
(2009) 04 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1449 of 2008

State Bank of India

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22C, 22C(1), 22C(3), 22C(4) , 22C(5)

Citation : (2009) 57 BLJR 2769

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

Bench : Single Bench

Advocate : Rajesh Kumar, Deepak Kumar Bharti and Manindra Kumar Sinha, for the Appellant; Rahul Gupta, (JC to AG) for Respondent No. 1, R.S. Majumdar and P.A.S. Pati, for the Respondent

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly against a decision rendered by Permanent Lok Adalat at Dhanbad, on merits, in Permanent Lok Adalat Case No. 91 of 2007 dated 8th February, 2008 (Annexure 2 to the memo of present petition).

2. Counsel appearing for the petitioner-bank submitted that Permanent Lok Adalat ought not to have decided, on merits, the claim between the parties by exercising power, jurisdiction and authority under the Legal Services Authority Act, 1987 (hereinafter referred to as "the Act, 1987"). In fact, there is no willingness, on the part of the petitioner-bank to pursue the matter before the Permanent Lok Adalat in the Permanent Lok Adalat Case No. 91 of 2007. It is contended by the counsel for the petitioner that a loan amount of Rs. 2,25,000/- (Two lacs twenty five thousand) was received by the respondent from the State Bank of India towards housing loan in the year, 1995 with an interest @ 11% per annum, having equal monthly installment of Rs. 3079/- per month, on the assessable amount. Instead of making payment of the outstanding amount, an application was preferred by the respondent before Permanent Lok Adalat at Dhanbad, State of Jharkhand and Permanent Lok Adalat Case No. 91 of 2007

was thus instituted. Upon receipt of the notice, reply was given by petitioner-bank that the borrower must produce documents and receipts for the amount deposited, as alleged by him in his application. It is stated that the bank is not liable to credit the amount for which no deposit receipt is produced nor it is a case of deficiency of services and ultimately it was stated before Permanent Lok Adalat that the application preferred by the respondent deserves to be dismissed with cost. It is also submitted by counsel for the petitioner that Permanent Lok Adalat has not followed the proper procedure which is envisaged u/s 22-C of the Act 1987. Firstly it is not the role of Permanent Lok Adalat that it should decide on merits the dispute between the parties. It is further stated that the Permanent Lok Adalat, as the conciliator, must put all efforts to settle the dispute, between the parties as per Sub-section 7 of Section 22-C of the Act 1987, which empowers that the settlement ought to have been presented before the parties by the Permanent Lok Adalat so that the petitioner-bank can think upon it and can give its suggestion for settlement. It is also submitted by the counsel for the petitioner that from the very beginning, approach of the Permanent Lok Adalat is not that of a conciliator, but, it was playing role of adjudicatory authority, which is against the provisions of Section 22-C of the Act 1987 and therefore the claim between the parties decided on merits like a judgment, by the Permanent Lok Adalat, dated 8th February, 2008 in Permanent Lok Adalat Case No. 91 of 2007 deserves to be quashed and set aside, with cost.

3. The counsel appearing for the petitioner has submitted that looking to the decision given by the Hon"ble Supreme Court in the case of State of Punjab and Another Vs. Jalour Singh and Others, the Permanent Lok Adalat ought not have decided the dispute between the parties as an adjudicatory authority, but, ought to have acted like a conciliator. First of all, steps should have been taken to settle the matter between the parties and suggestions and conditions in the form of settlement ought to have been presented by the Permanent Lok Adalat before the parties, so that the parties to the disputes, especially the petitioner, could have pointed out its own suggestions, for better settlement. Such opportunity ought to have been given, which is envisaged in Sub-section 7 of Section 22-C of the Act 1987.

4. Counsel appearing for the petitioner relied upon the decision rendered by a division bench of this Court in the case of Bharat Sanchar Nigam Limited v. The State of Jharkhand as reported in 2008 (3) JLJR 513, and pointed out that the Permanent Lok Adalat instead of deciding the disputes on merits, first of all should have asked for the terms of settlements to the parties, as required in Sub-section 7 of Section 22-C of the Act, 1987. Predominantly the role of Permanent Lok Adalat is like a conciliator and not like an adjudicating authority. It is submitted by the counsel for the petitioner that the Bank is neither ready nor willing to go before the Permanent Lok Adalat for getting the dispute adjudicated, where the provisions of CPC is not applicable nor the Indian Evidence Act is applicable nor the order is made appellable. Petitioner is neither willing for adjudication of the dispute on merits nor it is willing to settle the matter, unless

reasonable figure of amount for settlement is offered by the original applicant or by the Permanent Lok Adalat. The petitioner, is also not binding itself, in absence of any suggestions, either from Permanent Lok Adalat or from the private respondent.

5. I have heard counsel appearing on behalf of respondent No. 2. It is submitted that looking into the provisions of the Act 1987, Permanent Lok Adalat has got power, jurisdiction and authority to decide the dispute u/s 22-C of the Act, 1987, which confers power upon the Permanent Lok Adalat to decide the dispute between the parties. It is submitted by counsel for the respondent No. 2 that there is vast difference between Lok Adalat and Permanent Lok Adalat. Chapter VI-A of the Act, 1987, is altogether a different procedure envisaged for the Permanent Lok Adalat. Section 22-C(8) of the Act, 1987, empowers the Permanent Lok Adalat to adjudicate the dispute, if the settlement is not possible. It is also submitted by the counsel for the respondent that no plea, has been raised, in the memo of present petition, that there is procedural lacuna, on the part of the Permanent Lok Adalat and, therefore, the order passed by the Permanent Lok Adalat dated 8th February, 2008, in Permanent Lok Adalat Case No. 91 of 2007 is absolutely, true, correct and in consonance with the provisions of the Act, 1987. Counsel appearing on behalf of respondent, has relied upon the decision rendered by the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Ajay Sinha and Another, and has submitted that to create another adjudicatory authority than the Civil Court, is a privilege and prerogative power of the Parliament. Permanent Lok Adalat constituted under the Act, 1987, is an independent and separate forum. Permanent Lok Adalat is created in Chapter VI-A of the Act, 1987, and it is clothed with all power of adjudication under Sub-section (8) of Section 22-C of the Act, 1987. It can also play a role like a court and an adjudicatory power is vested in it. If settlement is not possible, by suggestions and counter-suggestions of the parties to dispute, the Permanent Lok Adalat itself should make all efforts to settle the dispute between the parties, but, if dispute is not settled, the case can be heard and decided on merits. Thus, the decision rendered by the Permanent Lok Adalat, is absolutely in consonance with the provisions of the Act, 1987, and in consonance with the decision, as cited hereinabove, and, therefore, this Court, may not interfere with, the impugned order, passed by the Permanent Lok Adalat.

6. Having heard the counsels for the both sides and looking to the facts and circumstances of the case and the order passed by the Permanent Lok Adalat, I hereby quash and set aside, the order passed by the Permanent Lok Adalat, dated 8th February, 2008, in Permanent Lok Adalat Case No. 91 of 2007, for the following facts and reasons:

(i) Respondent No. 2, who had taken housing loan of Rs. 2,25,000/- @ 11% annual interest, was unable to make payment to the petitioner-bank and subsequently filed application before the Permanent Lok Adalat at Dhanbad, State Jharkhand as Permanent Lok Adalat Case No. 91 of 2007 for settlement of

dispute. This was unilateral application or negatively, it was never a joint application.

(ii) Upon receipt of a notice, from Permanent Lok Adalat, a reply was filed by the petitioner-bank, before Permanent Lok Adalat, wherein, the disputes have been raised on factual aspects about an amount paid, as claimed by respondent No. 2, and also on legal points that it is not the case of deficiency of services of the bank and therefore the case can not be decided by the Permanent Lok Adalat. Deficiency, if any, was on the part of defaulter and no assurance was given by the previous manager of the State Bank of India and ultimately it was replied, that Permanent Lok Adalat should dismiss the application preferred by respondent No. 2 with cost. Looking to the reply of the petitioner bank, there was no joint application and there was absence of willingness, on the part of petitioner-bank, to go before Permanent Lok Adalat. Secondly, there was dispute regarding the jurisdiction of the Permanent Lok Adalat also.

(iii) It appears that the bank was demanding, balance outstanding amount of Rs. 1,35,514.41/- and the private respondent was insisting upon some oral assurance, given by the concerned Branch Manager, State Bank of India to settle a loan account. Giving such type of oral promise has been denied, in black and white, by the petitioner in the written statement/reply of the notice given in the Permanent Lok Adalat Case No. 91 of 2007. No figure of settlement was ever presented by respondent No. 2 in his memo of application before Permanent Lok Adalat, nor any terms of settlement were pointed out to the bank, by the Permanent Lok Adalat during the course of settlement proceeding.

(iv) It ought to be kept in mind by the Permanent Lok Adalat that they must take all possible steps of settlement of the dispute. It should not wear a robe of the court from the very beginning. Predominant role to be played by Permanent Lok Adalat is of conciliator and not of an adjudicator. Members of Permanent Lok Adalat may be retired District Judges or retired members of Judiciary, but, their ability to decide a dispute, on merits, is not at the touchstone or to be checked. What is expected under the Act, 1987, is full use of wisdom and experience of members of Permanent Lok Adalat, for arriving at settlement of dispute. It is a prime duty vested in Permanent Lok Adalat to offer, terms of settlement, on its own, using all its common sense and knowledge, clarity of law and facts, worldly wisdom and enormous experience, as per Sub-section (7) of Section 22-C of the Act, 1987. For ready reference provisions of law read and read of the Act, 1987, are as under:

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 part 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.

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 proceeding.

(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.

(Emphasis supplied)

Thus, as per the aforesaid provisions, Permanent Lok Adalat, must offer terms of settlement, on its own, as stated hereinabove. Thereafter, some time to think upon it, should be given to the parties. Without following this procedure, in facts of the present case, Permanent Lok Adalat has switched over to an adjudicatory role, as envisaged under Sub-section (8) of Section 22-C of the Act, 1987, which is impermissible and illegal. The goal to be achieved by the Act, 1987, is, settlement of dispute, at pre-litigation stage, so that speedy justice can be rendered. Time and money of litigants, can be saved and adjudicatory institutions (courts or tribunals) can invest the time for other complex matters, where adjudication on merits is required.

(v) It has been held by Hon'ble Supreme Court in the case of State of Punjab and Another Vs. Jalour Singh and Others, , in paragraph Nos. 8 and 10, as under:

8. It is evident from the said provisions that the 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 puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to "determination" by the Lok Adalat and "award" by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The "award" of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

10. The order of the Lok Adalat in this case (extracted above), shows that it assumed a judicial role, heard parties, ignored the absence of consensus, and increased the compensation to an extent it considered just and reasonable, by a reasoned order which is adjudicatory in nature. It arrogated to itself the appellate powers of the High Court and "allowed" the appeal and "directed" the respondents in the appeal to pay the enhanced compensation of Rs. 62,200 within two months. The order of the Lok Adalat was not passed by consent of parties or in pursuance of any compromise or settlement between the parties, is evident from its observation that "if the parties object to the proposed order they may move the High Court within two months for disposal of the appeal on merits according to law". Such an order is not an award of the Lok Adalat. Being contrary to law and beyond the power and jurisdiction of the Lok Adalat, it is void in the eye of the law. Such orders which "impose" the views of the Lok Adalats on the parties, whatever be the good intention behind them, bring a bad name to the Lok Adalats and legal services.

(vi) It has been held by the Division Bench of this Court in the case of *Bharat Sanchar Nigam Limited v. The State of Jharkhand* (supra) as reported in 2008 (3) J.L.J.R. 513, in paragraph No. 18, as under:

18. In the instant case, the respondents claim compensation of Rs. 10,000/- (ten thousand) and cost of Rs. 2000/- (two thousand) on the allegation that his telephone connection remain out of order for about one month i.e. from 8.5.2005 to 2.6.2005. The appellant refuted the said allegation and stated that because of cable fault, the telephone remains out of order and as per the departmental rule, a rebate was sanctioned for the interruption and thereby respondent was adequately compensation. In spite of the aforesaid fact, Permanent Lok Adalat

exercised the adjudicatory role and ignoring the Telegraph Act and the Rules, awarded compensation of Rs. 10,000/- and cost of Rs. 2000/- without any basis. 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 22-C 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 22-C of the Act.

(Emphasis supplied)

(vii) Now the question arises how a Permanent Lok Adalat can switch over to Sub-section (8) of Section 22-C of the Act, 1987 for playing its adjudicatory role. It appears from Sub-section (8) of Section 22-C 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 22-C of the Act, 1987. As per Section 22-D of the Act, 1987, neither the provisions of the CPC 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 22-E 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 22-C 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 one 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 bound 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 22-C of the Act, 1987, that the award, passed by the Permanent Lok Adalat, will be a final one and no appeal shall lie 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 22-E 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 22-C 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 22-C of the Act, 1987, and if no settlement is arrived at, then again, option should be given to the parties to the dispute, after making 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 22-C 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 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 22-C 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 22-C of the Act. Consent or sanction of all the parties to the dispute before adjudication on merits under Sub-section (8) of Section 22-C 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 22-C 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 consent of the parties to the dispute.

7. 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 22-C 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 22-C 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 22-C 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 Section 22-D and 22-E of the Act, 1987), then no party will come for settlement of the dispute at a pre-litigation stage.

(xi) It appears that in the present case, the primary role has been forgotten by the Permanent Lok Adalat. Adjudicatory role u/s 22-C(8) of the Act, 1987, always depends upon the consent of all the parties to the dispute. If there is a consent by all the parties, then only Permanent Lok Adalat can decide the dispute on merits and that too, after making the parties to the dispute fully aware of non-applicability of the provisions of CPC and the provisions of Indian Evidence Act and after making aware the parties to the dispute that there shall be no appeal against the award, passed by the Permanent Lok Adalat.

(xii) It has been held by the Hon'ble Supreme Court in the case of United India Insurance Co. Ltd. Vs. Ajay Sinha and Another, , in paragraph Nos. 25, 26 and 41, as under:

25. Chapter VI-A, stands independently. Whereas, the heading of the Chapter

talks of pre-litigation, conciliation and settlement. Section 22-C(8) of the Act speaks of determination. It creates another adjudicatory authority, the decision of which by a legal fiction would be a decision of a civil court. It has the right to decide a case. The term "decide" means to determine; to form a definite opinion; to render judgment, (see Advanced Law Lexicon 3rd Edition 2005 at 1253). Any award made by the Permanent Lok Adalat is executable as a decree. No appeal there against shall lie. The decision of the Permanent Lok Adalat is final and binding on parties. Whereas on the one hand, keeping in view the Parliamentary intent, settlement of all disputes through negotiation, conciliation, mediation, Lok Adalat and Judicial Settlement are required to be encouraged. It is equally well settled that where the jurisdiction of a court is sought to be taken away, the statutory provisions deserve strict construction. A balance is thus required to be struck. A court of law can be created under a statute. It must have the requisite infrastructure therefor. Independence and impartiality of Tribunal being a part of human right is required to be taken into consideration for construction of such a provision. When a court is created, the incumbents must be eligible to determine the lis.

26. An option is given to any party to a dispute. It may be a public utility service provider or a public utility service recipient. The service must have some relation with public utility. Ordinarily, insurance service would not come within the public utility service. But having regard to the statutory scheme, it must be held to be included thereunder. It is one thing to say that an authority is created under a statute to bring about a settlement through alternate dispute resolution mechanism but it is another thing to say that an adjudicatory power is conferred on it. Chapter VI-A, therefore, in our opinion, deserves a closer scrutiny. In a case of this nature, the level of scrutiny must also be high. (See *Anuj Garg v. Hotel Assn. of India*).

41. We must guard against construction of a statute which would confer such a wide power in the Permanent Lok Adalat having regard to Sub-section (8) of Section 22-C of the Act. The Permanent Lok Adalat must at the outset formulate the questions. We, however, do not intend to lay down a law, as at present advised, that Permanent Lok Adalat would refuse to exercise its jurisdiction to entertain such cases but emphasise that it must exercise its power with due care and caution. It must not give an impression to any of the disputants that it, from the very beginning has an adjudicatory role to play in relation to its jurisdiction without going into the statutory provisions and restrictions imposed thereunder.

(Emphasis supplied)

8. Thus, in view of the aforesaid decision also, adjudicatory role should not be played, so hurriedly, unless the independence and impartiality of the Tribunal is properly established, unless the incumbents are found eligible to determine the lis. Thus, a precaution and warning has been given in the aforesaid paragraphs, of an inbuilt danger for playing an adjudicatory role, u/s 22-C(8) of the Act, 1987 and, therefore, written joint consent by all the parties is a minimum

requirement, over and above, impartiality and capability of the members of the Permanent Lok Adalat. None of the aforesaid aspects has been properly appreciated by the Permanent Lok Adalat in the facts and circumstances of the present case and, therefore, I hereby quash and set aside the order passed by the Permanent Lok Adalat, Dhanbad, dated February 8, 2008, in Permanent Lok Adalat Case No. 91 of 2007, which is Annexure 2 to the memo of present writ petition.