

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CWP-26019-2017

Date of decision: 11.03.2024

SYNDICATE BANK

.....Petitioner

VERSUS

PERMANENT LOK ADALAT AND OTHERS

.....Respondents

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

Present: - Mr. Sandeep Verma, Advocate for
Mr. Pawan Nanda, Advocate
for the petitioner.

Mr. Alankar Narula, Advocate
for respondent No.3.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the award dated 19.06.2017 passed by the Permanent Lok Adalat (Public Utility Services), Chandigarh whereby an application preferred by the respondent No.3-applicant M/s Irush India under Section 22-C of the Legal Services Authorities Act, 1987 has been allowed and the petitioner-Bank has been directed to release a sum of Rs. 2,78,720/- in favour of respondent No.3-applicant alongwith interest @ 9% per annum. A further compensation of Rs. 15,000/- towards mental agony and physical harassment alongwith Rs. 10,000/- towards litigation expenses has also been awarded.

2. Briefly summarized the facts of the present case are that respondent No. 3-applicant had submitted an application for grant of loan

for a sum of Rs. 10 lacs to the petitioner-Bank for purchasing certain machines under the Technology Up gradation Scheme of Credit Linked Capital Subsidy Scheme (CLCSS) framed by the Small Scale Industries and ARI Government of India. The respondent No.2 i.e. the Small Industries Development Bank of India- was appointed as the Nodal Agency to channelize the Credit Linked Capital Subsidy. The documents in support of said benefits had been claimed to be submitted by the respondent-applicant and on finding the same to be in order, the loan was sanctioned on 27.03.2012. After the disbursement of the loan amount in account of the respondent No.2, the procedure for subsidy was taken up and the matter was referred to the Nodal Agency, however, the claim of respondent No.3-applicant was rejected by respondent No.2. Aggrieved of denial of the subsidy by the Bank, a complaint was filed by respondent No.3-applicant before the District Consumer Disputes Redressal Forum-1, U.T. Chandigarh bearing Consumer Complaint No.CC/310/2014. After consideration of the claims by the respective parties, the Consumer Disputes Redressal Forum, U.T. Chandigarh dismissed the above said complaint leaving the parties to pursue their grievance before a Civil Court since the respondent No.3-applicant was not found to be a consumer qua respondent No.2-Nodal Agency.

3. After dismissal of the said complaint by the Consumer Disputes Redressal Forum-1, U.T. Chandigarh, the present application was filed, wherein the respondent No.3-applicant reiterated the above sequence of facts and it was further stated that the applicant was found entitled for subsidy to the extent of 15% on the asset value that was worked out to be Rs.2,78,720/- and an agreement in this regard was also executed on

27.03.2012 between the Bank and the applicant. The Nodal Agency-responder No.2 i.e. SIDBI however rejected the claim and returned the case for completion of some discrepancies. The information was sought by the respondent-applicant as to the reasons for such rejection, however, the respondent No.2 chose not to respond to the same. After a lot of persuasion and efforts made by the applicant, it was informed vide letter dated 07.05.2013 that the SIDBI had advised not to send any old case whose reference date is prior to 01.04.2012. The claim was rejected and information was sent vide communication dated 08.08.2013 on account of the case having been sent beyond the limitation. Alleging that the rejection was not attributable to the lapse on the part of applicant and hence the subsidy ought to be released. Hence the said application had been moved. On receipt of notice, the petitioner Bank filed its reply raising objections to the maintainability of the proceedings. It was also alleged that the Permanent Lok Adalat had no jurisdiction since it was a claim for release of subsidy and not a Public Utility Service. It was also submitted that the Bank had no obligation to release subsidy and the same was to be released by the Government.

4. A separate reply was also submitted by the SIDBI wherein it raised an additional objection that it was only a nodal agency and that the subsidy was to be released by the Government of India which had not been impleaded as a party. The claim was sent to SIDBI on 13.06.2012 and was returned to the Bank with certain observations on 16.10.2012. The reference date in the case was 27.03.2012 and as per the circular dated 07.09.2012, the documents should have been sent by the Bank by 30.06.2012 but by the Bank submitted the same after the above date, the claim was rejected.

5. Efforts were made for conciliation but the same failed. Adjudication under Section 22-C (8) was accordingly undertaken by the Permanent Lok Adalat (Public Utility Services).

6. Upon consideration of the claim of the respective parties, the claim of the respondent No.3-applicant was allowed and it was observed that the claim was not submitted by the petitioner-Bank in time i.e. before 30.06.2012 and an intimation as regards the rejection of the said subsidy was sent to the respondent-applicant for the first time only on 08.08.2013, hence, the Bank was liable to release the sanction subsidy. The deficiency was hence fastened on the Bank. Aggrieved thereof, the present writ petition has been filed.

7. Learned counsel appearing on behalf of the petitioner has raised a twin arguments which are as under:-

- i) That the Permanent Lok Adalat (Public Utility Services), had no jurisdiction to entertain the applications since the proceedings instituted earlier before the District Consumer Disputes Redressal Forum-1, U. T, Chandigarh had been dismissed with liberty to the petitioner to approach the Civil Court. It is thus contended that as per Section 22 (C), jurisdiction of Permanent Lok Adalat can be invoked 'before approaching any Court' as defined under 'Section 2 (aaa)' of the Legal Services Authorities Act, 1987. Since the respondent-applicant had already approached the District Consumer Disputes Redressal Forum without success, hence, the instant application under Section 22 (c) under the Legal Services Authorities Act, 1987

could not have instituted before the Permanent Lok Adalat (Public Utility Services).

- ii) It is contended that so far as the question of sanction of subsidy is concerned, the same is required to be released by the Nodal Agency-Union of India as per the applicable scheme. The petitioner-Bank is only a lending institution and the subsidy is required to be released by the competent authority. Once a Nodal Agency of the Union of India had declined the claim of the respondent No.3-applicant and held them to be not entitled for the subsidy, the petitioner Bank cannot be held liable to release the said subsidy. The petitioner-Bank is thus not in default or lapse in performance of any of its obligations.
- iii) The release of subsidy was to be sanctioned by the Union of India which was not a party in the proceedings.
- iv) The Bank did not cause any delay in submission of the claim to the competent authority.

8. Counsel for the respondent No.3-applicant on the other hand contends that they had made huge investment on the strength of the scheme so sanctioned and that the respondent No.2 have unilaterally rejected the application without assigning any valid reasons. The application was accepted by the Permanent Lok Adalat (Public Utility Services) and after considering all the objections, the award has been passed. He submits that the applicant has been pursuing his claim for release of the capital subsidy for last nearly a decade and that the grievance still remains unredressed. He further submits that the petitioner Bank erred in not forwarding the claim to the respondent SIDBI in time and hence a right that had accrued in its favour

was defeated. He further submitted that the deficiency was thus on the part of the Bank and that the complaint before the Consumer Court was determined on technical ground and that the same is not an adjudication on merits. The award has hence been rightly passed by the Permanent Lok Adalat and the writ petition deserves to be dismissed.

9. He is however not in a position to controvert that Section 2 (aaa) of the Legal Services Authorities Act, 1987 brings within its hold all Forums/Tribunal/authorities which perform judicial/quasi judicial functions. No other argument has been raised or judgment cited by any of the parties.

10. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents filed alongwith the present petition.

11. The primary question which comes up for consideration before this Court is as to whether the Permanent Lok Adalat (Public Utility Services) was competent to decide the application preferred by the respondent No.3-applicant considering that the respondent No.3-applicant had earlier espoused his grievance for release of the capital subsidy as per the above said scheme before the District Consumer Disputes Redressal Forum-1, U.T Chandigarh. Section 22 (C) specifically stipulates that a person is to approach the Permanent Lok Adalat (Public Utility Services) ‘before’ approaching any other Court as defined under Section 2 (aaa). The relevant statutory provisions 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 of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

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

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

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

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

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

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

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

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

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

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

Section 2- (aaa) “court” means a civil, criminal or revenue court and includes any tribunal or any other authority

constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;]

(Emphasis supplied)

12. It is evident from a perusal of the above said statutory provision that the prohibition against entertaining an application by the Permanent Lok Adalat (Public Utility Services) is attracted once a person has already approached any other 'Court' for seeking redressal of the said grievance. The stage for approaching Permanent Lok Adalat prescribed in the statute is to approach the Permanent Lok Adalat (Public Utility Services) before a dispute is brought before any Court. Hence, Permanent Lok Adalat (Public Utility Services) is prohibited from entertaining a dispute after initiation of proceedings before any other Court as defined under Section 2 (aaa). The stage for entertaining the application is not qualified or related to the final outcome of the proceedings that were initiated before approaching the Permanent Lok Adalat. The prescription of a stage is a conscious act of the legislature, hence, a subsequent dismissal even on a technical ground, may not *ipso facto* be sufficient to over ride the statutory provision enshrined under Section 22 (C).

13. It is thus not a case where legislature is silent while providing a stage for approaching the Permanent Lok Adalat, rather, it mandates that Permanent Lok Adalat can be approached only before approaching any other Court. It linked the stage of invoking jurisdiction of Permanent Lok Adalat to the institution of the case and not to a final outcome of the proceeding- whether on merits or for technical reasons. In exercise of its powers of judicial review, the Courts may fill up a gap or lacunae or read down a provision to cater to a situation not contemplated but does not legislate in the

said process. High Court does not substitute its opinion for the intent of the legislature. If the stage for approaching the Permanent Lok Adalat was not intended to be prescribed, there was no occasion or reason to specify the same. It is well settled role of statutory interpretation that every word or phrase has been incorporated consciously by the legislature and attempt has to be given to interpret the clause so as to give effect to it and not to render it nugatory or otiose. Unless the interpretation runs contrary to the statutory object and scheme, it must be interpreted in a manner to implement the same.

14. Under the statutory scheme, it cannot be said that a person would be left remediless if the remedy provided under the Legal Services Authorities, Act, 1987 is not made available to him. The intent rather appears to be that once any other option is exercised, the remedies prescribed thereunder ought to be availed and pursued. It was thus not a case of a remedy which could be pursued simultaneously or in substitution and supersession of a remedy already availed but only as a first option. The remedy seized to exist thereafter.

15. Even otherwise, once various alternative remedies are available under different statutory regimes and a litigant exercises his discretion and elects to pursue his remedy in a particular forum, he is required under judicial sanctity and discipline to exhaust his remedies under the said statutory forum alone. It should not ordinarily be permitted or be rule of law that a person be allowed to switch from one statutory forum to a forum under different statute when such litigation, elected to be pursued before a particular forum, does not yield the desired result. Such an attempt, if permissible, will lead to an anarchy and propagate and promote forum

shopping at the hands of mischievous litigant. The limitation imposed on the jurisdiction of the Permanent Lok Adalat (Public Utility Services) under the statute was thus conscious and only as a first option towards seeking settlement of dispute and not in the event where a litigant had already approached any other Court/forum for seeking redressal of the said grievance.

16. Even though one may contend that where adjudication before a forum does not happen on merits and such forum declines to pass award on merits, or the case is withdrawn, proceedings before Permanent Lok Adalat be permitted to be instituted before the Permanent Lok Adalat, however, such a concession not only does violence to the statute but also opens way for mischief of forum shopping and seeking withdrawal of case to pursue other remedies. There is no reason as to how a grave prejudice and violation of right to constitutional remedies gets taken away when all other remedies are still available to the litigant.

17. Besides various other questions also arise:-

- i) the claim is for release of subsidy by the Government and it was required to be also seen whether it was a Public Utility Services as defined under Section 22-B of the Legal Services Authorities Act, 1987.
- ii) even though the subsidy was to be released by Union of India, however, the same was not a party.
- iii) the claim was declined for late submission of pleadings shows that the circular for submission of claim before 30.06.2012 was itself circulated in September, 2012. Besides, the document were forwarded by the Bank to the SIDBI on

13.06.2012 i.e. before the late date of 30.06.2012. The deficiency was conveyed only in October, 2012 by the SIDBI, hence, it was needed to be ascertained as to who would be liable when deficiency is communicated after the last date and where even the last date is notified by a later circular. The said issues could not be determined summarily.

18. Further, even though the above said issue may not have been agitated before the Permanent Lok Adalat (Public Utility Services), however, once the fact had been brought to the notice of such authority, the same being a legal issue, it was required to be determined by the competent Court. The aspect of jurisdiction is fundamental and would travel to the very foundation of the case. Defect of jurisdiction, being fundamental, cannot be cured at any later stage as per the settled position in law.

19. Taking into consideration that the Permanent Lok Adalat (Public Utility Services) did not have the jurisdiction and noticing that the respondent No.3-applicant had already preferred a complaint before the District Consumer Disputes Redressal Forum-1, I am of the opinion that the exercise of jurisdiction by the Permanent Lok Adalat (Public Utility Services) was beyond the powers conferred upon it and in violation of the mandate of Section 22 (C) of the Legal Services Authorities, Act, 1987. The proceedings thus could not have been initiated or finally determined by the Permanent Lok Adalat (Public Utility Services).

20. The present writ petition is accordingly allowed and the award dated 19.06.2017 passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh in Application No. 220/2015 is set aside.

21. Since this Court has allowed the instant writ petition only on the basis of the maintainability of the proceedings before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, I do not wish to go into the merits of the claim of the respective parties which may prejudice the right of the respective parties, in the event of them pursuing the remedies before an alternative forum, as are available to them under law.

22. It is also reiterated that in the event of respondent No.3-applicant taking recourse to the alternative remedies available to it as per law, the period during which the proceedings remain pending before different forum shall be taken into consideration while computing the limitation.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 11, 2024

Vishal Sharma

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