

(2024) 04 CHH CK 0014

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 2196 Of 2012

Branch Manager The Oriental Insurance Co. Ltd.

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22C, 22C(3), 22C(4), 22C(5), 22C(6), 22C(7), 22C(8)

Citation : (2024) 04 CHH CK 0014

Hon'ble Judges : Sanjay S. Agrawal, J

Bench : Single Bench

Advocate : Sudhir Agrawal, Shashank Agrawal, Prerna Agrawal, Akhilesh Kumar, Keshav Dewangan

Final Decision : Allowed

Judgement

1. This petition has been filed by the Oriental Insurance Company Limited questioning the legality and propriety of award dated 28.08.2012 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility), Bastar, Place Jagdalpur in Case No.37/2012, whereby the claim made by the respondent No.3-J. C. Construction Company under Section 22(C) of the Legal Services Authorities Act, 1987 (hereinafter referred to as "the Act, 1987") has been allowed while directing the Insurance Company to pay a sum of Rs.24 Lakhs (Twenty four Lakh only) with interest @ 7.5 % per annum from the date of filing of the claim form dated 25.06.2007.

2. Briefly stated the facts of the case are that the claim enumerated under Section 22(C) of the Act, 1987 has been made by the respondent No.3 before the Permanent Lok Adalat claiming compensation to the tune of Rs.24 Lakhs by submitting, inter alia, that the Poklane Machine bearing No.Tata Hitachi EX-110-Number-1101-0120 (hereinafter referred to as "the machine in question") owned by him was destroyed by unknown naxalites near the village Katekalyan of District Dantewada on 08.06.2007 while burning it, owing to which, a report was

lodged before the Police Station Katekalyan, District Dantewada. Since it was insured with the Insurance Company for Rs.24 Lakhs, therefore, an intimation to this effect was reported to the Insurance Company on 09.06.2007. It is pleaded further that a Surveyor of the Insurance Company has inspected the spot on 12.06.2007 and thereafter, the claim was made before the Insurance Company, but, has not been considered even after the issuance of notices, issued on 30.11.2011 and 20.01.2012, which compelled him for institution of the claim, instituted on 07.04.2012.

3. In reply to the aforesaid claim, it was stated by the Insurance Company that since the machine in question was not insured, as claimed, therefore, no liability could be fastened upon it.

4. In support, the respondent No.3 has examined its Power of Attorney holder namely Satish Kumar Vyas, who has exhibited as many as 9 documents, including the insurance policy, marked as Ex.P-2, and deposed that the surveyor of the Insurance Company has certified that the machine in question was belonging to the respondent-Company, i.e. J.C. Construction Company and, Abhay Kumar Sinha, the Branch Manager of the Insurance Company (NAW-1) has also stated in his evidence at para-7 that the model No.EX-110 and the machine in question bearing Registration No.1101-0120 are the same. It was deposed further by him that a recommendation was made by his Divisional Office Jagdalpur to the Regional Office at Indore for releasing the claim as made by the said respondent, but the competent officer of the Head Office has rejected the same.

5. The Permanent Lok Adalat, after considering the evidence led by the parties and that by considering the report (Ex.D-2) submitted by the Investigator-P. K. Bhattacharya, held that the machine in question, destroyed on the fateful day, insured with the Insurance Company vide its Policy (Ex.P-2), is the same. It held further that since the machine in question was destroyed completely, therefore, the said respondent is entitled to get the entire insured amount of Rs.24 Lakhs from the Insurance Company and, in consequence, the said respondent has been held to be entitled for the alleged insured amount of Rs.24 Lakhs along with its interest @7.5% per annum from 25.06.2007, the date when the claim form was submitted before the Insurance Company.

6. According to the learned counsel appearing for the petitioner, the finding of the Court below holding that the machine in question was insured with the Oriental Insurance Company Limited is apparently contrary to law. It is contended further that before deciding the alleged dispute, the Permanent Lok Adalat ought to have conducted the conciliation proceedings between the parties as required to be made mandatorily under sub-sections (4) and (5) of Section 22(C) of the Act, 1987. Having failed to follow the same, the entire proceedings initiated by the Permanent Lok Adalat is, thus, vitiated and, deserves to be quashed. In support, learned counsel appearing for the petitioner has placed his reliance upon the principles laid down by the Supreme Court in the matter of

Canara Bank vs. G. S. Jayarama, reported in (2022) 7 SCC 776.

7. On the other hand, learned counsel appearing for the respondent No.3 supported the award impugned as passed by the Permanent Lok Adalat.

8. I have heard learned counsel appearing for the parties and perused the entire record.

9. The alleged claim has been made by the respondent No.3-J. C. Construction Company under Section 22 (C) of the Act, 1987, therefore, the scope provided therein is to be seen, which provides as under:-

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:

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 cooperate 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”.

10. The interpretation of the aforesaid provision has been examined by the Supreme Court in the matter of Canara Bank (supra) and, it has been observed that the Permanent Lok Adalat, after completion of the procedure prescribed under sub-section(3), has to conduct the conciliation proceedings between the parties in accordance with sub-section (4) of the aforesaid provision in a manner it thinks fit while keeping in mind the nature of the dispute and, thereby held at paragraphs-25, 36 & 37, as under :-

25. “During the conciliation proceedings under sub-Section(4), sub-Section(5) of Section 22-C imposes a duty on the Permanent Lok Adalat to assist the parties in reaching an amicable resolution to their dispute in an independent and impartial manner.....”

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36. The appellant’s argument, however, is that if the opposite party does not appear before the Permanent Lok Adalat, it can dispense with the conciliation proceedings and straightaway adjudicate the dispute under Section 22-C(8). We are unable to accept this submission. Even if the opposite party does not appear, the Permanent Lok Adalat is still bound to follow the step-by-step procedure laid down by Section 22-C. Under Section 22-C(3), it would require the party before it to file their submissions and documents, and make the best efforts to communicate them to the opposite party for their response. If it is satisfied that

no response is forthcoming from the absent opposite party, the Permanent Lok Adalat shall still attempt to settle the dispute through settlement under Section 22-C(4). It is important to remember that Section 22-C(5) imposes a duty upon the Permanent Lok Adalat to be independent and impartial in attempting to amicably settle the dispute, while Section 22-C(6) imposes a duty upon the party present before the Permanent Lok Adalat to cooperate in good faith and assist the Permanent Lok Adalat.

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37. Section 22-C(8) is amply clear that it only comes into effect once an agreement under Section 22-C(7) has failed. The corollary of this is that the proposed terms of settlement under Section 22-C(7), and the conciliation proceedings preceding it, are mandatory. If Permanent Lok Adalats are allowed to bypass this step just because a party is absent, it would be tantamount to deciding disputes on their merit ex parte and issuing awards which will be final, binding and will be deemed to be decrees of civil courts. This was simply not the intention of the Parliament when it introduced the LSA Amendment Act. Its main goal was still the conciliation and settlement of disputes in relation to public utilities, with a decision on merits always being the last resort. Therefore, we hold that conciliation proceedings under Section 22-C of the LSA Act are mandatory in nature.”

11. In the light of the principles laid down by the Supreme Court in the above-referred matter, it is, thus, settled that the nature of conciliation proceedings provided under Section 22(C) is mandatory in nature. The duty is, thus, cast mandatorily upon the Permanent Lok Adalat to conduct the conciliation proceedings between the parties and assist them in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner and only in the eventuality of their failure to arrive at a compromise, the Permanent Lok Adalat could proceed and decide the lis as provided under Section 22(C)(8) of the Act, 1987. It is, therefore, to be seen as to whether the Permanent Lok Adalat before passing the award impugned has followed the said mandatory provision in its true spirit or not.

12. It appears from perusal of the record that after receiving the said application of respondent No.3 under Section 22(C) of the Act, 1987, a notice/summon was directed to be issued by the Permanent Lok Adalat against the petitioner on 07/04/2012 for appearance and also for filing its reply while fixing the case on 19/04/2012. The matter was, thereafter, adjourned from time to time as per the request of the counsel for the Insurance Company for filing the reply, who ultimately succeeded to submit the same on 15/06/2012. It appears further that on the said date itself, it was informed by the parties that there is no possibility for any of their amicable settlement and, as per the request made by the counsels, the Permanent Lok Adalat proceeded with the matter to decide the alleged dispute and after considering the evidence led by the parties, has decided the matter finally on 28.08.2012.

13. What is, therefore, reflected from perusal of the order sheets that right from the initiation of the proceedings, commencing with effect from 07.04.2012 upto 15.06.2012, none of the parties were found to be present before the Permanent Lok Adalat and instead, they were represented by their counsels. It is, thus, evident that the conciliation proceedings, as was required to be conducted between the parties, were even not done, though required to be done mandatorily in the light of the principles laid down by the Supreme Court in the said matter of Canara Bank (supra). It, thus, appears that the Permanent Lok Adalat has conducted the matter extremely in a casual manner without following the procedure prescribed mandatorily under Section 22(C) of the Act, 1987. The entire proceeding is, thus, held to be vitiated and consequent upon its decree.

14. Consequently, the impugned award dated 28.08.2012 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility) Bastar, Place-Jagdalpur in Case No.37/2012 is hereby set aside and the matter is remitted back to the learned Permanent Lok Adalat with a direction to decide the same afresh strictly in accordance with the provisions prescribed under Section 22(C) of the Act, 1987 and, the parties are directed to remain present before the said Court on 06.05.2024. Needless to mention here that the parties shall be at liberty to amend their pleadings, if so desire.

15. Before parting with the matter, it is to be noted that this Court vide order dated 13.02.2013 has stayed the effect and operation of the impugned award, while directing the petitioner-Insurance Company to deposit a sum of Rs.10 Lakhs before the concerned Court with a direction to deposit the said amount before the Nationalized Bank in the Fixed Deposit for a period of three months, which are to be renewable from time to time. Since the award impugned has been set aside, therefore, the petitioner-Insurance Company is entitled to get back the same.

16. With the aforesaid observations and directions, the petition is allowed.

No order as to costs.