

Before Alok Singh, J.

**RELIANCE GENERAL INSURANCE
COMPANY LTD.—Petitioner**

versus

VIJAY KUMAR & ANOTHER—Respondents

CWP No. 20825 of 2010

January 4, 2012

Constitution of India, 1950 - Art. 226 & 227 - Legal Services Authority Act, 1987 - Ss.20, 20C, 22A, 22B, 22C, 22D, 22E - Respondent submitted an application u/s 22C of the Legal Services Authority Act, 1987 at pre-litigation stage for recovery of medical claim from Insurance Company - Insurance Company filed reply before Lok Adalat, taking stand that claim was bogus and false - Specific plea taken that claim cannot be adjudicated upon by Lok Adalat, as detailed evidence and cross-examination required - Lok Adalat decided claim on merits and awarded a sum of Rs.24,509/- with 9% interest per annum - Order of Lok Adalat challenged before High Court by Insurance Company - High Court held that adjudication by Lok Adalat presumably u/s 22C(8) bad, because claim was denied as false by Insurance Company - There was no narrowing down of dispute during conciliation as contemplated under sub-sections 4, 5, 6 & 7 of Section 22C, enabling Lok Adalat to resort to S.22C(8) - If claim is denied outright, no jurisdiction with Lok Adalat to invoke sub-section 8 of S.22C and to decide on merits without there being any element of compromise - Claimant could approach appropriate forum - Petition Allowed.

Held, that from the judgment of Division Bench of Jharkhand High Court in the case of Bharat Sanchar Nigam Ltd. (supra) as well as observations of the Apex Court in the case of United India Insurance Company Limited (supra), it is thus clear that PLA has no jurisdiction to invoke directly Section 22C(8) and decide the dispute on merit; if case involves disputed questions of facts and law PLA shall not proceed to decide the case on merit from the very beginning by invoking sub-section

(8) of Section 22C and shall direct the parties to approach appropriate forum for redressal of their grievances.

(Para 19)

Further held, that however, if on notice Public Utility Service Provider does not dispute the genuineness of the claim and comes with the plea claimant is not entitled for the sum claimed, however, is entitled for the lesser amount and agrees for the conciliation PLA PUS shall commence conciliation proceedings under sub-section (4) and assist the parties to reach to the settlement. Thereafter, if PLA PUS finds that dispute can be resolved amicably, it shall formulate the terms of the possible settlement under sub-section (7) and shall supply the same to the parties for their respective opinions. If having received terms of possible settlement formulated by PLA PUS parties have narrowed down their respective claims and are unable to reach to the final conclusion PLA PUS shall proceed to decide the differences by invoking Section 22C (8) and shall pass the award on merit by applying principles of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act.

(Para 20)

Further held, that for example if claimant is claiming amount 'A' from the Insurance company as medical reimbursement and Insurance company is denying the claim in toto saying claim is bogus; claimant is not entitled for any reimbursement. PLA PUS shall drop the proceedings then and there and shall not proceeded under sub-sections (4) (7) and (8). However, if insurance company is coming with the plea instead of amount A claimant is entitled some lesser amount say amount B and with the assistance of the PLA PUS during the conciliation proceedings commenced under sub-sections (4), (5), (6) and (7) difference between the claimant and insurance company have been narrowed down and parties are not able to reach the final figure, PLA PUS by invoking sub-section (8) can decide dispute to reach the final amount by applying the principle of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act.

(Para 21)

Further held, that in my humble opinion if parties have narrowed down their disputes during the conciliation proceedings commenced and held under sub-sections (4), (5), (6) and (7) and have failed to reach to

the final conclusion it shall give jurisdiction to the PLA PUS to invoke sub-section (8) to decide margin finally by applying the principles of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act. In that eventuality no written consent would be required to come to the final figure.

(Para 24)

Further held, that in the present case, it is specifically stated by the Insurance Company that Lok Adalat cannot decide present dispute since lot of evidence and cross examination is required to prove the claim. No conciliation proceedings were ever commenced under sub-section (4), PLA PUS never assisted, guided the parties to explore possibility of amicable settlement under sub-sections (5) and (6). Nor PLA PUS ever opined that there was possibility of amicable settlement nor PLA PUS has ever formulated terms of possible settlement as required under sub-section (7). What is surprising is PLA PUS without following procedure provided under sub-sections (4), (5), (6) and (7) straightway has invoked sub-section (8) and has decided the case on merit as if PLA PUS is regular court. Therefore, impugned award cannot be sustained in the eyes of law.

(Para 25)

P.M. Goyal, Advocate, *for the petitioner.*

S.K. Bawa, Advocate, *for respondent No.1*

ALOK SINGH, J. (ORAL)

(1) Petitioner Insurance company has invoked jurisdiction of this Court under Articles 226/227 of the Constitution of India assailing the award dated 27.07.2010, passed by Permanent Lok Adalat (Public Utility Services) (hereinafter referred to as 'PLA PUS'), Gurgaon.

(2) Brief facts, inter alia, are that respondent No.1-Vijay Kumar has submitted an application at pre litigation stage under Section 22C of the Legal Services Authorities Act, 1987 (hereinafter to be referred as 'the Act') to recover from the Insurance company '23,726/- along with interest at the rate of 12 % per annum on account of medi-claim; inter alia, contending therein that the claimant (respondent No.1 herein) was having

medi-claim No.282510413811 for the period 05.05.2009 to midnight 04.05.2010 for a sum of '1 lac; claimant suffered from several difficulty in breathing with high grade fever and vomiting with productive cough and was diagnosed on investigation as a case of acute bronchitis; he rushed and admitted in Park Hospital 1, Dundahera, Gurgaon and remained admitted upto 30.11.2009 and has incurred a sum of '24,509/- on his treatment, however, Insurance company is not reimbursing the amount incurred by the claimant towards the treatment in hospital.

(3) Insurance company had filed written statement before the Lok Adalat denying the contentions made in the claim petition and has taken specific stand that matter was thoroughly got investigated by the Insurance company and claim of the claimant was found to be bogus and not genuine. It was also stated by the Insurance company that hospital in question was indulging in issuing incorrect, false and bogus medical certificates to the claimants facilitating them to raise false claim against the Insurance Companies. In paragraph No.10 of the reply the specific plea of Insurance company is that complaint cannot be decided by PLA PUS as lot of evidence and cross examination would be required to justify and prove the claim of the claimant

(4) Learned Lok Adalat in the impugned judgment in paragraph Nos.4 and 5 has observed as under :-

"4. We have heard Ld. Counsel for the parties and have gone through the pleadings and the documents. It is not disputed that applicant had medi-claim policy from the respondent. Admission of the applicant in the hospital is also not disputed. The policy is not made out cashless. The applicant remained under treatment from 26.11.2009 to 30.11.2009. He has spent '24,509/- on his treatment as is clear from the copy of the bill produced.

5. So we direct the respondent to pay a sum of '24,509/- (Twenty four thousand five hundred and nine only) to the applicant alongwith interest at the rate of 9% pa from the date of institution of the application till payment. The petition is disposed of accordingly. File be consigned to the record room."

(5) I have heard learned counsel for the parties and have perused the record.

(6) Learned counsel for the petitioner contends that Lok Adalat has passed the award on merit; award can be passed as per the compromise or settlement between the parties and not on merit.

(7) Learned counsel for the respondent-claimant contends that combined reading of Section 22C(8), Sections 22D and 22E would suggest that even if parties fail to reach to settlement Lok Adalat shall decide the case on merit. As per learned counsel sub-section (8) of Section 22C reads "*where parties fail to reach at an agreement, Permanent Lok Adalat shall decide the dispute*"; Section 22D further reads "*while conducting, conciliation proceedings or deciding the dispute on merit*" goes to prove that PLA PUS can decide the dispute on merit; further contends that even language of Section 22E "*Award of the Permanent Lok Adalat either on merit or in terms of a settlement agreement shall be final*" would show that Permanent Lok Adalat can decide the dispute on merit if parties fail to reach a settlement.

(8) Before proceeding further, this Court would like to point out that this Court is shocked to note that orders are being passed by the PLA PUS wherein PLAs have adjudicated the claims on merit without their being any element of settlement or compromise. It seems that a lot of confusion is prevailing pertaining to the procedure and jurisdiction of the PLA PUS.

(9) As per the Act there are two stages to refer the disputes to the Lok Adalat or PLA-PUS under Section 20 as well as under Section 20C respectively. First of all I would like to deal with the reference, in a pending case, to the Lok Adalat as per Section 20 of the Act. Reference in pending case

(10) Hon'ble Apex Court in the case of *State of Punjab versus Jalour Singh*, in para 8 and 9 has observed as under :-

"8. It is evident from the said provisions that Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on

the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by principles of justice, equity, fair play. When the LSA Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

9. But we find that many sitting or retired Judges, while participating in Lok Adalats as members, tend to conduct Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through Lok Adalats, will drive the litigants away from Lok Adalats. Lok Adalats should resist their temptation to play the part of Judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strength and weaknesses, advantages and disadvantages of their respective claims."

(11) Hon'ble Apex Court in the case of *State of Punjab and others versus Ganpat Raj (2)*, as well as in the case of *Union of India versus Ananto and another (3)*, has observed as under :-

"7. The specific language used in sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in sub-sections (3) and (5) of Section 20 are 'compromise' and 'settlement'. The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per Termes de la Ley, 'compromise is a mutual promise of two or more parties that are at controversy'. As per Bouvier it is 'an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon'. The word 'compromise' implies some element of accommodation on each side. It is not apt to describe total surrender. (See NFU Development Trust Ltd., Re2.) A compromise is always bilateral and means mutual adjustment. 'Settlement' is termination of legal proceedings by mutual consent. The case at hand did not involve compromise or settlement and could not have been disposed of by the Lok Adalat. If no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat."

(12) The Court, hearing the case, either with the consent of the parties or on the application of party, after hearing other party, having satisfied that case can be settled with the intervention of the Lok Adalat, can refer the case to the Lok Adalat under Section 20 of the Act or under Section 89 of CPC. Having received the reference Lok Adalat shall formulate the terms of a possible settlement and explore the possibility of the settlement between the parties without using any coercion or undue pressure on the parties. If parties reach to a settlement Lok Adalat shall pass an award. However, if no settlement is reached, Lok Adalat shall return the reference to the Court wherefrom reference was received by the Lok Adalat.

(2) 2006 (8) SCC 364

(3) 2007 (10) SCC 748

(13) Even as per Regulation 13 of the National Legal Services Authority (Regulations) 2009, Lok Adalat has no power to hear the parties to adjudicate their dispute as a regular Court, therefore, while hearing the reference sent by the Court, Lok Adalat shall act only as conciliator to explore the possibility of the compromise/mutual settlement, but in any case Lok Adalat cannot pressurise the parties to arrive at settlement or adjudicate a dispute on merit and in the event of failure of the conciliation is duty bound to return the reference to the Court concerned.

Pre litigation stage references

Sections 22A, 22B, 22C, 22D and 22 E are being reproduced herein :-

22A. Definitions :- *In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires, -*

(a) *“Permanent Lok Adalat” means a Permanent Lok Adalat established under sub-section (1) of section 22B.*

(b) *“public utility service” means any-*

(i) *transport service for the carriage of passengers of goods by air, road or water; or*

(ii) *postal, telegraph or telephone service; or*

(iii) *supply of power, light or water to the public by any establishment;*

or

(iv) *system of public conservancy or sanitation; or*

(v) *service in hospital or dispensary; or*

(vi) *insurance service,*

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purpose of this Chapter.

22B. Establishment of Permanent Lok Adalats.- (1) Notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of-

(a) a person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat; and

(b) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority, appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be such as may be prescribed by the Central Government.

22 C. 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 subsection (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 applicant;

(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 subsection (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 circumstance of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under subsection (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 or 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 subsection (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.*

22D. Procedure of Permanent Lok Adalat- *The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872).*

22E. Award of Permanent Lok Adalat to be final – (1) *Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.*

(2) *Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.*

(3) *The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.*

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

(5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(14) From the perusal of Sections 22A and 22B, this Court has no hesitation to hold that Central Authority or the State Authority shall, by notification, establish Permanent Lok Adalats for exercising such jurisdiction in respect of one or more public utility services as provided under Section 22A(b) of the Act for such areas as may be specified in the notification.

(15) PLA PUS, having territorial jurisdiction, can be approached under Section 22C (1) of the Act at the pre litigation stage for the settlement of dispute by moving appropriate application. Having received application, PLA PUS under sub-section (3) shall direct both the parties to file their statements in writing supported by any document or evidence which parties intend to file in support of their respective claims. Having received statements and evidence PLA PUS under sub-section (4) and (5) of Section 22C shall commence conciliation proceedings and assist the parties to reach an amicable settlement of the dispute in an independent impartial manner. While assisting the parties to reach to an amicable settlement Lok Adalat shall not use any coercion or pressure on the parties concerned. If during the conciliation proceeding Lok Adalat finds that their exist elements of settlement which may be acceptable to the parties, shall formulate the terms of a possible settlement of the dispute and supply to the parties concerned enabling them to reach an agreement on the settlement of dispute. If settlement is arrived at between the parties with the assistance of the PLA PUS an award shall be passed by the PLA PUS as per the terms and conditions of the settlement between the parties.

(16) Now question comes if reference is made by any party at a pre litigation stage under Section 22C as to whether PLA PUS can decide the dispute on merit by invoking sub-section (8) of Section 22C in the event conciliation fails?

(17) Division Bench of Jharkhand High Court in the case of *Bharat Sanchar Nigam Ltd. Vs. State of Jharkhand* (4), in para 18 has observed as under :-

"The duty of Permanent Lok Adalat is to bring parties to a settlement instead of adjudicating the dispute. The Permanent Lok Adalat has no jurisdiction to directly invoke the provisions of Section 22C(8) and decide the dispute on merit against the will of the party."

(18) Hon'ble Apex Court in the case of *United India Insurance Company Limited versus Ajay Sinha and Another* (5), in paras 28, 30, 37, 39 and 41 has observed as under :-

28. Here, however, the Permanent Lok Adalat does not simply adopt the role of an arbitrator whose award could be the subject-matter of challenge but also the role of an adjudicator. Parliament has given the authority to the Permanent Lok Adalat to decide the matter. It has an adjudicating role to play.

30. In this case, as noticed above, the genuineness of the claim itself is in dispute. Where the parties have taken extreme positions, the same prima facie may not be the subject-matter of conciliation which provides for a non-binding settlement.

37. Section 22-C(1) read with Sections 22C(2), 22-C(8) and 22-E of the Act, exclude the jurisdiction of the civil courts by providing that when an application is made by either party to the Permanent Lok Adalat to settle a dispute at the pre-litigation stage, the PLA shall do so, and the other party is precluded from approaching the civil court in such a case.

39. What is important to note is that with respect to public utility services, the main purpose behind Section 22-C(8) seems to be that "most of the petty cases which ought not to go in the regular courts would be settled in the pre-litigation stage itself".

(4) 2008 (4) JCR 12 (Jhr)

(5) 2008 (7) SCC 454

41. *We must guard against construction of a statute which would confer such a wide power in the Permanent Lok Adalat having regard to sub-section (8) of Section 22-C of the Act. The Permanent Lok Adalat must at the outset formulate the questions. We, however, do not intend to lay down a law, as at present advised, that Permanent Lok Adalat would refuse to exercise its jurisdiction to entertain such cases but emphasise that it must exercise its power with due care and caution. It must not give an impression to any of the disputants that it, from the very beginning has an adjudicatory role to play in relation to its jurisdiction without going into the statutory provisions and restrictions imposed thereunder.*

(19) From the judgment of Division Bench of Jharkhand High Court in the case of Bharat Sanchar Nigam Ltd. (supra) as well as observations of the Apex Court in the case of United India Insurance Company Limited (supra), it is thus clear that PLA has no jurisdiction to invoke directly Section 22C(8) and decide the dispute on merit; if case involves disputed questions of facts and law PLA shall not proceed to decide the case on merit from the very beginning by invoking sub-section (8) of Section 22C and shall direct the parties to approach appropriate forum for redressal of their grievances.

(20) However, if on notice Public Utility Service Provider does not dispute the genuineness of the claim and comes with the plea claimant is not entitled for the sum claimed, however, is entitled for the lesser amount and agrees for the conciliation PLA PUS shall commence conciliation proceedings under sub-section (4) and assist the parties to reach to the settlement. Thereafter, if PLA PUS finds that dispute can be resolved amicably, it shall formulate the terms of the possible settlement under sub-section (7) and shall supply the same to the parties for their respective opinions. If having received terms of possible settlement formulated by PLA PUS parties have narrowed down their respective claims and are unable to reach to the final conclusion PLA PUS shall proceed to decide the differences by invoking Section 22C (8) and shall pass the award on merit by applying principles of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act.

(21) For example if claimant is claiming amount 'A' from the Insurance company as medical reimbursement and Insurance company is denying the claim in toto saying claim is bogus; claimant is not entitled for any reimbursement. PLA PUS shall drop the proceedings then and there and shall not proceed under sub-sections (4) (7) and (8). However, if insurance company is coming with the plea instead of amount A claimant is entitled some lesser amount say amount B and with the assistance of the PLA PUS during the conciliation proceedings commenced under sub-sections (4), (5), (6) and (7) difference between the claimant and insurance company have been narrowed down and parties are not able to reach the final figure, PLA PUS by invoking sub-section (8) can decide dispute to reach the final amount by applying the principle of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act.

(22) Learned Single Judge of Jharkhand High Court in the case of *Sandip Ekka versus Selestia Kerketa* (6), in paragraph No.5 has held as under :-

5. Having heard learned counsel for the petitioner and looking to the award passed by the Permanent Lok Adalat, Simdega in M.J.C. Case No. 28 of 2008, it appears that the Permanent Lok Adalat, Simdega, has ordered the interim relief in favour of the respondent and has thereby decided the claim. It appears from the ratio laid down in the aforesaid cases that the Permanent Lok Adalat has no power, jurisdiction and authority to decide the dispute, on merits without there being any consent by the petitioner. The predominant role of the Permanent Lok Adalat is of a conciliator and not of an adjudicator. It has been held in the decisions rendered by this Court reported in 2009(4) J.L.JR 129 as well as in 2008(3) J.L.JR 513 that the Permanent Lok Adalat can decide the dispute, on merits only when there is consent, in writing, by the parties, to the dispute. For the reasons stated in the aforesaid judgments, the order passed by the Permanent Lok Adalat, Simdega in M.J.C. Case No. 28 of 2008 dated 27th July, 2009 is, hereby, quashed and set aside.

(23) Learned Single Judge of the Gauhati High Court in the case of *Deputy Divisional Manager, Shillong & Another* versus *Smt. Jharna Ghosh* (7), in paragraph Nos.10, 11, 12 and 14 has observed as under :-

10. It has been specifically provided in sub-sections (4),(5), (6) and (7) of Section 22C of the Act that the Permanent Lok Adalat, during conduct of conciliation proceedings under subsection (4), it shall assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner, and 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. When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of the 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. However, if the parties fail to reach to an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, in terms of the above provision, with the approval of the parties, decide the dispute.

11. In terms of the provisions of Section 22C(7), it clearly transpires that the Permanent Lok Adalat has to formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations. However, in the instant case, as rightly pointed out by the learned counsel for the petitioners, no such initiative was ever taken up by the learned

Members of the Permanent Lok Adalat, for a possible settlement of the dispute between the parties. Neither any observation, nor any opinion was expressed by the learned Permanent Lok Adalat as to whether any element of settlement existed for a possible settlement.

12. The very purpose of establishment of a Permanent Lok Adalat is to take an initiative for a settlement of the dispute between the parties without litigation. However, in the instant case, as it appears, such an effort for conciliation by the learned Permanent Lok Adalat is conspicuously absent.

14. The Permanent Lok Adalats are saddled with a pious duty of using their wisdom, knowledge and experience, for settlement of the dispute between the parties. The Permanent Lok Adalat should offer terms of settlement on its own. Thereafter, some time have to be given to the parties to the dispute to enable them to come to a settlement. If they offer their terms of settlement, it can be accepted by the Permanent Lok Adalat or if they accept the terms of settlement, offered by Permanent Lok Adalat, then also an award can be passed, as agreed to by the parties. Except as above, the Permanent Lok Adalat cannot directly take a decision, on merits. Even thereafter a written consent must be given by the parties to the Permanent Lok Adalat for deciding the dispute, on merits. Unless a written consent is given by the parties, for deciding the dispute, on merits, the Permanent Lok Adalat shall not exercise power to decide the issues, on merits in terms of Sec.22 C (8) of the Act.

(24) Observation of the Jharkhand High Court in the case of Sandip Ekka (supra), Gauhati High Court in the case of Deputy Divisional Manager (supra) to the effect that PLA shall exercise power to decide the issue on merit in terms of Section 22C (8) of the Act only after written consent is given by the parties with all due respects do not impress me. In my humble opinion if parties have narrowed down their disputes during the conciliation proceedings commenced and held under sub-sections (4), (5), (6) and (7) and have failed to reach to the final conclusion it shall give jurisdiction to the PLA PUS to invoke sub-section (8) to decide margin

finally by applying the principles of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act. In that eventuality no written consent would be required to come to the final figure.

(25) In the present case, it is specifically stated by the Insurance Company that Lok Adalat cannot decide present dispute since lot of evidence and cross examination is required to prove the claim. No conciliation proceedings were ever commenced under sub-section (4), PLA PUS never assisted, guided the parties to explore possibility of amicable settlement under sub-sections (5) and (6). Nor PLA PUS ever opined that there was possibility of amicable settlement nor PLA PUS has ever formulated terms of possible settlement as required under sub-section (7). What is surprising is PLA PUS without following procedure provided under sub-sections (4), (5), (6) and (7) straightway has invoked sub-section (8) and has decided the case on merit as if PLA PUS is regular court. Therefore, impugned award cannot be sustained in the eyes of law. It reminds me observations of Hon'ble Apex Court in para 9 in the case of State of Punjab Vs. Jalour Singh (*supra*) which need not be reproduced herein.

(26) Before parting with the judgment I would like to summarize as under :-

(27) If reference is made to the Lok Adalat under Section 20 of the Act, Lok Adalat without using any coercion or undue pressure by applying the principle of natural justice, equity, persuade the parties to reach to an amicable settlement. If settlement is arrived at Lok Adalat shall pass award accordingly. However, if parties do not reach to the final settlement despite of best efforts of the Lok Adalat to explore the possibility of settlement, Lok Adalat shall have no option except to return the reference to the Court wherefrom it was received.

(28) If PLA PUS is approached under Section 22C at the pre litigation stage in relation of public utility services and other party disputes the claim saying claim is bogus and case involves disputed questions of facts and law and cannot be settled by the intervention of the PLA PUS then conciliation proceedings shall stand terminated and PLA PUC shall have absolutely no jurisdiction to invoke Section 22C(8) to decide the dispute directly. However, if during the conciliation proceedings under sub-sections

(4), (5), (6) and (7) of Section 22C parties to the application have narrowed down their disputes and are not able to come to the final figure then by invoking sub-section (8) PLA PUS can decide the differences by applying principles of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act.

(29) Petition is allowed. Impugned award is set aside. Respondent No. 1 - claimant is free to approach appropriate forum for redressal of his grievance.

(30) Copies of this judgment shall be forwarded to all the District Judges, Lok Adalats, Permanent Lok Adalats within the State of Punjab, Haryana and U.T. Chandigarh, subject to the approval of Hon'ble the Chief Justice.

P.S. Bajwa