been followed i.e. giving the terms of settlement, by Permanent Lok Adalat to the parties to the dispute, nor their consent has been taken prior to

playing an adjudicatory role under Sub-section (8) of Section 22C of the Act. Consent or sanction of all the partiers to the dispute before

adjudication on merits under Sub-section (8) of Section 22C of the Act, 1987, is a condition precedent. Willingness of the parties to the dispute

for adjudication, on merits, of a dispute, is at a pivotal position. Permanent Lok Adalat is basically not a court at all. Only as an exceptional case,

with consent of the parties, the Permanent Lok Adalat can play an adjudicatory role. It is a prime duty, vested in the Permanent Lok Adalat,

before exercising powers under Sub-section (8) of Section 22C of the Act, 1987, to make the parties aware about non-applicability of the

provisions of CPC and the provisions of the Indian Evidence Act and also that the award, passed by the Permanent Lok Adalat, is a non-

appellable order and, thereafter, the Permanent Lok Adalat must ask for the cosnent of the parties to the dispute. Such consent must be reduced in

writing by the parties, so as to avoid future complications and upon taking such pursis/joint application, signed by both the parties to the dispute

that they are ready and willing for getting decision on merits, by the Permanent Lok Adalat, of their dispute, and they are aware that the provisions

of the CPC and the provisions of Indian "Evidence Act are not applicable and the award, passed by the Permanent Lok Adalat, is also not

appellable, this type of written joint pursis/joint application, signed by both the parties, must be taken on record, henceforth, by the Permanent Lok

Adalat, and thereafter only, it shall exercise the powers of deciding, on merits, the dispute or disputes between the parties under Sub-section (8) of

Section 22C of the Act, 1987. If there is no consent by any of the parties to the dispute, Permanent Lok Adalat shall refrain itself, from exercising

powers under Sub-section (8) of Section 22C of the Act, 1987, it has also been held by the Hon"ble Supreme Court in the case of State of

Punjab and Another Vs. Jalour Singh and Others, , in paragraph No. 9, as under:

9. But we find that many sitting or retired Judges, while participating in the Lok Adalats as members, tend to conduct the Lok Adalats like courts,

by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass

orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution

through the Lok Adalats, will drive the litigants away from the Lok Adalats. The Lok Adalats should resist their temptation to play the part of

Judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties,

with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and

weaknesses, advantages and disadvantages of their respective claims.

(Emphasis supplied).

(x) If against the desire of the parties, a dispute is decided on merits under Sub-section (8) of Section 22C of the Act, 1987, where neither the

provisions of the CPC are applicable, nor the provisions of Indian Evidence Act are applicable, nor the order is appellable (as per Sections 22D

and 22-E of the Act, 1987), then no party will come for settlement of the dispute at a prelitigation stage.

(Emphasis supplied)

(V) It has been held by this Court in the case of Eastern-Central Railway and Anr. v. Ashok Kumar Verma and Ors. as reported in 2009(4)

J.L.J.R. 129, at paragraph No. 5, that looking to the provisions of Section 22D of the Legal Services Authority Act, 1987. and looking to the role,

to be played by the Permanent Lok Adalat, it should be brought to the notice by the Permanent Lok Adalat of the parties to the dispute that

neither the provisions of the Indian Evidence Act, 1982 nor the provisions of the Code of Criminal Procedure, 1908 are applicable to the

proceedings of the Permanent Lok Adalat and there shall not be any appeal, tenable at law. With these informations, if the parties are giving their

consent in writing, then only the Permanent Lok Adalat can decide the dispute, on merits, as envisaged under Sub-section (8) of Section 22C of

the Legal Services Authority Act, 1987. In the facts of the present case, never such consent in writing has been given by the present petitioners

and, therefore also, the impugned order deserves to be quashed and set aside.

(VI) The predominant role, to be played by the Permanent Lok Adalat, is of a conciliator and not as a adjudicator. The Permanent Lok Adalat

should not wear the robe of tire Court. If the Permanent Lok Adalat will decide the disputes, on merits, perhaps the parties will not go to the

Permanent Lok Adalat. The Permanent Lok Adalat must offer the terms of settlement to the parties, looking to their wisdom and experience, as

envisaged under Sub-section (7) of Section 22C of the Legal Services Authority Act, 1987 and also looking to the aforesaid decisions, rendered

by this Court. The Permanent Lok Adalat should remain slow in deciding the dispute, on merits, unless the parties are made aware of the fact that

to the proceedings of the Permanent Lok Adalat, the provisions of Indian Evidence Act, 1872 and the provisions of the Code of Criminal

Procedure, 1908 are not applicable and the order, passed by the Permanent Lok Adalat is not an appellable order, as per the provisions of

Section 22D of the Legal Services Authority Act, 1987 as also the provisions of Section 22E of the Legal Services Authority Act, 1987 and,

thereafter, if the parties are giving their consent, in writing, then only, the Permanent Lok Adalat should venture in deciding the dispute, on merits,

otherwise not. Once consent is given by the parties to the dispute, in writing, the Permanent Lok Adalat would decide the dispute, on merits, like

an arbitrator. The arbitrator is a Judge privately appointed by the parties and the decision, rendered by the arbitrator, is known as an ""award"" and

only on a limited ground, it can be challenged and not by way of an appeal. Looking to the scheme of the Legal Services Authority Act, 1987,

enacted in pursuance of the provisions of Article 39A of the Constitution of India, it appears that the Predominant role of a Permanent Lok Adalat

is to arrive at a settlement between the parties. For adjudication, there are several courts and several tribunals. It has been observed by this Court

in several Motor Vehicle Accident Claim Cases also that the Permanent Lok Adalats are deciding the disputes, on merits, without there being any

consent. It ought to be kept in mind that separate tribunals have already been constituted by law and the members of the Permanent Lok AdalaLs

are sometime retired judges of the district court. Their ability of the judgment to the dispute is not to be checked as a member of the Permanent

Lok Adalat. Their ability to arrive at a settlement will be appreciated by the law. Even though they are retired judges, they must remain slow in

deciding the disputes, on merits, because they are sitting as a member of the Permanent Lok Adalat and not as a judge in any court.

4. As a cumulative effect, of the aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the impugned order, passed by

the Permanent Lok Adalat, Jamshedpur, dated 2nd January, 2008, in Permanent Lok Adalat Case No. 132 of 2007 (Annexure 6 to the memo of

petition). The respondent is at liberty to approach the appropriate court or forum for redressal of the grievances. As and when the respondent

approaches the concerned court/forum for redressal of her grievances, the period consumed in pursuing the Permanent Lok Adalat Case and in

this writ petition, will be sympathetically considered for condoning the delay, in view of Section 14 of the Indian Limitation Act, 1963.

5. This writ petition is, accordingly, allowed and disposed of.