

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12302 OF 2018

Radhakisan s/o Tatyaba Muley,
Age 79 years, occu: agri,
R/o Gut No.100, Dhorkin,
Tq. Paithan, District: Aurangabad

Petitioner

versus

1 Maharashtra State Electricity
Distribution Company Ltd.,
Through Executive Engineer,
Mahavitaran, Aurangabad Rural
Division Office, Flat No.J-13
MIDC, Chikalthana, Near Garware
Stadium, Chikalthana, Aurangabad

2 Dy. Executive Engineer,
Mahavitaran Sub-Division Office,
Paithan, Power House, Pratisthan
College Road, Paithan,
Tq. Paithan, District Aurangabad

Respondents.

Mr. S.C. Yeramwar advocate for petitioner
Mr. A.S. Shelke advocate for respondents.

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CORAM: ROHIT BABAN DEO, J.

Date: JANUARY 14th, 2020

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ORAL JUDGMENT

1 Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2 The petitioner is aggrieved by the order dated 24.5.2018 rendered by the Permanent Lok Adalat, Aurangabad in Pre-litigation Application Dispute No.589/2017 whereby, the application/dispute preferred by the petitioner is rejected.

3 It would be necessary to note certain facts:-

The petitioner approached the District Consumer Redressal Forum, seeking compensation from the respondents herein for the loss caused to the sugar crop and the drip irrigation system due to short circuit in the 11 KV transmission line which passes over the agricultural field of the petitioner.

4 Vide Judgment dated 7.7.2015, the Forum directed the respondents to pay the petitioner compensation of Rs.80,000/- for damage caused to the drip irrigation system and Rs.1,69,200/- for the loss caused to the sugarcane crop.

5 Respondents preferred an appeal before the Maharashtra State Consumer Redressal Commission.

6 Vide Judgment dated 27.10.2016, the State Commission allowed the appeal.

7 At the first blush, it does appear that the controversy is touched on merit. However, perusal of paragraph No.7 of the Judgment of the State Commission would reveal that a finding is recorded that the petitioner is not a consumer vis-a-vis 11 KV transmission line. If this be so, it is obvious that the State Commission was not called upon to make any observation on the merits of the controversy. The State Commission having held the

jurisdictional facts against the petitioner, the observation made which ostensibly touch the merits of the issue, cannot be said to be observations which are binding and conclusive.

The petitioner then approached the Permanent Lok Adalat for public utility services, Aurangabad which, as stated supra, rejected the application.

8 It would be pertinent to note the reasons recorded by the Permanent Lok Adalat.

"6. At the outset it is advantageous to discuss undisputed facts on record. The applicant was filed complaint bearing No.396/2014 before the District Consumer Redressal Forum, Aurangabad on dated 25/08/2014. That complaint has been decided on merit on dated 07/07/2015 and allowed that complaint. Xerox copy of judgment of District Consumer Redressal Forum, Aurangabad placed on record on behalf of applicant below exh.3 at serial no.13. The applicant also filed copy of judgment of State Consumer Disputes Redressal Commission, Mumbai, Bench of Aurangabad in appeal No.507/2015, which came to be allowed and set aside the judgment and order of District Consumer Redressal Forum, Aurangabad. In District Consumer protection Act, 1986 there is special authority established on behalf of Central Government, i.e. National Commission, Delhi and the applicant has not approached to National Commission, Delhi, to seek Redressal against the judgment and order of State Consumer Disputed Redressal Commission, Mumbai, Bench at Aaurangabad. When there specific remedy available to the applicant in District Consumer Protection Act, 1986, he has not availed that remedy and instead of this approached to the Permanent Lok Adalat. The Permanent Lok Adalat has no jurisdiction to try and entertain the present application in view of section 22-C(1) of Legal Services

Authorities Act, and section 11 of Civil Procedure Code. The Permanent Lok Adalat shall not try this application because the issue involved in this application was involved in the complaint filed by the applicant before the District Consumer Redressal Forum. The issue in this application was directly and substantially has been decided by the District Consumer Redressal Forum, Aurangabad and State Disputes Consumer Redressal Forum, Mumbai, bench at Aurangabad in between the present parties. Therefore, the principle of Res – Judicata is applicable to the present application. In view of this discussion, we answered these points accordingly and proceed to pass following award. ”

9 I am satisfied that the Permanent Lok Adalat seriously erred in refusing to decide the application on merit on the assumption that *res judicata* or the principles akin thereto come into play. The Permanent Lok Adalat erred in observing that the issue involved was directly and substantially involved in the proceeding before the Consumer Forum and is decided. It is already noted that State Commission recorded a finding that the petitioner is not a consumer with the result that the proceedings before the fora under Consumer Protection Act suffered from an inherent defect. In my considered view the question of applicability of the principles akin to *res judicata* does not arise. The learned counsel for the respondents invites my attention to section 22-C of the Legal Services Authorities Act 1987 which reads thus:-

“ 22C. (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 not have jurisdiction in the matter where the value of the property in dispute exceeds twenty five lakh rupees:

Provided also that the Central Government, may, by notification, increase the limit of "twenty five 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 submission of the learned counsel for the respondent is that the right to approach Permanent Lok Adalat is available only before the dispute is brought before any Court. The extension of the submission is that since the petitioner approached the forum under the Consumer Protection Act, 1986, the application under section 22-C was even otherwise not

maintainable. I note from the order impugned that this submission was neither raised, nor decided. Since I propose to remit the matter to the Permanent Lok Adalat, the said submission shall also be duly considered by the Lok Adalat.

11 The order impugned is quashed and set aside.

12 The matter is remanded to the Permanent Lok Adalat for fresh decision in accordance with law.

13 It is made clear that every contention is left open including the contention of the learned counsel for the respondents that the petitioner having approached the District Forum, the application under section 22-C is not maintainable. The Permanent Lok Adalat is requested to dispose of the application within 90 days of the appearance of the parties.

14 The parties are directed to appear before the Permanent Lok Adalat on 27.1.2020.

15 Rule is made absolute in above terms.

16 Petition is disposed of.

(ROHIT BABAN DEO, J)