IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8808 of 2020
(Through hybrid mode)

The Divisional Manager, NIC, Ltd. .... ***Petitioner***

Mr. N.K. Mishra, Senior Advocate

-versus-

Ashish Kumar Kantha and another .... ***Opposite Parties***

Mr. A.K. Roy, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
29.08.2022

Order No.	
9.	**1.** Mr. Mishra, learned senior advocate appears on behalf of petitioner insurance company. He submits, the insured was not a person eligible to seek alternate dispute resolution from the Permanent Lok Adalat (PLA). He refers to, inter alia, the preamble and section 12 in Legal Services Authorities Act, 1987 to submit, the alternate dispute resolution forum was established to provide justice to weaker sections of the society. He draws attention to impugned award dated 31st October, 2019 made by the PLA in favour of the insured, being a company with authorized capital of Rs.2 crores and paid up capital of Rs.1.76 crores. Such a party went to the PLA and said that there should be adjudication on repudiation of the claim. The

PLA, without following procedure provided for adjudication by Courts, passed impugned award.

2. In keeping with object of the Act, organization and establishment of Lok Adalats and Permanent Lok Adalats, he submits with reference to section 12 and rule 16 in Orissa State Legal Services Authority Rules, 1996, it is legal services offered by State to every person, whose annual income from all sources does not exceed three lakhs rupees. That is why, inter alia, Permanent Lok Adalats were established. He lays emphasis on term 'Lok' to submit, it must be a person entitled to legal services, being member of weaker sections of the society, who is entitled to approach the PLA. Opposite parties may be corporations or banks but a corporation with substantial financial presence cannot take advantage of provisions in the Act to bypass adjudication in Court. He submits, it is irrelevant that value of the property has been increased to Rs.1 crore, from initially legislated value of Rs.10 lakhs.

3. Mr. Roy, learned advocate appears on behalf of opposite party no.1 and relies on **judgment dated 19th May, 2022** of the Supreme Court in **Civil Appeal no.3872 of 2022** (**Canara Bank v. G.S. Jayarama**), paragraphs-18, 24 and 30. On query from Court Mr. Roy submits, in the case, neither the preamble nor section 12 was under consideration by the Supreme Court.

4. He submits, his client is not entitled to and did not seek legal aid. That is not a bar for his client to have moved the PLA. It did so with a claim within increased property value of Rs.1 crore and has obtained impugned award. He submits, the Supreme Court in **Rajoo v. State of MP** reported in **(2012) 8 SCC 553**, in paragraph-10 had noticed that section 12 of the Act lays down criteria for providing legal services.

5. Preamble of Legal Services Authorities Act, 1987 is reproduced below.

> *"An Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity."*

6. Court required production of the policy and petitioner filed additional affidavit disclosing it. Insured, named in the policy, is a private limited company. Court has ascertained that the company was petitioner in the PLA. Its pleading was signed by a Director. Procedure required by rule 1 in order XXIX of the Code of Civil

Procedure appears to have been satisfied. The point for adjudication is, however, whether the company could have been petitioner before the PLA. More so because, by section 22-E every award of the PLA, either on merits or on terms of settlement, is mandated to be final and binding on all parties, deemed to be decree of civil Court, as cannot be called in question in any original suit, application or execution proceeding and capable of execution. No appeal is provided. Impugned award is for payment of Rs.42,64,051/- along with accrued interest. Since the company approached the PLA before either party had moved Court, impugned award was made by the PLA, on deciding the dispute.

7. The insured is a corporation. It is not a citizen, who might face denial by reason of economic or other disability, of securing justice. Though only specific provisions in the Code are made applicable to both Lok Adalats and Permanent Lok Adalats, regarding summoning and enforcing attendance of witnesses, discovery and production of documents, reception of evidence on affidavits, requisition of public record or document from any Court or office and such other matter as may be prescribed, rest of procedure provided by the Code may not be followed by either or both. It is noticed that in fulfilling object of the Act, while Lok Adalats are organized consisting of serving or retired judicial officers and other persons, having same specific power under the Code as Permanent Lok Adalats, they cannot adjudicate. Permanent Lok Adalats consisting, inter alia, of a person, who has held office of District Judge or higher rank and two others, can. Section 22-C(1) provides for value of the property in dispute to not exceed Rs.10 lakhs with proviso also that the Central Government may, by notification, increase the limit in consultation with the Central Authority. It was increased to one crore rupees by notification dated 20th March, 2015 but corresponding amendment not yet made to second proviso under the section.

8. Apart from section 12 and rule 16, there is no specific provision, pursuant to the preamble, as to who can approach the Lok Adalats or Permanent Lok Adalats. Sections 12 and 13 mention persons entitled to legal services. Sections 19 and 20 mention parties to a dispute before or after approach to Court and section 22C mentions parties to a dispute before approach to Court. It is clear from mention of persons in sections 12 and 13 and of parties in sections 19, 20 and 22-C, the latter can include juristic persons like corporations and banks. For purpose of interpretation, as to who can approach the PLA, there has to be reliance, therefore, on the preamble. It cannot be denied that under the Act, Lok Adalats are to be organized and Permanent Lok Adalats established, to secure that operation of the legal system promotes justice of equal opportunity. A corporation such as the insured cannot claim equality with any member of weaker sections in the society. It has moved the PLA to obtain award in summary procedure, when it cannot be said that it could not have obtained or secured justice in a Court of law, by reason of financial constraint. At instance of the insured, on repudiation of claim under the policy, where aggregate sum insured was Rs.70,79,176/- on machinery requiring aggregate premium (with tax etc.) at Rs.89,162/- for period of one year, the PLA adjudicated since, value of property conferring jurisdiction on it stood increased, by notification dated 20th March, 2015, to Rs.1 crore.

9. It is true that law declared in **Canara Bank** (supra) was, observation made by the Single and Division Benches of the Karnataka High Court that, Permanent Lok Adalats cannot act as a regular civil Court in adjudicating dispute between the parties, were clearly incorrect. Nevertheless, section 22-C enables any party to a dispute, before it is brought before any Court, to make an application to a Permanent Lok Adalat, for settlement of the dispute. The PLA stands moved for that purpose. Up to sub-section (7) in said section, emphasis is on settlement. It is only in sub-section (8), where, on parties' failure to reach at an agreement under sub-section (7), the PLA shall decide the dispute. This provision was enacted by Parliament, it must be remembered, on provision of pecuniary limit of property value below Rs.10 lakhs. Here, once again looking at provisions in sections 12, 13 and rule 16, it is to be seen that legal services eligibility and entitlement are both, for prosecuting and defending. Hence, in prosecuting, the Adalats are approach friendly to the weaker sections and per rule 16, legal services available are provided for litigation in Courts, other than the Supreme Court.

10. The writ Court is confronted with impugned award, which may have been on good adjudication but denies remedy of appeal to petitioner, against it, though deemed as a decree. Judicial review is limited in scope, as not possible on merits. This appears to militate against the object of securing justice to all since, had the matter been adjudicated in any other forum, there would have been built in statutory remedy of appeal. This Bench in discharging function under assignment entry "writ petitions under the Legal Services Authorities Act", had to and will surely be required to deal with large number of writ petitions challenging awards made by the PLA. Lok Adalats cannot adjudicate, as declared by **Canara Bank** (supra), its awards based on settlement, to result in closure on those disputes, with section 21 providing for refund of Court fees. Awards on adjudication by the PLA give rise to writ petitions challenging them, which goes against object of the Act in providing for resolution of disputes through alternate forum.

11. In view of aforesaid, the insured corporation could not have moved the PLA to use the alternate dispute resolution forum, established to secure operation of the legal system to promote justice on a basis of equal opportunity, inasmuch as it cannot say it is unequal or at a disadvantage in obtaining adjudication under general law. In adjudicating cause of such a party the PLA was drawn into illegality. Impugned award is set aside and quashed.

12. Mr. Roy again relies on **Canara Bank** (supra) to point out that the bank had moved the Lok Adalat and the matter reached the Supreme Court to result in the judgment. Facts recited in the judgment show that private respondent in the PLA did not participate in conciliation at instance of it. The PLA proceeded to adjudicate and pass award. The bank initiated execution proceedings, while award debtor moved the writ Court and had the award set aside and quashed. The bank preferred appeal unsuccessfully and thereupon the civil appeal before the Supreme Court. In this connection, a passage from the judgment is extracted and reproduced below.

> *"Thus, the Division Bench dismissed the writ appeal on two grounds: first, that the procedure for conciliation under Section 22-C of the LSA Act was not followed, and hence, the award under Section 22-C(8) was a nullity; and second, the Permanent Lok Adalat could not have acted as a regular civil Court in*

adjudicating the proceedings"

Point taken in this writ petition and dealt with as above was neither taken nor considered by the Supreme Court in **Canara Bank** (supra). Needless to mention the insured will be entitled to exclusion of time provided under Limitation Act, 1963, in event it wishes to institute legal proceeding, on its cause, before appropriate forum.

13. Mr. Mishra submits, by order dated 18th August, 2020 his client was directed to deposit 30% of impugned award. His client had deposited Rs.10,24,216/- in the Registry on 11th September, 2020. He prays for direction of refund, with accrued interest. The Registry will refund the same to petitioner in event, within four weeks from date, suit or other proceeding has not been filed by the insured. Otherwise, the security be transferred to the forum of that proceeding, to be held in favour of it. This is because there already has been an adjudication, wherein petitioner's liability has been pronounced.

14. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks