
(2011) 04 KL CK 0033
In the High Court Of Kerala
Case No : W.A. No. 2138 of 2010

Ambika Kumary

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Legal Services Authorities Act, 1987 — Section 19, 19(5), 20, 20(5), 20(6)

Citation : (2011) 3 CivCC 66 : (2011) 2 ILR (Ker) 625 : (2011) 2 KLJ 636 :
(2011) 2 KLT 673 : (2012) 1 RCR(Civil) 798

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : S. Gopalakrishnan Nair, for the Appellant; P. Sankarankutty Nair and K.C. Santhosh Kumar, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The short question arising for our decision in this case is on the nature of jurisdiction of the Permanent Lok Adalat established u/s 22B of the Legal Services Authorities Act, 1987 (hereinafter called "the Act"). The issue cropped up in a claim for damages filed before the Permanent Lok Adalat, Trivandrum by the wife and children of the deceased Sri. Murugan, alleging the death of the latter as on account of medical negligence by the Appellants, few of whom are Doctors in the E.S.I. Hospital, Peroorkada, Trivandrum and the last one the Insurance Officer therein. On receipt of notice of claim petition, the Appellants raised a preliminary objection before the Permanent Lok Adalat contending that the PLA has no jurisdiction to decide a claim disputed by the Appellants by conducting a trial like a Civil Court. At the request of the Appellants the preliminary objection on jurisdiction was heard and decided by the PLA against the Appellants by holding that the forum has jurisdiction to decide all issues raised in the claim petition by virtue of powers conferred on them u/s 22C(7) and (8) read with Section 22A(b)(v) of the Act. It is against this order the Appellants filed Writ Petition before the learned Single

Judge for declaration that dispute is outside the scope and jurisdiction of the PLA and for prohibitory orders against the PLA from proceeding with the complaint. The learned Single Judge, however, did not accept the contentions of the Appellants by holding that Appellants' effort is only to delay the matter before the PLA and the W.P.(C) was accordingly dismissed. It is against this judgment of the learned Single Judge Appellants have filed this Writ Appeal before us.

2. We have heard Senior counsel Sri. Gopakumaran Nair appearing for the Appellants, counsel appearing for the contesting parties, Standing Counsel for the E.S.I. Corporation and Government Pleader for the State.

3. Since the issue raised pertains to the scope and nature of jurisdiction of the PLA, we have to necessarily consider the relevant provisions of the Act, namely Sections 22C, 22D and 22E, which are extracted hereunder.

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 Lok Adalat, 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 co-operate in good faith with the Permanent Lok Adalat 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 Lok Adalat, 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.

22D. Procedure of Permanent Lok Adalat.-- The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872).

22E. Award of Permanent Lok Adalat to be final.-- (1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.

(3) The Award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings.

(5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

4. The contention raised by the Senior counsel appearing for the Appellants is that PLA is only an authority to help settlement of disputes between parties in conciliation proceedings, and if no conciliation is possible, the PLA can record failure and close the complaint leaving the parties to approach appropriate Forum or Court for relief. The learned Counsel has heavily relied on the decision of the Honourable Supreme Court of India in the case of *State of Punjab and Another Vs. Jalour Singh and Others*, wherein the Honourable Supreme Court while examining the scope of Lok Adalat constituted under the Act, held that Lok Adalats have no adjudicatory or judicial functions and their functions are purely related to conciliation. Of course while considering the scope, nature and jurisdiction of Lok Adalat, the Honourable Supreme Court categorically held that no Lok Adalat has the power to hear parties to adjudicate cases as a Court does. However, the question to be considered is whether the powers of the Permanent Lok Adalat constituted u/s 22B of the Act are similar to the functions of the Lok Adalat constituted under Chapter VI of the Act. What is clear from various provisions of Chapter VI is that pending cases can be referred to Lok Adalat by any Court and parties can also approach the Lok Adalat for settling pre-litigation disputes. Sub-section (5) of Section 19 of the Act specifically states that Lok Adalat has jurisdiction to determine and to arrive at a compromise or settlement between the parties to dispute, when a case pending before a Court is referred to Lok Adalat or the dispute is otherwise brought before it over which it has jurisdiction. There is no specific provision in Chapter VI authorising Lok Adalat to settle any dispute between parties that could not be settled through compromise or settlement between parties. In fact what is specifically provided in Sub-section (5) of Section 20 is that if no compromise or settlement is arrived at in a case referred to Lok Adalat, the Lok Adalat shall return the case records to the Court, where from it is referred, for the Court to proceed with the matter in accordance with law. Similarly Sub-section (6) of Section 20 specifically states that whenever the Lok Adalat feels that a dispute raised before it could not be settled through compromise or settlement, all what it has to do is to advise the parties to seek remedy in a Court. In the decision referred to above, the Honourable Supreme Court was only dealing with the scope of Lok Adalat with reference to Sections 19 and 20 of the Act, which do not confer power on Lok Adalat to decide any dispute between parties that could not be settled through agreement between parties. In other words, the Lok Adalat can only produce compromise decrees or failure reports and they have no authority to settle disputes through adjudication.

5. Though Permanent Lok Adalat has certain characteristics of Regular Lok Adalat constituted under Chapter VI of the Act, its nature, scope and powers conferred under the provisions of Chapter VIA are entirely different from that of other Lok Adalats. In the first place, Permanent Lok Adalat constituted u/s 22B of the Act can decide only disputes arising in respect of public utility services and any other

service notified by the Government as provided u/s 22A(b) of the Act. Admittedly, the case of medical negligence i.e., death caused on account of medical negligence is covered by Clause (v) of Section 22A(b) of the Act, which covers "service in hospital or dispensary". The question to be considered is whether the provisions of the Act give authority to Lok Adalat to settle dispute only through conciliation proceedings as claimed by the Appellants. Learned Senior counsel appearing for the Appellants contended before us that Respondents have effective alternate remedy by way of approaching Civil Court or even E.S.I. Court for award of compensation. However we do not think other remedies available to parties is a ground for the PLA to decline to exercise their jurisdiction. In other words, if PLA has jurisdiction to decide the matter, then it has to proceed and decide the case according to statutory provisions, no matter the party has other remedies available in law. The whole scheme of the Act is to provide a new Forum for easy and fast settlement of certain disputes and the same is optional and alternate to the existing legal remedies available under the general law. The provisions of the Act are only supplementary and alternate to other remedies and it is up to the parties to opt to invoke the jurisdiction of the PLA constituted under the Act or to pursue other legal remedies.

6. As already stated, the PLA constituted under Chapter VIA has jurisdiction to entertain only disputes arising in public utility services referred to therein. Obviously any dispute pertaining to any of the services defined u/s 22A(b) of the Act could be raised before the PLA having jurisdiction over the area and the parties. Section 22C prohibits any party, who has already made an application under Sub-section (1) before PLA, from making an application or from invoking jurisdiction of any Court in the same dispute. This provision makes it clear that jurisdiction of the PLA when invoked bars the party from availing any other remedy under law. Even though the bar is specifically with reference to invoking of jurisdiction of Court, we feel it covers statutory authorities and other Forums before which the party can approach for same relief. In other words, once jurisdiction of PLA is invoked by a party, no other Court or authority can exercise jurisdiction over the matter. However if the PLA for any reason refuses to decide the case on merit, the party is free to approach appropriate Forum or Court for relief after the PLA closes the matter. In other words, so long as the PLA is seized of the matter, no other Court or authority can allow the party to invoke it's jurisdiction for deciding the same dispute.

7. So far as the contention of the Appellants that PLA has no jurisdiction to settle a dispute through adjudication, we are unable to accept the same because the provisions of the statute extracted above specifically provide for it. Detailed procedure to be followed by PLAs on receipt of a complaint are covered by Sub-sections (3) to (8) of Section 22C of the Act. Sub-section (3) of Section 22C only deals with the procedure to be followed by PLAs on receipt of a complaint, and sub Clauses (a) to (c) thereof cast burden on PLA to give sufficient opportunity to both the parties to raise their contentions and claims precisely and furnish details of the evidence relied on by them in support of their claims and counter claims.

Once the proceedings in regard to framing of precise claims and counter claims are completed and other evidence and materials in support of their claims are produced, the PLA will start conciliation proceedings as provided under sub-Sub-section (4) & (5) of Section 22C the Act. Sub-section (6) of Section 22C specifically states that both parties should co-operative to settle the dispute in conciliation proceedings initiated by the PLA. Sub-section (7) of Section 22C states that if the PLA finds elements of settlement then they will make terms of settlement acceptable to the parties and on the parties signing the terms of settlement prepared by the PLA, the PLA will proceed to pass the award which should be strictly in terms of settlement between the parties. The first and foremost scheme of settlement of dispute raised before the PLA is conciliation proceedings, and in cases of settlement, proceedings end up with passing of settlement award by PLA.

8. The next question to be considered is what is the recourse open to PL As when parties fail to reach a settlement in a dispute raised before it. Unlike the provisions of Chapter VI of the Act, wherein the Lok Adalat on failure to settle dispute through agreement between the parties, return case records to the Court concerned where from reference is made or advice the parties to seek remedy before appropriate forum, the provisions of Sub-section (8) of Section 22 Cauthorise the PLA to proceed to decide dispute obviously on merit by themselves. What we notice is that the only prohibition against PLA is not to entertain a claim in respect of a dispute relating to any offence. The first proviso to Section 22C(1) prohibits PLA from entertaining any matter relating to an offence not compoundable under any law. Similarly under the 2nd proviso to the said Section, the jurisdiction of the PLA is limited to disputes on value of property up to rupees ten lakhs. In fact, what is carried under Sub-section (8) of Section 22C is the same limitation on the jurisdiction contained u/s 22C of the Act. in this case, even though there was an allegation that initially criminal complaint was filed before the Police for prosecution of the Appellants, the matter got referred by the Magistrate Court on report by the Police and so much so, the claim of compensation made by the party Respondents do not relate to any offence, and so much so, the bar provided under sub-section (8) of Section 22C does not apply to the claim involved in this case.

9. The contention raised by the Senior counsel is that PLA is not authorised to take detailed evidence like calling for evidence, examination of witnesses etc. and only civil court of competent jurisdiction or an E.S.I. Court could settle a dispute on claim for compensation as in this case. We are unable to accept this contention because Section 22 of the Act confers on Lok Adalats and PLAs the same powers as are vested in Civil Courts under the CPC while conducting trial of a suit, which specifically cover the authority of the Court for summoning and enforcing attendance of witnesses, examining them on oath, discovery and production of any document, reception of evidence on affidavits, requisitioning of any public records or documents from any Court or Office and such other matters as prescribed. In other words, PLAs have powers similar to Civil Courts trying

suit. So much so, we do not find that PLA has any disability to take evidence or proceed with trial of the matter to decide the claim raised by parties.

10. Learned Senior Counsel appearing for the Appellants also submitted that PLA lacks experience or qualification required for taking evidence and deciding the case like a Civil Court. In our view, the submission of the Appellants is completely out of place because PLA is headed by a retired District Judge, who has long experience as a trial Judge and other members are also experienced in the field of public utility services falling under the jurisdiction of PLA. In fact in our view PLA with Rtd. Dist. Judge as Chairman and with expert members in the subject can be expected to produce orders qualitatively better than Civil Court judgments.

11. We have already noticed that the difference between Lok Adalat and PLA is that while the Lok Adalat only makes an attempt to settle dispute with the agreement of parties and passes only compromise decrees for settlement of dispute, Section 22E makes it clear that PLA can either pass an award on merit or can pass an award in terms of settlement or agreement which is signed by the parties also. In other words, once a complaint filed before PLA is within its jurisdiction, then PLA has no escape from deciding the matter finally, which can be through a settlement award, and if there is no possibility of settlement by PLA deciding the case on merit after taking evidence in the same way a Civil Court does. However, Section 22D makes it clear that PLA shall not be bound by the provisions of the CPC and Indian Evidence Act and all what is required of it is to follow principles of natural justice, objectivity, fair play and equity. In other words once the proceedings are completed and decision rendered following the above principles, then the award cannot be invalidated for procedural noncompliance or other technical non-compliance of Evidence Act or CPC. By virtue of Sub-sections (2) & (4) of Section 22E award of PLA is a decree and the same shall be final and shall not be called in question in any suit, application or in execution proceedings. Sub-section (5) of Section 22E authorises Civil Courts to execute the decree passed by PLA as if it is a decree made by Civil Court. The only remedy available against an award passed by PLA is the writ remedy available before High Courts under Articles 226 & 227 of the Constitution of India and the grounds of challenge available will be violation of natural justice and incompatibility with principles of justice, equity, fair play and reason and not on grounds of technicality or procedural noncompliance not affecting the result of adjudication.

12. Even though learned Counsel for the Appellants relied on several decisions of the Honourable Supreme Court of India on medical negligence and the standards to be applied in deciding the claims, we do not think the same should be considered because it is for the Appellants to raise all the contentions before the PLA while deciding the claim petition on merits.

We therefore uphold the findings of the PLA on their jurisdiction and direct them to proceed with the trial of the dispute and pass final award within three months

of receipt of a copy of this judgment. However, having regard to the fact that the matter is pending for the last 5 years and considering the financial plight of the party Respondents we direct the 4th Appellant to deposit Rs. 50,000/- before the PLA, which will be released to Respondents 3 to 5 as temporary relief, subject to result of final award in the complaint.

The Writ Appeal is consequently dismissed.