

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

207

CWP-17400-2015 (O&M).
Date of Decision: 09.03.2023.

LIFE INSURANCE CORPORATION OF INDIA AND OTHERS

...Petitioner

Versus

DALIP SINGH

...Respondent

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

Present: Mr. Puneet Sharma, Advocate, for the petitioner.

Mr. Mukesh Yadav, Advocate, for the respondent.

VINOD S. BHARDWAJ. J (ORAL)

The present writ petition has been filed raising a challenge to the award dated 09.05.2015 (Annexure P-12) passed by the Permanent Lok Adalat (Public Utility Services), Narnaul, exercising the powers under Section 22-C of the Legal Services Authorities Act, 1987 (hereinafter referred to as 'the Act of 1987') whereby the application submitted by the respondent-applicant has been partly allowed.

Briefly summarized the facts of the case are that the respondent-applicant had got himself insured with the petitioner Insurance Company vide Policy No.178882204 on 24.02.2011. The annual premium of Rs.5,000/- was deposited on 24.02.2011 and thereafter also on 03.03.2012. The respondent-applicant thereafter claimed to have suffered a heart disease and was admitted to Metro Umkol Hospital and Heart Institute, Rewari on 03.12.2012. He underwent an Angioplasty on being diagnosed of Coronary Artery Disease and two valves in his heart had to be fixed by the doctors of the above said Hospital on 03.12.2012. He remained admitted there upto 06.12.2012. An amount of approximately Rs.2,00,000/- was claimed to have been spent. A claim was thereafter lodged with the petitioner-Insurance Company in the month of March 2013, however, the same was repudiated vide letter dated 30.08.2013. Aggrieved of the said repudiation of the claim, an application under Section 22-C of the Legal Services Authorities Act, 1987, was preferred before the Permanent Lok Adalat (Public Utility Services), Narnaul.

The petitioner-Insurance Company entered its appearance in the proceedings and filed its response wherein it took various objections including that the correct and complete documents had not been submitted by the respondent-applicant and that the benefits claimed by the respondent-applicant were not admissible. It was also pleaded that as per the documents submitted by respondent-applicant, he was hospitalized in Metro Umkol Hospital and Heart Institute, Rewari and underwent procedure of coronary angiography on account of acute MI.

The Hospitalization claim could not be allowed under the aforesaid

policy and also that the surgery undergone by the respondent-applicant was not in the list of surgeries as per the policy conditions. Hence, no amount was admissible. Various other objections on merits were also raised.

Upon consideration of the respective submissions advanced by the parties, the Permanent Lok Adalat (Public Utility Services), Narnaul, partly allowed the application and held the respondent-applicant entitled to get only Rs.1,60,000/- along with interest @ 9% per annum from the order of repudiation i.e. 30.08.2013 till its reimbursement. A cost of Rs.15,000/- towards harassment was also awarded.

Aggrieved by the aforesaid, the present writ petition has been filed by the Insurance Company.

Learned counsel for the petitioner-Insurance Company has, inter alia, argued that the award passed by the Permanent Lok Adalat (Public Utility Services), Narnaul, suffers from patent illegality inasmuch as the Permanent Lok Adalat (Public Utility Services), never initiated conciliation proceedings in terms of Section 22-C (4) to (7) of the Act of 1987. He places reliance on the law laid down in the matter of **Reliance General Insurance Company Limited Vs. Vijay Kumar**, reported as **2013 (5) RCR (Civil) 226**, whereby it was held that the Permanent Lok Adalat (Public Utility Services), is duty bound to initiate conciliation proceedings in terms of Section 22-C (4) to (7) of the Act of 1987. The adjudicatory power of the Court can be invoked under Section 22-C (8) of the Act of 1987 only after the conciliation proceedings under

Section 22-C (7) fail to resolve the dispute amicably. He contends that the claim of the respondent-applicant was rightly repudiated by the petitioner Insurance Company and that the reasoning given by the Permanent Lok Adalat (Public Utility Services), Narnaul suffers from gross mis-appreciation of the objections raised by the petitioner-Insurance Company. The Permanent Lok Adalat (Public Utility Services), proceeded on a presumption that the terms and conditions of the policy document had not been countersigned by the respondent-applicant without appreciating that the respondent-applicant had signed the proposal form wherein it was specifically mentioned that he agreed by way of an undertaking, to the terms and conditions as incorporated in the policy document.

Learned counsel for the respondent-applicant, however, contends that all the aspects have been duly taken into consideration by the Permanent Lok Adalat (Public Utility Services), and that there is no illegality, perversity, impropriety or mis-appreciation of evidence by the Permanent Lok Adalat. He further contends that the Permanent Lok Adalat (Public Utility Services), is guided by the Equity, principles of natural justice, fairness; objectivity and other principles of justice as mentioned in Section 22-D of the Act of 1987 and that the award having been passed in favour of the respondent-applicant, there is no occasion as to why the same should be set aside solely upon non-adherence of a directory requirement of initiation of conciliation proceedings. He contends that if the petitioner-Insurance Company is sanguine about exploring the possibilities of settlement, it should have come up with

some terms. The petitioner solely intends to delay the proceedings instead of resolving the same.

Learned counsel for the parties are ad idem that the amount awarded by the Permanent Lok Adalat (Public Utility Services), Narnaul, has already been deposited with the executing Court, however, the same has not been disbursed to the respondent-applicant.

I have heard learned counsel for the respective parties and have gone through the documents appended along with the present petition.

In order to appreciate the controversy, it would be appropriate to refer to the relevant Statutory provisions of the Act of 1987. The same are extracted as under:-

22C. Cognizance of cases by Permanent Lok Adalat.—(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may by notification, increase the limit often lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section(1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section(1), it—

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of the every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.”

(Emphasis supplied)

It is evident that Section 22-C (4) to (7) lay down an elaborate procedure for the Permanent Lok Adalat (Public Utility Services), to conduct its proceedings. The stage and the manner in which the proceedings, including conciliation, are to be conducted is well prescribed. The same was not intended by the Legislature as just a meaningless formality. Much emphasis has been laid on the need to resolve the issue and to resort to adjudication only after conciliation fails. The requirement elucidates the Legislative intent object. The adjudication power has been subjected to conciliation proceedings.

Further, the question as to whether the conciliation proceedings are mandatory or directory in nature, was examined by the Hon'ble Supreme Court in the matter of **Canara Bank Vs. G.S. Jayarama, in Civil Appeal No. 3872 of 2022 decided on 19.05.2022,** wherein it was held by the Hon'ble Supreme Court that the conciliation proceedings are mandatory and that the adjudicatory process could not have been initiated by the Permanent Lok Adalat (Public Utility Services), unless the procedure as contemplated under Section 22-C of the Act of 1987 has been meticulously followed by the Permanent Lok Adalat. Relevant extract in paragraph No.18 of the judgment is reproduced as under:-

“ Once the procedure under sub-Section (3) is completed, the Permanent Lok Adalat, in accordance with sub-Section (4), shall conduct conciliation proceedings between parties in a manner it sees fit keeping in mind the nature of the dispute. During the conciliation proceedings under sub-Section (4), sub-Section (5) imposes a duty on the Permanent Lok Adalat to assist the parties in reaching an amicable resolution to their dispute in an independent and impartial manner. On the other hand, sub-Section (6) imposes a duty on the parties to cooperate with the Permanent Lok Adalat in good faith and produce any evidence/documents required for the resolution of the dispute. Sub-Section (7) empowers the Permanent Lok Adalat, when it is of the opinion that a settlement exists between the parties, to formulate the terms of such settlement and present it to the parties. If the parties are agreeable to the terms of the settlement, the Permanent Lok Adalat shall pass an award incorporating those terms and provide a copy to each party. Finally, if the parties fail to

reach an agreement under sub-Section (7), the Permanent Lok Adalat can decide the dispute on merits under sub-Section (8), if the dispute does not relate to any offence.”

The two issues that were delved into by the Hon’ble Apex Court were “whether conciliation proceedings are mandatory” under Section 22-C of the Act of 1987, and “whether the Permanent Lok Adalats have adjudicatory functions under the said Act of 1987.”

The Hon’ble Apex Court while addressing the nature of conciliation proceedings observed as under:-

“23 We must now address the first issue, i.e., whether the conciliation proceedings before the Permanent Lok Adalats are mandatory before it can decide a dispute on its merits.

24 This issue is clearly resolved from a bare reading of Section 22-C. Section 22- C provides a step-by-step scheme on how a matter is to proceeded before the Permanent Lok Adalat. The first step is the filing of the application which ousts the jurisdiction of other civil courts, in accordance with sub-Sections (1) and (2). The second step is the parties filing requisite submissions and documents before the Permanent Lok Adalat, in accordance with sub-Section (3). On the completion of the third step to its satisfaction, the Permanent Lok Adalat can move to the fourth step of attempting conciliation between the parties, in accordance with sub-Sections (4), (5) and (6). Subsequently, in the fifth step in accordance with sub-Section (7), the Permanent Lok Adalat has to draw up terms of settlement on the basis of the conciliation proceedings, and propose them to the parties. If the parties agree, the Permanent Lok Adalat has to pass an award on the basis of the agreed upon terms of settlement. Only if the parties fail to reach an agreement on

the fifth step, can the Permanent Lok Adalat proceed to the final step and decide the dispute on its merits.

*25 Such an interpretation is also supported by the decision of a two-Judge Bench of this Court in **Bar Council of India** (supra), where the constitutionality of Chapter VI-A of the LSA Act was upheld. Speaking for the Bench, Justice R M Lodha highlighted that the Permanent Lok Adalats would proceed to adjudication of a dispute on its merits only after attempting and failing to generate a settlement between the parties:-*

22. Chapter VI-A inserted by the 2002 Amendment Act in the 1987 Act, as its title suggests, provides for pre-litigation conciliation and settlement procedure...The disputes in relation to public utility service need urgent attention with focus on their resolution at the threshold by conciliation and settlement and if for any reason such effort fails, then to have such disputes adjudicated through an appropriate mechanism as early as may be possible...

23. The Statement of Objects and Reasons itself spells out the salient features of Chapter VI-A. By bringing in this law, the litigation concerning public utility service is sought to be nipped in the bud by first affording the parties to such dispute an opportunity to settle their dispute through the endeavours of the Permanent Lok Adalat and if such effort fails then to have the dispute between the parties adjudicated through the decision of the Permanent Lok Adalat

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26. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to Permanent Lok Adalats only if the process of conciliation

and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat. It is for this reason that sub-section (1) of Section 22-C states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat.

(emphasis supplied)

26 The appellant's argument, however, is that if the opposite party does not appear before the Permanent Lok Adalat, it can dispense with the conciliation proceedings and straightaway adjudicate the dispute under Section 22-C (8). We are unable to accept this submission. Even if the opposite party does not appear, the Permanent Lok Adalat is still bound to follow the step-by-step procedure laid down by Section 22-C. Under Section 22-C (3), it would require the party before it to file their submissions and documents, and make the best efforts to communicate them to the opposite party for their response. If it is satisfied that no response is forthcoming from the absent opposite party, the Permanent Lok Adalat shall still attempt to settle the dispute through settlement under Section 22-C (4). It is important to remember that Section 22-C (5) imposes a duty upon the Permanent Lok Adalat to be independent and impartial in attempting to amicably settle the dispute,

while Section 22-C (6) imposes a duty upon the party present before the Permanent Lok Adalat to cooperate in good faith and assist the Permanent Lok Adalat. Thereafter, the Permanent Lok Adalat, based on the materials before it, shall propose terms of settlement and communicate them to both parties, regardless of whether they participated in the proceedings. If the party present before the Permanent Lok Adalat does not agree or if the absent party does not respond in a sufficient period of time, only then can the Permanent Lok Adalat adjudicate the dispute on its merits under Section 22-C (8). Keeping in mind the principles enshrined in Section 22-D, the Permanent Lok Adalat shall once again notify the absent party of its decision to adjudicate the dispute on its merits, in case it wishes to join the proceedings at that stage.

27 Section 22-C (8) is amply clear that it only comes into effect once an agreement under Section 22-C (7) has failed. The corollary of this is that the proposed terms of settlement under Section 22-C (7), and the conciliation proceedings preceding it, are mandatory. If Permanent Lok Adalats are allowed to bypass this step just because a party is absent, it would be tantamount to deciding disputes on their merit ex parte and issuing awards which will be final, binding and will be deemed to be decrees of civil courts. This was simply not the intention of the Parliament when it introduced the LSA Amendment Act. Its main goal was still the conciliation and settlement of disputes in relation to public utilities, with a decision on merits always being the last resort. Therefore, we hold that conciliation proceedings under Section 22-C of the LSA Act are mandatory in nature.

(emphasis supplied)

In view of the statutory provisions as interpreted conclusively by the aforesaid judicial pronouncement, the issue in hand remains no more ambiguous or unsettled.

The requirement to initiate conciliation proceedings under Section 22-C (4) to (7) of the Act of 1987 is mandatory in nature.

The Permanent Lok Adalat (Public Utility Services), is required to effect settlement amongst the parties and only to proceed with the adjudication after the parties fail to reach at an agreement. Invocation of adjudicatory power under Section 22-C (8) of the Act of 1987, by the Permanent Lok Adalat (Public Utility Services), is subject to failure of conciliation proceedings and not at any prior stage.

Since the above mandatory procedure has not been followed in the present case, the present petition deserves to be allowed for the said reason. Hence, without commenting on the merits *inter se* with regard to the stand of the parties and noticing that the aforesaid mandatory procedural requirement has not been followed by the Permanent Lok Adalat (Public Utility Services), Narnaul, the present petition is allowed and the award dated 09.05.2015 (Annexure P-12) is set aside. The matter is remanded to the Permanent Lok Adalat (Public Utility Services), Narnaul for passing a fresh Award in accordance with law and after affording an opportunity of hearing to the respective parties.

The parties are directed to appear before the Permanent Lok Adalat (Public Utility Services), Narnaul on 11.04.2023.

March 09, 2023

raj arora

(VINOD S. BHARDWAJ)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No