

(2011) 05 JH CK 0086

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2534 of 2009

New India Assurance Co. Ltd.

APPELLANT

Vs

Aloka Bhakat and Others

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

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

Citation : (2011) 3 JCR 64

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

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred against the order passed by the Permanent Lok Adalat, Jamshedpur in P.L.A. Case No. 441 of 2007 dated 1st October, 2008 mainly on the ground that the Permanent Lok Adalat has no power, jurisdiction and authority to decide the dispute between the parties, on merits. Never any consent in writing, was given by the Petitioner to take a decision, on merits. The Motor Vehicle Accidents Claims Tribunal is already in existence under the Motor Vehicles Act, 1988. The present case is pertaining to motor accident and, therefore also, the Permanent Lok Adalat cannot decide the dispute, on merits.

2. It is submitted by learned Counsel for the Petitioner that the role of Permanent Lok Adalat is of a conciliator and not of an adjudicator.

3. Learned Counsel for the Petitioner further submitted that the Permanent Lok Adalat has never offered the terms of settlement, as required under Sub-Section 3 of Section 22C of the Legal Services Authority Act, 1987 and, thus, there is also a breach of the aforesaid Sub-section.

4. Learned Counsel for the Petitioner also submitted that the Permanent Lok Adalat has no power, jurisdiction and authority to decide the dispute, on merits, unless there is consent by both the parties in writing, as has been held by the

Division Bench of this Court in the case of Bharat Sanchar Nigam Limited v. The State of Jharkhand, as reported in 2008(3) J.L.J.R. 513, and a decision, rendered by this Court in W.P. (C) No. 1449 of 2009 dated April 9, 2009 and upon the decisions rendered by the Hon"ble Supreme Court in the case of State of Punjab and Another Vs. Jalour Singh and Others, and in the case of United India Insurance Co. Ltd. Vs. Ajay Sinha and Another, and a decision, rendered by this Court in W.P. (C) No. 1168 of 2009 dated 25th May, 2009 and a decision, rendered by this Court in W.P. (C) No. 2477 of 2008 dated 26th April, 2010. Moreover, as has been held in the aforesaid decisions, there must be written consent, given by the parties and, thereafter only, the Permanent Lok Adalat can decide the issue, on merits. In the facts of the present case, the Petitioner has not given any consent to decide the issue, on merits and, therefore, the impugned order deserves to be quashed and set aside.

5. Learned Counsel for Respondent Nos. 1 to 4 submitted that the Petitioner has already given consent and, therefore, the Permanent Lok Adalat has proceeded ahead and decided the issue, on merits. Once, the consent is given, now the Petitioner cannot say that there was no consent and, therefore, the present petition deserves to be dismissed, as all the procedural requirement u/s 22C of the Legal Services Authority Act, 1987 has already been complied with by the Permanent Lok Adalat, Jamshedpur.

6. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by the Permanent Lok Adalat, Jamshedpur in P.L.A. Case No. 441 of 2007 dated 1st October, 2008 mainly for the following facts and reasons:

(i) Looking to the dispute between the parties, it appears that the whole claim of the Respondents before the Permanent Lok Adalat is based upon the Motor Vehicles Act, 1988.

(ii) It has been held by this Court in the case of National Insurance Company v. Kartik Gorain and Ors. as reported in 2009 (4) JLJR 412, especially in paragraph 4, which reads as under:

4. It has been held in the aforesaid decisions that it is a duty vested in the Permanent Lok Adalats that by using their wisdom, knowledge and experience, terms of settlement ought to have been offered by the Permanent Lok Adalat on its own to the parties to the dispute. Thereafter, sometime ought to be granted to the parties to the dispute. If they are offering their terms of settlement, it can be accepted by the Permanent Lok Adalat and if they are accepting the terms of settlement, offered by Permanent Lok Adalat, then only, an award can be passed. But, directly, the Permanent Lok Adalat cannot take a decision, on merits. Still there is an intervening stage. There must be a written consent by the parties to the dispute, given to the Permanent Lok Adalat for deciding the dispute, on merits. Unless there is a written consent by the parties to the dispute, given to the Permanent Lok Adalat, for deciding the dispute, on merits, the Permanent

Lok Adalat shall have no power to decide the issues, on merits, as has been held in the aforesaid decision, rendered by this Court dated April 9, 2009 in W.P.(C) No. 1449 of 2008

(Emphasis Supplied)

In view of the aforesaid decision, the predominant role of the Permanent Lok Adalat is of a conciliator and not of an adjudicator. Permanent Lok Adalat should not wear the robe of the Court. It should be kept in mind that they are retired Judges of a District Court and, as such, they should not decide the issue, on merits, like a civil court. Permanent Lok Adalat is not a Court, at all. Their experience and wisdom ought to be utilised more in conciliation. Unless the consent is given in writing, as stated hereinabove by both the parties, the Permanent Lok Adalat has no power, jurisdiction and authority to decide the issue on merits, under Sub-section (8) of Section 22C of the Act, 1987.

(iii) 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, which reads 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 prelitigation 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.

In view of the aforesaid decision also, it is the bounden duty of the Permanent Lok Adalat to offer terms of settlement under Sub-section (7) of Section 22C of the Act, 1987. No such terms of settlement has ever been offered by the Permanent Lok Adalat under Sub-section (7) of Section 22C of the Act, 1987 and hence also, the impugned order deserves to be quashed and set aside.

(iv) The Permanent Lok Adalats ought not to have wore the robe of the Court, even though they have the capacity. They may be retired Judges, but, they must appreciate that they are working under the Legal Services Authority Act, 1987. If they are deciding the dispute on merits without consent of the parties, perhaps the parties will run away from the Permanent Lok Adalat. Primarily, the role of the Permanent Lok Adalat is of conciliator. For adjudication, there are several machinery available to the parties. The Permanent Lok Adalat should be loth in deciding the issue, on merits because no appeal can be preferred against the award passed by the Permanent Lok Adalat and the provisions of the Indian

Evidence Act are also not applicable. These two factors are also very crucial, so far as the decision, on merits is concerned and, therefore, unless the consent is given by the parties in writing, the Permanent Lok Adalat should never decide the issue, on merits. But after the consent given in writing, by the parties to the dispute, the Permanent Lok Adalat will act like an arbitrator and like arbitrator's award, the award passed by the Permanent Lok Adalat is also not appealable one and the grounds which are available for quashing and setting aside the arbitrary award, will also be available to challenge, an award passed by the Permanent Lok Adalat.

7. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the order passed by the Permanent Lok Adalat, Jamshedpur in P.L.A. Case No. 441 of 2007 dated 1st October, 2008 at Annexure1 to the memo of the present writ petition is, hereby, quashed and set aside. Respondents are at liberty to prefer proper application before proper authority to take the decision on merits.

8. The petition is allowed and disposed of.