

(2017) 01 CHH CK 0009

In the Chhattisgarh High Court

Case No : Writ Petition (Art. 227) No. 6406 of 2008

Divisional Railway Manager Bilaspur

APPELLANT

Vs

Public Utility Permanent Lok Adalat

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22A (b), Section 22E

Citation : (2017) 172 AIC 588 : (2017) AIR(Chhattisgarh) 41 : (2017) 2 CGLJ 322 : (2017) 1 CivilLJ 877

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Abhishek Sinha, Ghansyam Patel, S. Harshita, Ramakant Pandey, Dheeraj Kumar Wankhede

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J. - Complainant Smt. Draupati Bai Kaiwartya, respondent No.2 herein, under went sterilization operation on 27-3-2003 at the hands of petitioner No.3 Dr. S.K. Mishra, Senior Divisional Medical Officer, in the hospital owned by South East Central Railway (SECR), Bilaspur. Respondent No.2 / complainant after three years of sterilization operation conceived pregnancy and gave birth to a child on 2-1-2007. Feeling aggrieved against the birth of child pursuant to the sterilization operation, respondent No.2 filed a complaint before the Permanent Lok Adalat constituted under Section 22-B of the Legal Services Authorities Act, 1987 (for short "the Act of 1987") claiming compensation to the tune of Rs.3,36,000/- along with interest.

2. The Permanent Lok Adalat by its impugned award granted compensation of Rs.97,200/- along with 6% interest per annum from the date of application holding that it is a case of comparative / composite negligence and also held that the dispute is covered under Section 22-A(b)(v) of the Act of 1987 and as such it is a public utility service holding that service in hospital or dispensary is public utility service and therefore the dispute is amenable to the Lok Adalat. Feeling

aggrieved against the award passed by the Permanent Lok Adalat, South East Central Railway and its doctor who performed the surgery have filed this writ petition under Article 227 of the Constitution of India.

3. Mr. Abhishek Sinha and Ms. S. Harshita, learned counsel appearing for the writ petitioners, would submit that the award suffers from jurisdictional lacunae as the services provided by the petitioner institution would not be covered under public utility service as defined in Section 22-A(b) of the Act of 1987, as the Railway Hospital is run by the Railways only for its employees as a benevolent measure of welfare, thus the Permanent Lok Adalat would not have jurisdiction to decide the instant matter. They would further submit that the Permanent Lok Adalat shall have no jurisdiction to adjudicate upon the tortuous liability i.e. the fault liability of any of the parties and as such, the award of damage or compensation that has been made is without jurisdiction in tortuous liability as well as it is also not maintainable and therefore the award deserves to be set aside.

4. Mr. Ramakant Pandey, learned counsel appearing for the complainant/respondent No.2, would submit that the award passed by the Permanent Lok Adalat is final by virtue of the provisions contained in sub-section (4) of Section 22-E of the Act of 1987 and shall not be called in question in any original suit, application or execution proceeding, therefore, the writ petition is liable to be dismissed. Alternatively, he would submit that the Permanent Lok Adalat is having jurisdiction to decide the dispute as brought and no exception can be taken to the award passed by the Permanent Lok Adalat and as such, the writ petition deserves to be dismissed.

5. Mr. Dheeraj Kumar Wankhede, learned counsel assisting the Court, would submit that only in case of medical negligence on the part of the medical practitioner, compensation can be awarded and without adjudicating the question of negligence, no compensation can be awarded.

6. I have heard learned counsel for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.

7. It is not in dispute that on 27-3-2003, respondent No.2 underwent sterilization operation in the hospital run by SECR and petitioner No.3 performed that sterilization operation. Thereafter, after three years, she conceived pregnancy and gave birth to a child. Complaint filed by respondent No.2 under Section 22-A(b)(v) of the Act of 1987 i.e. service in hospital or dispensary would be public utility service, was entertained. The question is whether the Permanent Lok Adalat would have the adjudicatory power to determine the disputed question and / or whether the Permanent Lok Adalat is justified in granting compensation in the facts and circumstances of the case.

8. Chapter VI-A, which is titled as Pre-Litigation Conciliation and Settlement, was inserted in the Legal Services Authorities Act, 1987 by Amending Act 37 of 2002

with effect from 11-6-2002 under which Permanent Lok Adalat is to be constituted under Section 22-B of the Act of 1987. The Permanent Lok Adalats shall have jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification. "Public utility service" is defined in Section 22-A(b) of the Act of 1987 which states as under: -

"(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."

9. Cognizance has to be taken by the Permanent Lok Adalat under Section 22-C of the Act of 1987. By virtue of the provision under subsection (2) of Section 22-C, after an application is made under subsection (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute. Procedure to be followed in dealing with complaint filed before the Lok Adalat is prescribed in Section 22-D of the Act of 1987 which provides that 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. Section 22-E provides that award of Permanent Lok Adalat to be final. Section 22-E(1) provides that 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. Sub-section (4) of Section 22-E provides that 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 proceeding, but that finality clause attached with the award of the Permanent Lok Adalat will not exclude the jurisdiction of this Court under Article 226/227 of the Constitution of India, as the statutory provisions contained in the Act of 1987 will not exclude the constitutional remedy available under the provisions of the Constitution of India. The Supreme Court in the matter of Bar Council of India v. Union of India, (2012) 8 SCC 243 while considering Section 22- E(1) of the Act of 1987 held in unmistakable terms that party to dispute before Permanent Lok Adalat can always approach against the award of Permanent Lok Adalat, this Court under Article 226/227 of the

Constitution of India.

10. Now, the question is whether the Permanent Lok Adalat has adjudicatory power to make adjudication and determine the disputed question.

11. In the matter of State of Punjab and another v. Jalour Singh and others, 2008 AIR SCW 1196 the Supreme Court while dealing with the award passed by the Lok Adalat held that Lok Adalats have no adjudicatory or judicial function and observed as under in paragraph 8: -

"8. It is evident from the said provisions that Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. ..."

12. Likewise, it has been held by the Supreme Court in the matter of Interglobe Aviation Limited v. N. Satchidanand. (2011) 7 SCC 463 as under: -

"27. The nature of proceedings before the Permanent Lok Adalat is initially a conciliation which is nonadjudicatory 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. ..."

13. In Bar Council of India (supra), it has been held by the Supreme Court 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 thorough the medium of Permanent Lok Adalat. ..."

14. This Court in the matter of Superintending Engineer, CSEB v. Public Utility Permanent Lok Adalat, W.P.No.6728/2008 has held that the Permanent Lok Adalats do not exercise any plenary jurisdiction to adjudicate upon the disputes relating to claims based on tortuous liability merely because one who is engaged in operating a public utility service, and observed as under in paragraph 20: -

"20. The upshot of aforesaid discussion is that the Permanent Lok Adalats can exercise the jurisdiction in the matter of disputes arising out of public utility services relating to public utility service and do not exercise any plenary jurisdiction to adjudicate upon the disputes relating to claims based on tortuous liability merely because one who is engaged in operating a public utility service."

15. Thus, there is no doubt in my mind that the Permanent Lok Adalats cannot perform their adjudicatory function and proceed to decide the claim based on tortuous liability merely because the petitioners are operating a public utility service under Section 22-A(b) of the Act of 1987. Therefore, the award passed by the Lok Adalat cannot be upheld.

16. This matter can be viewed from another angle. The Permanent Lok Adalat may have recorded a finding that it is the comparative negligence/composite negligence and proceeded to award compensation and not even recorded a finding of clear cut medical negligence i.e. tortious liability on the part of petitioner No.3 and ignored the well settled law that sterilization is not cent percent guarantee of not getting conceived. It is having an error value to the extent of 1-2%. Being having error value, the Permanent Lok Adalat should have examined the negligence on the part of surgeon in conducting surgery for sterilization. In absence of such negligence, no tortious liability could have been settled for payment of compensation.

17. The Supreme Court in the matter of State of Punjab v. Shiv Ram and others 5 while dealing with medical negligence in failure of 5 (2005) 7 SCC 1 sterilization operations held as under in paragraphs 28, 29 and 30: -

"28. The methods of sterilization so far known to medical science which are most popular and prevalent are not 100% safe and secure. In spite of the operation having been successfully performed and without any negligence on the part of the surgeon, the sterilized woman can become pregnant due to natural causes. Once the woman misses the menstrual cycle, it is expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Section 3 thereof permits termination of pregnancy by a registered medical practitioner, notwithstanding anything contained in the Penal Code, 1860 in certain circumstances and within a period of 20 weeks of the length of pregnancy. Explanation II appended to subsection (2) of Section 3 provides:

"Explanation II.--Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman."

29. And that provides, under the law, a valid and legal ground for termination of pregnancy. If the woman has suffered an unwanted pregnancy, it can be terminated and this is legal and permissible under the Medical Termination of Pregnancy Act, 1971.

30. The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone the sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed."

18. Likewise, a three-Judge Bench of the Supreme Court in the matter of State of

Haryana and others v. Raj Rani, (2005) 7 SCC 22 has clearly held that only if there was negligence on part of surgeon performing sterilization operation and not otherwise, medical negligence is actionable and failure due to natural causes, no method of sterilization being foolproof or guaranteeing 100 per cent success, would not provide any ground for claim and followed the decision of the Supreme Court in Shiv Ram's case (supra). Their Lordships in Raj Rani's case (supra) observed in paragraph 3 as follows: -

"3. A three-Judge Bench of this Court has held in State of Punjab v. Shiv Ram (supra) that childbirth in spite of a sterilisation operation can occur due to negligence of the doctor in performance of the operation, or due to certain natural causes such as spontaneous recanalisation. The doctor can be held liable only in cases where the failure of the operation is attributable to his negligence and not otherwise. Several textbooks on medical negligence have recognized the percentage of failure of the sterilization operation due to natural causes to be varying between 0.3% to 7% depending on the techniques or method chosen for performing the surgery out of the several prevalent and acceptable ones in medical science. The fallopian tubes which are cut and sealed may reunite and the woman may conceive though the surgery was performed by a proficient doctor successfully by adopting a technique recognized by medical science. Thus, the pregnancy can be for reasons dehors any negligence of the surgeon. In the absence of proof of negligence, the surgeon cannot be held liable to pay compensation. Then the question of the State being held vicariously liable also would not arise. The decrees cannot, therefore, be upheld."

19. In the aforesaid cases, only after arriving at a definite conclusion regarding negligence on the part of medical practitioner, compensation was awarded to the claimant therein. In the case in hand, no such finding of negligence appears to have been recorded factually and no express conclusive finding has been recorded by the Permanent Lok Adalat regarding actionable negligence on the part of petitioner No.3 who performed sterilization operation to respondent No.2.

20.As a fallout and consequence of aforesaid discussion, the writ petition is allowed and the impugned award is quashed. However, quashing of the impugned award would not bar respondent No.2 to make claim, in accordance with law. No order as to costs.