

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-24292-2016

Judgment reserved on: 10.10.2022

Judgment pronounced on : 02.11.2022

LIFE CORPORATION OF INDIA

.....Petitioner

VERSUS

PERMANENT LOK ADALAT & ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Prateek Mahajan, Advocate with
Mr. Trideep Sharma, Advocate and
Mr. Jaskirat Singh, Advocate
for the petitioner.

Mr. Aakash Singla, Advocate
For the respondent No.2.

VINOD S. BHARDWAJ. J.

The question which arise for determination in the present case are about the interpretation and scope of Section 108 of the Indian Evidence Act, 1872 (hereinafter referred to as “Evidence Act”) and as to whether such presumption shall be drawn w.e.f. the date when the person went missing and was not heard of for a period of seven years or after expiry of the said statutory period.

2. The ancillary issue which requires consideration is as to whether the Permanent Lok Adalat (Public Utility Services) can exercise an equitable jurisdiction and dilute the contractual requirements and thus

direct the Life Insurance Corporation to pay the benefits under the policy even though premium for the period when the insured went missing have not been deposited resulting in policy being cancelled.

3. The present petition raises a challenge to the Award dated 12.07.2016 (Annexure P-1) passed by respondent No.1-the Permanent Lok Adalat (Public Utility Services), Patiala in Application No.2426 of 2015 whereby the application under Section 22 (C) of the Legal Services Authorities Act, 1987 was allowed in favour of the respondent No.2-applicant despite non-payment of the premium for the period when the insured was missing.

4. Briefly summarized, the facts of the instant petition are that the respondent No.2-applicant is the widow of Dwarka Dhish Sharma (insured) son of Santosh Kumar, residing in Quarter No.13, Line No.3, Labour Quarters, Factory Area, Patiala. The said Dwarka Dhish Sharma had purchased two policies No.1661566061 and 161566868 for a sum of Rs. 50,000/- & Rs. 25,000/- respectively from the petitioner Life Insurance Corporation of India (Annexure P-2 & P-3). In both the above said policies, the respondent No.2-applicant namely Usha Rani was the nominee. The above named Dwarka Dhish Sharma, however, went missing on 06.03.2007 and a DDR No.11 dated 07.03.2007 was also lodged in this regard. Neither any information was received nor the whereabouts of Dwarka Dhish Sharma were known for a period of more than seven years. A Civil Suit for declaring civil death of Dwarka Dhish Sharma was accordingly instituted by the respondent No.2-applicant before the Civil Court on 31.04.2014 which was decreed in favour of the respondent No.2-applicant vide judgment and decree sheet dated

09.01.2015 (Annexure P-4).

5. The respondent No.2-applicant thereafter approached the office of the Petitioner-Insurance Company and enquired about the release of the death benefits under both above said policies and also submitted an application dated 30.03.2015 (Annexure P-5) for the release of the same to the petitioner. A response was however sent by the petitioner to the respondent No.2-applicant stating that both the policies had lapsed since April 2007 as the premium against the said policies had not been deposited and that only the paid up value of the policies could be released and that the death benefits could not be extended.

6. Aggrieved of the above, an application under Section 22-C of the Legal Services Authorities Act, 1987 was preferred by the respondent No.2-applicant before Permanent Lok Adalat (Public Utility Services), Patiala for issuance of appropriate directions and also praying for release of all dues alongwith interest.

7. Petitioner entered appearance before the Permanent Lok Adalat (Public Utility Services), Patiala and raised the objections as already noticed above and also that in the absence of the policies being alive, the claim of the respondent No.2-applicant has been rightly rejected.

8. Conciliation proceedings were initiated between the parties, but the same remained unfruitful as the parties could not arrived at a mutual settlement. Resultantly, the Permanent Lok Adalat (Public Utility Services), Patiala proceeded to adjudicate on merits in terms of Section 22 C (8) of the Legal Services Authorities Act, 1987.

9. Upon consideration of the respective contentions advanced

by the parties as also by referring to the evidence brought on record, the Permanent Lok Adalat (Public Utility Service), Patiala observed that Dwarka Dhish Sharma-husband of the respondent No.2-applicant went missing on 06.03.2007 and DDR No.11 dated 07.03.2007 was duly lodged. An intimation about Dwarka Dhish Sharma being missing was also sent to the petitioner Insurance Company vide letter dated 27.12.2007 (Ex.A-3) alongwith intimation about lodging of the FIR. Thereafter, the suit for declaration of civil death had been filed and judgment and decree was passed in favour of respondent No.2-applicant and an application for release of death-cum-maturity benefits was submitted on 30.03.2015 (Ex.A-5) with the petitioner-Insurance company without any delay or fault. The respondents were never apprised that the premium of the insurance policy is to be deposited.

10. It was held that as Dwarka Dhish Sharma had been declared dead due to his continuous absence from March 2007, the question of payment of premium after March, 2007 does not arise. Thus, the decision of the petitioner-Insurance Company to rejected the claim on the ground that the policies stand lapsed for non-payment of the Insurance premium from April, 2007 onwards is unacceptable. The principles of equity & justice demanded that the nominees be held entitled to the death benefits as a result of deemed death of Dwarka Dhish Sharma.

11. Aggrieved of the same, the present petition has been filed.

12. Learned counsel appearing on behalf of the petitioner-Insurance Company has argued that the award passed by Permanent Lok Adalat (Public Utility Services) Patiala is bad inasmuch as the declaration qua Dwarka Dhish Sharma husband of respondent No.2-applicant was

passed only on 09.01.2015. Hence, there can be no presumption of the policy holder being dead at any date prior thereto. The holder of the policy was obligated to ensure that the premium against the said policies is duly deposited. If the premium is not paid, the policies in question stand lapsed and only the deposit value of the policies was payable and not the maturity value. He thus submits that it was erroneous for the Permanent Lok Adalat (Public Utility Service), Patiala to relate the date of death from the date when the husband of respondent No.2-applicant went missing and thus passing the award against the petitioner. He further submits that the declaration does not amount to determination of the factum death by itself and that fact of death may still be required to be established. It is also argued that the onus of proving the date of death is distinct from declaration of deemed death. Reference was made to a judgment of Hon'ble Supreme Court passed in the matter of "**LIC of India versus Anuradha**" reported as **2004 (10) SCC 131**. The relevant part of the judgment is reproduced herein below:

"11. Whether Section 108 of Evidence Act nor logic, reason or sense permit a presumption or assumption being drawn or made that the person not heard of for seven years was dead on the date of his disappearance or soon after the date and time on which he was last seen. The only inference permissible to be drawn and based on the presumption is that the man was dead at the time when the question arose subject to a period of seven years absence and being unheard of having elapsed before that time. The presumption stands un-rebutted for failure of the contesting party to prove that such man was alive either on the date on which the dispute arose or at any time before that so as to break

the period of seven years counted backwards from the date on which the question arose for determination. At what point of time the person was dead is not a matter of presumption but of evidence, factual or circumstantial, and the onus of proving that the death had taken place at any given point of time or date since the disappearance or within the period of seven years lies on the person who stakes the claim, the establishment of which will depend on proof of the date or time of death.

12. A presumption assists a party in discharging the burden of proof by taking advantage of presumption arising in his favour dispensing with the need of adducing evidence which may or may not be available. Phipson and Elliott have observed in 'Manual of the Law of Evidence' (Eleventh Edition at p.77) that although there is almost invariably a logical connection between basic fact and presumed fact, in the case of most presumptions it is by no means intellectually compelling. In our opinion, a presumption of fact or law which has gained recognition in statute or by successive judicial pronouncements spread over the years cannot be stretched beyond the limits permitted by the statute or beyond the contemplation spelled out from the logic, reason and sense prevailing with the Judges, having written opinions valued as precedents, so as to draw such other inferences as are not contemplated.

13. On the basis of the abovesaid authorities, we unhesitatingly arrive at a conclusion which we sum up in the following words. The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act, 1872. In the scheme of Evidence Act, though Sections 107 and 108 are drafted as two Sections, in effect, Section 108 is an exception to the

rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not be applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise.

14. If an issue may arise as to the date or time of death the same shall have to be determined on evidence-direct or circumstantial and not by assumption or presumption. The

burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim. Rarely it may be permissible to proceed on premise that the death had occurred on any given date before which the period of seven years' absence was shown to have elapsed.

We cannot, therefore, countenance the view taken by the High Court in either of the two appeals that on the expiry of seven years by the time the issue came to be raised in Consumer Forum or Civil Court and evidence was adduced that the person was not heard of for a period of seven years by the wife and/or family members of the person then not only the death could be presumed but it could also be assumed that the presumed death had synchronized with the date when he was reported to be missing or that the date and time of death could be correlated to the point of time coinciding with the commencement of calculation of seven years backwards from the date of initiation of legal proceedings. In order to successfully maintain the claim for benefit under the insurance policies it is necessary for the policy to have been kept alive by punctual payment of premiums until the claim was made. The appellant-LIC was justified in turning down the claims by pleading that the policies had lapsed and all that could be paid to the claimants was the paid-up value of the policies.

(Emphasis supplied)

No other point was urged.

13. Per contra, learned counsel appearing on behalf of respondent No.2-applicant submits that there is no error in the award passed by the Permanent Lok Adalat (Public Utility Services) and same has been based on sound principles of natural justice, objectivity, fair

play , equity and other principles of justice. He contends that the cause of action for seeking a declaration for a person to be presumed dead under Section 108 of the Evidence Act comes into operation after an expiry of period of 07 years from the date when the person has not been heard of by the persons who would have ordinarily been contacted by such person. He contends that the Dwarka Dhish Sharma (the deceased husband of the respondent No.2-applicant) had gone missing since March, 2007 and is now declared to be deemed dead. Such declaration would be relatable to the date when he went missing and there can be no possibility that a person who was missing would yet be depositing premium. Rather, the aforesaid aspect only corroborates the actual death of Dwarka Dhish Sharma because had he been alive, he would have deposited the premium. There was no occasion for any third party or nominee to deposit the premium against a policy that was obtained by Dwarka Dhish Sharma to transfer benefits to his nominees and heirs in the event of any untoward incident occurring to him. He submits that the very object of obtaining a Life Insurance Policy would stand defeated in case the interpretation offered by the Insurance Company is accepted and an obligation is put upon the heirs to continue paying premium despite the life assured being not traceable if they intend to derive benefit of the same. The object of obtaining a Life Insurance Policy is to extend pecuniary help to the heirs whereas the suggestive interpretation would only escalate the hardship and the financial difficulties of the family in distress. He makes a reference to the judgment of Bombay High Court in the matter of “*Smt. Bhanumati Dayaram Mhatre versus Life Insurance Corporation of India*” reported as **2008 AIR (Bombay) 196**.

The relevant extract of the said judgment is extracted hereinafter below:

“4. Sections 107 and 108 of the Indian Evidence Act, 1872 (for short "the Act") contain the provisions relating to the burden of proving death of a person and read as under :-

"107. Burden of proving death of person known years to have been alive within thirty years.-When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it."

108. Burden of proving that the person is alive years who has not been heard of for seven years.- Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it."

Section 107 says that when the question is whether a person is dead or alive and it is shown that he was alive within 30 years (immediately preceding the date when the question arises), the burden of proving that he is dead is on the party who contends that the person is dead. When any party to a proceeding asserts that a person is dead and it is shown that the person was alive within 30 years immediately preceding the date when the question is to be decided, the burden of proving that the person is dead is on the person who asserts the person to be dead. Section 108 of the Act is in the nature of exception to the rule contained in Section 107 of the Act and states that when a person has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who asserts that the person is alive. In other words, if a person has not been heard of for a period

of more than 7 years by the persons who would naturally have heard of him if he had been alive, then a presumption arises of his death. Though Section 108 of the Act raises a presumption of death of a person if he has not been heard of for a period of 7 years by the persons who would naturally have heard of him, it raises no presumption as to the date of his death.

The date of his death, if disputed, must be proved as any other fact.

5. Section 3 of the Evidence Act prescribes the standard of proof by defining the word "proved" as follows :

"Proved - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

If the test of preponderance of probability laid down by Section 3 of the Act is applied, that is to say a fact is said to be proved if the court considers its existence to be so probable that a prudent man ought, under the circumstances of the particular case, to act upon certain supposition that it exists, then it would have to be held that Kushal has died on 13th November 1995 or soon thereafter. If he was alive after 13th November 1995, there was no reason for him not to contact his immediate family members. It is not the case that Kushal left the house in distress or he was under some disability which prevented him from returning home or even contacting his family members. Nor is it shown that Kushal was missing in such circumstances or could be at such place wherefrom he could not even contact his parents or close family members. Considering the fact that Kushal was not under any distress or disability nor was he in the situation wherefrom he could not contact his family members coupled

with the fact that he has not contacted his family members at all since 13th November 1995 and has been declared to be dead by the declaratory decree of the competent court makes us, as men of ordinary prudence, believe that Kushal must have died on 13th November 1995 or soon thereafter.

6. In view of the fact that Kushal had died in November 1995, it was not necessary for him or his family members to pay the premium of his life insurance policy to keep it alive. The respondent was therefore not entitled to deny the claim for full payment of the sum assured on the ground that policy had lapsed in the year 1999. In our view, the respondent must pay to the petitioner not only the entire amount of sum assured together with accrued bonus with interest but also refund the premium paid from 1996 to 1999 with interest. We accordingly direct the respondent to pay to the petitioner the entire sum assured of Rs. 10,000/- together with accrued bonuses and interest thereon at the rate of 12% per annum from 13th November 1995 till payment and further refund the premium paid and recovered by the respondent from 1996 to 1999 together with interest thereon at the rate of 12% per annum from 1996 till payment. We also direct the respondent to pay the costs of this petition to the petitioner which we quantify at Rs. 5,000/-.

14. I have heard learned counsel appearing on behalf of the respective parties and have gone through the pleadings as well as the judgments relied upon by them.

15. In order to appreciate the present controversy as also the questions and issues referred to in the judgment, reference is required to be made to the following provisions of Evidence Act, 1872.

*“Section 3 of the Evidence Act prescribes the standard of proof by defining the word "**proved**" as follows :*

"Proved - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

102 . On whom burden of proof lies.—The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
Illustrations

107. Burden of proving death of person known to have been alive within thirty years.—When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Burden of proving that person is alive who has not been heard of for seven years.—1 [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it.

16. A conjoint reading of the aforesaid provisions of the Evidence Act, holds that a fact is said to be proved only after the Court believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of the case act upon existence of such a supposition. Further, as per Section 102 of the Evidence Act, the burden of such proof is on the person whose case would fail if no evidence is given and the burden of proof as to particular fact is on the person who wishes the Court to believe in existence of such a fact. A

perusal of Section 107 and 108 of the Evidence Act, shows that both the

said provisions are substantive provision and yet exceptions to each other. While Section 107 presumes a person to be alive within 30 years till he is proved dead, Section 108 creates a presumption that he is dead if he is not heard of for 07 years by those who would naturally have heard of him if he had been alive. A Division Bench of Telangana and Andhra Pradesh High Court, in the matter of “***Union of India, represented by its Secretary, to the Government of India, Ministry of Finance, Department of Revenue, New Delhi and 3 others versus Polimetla Mary Sarojini and another***” decided on 31.01.2017 passed in Writ petition No. 34859 of 2016, also considered the said aspect and the presumption under Section 107 and 108 of the Evidence Act. The relevant part of the said judgment is extracted as under:

“11. In order to appreciate this issue, it is necessary to understand the scheme of sections 107 and 108 the Indian Evidence Act, 1872. These sections are found in Part-III of the Act which deals with burden of proof. Interestingly, the expression 'presumption' is not used in either of these 2 sections, though it is used in other sections that form part of the same Chapter. The Evidence Act itself is divided into three parts with 11 Chapters. Part-I containing Chapters I and II, comprises of provisions relating to interpretation of words and phrases and provisions relating to relevancy of facts. Part-II contains Chapters III to VI, which contain provisions relating to oral evidence, documentary evidence etc. Sections 101 to 114A form part of Chapter VII, which is contained in Part-III of the Act. They speak mainly of the burden of proof. Sections 101 to 111 speak only about burden of proof. Sections 112 and 113 speak about proof of legitimacy about birth during marriage and proof of cession of territory respectively. It is only Sections 111A, 113A,

113B, 114 and 114A which contain the expression 'presumption'. Sections 107 and 108 read as follows:

Section 107:- Burden of proving death of person known to have been alive within thirty years.- When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Section 108:- Burden of proving that person is alive who has not been heard of for seven years.- (provided that when) the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is (shifted to) the person who affirms it.

12. If we have a careful look at Sections 107 and 108, it could be seen that both are something like mirror images of each other. Under Section 107, the burden of proving that a person is dead, when it is shown that he was alive within 30 years, is on the person who affirms it. But the burden of proof so cast under Section 107 upon the person affirming death, is whittled down under Section 108 by enabling the person who affirms the death of another to prove that such a person has not been heard of for seven years by those who would naturally have heard of him. Once a person affirming the death of another is able to prove that the other person has not been heard of for seven years, then the burden of proving that the other person is alive, shifts to the person who affirms it. In simple terms, section 107 raises a presumption of life while section 108 raises the presumption of death.

13. *The burden of proof oscillates like a pendulum from the person, who asserts death, to the person who asserts life. To put it differently, the burden of proof cast under Section 107 upon the person asserting death of another becomes lighter under Section 108. While a person asserting death of another is obliged to prove positively under Section 107 that the other person is dead, he is given an option or gateway under Section 108 to prove instead, that the other person has not been heard of for seven years. In other words, the requirement under Section 107 is to prove the factum of death. The requirement under Section 108 is to prove a fact that would lead to a presumption of such a fact. The presumption under Section 108, as in the case of every other presumption, is rebuttable, since a person asserting life is entitled under Section 108 to show that the person presumed to be dead was actually alive.*

14. *Though the provisions of sections 107 and 108 are very clear as to the rising of presumption, these sections do not throw any light upon the date on which a person can be presumed to be dead. In other words, the doubt or dilemma that arises in cases of this nature is as to the date of death of the person in respect of whom the presumption is raised. The moment it is established that a person has not been heard of for 7 years, the presumption of death arises. But the presumption under the Act is confined only to the factum of death and not to the actual date of death.*

15. *Since the Statute confines itself only to the factum of death and leaves it largely to the imagination of the courts to find out from the evidence on record, the actual date of death, some courts have taken the view that the person must be taken to be dead with effect from the date on which he is not heard of. But some courts have taken the view that in the*

absence of any evidence to the contrary, the date of death could be fixed only from the expiry of the period of 7 years.

*16. In **Ram Singh v. Board of Revenue, U.P. Allahabad, AIR 1964 Allahabad 310**, a Single judge of the Allahabad High Court held that all that one can presume under Section 108 is that the person concerned is dead but one cannot fix the time of his death under the provisions of said section. The court further held that Section 108 is not exhaustive on the question of presumption as regards the death of a person and hence the Court may in the circumstances of each case make suitable presumption even regarding the time of death. The court said:*

"Section 108, however, is not exhaustive on the question of presumption as regards death of a person. The Court may make a suitable presumption in accordance with the circumstances of each case :-

(1) Suppose a man sails in a ship, and the ship sinks. Thereafter the man is never seen alive. Under such circumstances, it is reasonable to assume that the person died in the ship wreck.

(2) When a person goes for pilgrimage he or she ordinarily returns home in six months or in a year. In the present case, Smt. Rukmini left for Gangasagar Yatra 17 years ago. Since then she has not been heard of. It is reasonable to assume that, she died in some accident or of some disease during the journey or at Gangasagar."

*17. The aforesaid view was followed by the Bombay High Court in **Subhash Ramchandra Wadekar v. Union of India, AIR 1993 Bombay 64**, in which a Single Judge of the Bombay High Court held that if section 108 of Indian Evidence Act is to be interpreted literally, it would have to be held that law presumes the death of a person unheard of*

for seven years but is silent in respect of the date of presumed death. It was further held that the date of presumed death must be proved by the party concerned as a fact by leading reliable evidence. The Court formulated two propositions viz. (1) Ordinarily a person unheard of for the statutory period shall be presumed to be dead on expiry of seven years and not earlier. (2) section 108 of Indian Evidence Act, 1872 is not exhaustive. It is permissible for the court to raise a suitable presumption regarding the date of presumed death depending upon the attendant circumstances and other reliable material on record. In other words no rule of universal applicability can be spelt out regarding presumed date of death. The court indicated that proposition No.1 must operate subject to proposition No. 2.

*18. In **Indira v. Union of India 2005 (3) KLT 1071** , a Single judge of the Kerala High Court held that even though under the Army Act, a person can be said to be a deserter when he is found missing and can also be dismissed for desertion, the situation changes when the presumption of death of such a person becomes available under Section 108 of the Evidence Act. In other words, if a person is declared a deserter and dismissed from service and is not traced out within seven years, then Section 108 of the Evidence Act takes over and all consequences would follow. In other words, presumption of death was held to supersede the finding of desertion.*

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*20. In **Zishan Khan v. District Inspector of Schools, Varanasi & Ors., 2012 (92) ALR 154** , a Single judge of the Allahabad High Court held as follows :*

"(1) Ordinarily, a person not heard of for the statutory period shall be presumed to be dead on expiry of

seven years and not earlier; (ii) section 108 of the Indian Evidence Act, 1872 is not exhaustive. It is permissible for the Court to raise a suitable presumption regarding the date of presumed death depending upon the attending circumstances and other reliable material on record. In other words, no Rule of universal applicability can be spelt out regarding presumption of death."

21. Thus various courts have come to the conclusion that depending upon the circumstances of each case, it would be open to the court to fix the date of death. But the reasoning given by many courts to come to such a conclusion appear to be one sided and made without reference to the perspectives of persons upon whom claims may be lodged on the basis of presumed date of death.

*25. In **N. Pankajam v. State of Tamil Nadu 2006 (3) MLJ 702** on which the Central Administrative Tribunal placed reliance, a learned Judge of the Madras High Court held that by virtue of the presumption under Section 108 of the Evidence Act, a person who is not heard of for 7 years should be treated as dead, from the date he became untraceable. But a Division Bench of the Madras High Court disagreed with the said view, in **The Managing Director, State Express Transport Corporation Tamil Nadu Limited v. E. Tamilarasi 2016 (1) CTC 698**. The distinction between Sections 107 and 108 of the Evidence Act were brought out in the said decision of the Division Bench, to which one of us (VRS, J.) was a party. Paragraphs 11 to 16 of the said decision read as follows :*

"11. While there can be no dispute about the presumption available under section 108 of the Indian Evidence Act, 1872, what is important is to see the date on which such presumption arises. As per section

108 of the Indian Evidence Act, 1872, whenever a question arises whether a man is alive or dead and it is proved that he has not been heard of for seven years by those, who would naturally have heard of him, burden of proving that he is alive, is shifted to the person, who affirms it.

12. What is provided in section 108 of the Indian Evidence Act, 1872, is only a presumption. section 108 of the Indian Evidence Act, 1872 cannot be read in isolation. It should be read along with section 107 of the Indian Evidence Act, 1872. Under section 107 of the Indian Evidence Act, 1872, whenever a question arises as to whether a man is alive or dead and it shown that he was alive within thirty years, the burden of proving that he is dead is on the person, who affirms it.

13. Thus, Section 108 is an exception to Section 107. If Section 107, provides the rule, Section 108, provides the exception. Once it is established that a person was alive within 30 years, the burden of proving that he is dead is on the person, who affirms it. This is the rule under Section 107. But, if it is proved that such a person, despite being alive within 30 years, has not been heard of for seven years by those, who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person, who affirms that he is alive.

14. Therefore, it follows as a corollary that for the application of Section 107, the outer limit of the period of prescription is 30 years. Similarly, for the Application of Section 108, the minimum period of time limit statutorily prescribed for the presumption to arise is seven years.

15. This is why the presumption as to death cannot be raised before the expiry of seven years. It cannot be raised even if the period of seven years falls short by one or two days. In **LIC of India v. Anuradha , 2004 (3) CTC 281 (SC) : AIR 2004 Supreme Court 2070**, the Supreme Court held that the presumption as to death by reference to Section 108 would arise only on the expiry of seven years and would not by applying any logic or reasoning be permitted to be raised on the expiry of 6 years and 364 days or at any time short of it. Moreover, the Court pointed out that an occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an Authority, who is called upon to decide as to whether the person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings, the occasion for raising the presumption does not arise.

16. Therefore, the expiry of the full period of seven years is essential to raise the presumption under Section 108. This takes us to the next question as to what exactly could be taken as the date of death."

26. After pointing out the distinction between Sections 107 and 108 of the Evidence Act, the Division Bench of the Madras High Court then took up for consideration in **The Managing Director, State Express Transport Corporation Tamil Nadu Limited v. E. Tamilarasi**, the next question as to what exactly could be taken to be the date of death. Inviting a reference to the decision of the Supreme Court in **N. Jayalakshmi Ammal v. Gopala Pathar (AIR 1995 Supreme Court 995)** , wherein the Supreme Court quoted a passage from Sarkar on Evidence to the effect that though a presumption of death arises after 7 years, the exact time of death is not a matter of presumption, it was pointed out by

the Division Bench of the Madras High Court that the burden lies upon the person who asserts a particular date as the date of death, to prove the same. In paragraphs 19 to 21 of its decision, the Division Bench of the Madras High Court held as follows :

"19. As a matter of fact, there is an inherent danger in presuming that the date from which a person went missing could be taken to be the date of death. If it is so taken, many claims that could be made by his Legal Heirs would become barred by time, despite the fact that the very presumption of death could be raised only after seven years from the date on which he was last heard of.

*20. In **LIC of India v. Anuradha, 2004 (3) CTC 281 (SC)**, which we have cited earlier, the Supreme Court extracted the following passage from Halsbury's Laws of England, after pointing out that there is no difference between the English Law and the Indian Law on the subject. Where the presumption of death after seven years' absence applies, the person will be presumed to have died by the end of that period, where the presumption does not apply, or is displaced by evidence, the issue will be decided on the facts of the particular case. In some old cases, where neither the evidence nor the incidence of the burden of proof was decisive, the Court made the best order it could in the circumstances. Where the question to be decided, for the purposes affecting the title to property, is which of two persons died first, a Statutory Rule may apply. The question whether a person was alive or dead at a given date will be decided on all the evidence available at the date of the hearing.*

21. Therefore, it is impossible to think that a person can be presumed to be dead from the date on which he went missing. Unless a period of seven years expire from the date

of his missing, the very occasion for the raising of the presumption does not arise. Therefore, the learned Judge was not correct in thinking that the Respondent's husband should be presumed to be dead from May 1999 onwards."

27. Therefore, the consequences of holding a person to be deemed to be dead from the date on which he went missing, are disastrous. The Statute merely raises a presumption and indicates the circumstances under which the presumption would arise. Such a presumption cannot relate back. Even historically, the presumption was never considered to relate back, in any of the legal regimes including the common law regime. This can be demonstrated by tracing the origin of this rule of evidence both from the common law regime and from the statutory regime of India and the other parts of the world.

Origin of the Rule in Other Countries (England, Ireland, Scotland, Australia and U.S.A.)

28. The precise origin of this rule in the western world is difficult to predict. It appears that the necessity for this rule was felt for the first time, when sailors who went on long voyages on the seas, returned home after several years, only to find their wives remarried to other men. This led to complaints of bigamy. Therefore, this rule was first set out in statutory form in Section 1 of the (English) Bigamy Act of 1603, which provided a defence to a charge of bigamy if either of those who were charged, marry a second time when the first spouse had been beyond the seas for seven years or those whose spouse had been absent for seven years although not beyond the seas.

29. This seven year rule under the English Bigamy Act of 1603 was later incorporated in the English Cestui Que Vie Act, 1666. It was later adopted in the Life Estates Act, 1695 by the Irish Parliament.

31. *In Australia there is no generally applicable legislation for missing persons, but the Courts apply the common law presumption of death. In a leading decision in **Axon v. Axon (1937 (59) CLLAW 395)** the High Court of Australia held "if, at the time when the issue of whether a man is alive or dead must be judicially determined, at least seven years have elapsed since he was last seen or heard of by those who in the circumstances of the case would according to the common course of affairs be likely to have received communication from him or to have learnt of his whereabouts, were he living, then in the absence of evidence to the contrary it should be found that he was dead".*

32. *Scotland enacted its own law under the title Presumption of Death (Scotland) Act, 1977 which provides for a declaration of presumed death, if a person who is missing has not been known to be alive for a period of at least seven years. In Ireland, a law was enacted under the Presumption of Death (Ireland) Act, 2009 almost on similar lines as in Scotland.*

33. *In England, the Presumption of Death Act, 2013 was passed providing under Section 2 that when an application is made, the Court must make a declaration of death, if it is satisfied that a missing person has died or has not been known to be alive for a period of at least 7 years. Interestingly under Section 2(2) of the Presumption of Death Act, 2013 (England), the declaration issued by the Court should include a finding as to the date and time of the missing person's death. Section 2 of the English Act could be usefully extracted as follows :*

*Section 2 of the Presumption of Death Act, 2013 (England):
Making declaration;*

(1) On an application under section 1, the court must make the declaration if it is satisfied that the missing person -

(a) has died, or

(b) has not been known to be alive for a period of at least 7 years.

(2) It must include in the declaration a finding as to the date and time of the missing person's death.

(3) Where the court-

(a) is satisfied that the missing person has died, but

(b) is uncertain at which moment during a period the missing person died, the finding must be that the missing person is presumed to have died at the end of that period.

(4) Where the court-

(a) is satisfied that the missing person has not been known to be alive for a period of at least 7 years, but

(b) is not satisfied that the missing person has died, the finding must be that the missing person is presumed to have died at the end of the period of 7 years beginning with the day after the day on which he or she was last known to be alive.

34. In U.S.A., 38 Code deals with the rule relating to presumption of death. It reads as follows :

38 U.S. Code Section 108: Seven year absence-presumption of death.

(a) No State law providing for presumption of death shall be applicable to claims for benefits under laws administered by the Secretary.

(b) If evidence satisfactory to the Secretary is submitted establishing the continued and unexplained absence of any individual from that individual's home and family for seven or more years, and establishing that after diligent search no evidence of that individual's existence after the date of disappearance has been found or received, the death of such

individual as of the date of the expiration of such period shall be considered as sufficiently proved.

Origin of the Rule in Ancient India :

35. It is interesting to note that while the western world realised a necessity for this rule of presumption only in the early 17th century when its sailors set on long voyages, the Indian Law Makers appears to have adopted this presumption at least a 1000 years before the Western Law makers could conceive of the same. References to this presumption could be found in the Smritis of Manu, Narada, Gautama and Vasistha. The Rules found in these smritis are as follows :

"Naradasmriti Chapter 12 - Relations between men and women – [98-102]

A brahmana woman should wait eight years for a husband who has gone away; but if she has no children, she should wait only four years before going to another man. A ksatriya woman should wait for six years, three years if she has no children. A vaisya woman should wait four years if she has children, two years if she does not. There is no waiting period for a sudra woman. She commits no breach of righteousness, especially if she has no children. The normal thing, however, is to wait a year. These rules apply to women whose husbands have gone away and not been seen. If the husband is still alive and has been heard of, these waiting periods should be doubled. Prajapati creates so that they might have offspring; therefore if a woman goes to another man under these circumstances there is no sin entailed.

Manusmriti; Chapter 9 – [76]

If the man has gone away on a journey to fulfil some duty, (she) should wait for him for eight years; (if he

has gone) for learning or fame, six; for pleasure, three years.

Gautama – Chapter 18 – [15 and 17]

15. (A wife must) wait for 6 years, if her husband has disappeared. If he is heard of, she shall go to him.

17. (The wife) of a brahmana (who has gone to a foreign country) for the purpose of studying (must wait) twelve years.

Vasistha – Chapter 17 – [78]

78. In this manner a wife of the Brahmana caste who has issue (shall wait) five years, and one who has no issue, four years; a wife of the ksatriya caste who has issue, five years, and one who has no issue, three years; a wife of the vaisya caste who has issue, four years, and one who has no issue two years; a wife of the shudra caste who has issue, three years and one who has no issue, one year."

Though the above rules found in various smritis appear to be discriminatory and may not be acceptable in an egalitarian society governed by Constitutional values and morality, the fact remains that these law makers could perceive of a presumption of death several centuries ago.

Presumption And Inference :

36. Thus it is clear that both in England and elsewhere, the date of expiry of 7 years from the time a person went missing, is taken to be the date of death also, unless any other date is proved by the party asserting, to be the date of death. But the moment a party is able to prove a particular date as the date of death, then the question of presumption itself would not arise. The decisions of various Courts holding that in certain circumstances a person must be presumed to be dead from the date he went missing or within a few days thereafter, are based upon a flawed logic. The

Evidence Act allows of only one presumption. But by holding that a person must be presumed to be dead from the time he went missing, some Courts have raised a second presumption, which is not traceable to the Evidence Act. A distinction exists between a presumed fact and an inferred one. Many times the confusion occurs due to the use of the "presumption" as a synonym for inference.

37. As we have pointed out earlier, there is a distinction between a presumption of fact and an inference. Section 108 of the Evidence Act admits of only one presumption namely the presumption of death of a person not heard of for 7 years by those who would normally have heard of him. Since it is a rebuttable presumption and the rebuttal can take place at any time, the law does not stipulate any date as the date on which a person may be presumed to be dead. There is huge difference between the presumption as to death and presumption as to date of death. Since the law does not prescribe any presumption as to date of death, the same may have to be proved. An inference cannot take the place on proof or presumption.

38. As a matter of fact an interesting case came up before the Succession Court in Hancock, of the State of OHIO in the U.S.A. A person by name Donald Eugene Miller went missing from August 1986, leaving his wife and two children in the lurch. His wife Robin Miller filed a petition in the Succession Court in 1994 for a declaration that her husband should be presumed to be dead. After ordering the publication of notices in the local newspapers for 4 consecutive weeks, the Court issued a decree on 31-05-1994 declaring that Donald Eugene Miller should be presumed to be dead and that his minor children should be granted benefits under the Social Security Scheme of the Government. After 19 years of such a declaration, Donald

Eugene Miller surfaced and applied for a driving licence. But the Transport Department rejected the application on the ground that no driving licence could be issued to a person who is dead as per law. Therefore, he filed a petition on 15-07-2013 in the very same Succession Court seeking to set aside the decree of the declaration of presumed death. But unfortunately his wife opposed the petition on the ground that the same was barred by limitation as it was not filed within a period of 3 years from the date of decree. The Court accepted the defence taken by the wife and dismissed the petition filed by Mr. Miller.

39. Therefore, what lies in the realm of presumption, which can be rebutted at any time, cannot be enlarged by way of interpretations, however well intended they are. Hence, we hold that the Tribunal was wrong in presuming the death of the respondent's husband to have taken place from the time he went missing. Once this presumption goes, it follows as a corollary that the penalty of removal from service passed by the petitioners cannot be stated to be illegal.

17. Even in the judgment of “**Saroop Singh versus Banto**” reported as **2005 (8) SCC 330**, the Hon’ble Supreme Court held that there was no presumption as to the time of death under Section 108 of the Evidence Act and that if a person is not heard of for 07 years, there is a presumption of death but the onus of proving that death took place in any particular time within 07 years lies upon the person who claims right to the establishment of which the fact is essential.

18. It is evident from the above that presumption as regards death under Section 108 of the Evidence Act can only be drawn after expiry of seven years. Once the presumption comes into play only upon expiry of period of 07 years, any declaration by interpretation to hold that

such a presumption may relate back to the date when the person went missing would in fact be relating the presumption to a date prior to when such presumption can come into operation in law.

19. There may be however certain circumstances when the Court may, while passing a decree, may declare the date of death as well. However, such an issue would be subject to appreciation of the evidence by the Court and the Doctrine of Probabilities before any decree is passed.

20. Even otherwise, it has to be seen that in certain aspects there are specific statutory provisions that recognize the Doctrine of Relation Back especially in the matters pertaining to registration of properties, adoption etc. However, no such provision has been created by legislature to apply as regards death from the date from which the person was unheard of. The legislature has thus safely guarded its provision to come in force only on expiry of period of 07 years and not to relate back to any other date. Any interpretation to the contrary is likely to give rise to a situation where the Court by interpretation creates yet another presumption as regards the date of death with effect from the date when the person went missing.

21. The present case would have yet another aspect. The respondent No.2-applicant had also approached the Civil Court for seeking a decree of declaration. The said decree does not make any declaration that Dwarka Dhish Sharma would be presumed to be dead from the date when he went missing. A Civil Court decree would relate back at best to the date of institution of the suit and not to any date prior thereto unless the decree so declares. Since even the decree in the case in

hand is silent, the presumption of death from the date when the person went missing cannot be construed.

22. The judgment of Hon'ble Bombay High Court in the matter of **Bhanumati Dayaram Mhatre (supra)** relied upon by the counsel for the respondent does not take into consideration the judgment of the Hon'ble Supreme Court in the matter of **Anuradha (supra)**. The respondent thus cannot be extended any benefit of the above judgment to support his case.

23. The same thus leads to advert to the next question as regards the legality and validity of the award passed by the Permanent Lok Adalat ignoring the fact that premium during the period of missing has not been disputed and the policy has lapsed. It would require consideration of the power of the Permanent Lok Adalat to strike a fine balance and to read down the contractual conditions of insurance for cause of substantial justice.

24. Provisions of Section 22 (D) of the Legal Service Authority Act mandates that while carrying out proceedings of adjudication or conciliation, the Permanent Lok Adalat (Public Utility Service), Patiala is governed by principle of natural justice, objectivity, fair play, equity and other principles of justice. Hence, the Legal Services Authorities Act, 1987 does not regulate jurisdiction of the Permanent Lok Adalat within confines of procedural or substantive law and allows equitable principles to govern the adjudication process.

25. It is also undisputed that the insurance policies availed by the deceased were for a sum of Rs. 50,000/- and Rs. 25,000/-. The said policy had been availed in the year 1997. The assured Dwarka Dhish

Sharma went missing from 06.03.2007 i.e. nearly after 11 years of the issuance of the policy. It is also not the case set up by the petitioner that the Dwarka Dhish Sharma had not deposited the premium amount which were payable for the period of almost 11 years when the said Dwarka Dhish Sharma was alive. The default occurred only after Dwarka Dhish Sharma went missing. In the above background, the objects of Section 22-D of the Legal Services Authorities Act, 1987 need to be examined. They have not been defined under the Legal Services Authorities Act, 1987 hence, it would be essential to understand the legal meaning & interpretation of the same for the sake of appreciating legality of the above award.

PRINCIPLES OF NATURAL JUSTICE

26. The **Black's Law Dictionary**, 10th Edition, defines the words 'Principles of Natural Justice' as under:-

“The principles of natural justice in a simple terms are the minimum standards or guidelines which the authorities should follow in deciding the matters.”

27. As per the meaning shown in the **Wharton's Law Lexicon**, 15th Edition, the word '*natural justice*' has been explained thus:-

“Natural justice - the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they supplant the rules of natural justice which are not embodied rules. What particular rule of natural justice should apply to a certain given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the

Tribunal pointed for the purpose, **A.K. Kraipak Vs. Union of India, AIR 1970 SC 150.**”

28. It would also be essential to consider, at this juncture, to assign meaning to the guiding principles that have been prescribed by the Statute. The aforesaid expressions have not been defined in the Act and as such, reference is made to the ordinary meaning.

The aforesaid principles construe the following aspects:-

- (i) No party should be contemned unheard (*Audi alteram partem*) and
- (ii) No one should be a judge of his or her own cause (*Nemo judex in causa sua*).

29. The aforesaid principles imply fairness, equity and equality. It also inherently prescribes rule against Bias i.e. to strike out all those acts that may improperly influence a judge in arriving at a decision in a particular case. Hence, if a person, for whatever reason, cannot take an objective decision upon assessment on evaluation of the record, such a decision may be termed as suffering from bias. The said principle has been instrumental in guiding that a person ought not to be a judge of his own cause since justice should not only be done but should manifestly and undoubtedly be also seem to be done. It is, however, not necessary, at this juncture, and for adjudication of the present *lis* to examine as to what necessarily may constitute a bias.

30. In so far as the principles of *Audi Alteram Partem* are concerned, a corollary deduced from this rule is *qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud equum fecerit* i.e.

he who shall decide anything without the other side being heard, although he may have decided right, has not done justice.

31. Thus the necessity of justice not only being done is also equally emphasized by the same being manifestly and undoubtedly be seen to be done.

32. Furthermore, the Hon'ble Supreme Court has in the matter of **D.K. Yadav Vs. J.M.A Industries Limited, (1993) 3 SCC 259**, held that the principles of natural justice are an integral part of the guarantee and equality assured by Article 14.

33. It would also be essential to refer to the extract of the judgment of the Hon'ble Supreme Court in the matter of **Automotive Tyre Manufacturers Association Vs. Designated Authority and others, reported as (2011) 2 SCC 258**. The relevant extract is reproduced hereinbelow:-

"77. It is trite that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In A.K. Kraipak (supra), it was observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

78. In Mohinder Singh Gill, (1978) 1 SCC 405, upon consideration of several cases, Krishna Iyer, J. in his inimitable style observed thus:

"48. Once we understand the soul of the rule as fairplay in action -- and it is so -- we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness

in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more -- but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

79. In *Swadeshi Cotton Mills Vs. Union of India*, (1981) 1 SCC 664, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus:

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle -- as

distinguished from an absolute rule of uniform application--seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(Emphasis supplied by us)

80. *It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the*

legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application.

81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined.”

34. Also in the matter of **Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central –I and another, reported as (2008) 14 Supreme Court Cases 151**, the Hon’ble Supreme Court dealt with the issue of principles of natural justice and observed as under:-

“14 Before dealing with the rival submissions to determine whether the principles of natural justice demand that an opportunity of hearing should be afforded to an assessee before an order under Section 142 (2A) of the Act is made, we may appreciate the concept of "natural justice" and the principles governing its application.

15 *Rules of "natural justice" are not embodied rules. The*

*phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly, i.e. fair play in action. As observed by this Court in **A.K. Kraipak & Ors. Vs. Union of India, (1969) 2 SCC 262**, the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it.*

xxx xxx xxx

17 *Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in **State of Orissa Vs. Binapani Dei. AIR 1967 SC 1269**, the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.*

18 *Recently, in **Canara Bank Vs. V.K. Awasthy, (2005) 6 SCC 321**, the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that the principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative*

authority while making an order affecting those rights, the Court said:-

“14 Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil 'liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of

universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined.”

35. It is thus evident that the principles of natural justice cannot be embodied in a process of straight jacket definition. The principle has been evolved under the common law to check arbitrary exercise of power by the State or its functionaries and must necessarily reflect fairness in action. There are certain exceptions to the said doctrine, however, the said exceptions need not be explored for adjudication of the controversy in hand.

OBJECTIVITY

36. The word objectivity has not been defined under the Legal Services Authorities Act, 1987 or the rules framed thereunder.

The Black's Law Dictionary, 10th Edition, defines 'objectivity' as under:-

“Objective - of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions. 2. Without bias or prejudice; disinterested.”

37. As per the meaning shown in the **Chambers 21st Century Dictionary**, the word 'objectivity' has been explained thus:-

“the fact or quality of being objective, especially of considering things without being dependent on, or influenced by, personal opinions or prejudices.”

38. Objectivity, thus, essentially means that the authority should be impartial and should not allow prejudice, bias, conflict of interests or the influence of any external aid to override its judgment and that the same should be passed on the consideration and evaluation of the evidence free of any such bias or prejudice. It thus necessitates getting rid of bias and requires dispassionate assessment based upon logical reasoning and rational consideration of entire material.

FAIR PLAY

39. As per the meaning shown in the **Oxford Advanced Learner's Dictionary**, New 7th Edition, the word 'fair play' has been explained thus:-

*“Fair play - the fact of playing a game or **acting honestly, fairly and according to the rules**; used to express approval when sb has done sth that you think is right or reasonable.”*

*As per the meaning shown in the **Chambers 21st Century Dictionary**, the word 'fair play' has been explained thus:-*

“just treatment.”

40. Fair play thus requires a standard of fairness which a Court must meet in its assertion of jurisdiction over a defendant together with due process.

41. The following principles can broadly be said to be basic to

determination of fair play:-

- (a) Respect for the Rules
- (b) Respect of the opponent
- (c) Allow participation by all concerned
- (d) To observe self-control; and
- (e) Due respect to the view of the respective parties free of any prejudice or bias.

42. In the matter of **D.K.Yadav (supra)**, the Hon'ble Supreme Court also considered the aspect of fair play in action. The relevant extract thereof reads thus:-

“12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.”

43. From a perusal of the above, for an active fair play, not only

should it embody in the assessment and in the evaluation as well as grant of an opportunity to the parties but also in providing a level playing, just and reasonable opportunity to all persons.

EQUITY

44. Equity again is a phrase that is not legally defined. As per the meaning shown in the **Black's Law Dictionary**, 10th Edition, the word 'equity' has been explained thus:-

*“Equity, - Fairness; impartiality; evenhanded dealing.
2. The body of principles constituting what is fair and right.”*

45. As per the meaning shown in the **Oxford Advanced Learner's Dictionary**, New 7th Edition, the word 'equity' has been explained thus:-

“Equity - a system of natural justice allowing a fair judgement in a situation which is not covered by the existing laws.”

46. As per the meaning shown in the **Chambers 21st Century Dictionary**, the word 'equity' has been explained thus:-

“Equity - “fair or just conditions or treatment. 2 law the concept of natural justice, as opposed to common law or statute law, often invoked to support an interpretation, or the complete waiving, of a law.

47. While adverting to the doctrine of equity, it may in a technical sense be defined as a portion of natural justice, however, while exercising equity, the Courts have exercised a latitude in stretching it to cover cases not expressly dealt with by law. 'Equity' is loosely used to

denote a system of justice which is administered by a particular Court in a particular case. Equity thus empowers a Court to exercise its judicial discretion in furtherance to interests of justice and to do substantial justice amongst the contesting parties by taking stock of the totality of circumstances. Equity does not suffer a wrong merely for want of a remedy but is to be exercised where a person comes to the Court/Authority with clean hands. It aims to do what ought to be done with an object to fulfilling obligations. Thus, the aforesaid principle cannot be summarized and has to be exercised, only as it cannot remain confined to the strict confines of statutory or proclaimed limitations. The principle answers are accountable to sound judicial conscience and fine judicial discretion.

OTHER PRINCIPLES OF JUSTICE

48. The phrase 'justice' has been defined in **Black's Law Dictionary**, 10th Edition, as under:-

"Justice -

1. The fair treatment of people.

2. The quality of being fair or reasonable.

3. The legal system by which people and their causes are judged; esp., the system used to punish people who have committed crimes.

4. The fair and proper administration of laws."

49. Justice would require that those who have caused harm should remedy the consequences of their fault. There can be numerous dimensions of justice. The phrase used being 'other principles of justices,' it would ordinarily also include preventive justice.

50. The Black's Law Dictionary, 10th Edition, defines "preventive justice" as thus:-

"Preventive justice. Justice intended to protect against probable future misbehavior. Specific types of preventive justice include appointing a receiver or administrator, issuing a restraining order or injunction, and binding over to keep the peace."

It also entails "substantial justice" which is defined as

"Substantial justice. Justice fairly administered according to rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights; a fair trial on the merits."

51. As per the meaning shown in the Oxford Advanced Learner's Dictionary, New 7th Edition, the word 'justice' has been explained thus:-

"the fair treatment of people; the quality of being fair or reasonable."

52. It is evident that Legislature has consciously used the aforesaid guiding principles for the Permanent Lok Adalat (Public Utility Services), while conducting conciliation proceedings or deciding a dispute on merits.

53. Having examined the aforesaid expressions used by the Legislature in Section 22 D of the Act of 1987, the question which comes up for consideration as to whether the Permanent Lok Adalat (Public Utility Services) would have any power to pass an order which is

perceived by the such Lok Adalat to be in furtherance of natural justice, objectivity, equity, fair play and/or other principles of justice can be attempted to be answered.

54. It is thus evident that equity is a principle that traverses beyond law and entitles the Court of Law to pass an order that satisfies the judicial conscience and stays within the confines of justice and balances rival contentions and expectations. It is also evident that the premium for the insurance policies were to be paid for a period of 15 years for the policy No. 1661566061 and were to be paid for a period 20 years i.e. upto the year 2016 in policy No.161566868. Thus, the policy had continued without any default for a substantive duration of its term. It would be indeed travesty of justice in case the respondents are deprived of the benefits of the policy on mere technicalities of law especially when the Permanent Lok Adalat (Public Utility Service), Patiala has exercised its equitable jurisdiction and has specifically observed that denial of such benefits would not be justified. Para 10 of the aforesaid award reads thus:

“10. Keeping in view the above discussed circumstances and the principles of equity, fair play, natural principles of justice, we allow the application and pass an award directing the respondents to pay to the applicant the claim amount of Rs. 75,000/- (assured amount of policies Ex-A1 and Ex-A2) alongwith bonus on the said amount with 8% interest p.a. from the due date (7.3.2007) till payment within one month from the receipt of the copy of the award. In case the respondents fail to make the payment as stipulated then the applicant would be entitled to recover the same with 15% interest thereon from the due date till payment by the process of law. No order as to costs. Copy of the award be supplied to the parties free of costs as and

when they apply for the same.

55. Taking into consideration the exercise of equitable discretion by the Permanent Lok Adalat (Public Utility Service), Patiala alongwith the totality of the circumstances noticed above, I find no reason to set aside exercise of an equitable discretion by the Permanent Lok Adalat in exercise of discretion showed not be ordinarily interfered by the High Court in exercise of powers of judicial review. The object of the Legal Services Authorities Act, 1987 is to provide justice and allow the Court to be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice and not solely to be governed by technicality or substantive law. Such guiding principles would be rendered ineffective in case the balancing Act is not reflected in the award passed. Such award would not be set aside by the High Court unless the award suffers from gross illegality; perversity, impropriety, or gross non-appreciation of evidence or where the exercise of discretion shocks judicial conscience or violates all cannons of law.

56. Accordingly, the present petition is disposed of with slight modification in award passed by the Permanent Lok Adalat (Public Utility Service), Patiala. The petitioner-Life Insurance Company is although held liable to pay the insured amount alongwith all bonus and interest as awarded, however, the petitioner-Insurance Company is held entitled to deduct only the principle amount of the insurance premium payable towards the policies in dispute till the time for payment of premium or date of institution of civil suit, whichever is earlier.

57. The petition is accordingly partly allowed and the award of

Permanent Lok Adalat (Public Utility Services), Patiala is modified to the above extent. The necessary benefits be released to the respondents within a period of 02 months of the receipt of certified copy of this order.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 02, 2022
Vishal Sharma

Whether speaking/reasoned:	Yes/No
Whether Reportable :	Yes/No