

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 12891 of 2012

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Executive Engineer Electrical (NESCO),
Baripada Electrical Division,
AT/PO: Baripada, Dist: Mayurbhanj
& another

... Petitioners

-Versus-

Chairperson, Permanent Lok Adalat (P.U.S.),
Mayurbhanj, Baripada
and another

... Opp. parties

For Petitioners : Mr. S.C. Dash

For Opp. parties : M/s Anjan Kr. Biswal, P.K.Roul
& D.R.Das
(Caveator)

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 14.2.2013

B.N. MAHAPATRA, J. This writ petition has been filed with a prayer to quash the award dated 12.06.2012 passed by the Permanent Lok Adalat Mayurbhanj, Baripada in P.L.A. Case No.5 of 2012 under Annexure-3 wherein the application filed by opposite party No.2-Suresh Chandra Acharya has been allowed in part on the ground that the impugned order is illegal, arbitrary and without jurisdiction/authority.

2. The facts and circumstances giving rise to the present writ petition in a nutshell are that present opp. party no.2 is a consumer of electricity under the petitioner-Company vide Consumer No. BG 2-611C. Opp. Party No.2's service line was converted to commercial category from domestic since long. . His service line was disconnected on 21.2.1997 due to non-payment of arrear dues of Rs.15,533/-. After disconnection of power supply on 21.2.1997, petitioners went on sending electricity bill as a result of which the arrear increased to Rs.1,33,830/- up to November, 2003. Thereafter opp. party no.2 approached the then Bijuli Adalat, which passed an order on 8.1.2004 in B.A. No.57 of 2004 directing S.D.O., Electrical, Betanoti(NESCO) to revise the energy bill deducting the amount claimed for the alleged disconnection period. On the same day, i.e., 8.1.2004 the opp. party no.2 deposited an amount of Rs. 1,000/- and was directed to pay the revised arrear amount in full before the power supply is restored to his premises. The consumer-opp. party no.2 also deposited Rs.5,000/- on 29.3.2005 towards part payment of the arrear bill. Despite the same, neither the power supply was restored nor revised bill was issued or change of tariff was done. Ultimately on 25.2.2006, reconnection was made after deposit of Rs.1050/-, which includes CRF of Rs.50/-, but the tariff was not changed though he deposited Rs.100/- on 18.7.2006 for the said purpose. Again for non-payment of arrear dues, notice for disconnection of power supply was issued and after receipt of the notice for disconnection of power supply against the arrear bill of Rs.1,83,102/- up to

February, 2012, the opposite party No.2-Consumer approached the Permanent Lok Adalat (for short, “PLA”) in PLA Case No.5 of 2012 with a prayer to implement the order of Bijuli Adalat dated 08.01.2004 passed in Case No. BA 57 of 2004; to change the tariff from commercial to domestic with effect from 18.07.2008; to pay a sum of Rs.1.00 lakh as compensation for mental agony, harassment and trouble; and to pay Rs.10,000/- towards the cost of litigation. Pursuant to notice issued to the petitioners in PLA Case No.5 of 2012, the present petitioners remained present on 07.04.2012 and filed a memo stating therein that they were unable to attend the PLA as they are extremely busy in settlement of the disputes of various consumers under the One Time Settlement Scheme which was going on then. They also suggested to advise the consumer to avail the benefit of exemption of certain amount under the said One Time Settlement Scheme and accordingly requested to drop the PLA Case No.5 of 2012. Despite the same, the PLA has proceeded in absence of the petitioners and only after hearing opp. party no.2-consumer has passed the impugned order as a common law forum. In the said award dated 12.06.2012, the PLA while directing the petitioner-Company to revise the electricity bill of the consumer by changing tariff structure from commercial to domestic with effect from 18.07.2006 and to reconnect the electric service line to the consumer’s premises within seven days, has also directed the petitioner-Company to pay Rs.30,000/- only to the applicant-consumer towards compensation for the alleged mental agony and harassment within a period

of two months from the date of award. Hence, the present writ petition.

3. Mr. S.C.Dash, learned counsel appearing on behalf of the petitioners-Company submitted that the impugned order has been passed ex parte relating to a billing dispute of opp. party no.2-consumer of electricity under the petitioner-Company. The impugned award under Annexure-3 is bad in law and violative of principles of natural justice, contrary to the Legal Services Authorities Act, 1987 (for short, 'Act, 1987') as well as the Odisha Lok Adalat Rules, 1990 (for short, 'Rules, 1990'). The PLA, Baripada has proceeded in a wrong, erroneous and arbitrary manner to decide the complaint against the petitioners. The PLA has exceeded its limit, jurisdiction and power to decide the case by ignoring guidelines and procedures as contained under Sections 20 and 22 of the Act, 1987. PLA is not empowered to dispose of a matter of such nature as has been done in this case. In the present case, the impugned award has not been passed on any compromise or settlement. The impugned order is contrary to the provisions of Section 22C of the Act, 1987. The PLA has failed to take recourse to the mechanism of conciliation. One of the most essential ingredients of the conciliation proceeding is that nobody would be compelled or forced to take part therein. It is voluntary in nature. The PLA cannot proceed to decide a case where the parties are not agreeing for settlement of dispute by negotiation, conciliation or mediation. The procedure adopted by the PLA is not binding one like that followed in the arbitration proceeding. The PLA cannot simply adopt the role of an

arbitrator whose award could be the subject matter of challenge. In absence of consent in writing by both the parties, the PLA has no power, jurisdiction and authority to decide the dispute between parties under sub-section (8) of Section-22C of the Act, 1987. In support of his contention, Mr. Dash placed reliance upon the judgment of the Gauhati High Court in the case of *Deputy Divisional Manager, Shillong & Anr. Vs. Smt. Jharna Ghosh*, AIR 2011 Gauhati 205; judgment of the Jharkhand High Court in the cases of *Sandip Ekka vs. Selestia Kerketa*, AIR 2011 Jharkhand 130; *Branch Manager, Hazaribag Branch, National Insurance Company Co. Ltd. v. Anand Prakash Handa*, AIR 2012 Jharkhand 6; *Divisional Manager, National Insurance Co. Ltd. v. Usha Sinha & Ors.*, AIR 2011 Jharkhand 5, *Divisional Manager, New India Assurance Co. Ltd., Ranchi v. Urmila Devi & Ors.*, AIR 2010 Jharkhand 133.

4. Mr. Dash submitted that the duty of the PLA is to bring the parties to a settlement and pass an award. Further, PLA has no jurisdiction to directly invoke the provision of sub-section (8) of Section 22C and decide the dispute on merit against the will of a party. The basic object and power of enacting Chapter-VIA is to get the dispute settled at the pre-litigation stage. The provisions of Section 22C (8) become redundant where the PLA failed to apply sub-sections (4) to (7) of Section 22C of the Act, 1987. In support of the above contention, Mr. Dash relied on the judgment in the case of *Bharat Sanchar Nigam Ltd. Vs. State of Jharkhand and another*, 2008 (3) J.L.J.R. 513. Neither the provisions of the Code of Civil Procedure

nor the provisions of Indian Evidence Act are applicable to the proceedings of a Permanent Lok Adalat. Role played by the PLA is of a conciliator and not an adjudicator. It should not wear the robe of the Court or a common law forum. Order of PLA is not appealable as per Section 22E of the Act, 1987. The PLA should have rejected the petition of the applicant-consumer with a direction to approach the appropriate forum provided under Section 42(5) of the Electricity Act, 2003, which is more competent than it to decide/adjudicate the dispute read with the Regulations framed thereunder by the OERC. The PLA, Baripada has no expertise, competency and technical knowledge to decide the dispute of such nature. The PLA has no power to pass ex parte award/order and enforce the attendance of the respondents through process of Court. Only the Civil Court can enforce the attendance of any of the parties through process of Court.

5. Mr. Dash further submitted that law is well-settled that PLA is not a Court to decide the case of parties on merit. Placing reliance on the decision of Jharkhand High Court at Ranchi in the case of *N.I.Co. Ltd. Vs. Sona Ram Murmu and another* disposed of on 06.05.2011, it was submitted that for adjudication of the dispute of this nature between the parties there are specific forum like G.R.F./Ombudsman and OERC etc created for the purpose. Mr. Dash placed reliance on the judgments of the Hon'ble Supreme Court in the cases of *State of Punjab and another vs. Jalour Singh and others*, (2008) 2 SCC 660; *United India Insurance Co. Ltd. vs. Ajay Sinha and another* decided on 13.05.2008; *Rajeev Hitendra Pathak and Ors.*

vs. Achyt Kashinath Carekar & Another, decided on 19.08.2011 and *L.I.C. of India vs. Suresh Kumar*, (2011) 7 SCC 491.

6. Mr. A.K. Biswal, learned counsel appearing for caveator-opposite party No.2 submitted that despite receipt of the notice in PLA No.5 of 2012 the petitioners-Company neither appeared nor filed any evidence on affidavit before the PLA. Therefore, it cannot be said that the impugned order has been passed without giving opportunity to the petitioners to defend their case. Placing reliance on paragraph 3 of the impugned order, Mr. Biswal submitted that principle of natural justice has been duly complied with. The petitioners did not choose to defend the case before the PLA though sufficient opportunity of hearing was given to them. The PLA has been established under Section 22B of the Act, 1987. The PLA has been established in every district of Odisha as per notification dated 03.02.2010 of the Orissa State Legal Services Authority. These Lok Adalats are established for exercising jurisdiction in respect of one and more public utility services Authorities. In spite of such orders as specified in the notification, Section 22(2) of the Act, 1987 stipulates that the PLA shall have the requisite powers to specify its own procedure for determination of any dispute coming before it. Referring to Section 22(3) of the Act, 1987, it was submitted that the PLA shall be deemed to be a Civil Court. Therefore, no illegality has been committed in passing the impugned award by the Permanent Lok Adalat. Section 22C provides how the PLA will take cognizance of the cases relating to public utility service. Section 22C (1) stipulates that any party to a dispute

may, before the dispute is brought before any court, make an application to the PLA for settlement of the dispute. PLA has no jurisdiction in respect of any matter relating to an offence not compoundable under any law. It also stipulates under Section 22C(2) of the Act, 1987 that after an application is made under Sub-section (1) to the PLA, no party to that application shall invoke jurisdiction of any Court in the same dispute. In the instant case, opposite party no.2 has directly approached the PLA, Baripada for settlement of the dispute which has been heard and award under Annexure-3 has been passed.

The PLA, Baripada has decided the matter on merit in absence of the petitioners. The case laws relied upon by learned counsel for the petitioners are distinguishable and have no application to the present case. In all the cases relied upon by learned counsel for the petitioners, the Public Utility Officers have appeared whereas in the present case, the petitioners preferred not to appear before the PLA. The present opposite party No.2 is suffering a lot due to illegal and arbitrary action of the petitioners and is living in dark without electricity to his house. Concluding his argument, Mr. Biswal prays for dismissal of the writ petition.

7. On the rival contentions of both parties, following questions arise for consideration by this Court.

- (i) Whether the PLA has been set up for providing compulsory pre-litigation mechanism for conciliation and settlement of cases relating to public utility service?

- (ii) Whether in absence of consent in writing by parties, i.e., where the parties fail to reach an agreement under sub-section (7) of Section 22-C, the PLA has any power/jurisdiction/authority to decide a dispute between the parties on merit in exercise of power conferred under sub-section (8) of Section 22C of the Act, 1987?
- (iii) Whether the PLA has power to pass ex-parte award/order in absence of either of the parties?
- (iv) Whether the PLA has power to enforce the attendance of the parties through process of Court?
- (v) What order?

8. Since the question nos. (i), (ii), (iii) and (iv) are interlinked, they are dealt with together.

In order to deal with the questions formulated above, it is necessary to have a bare idea about Lok Adalat and Permanent Lok Adalat, their establishment and functioning etc.

9. “Lok Adalat” means a “Lok Nyayalaya”, i.e., a people’s Court; a place of justice for a common man where efforts are made for resolving disputes through conciliation and persuasion. It is that temple of justice where people get and achieve speedy justice. It is a para-judicial institution. The sanction of people is the essence of Lok Adalat. Lok Adalat is an alternative forum for resolution of disputes, which is very popular among the rural people. In Lok Adalat, common people are able to ventilate their grievances against the State functionaries/agencies or individual to get a just settlement, if possible. In Lok Adalat, people’s disputes are resolved through discussion, counseling, persuasion and conciliation. Needless to

say that mutual settlement of disputes is always superior to long drawn out expensive litigation. In Civil Procedure Code, there are compoundable provisions. Criminal Procedure Code and other special laws like Family Courts Act and Arbitration Act also enable the Court to make attempt for settlement and to avoid adjudication wherever possible. The basic object of Lok Adalat is to overcome differences or hostility amicably, i.e., to bring about a resolution which is acceptable to both parties by intervention of third party. It is an amicable and peaceful method of settlement of disputes. The purpose of Lok Adalat is not merely to give justice on the basis of evidence, law and legal know-how, but to approach the human problem itself. Through Lok Adalat the enmity of the parties is also shunned away by amicable resolution of their cases.

10. By the Constitution (Forty-Second Amendment) Act, 1976 Article 39-A was inserted in the Constitution directing Government to enact a Free Legal Aid Scheme. Pursuant to such amendment in 1980, the Committee for implementation of Free Legal Aid Scheme was established by the Government of India to accelerate the legal aid movement. The object of the Scheme was to render legal aid services free of cost and at the same time to hold Lok Adalat for resolution of disputes. Since the Scheme has no statutory recommendation, in 1987 the Legal Services Authorities Act was enacted by the Parliament. Subsequently, amendment was brought to the said Act in 1994. Chapter VI of Legal Services Authorities Act, 1987 enshrines about the manner of holding Lok Adalats. According to Sections

19, 20 and 21 of the said Act pending disputes yet to arrive at the Court can be settled in Lok Adalat. Section 21 of the Act, 1987 provides to refund the Court fee to the parties under the Court-Fees Act.

11. Now, the question arises as to what was the necessity of establishing PLA by bringing amendment to the Act, 1987 in the year 2002 introducing Chapter-VIA which provides mechanism for pre-litigation, conciliation and settlement.

12. At this juncture, it would be appropriate to refer to the statement of Objects and Reasons of 2002 Amendment Act, which inter alia, reads as under:

“(1) The Legal Services Authorities Act, 1987 was enacted to constitute legal services authorities for providing (sic) and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity. The system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the courts.

(2) However, the major drawback in the existing scheme of organisation of the Lok Adalats under Chapter VI of the said Act is that the system of Lok Adalats is mainly based on compromise or settlement between the parties. If the parties do not arrive at any compromise or settlement, the case is either returned to the court of law or the parties are advised to seek remedy in a court of law. This causes unnecessary delay in the dispensation of justice. If Lok Adalats are given power to decide the cases on merits in case parties fail to arrive at any compromise or settlement, this problem can be tackled to a great extent. Further, the cases which arise in relation to public utility

services such as Mahanagar Telephone Nigam Limited, Delhi Vidyut Board, etc. need to be settled urgently so that people get justice without delay even at pre-litigation stage and thus most of the petty cases which ought not to go in the regular courts would be settled at the pre-litigation stage itself which would result in reducing the workload of the regular courts to a great extent. It is, therefore, proposed to amend the Legal Services Authorities Act, 1987 to set up Permanent Lok Adalats for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services.

(3) The salient features of proposed legislation are as follows—

(i) to provide for the establishment of Permanent Lok Adalats which shall consists (sic) of a Chairman who is or has been a District Judge or Additional District Judge or has held judicial officer (sic) higher in rank than that of the District Judge and two other persons having adequate experience in public utility services;

(ii) the Permanent Lok Adalat shall exercise jurisdiction in respect of one or more public utility services such as transport services of passengers or goods by air, road and water, postal, telegraph or telephone services, supply of power, light or water to the public by any establishment, public conservancy or sanitation, services in hospitals or dispensaries, and insurance services;

(iii) the pecuniary jurisdiction of the Permanent Lok Adalat shall be up to rupees ten lakhs. However, the Central Government may increase the said pecuniary jurisdiction from time to time. It shall have no jurisdiction in respect of any matter relating to an offence not compoundable under any law;

(iv) it also provides that before the dispute is brought before any court, any party to the dispute may make an application to the Permanent Lok Adalat for settlement of the dispute;

(v) where it appears to the Permanent Lok Adalat that there exist elements of a settlement, which may be acceptable to the parties, it shall formulate the terms of a possible settlement and submit them to the parties for their observations and in case the parties reach an agreement, the Permanent Lok Adalat shall pass an award in terms thereof. In case parties to the

dispute fail to reach an agreement, the Permanent Lok Adalat shall decide the dispute on merits; and
 (vi) every award made by the Permanent Lok Adalat shall be final and binding on all the parties thereto and shall be by a majority of the persons constituting the Permanent Lok Adalat.”

13. From the statement of Objects and Reasons mentioned above, it is apparently clear that Chapter-VI-A has been introduced in the Act, 1987 for establishment of PLA to eradicate the drawbacks in the Scheme of organization of Lok Adalat under Chapter-VI. It was noticed that Lok Adalat is mainly based on compromises and settlements between the parties. If the parties did not arrive at any compromise or settlement the case is returned to the Court of law or parties are advised to take shelter in the court of law. This caused delay in the dispensation of justice. Therefore, it was felt necessary to give power to Lok Adalats to decide cases on merit in the event the parties fail to arrive at any compromise or settlement to tackle the problem to a greater extent. It was further felt necessary that the cases which arise in relation to public utility services including supply of power, light or water to public by an establishment need to be settled urgently so that people would get justice without delay even at pre-litigation stage and thus most of the petty cases which ought not to go to the regular Courts would be settled at the pre-litigation stage itself which would result in reducing the workload of the regular Courts to a great extent. Therefore, it was proposed to amend the Legal Services Authorities Act, 1987 to set up

PLA for providing compulsory pre-litigation mechanism for conciliation and settlement of cases relating to public utility service.

14. Section 22A to Section 22E of the Act, 1987 were added for the purpose of disposal of pre-litigation cases on conciliation and mutual settlement. Under such amended provision, PLA was established to dispose of the disputes connected with public utility services like transport service, post and telegraph, telephone service, service connected with supply of water and light to the public by any establishment or system of public conservancy or sanitation or service in hospital or dispensary or insurance service or any other service under Central or State Government from time to time notifying as public utility service for public interest.

15. Section 22B provides for establishment of Permanent Lok Adalat. Section 22C (1) provides that any party to a dispute may, before the dispute is brought before any Court, make an application to the PLA for the settlement of the dispute. It is further provided that PLA shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law and also shall not have jurisdiction in the matter where the value of the property in dispute exceeds rupees ten lakh, which monetary limit may increase by notification by the Central Government in consultation with Central authority. Sub-section (2) of Section 22C provides that 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. Sub-section (3) provides that where an application is made to a PLA under sub-section (1) it shall; (a) 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 proceeding; (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. Sub-section (4) envisages that 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 proceeding between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute. Sub-section (5) provides that the PLA shall, during conduct of conciliation proceeding under sub-section (4) assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner. Sub-section (6) envisages that it shall be the duty of every party to the

application to cooperate in good faith with the PLA in conciliation of disputes relating to the applications and to comply with the direction of the PLA to produce evidence and other related documents before it. Sub-Section (7) provides that when a Permanent Lok Adalat, in the aforesaid conciliation proceeding is of opinion that there exists elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of 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 PLA shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned. Sub-section (8) says that where the parties fail to reach at an agreement under sub-section (7), the PLA shall, if the dispute does not relate to any offence, decide the dispute.

16. It is relevant to mention here that Section 22 of the Act, 1987 was substituted by Act 37 of 2002 w.e.f. 11.06.2002. Under Section 22, the PLA for the purpose of holding any determination under the Act shall have the same power as are vested in Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of matters, namely; (a) the summoning and enforcing the attendance of any witness and examining him on oath; (b) the discovery and production of any document; (c) the reception of evidence on affidavits; (d) the requisitioning


of any public record or document or copy of such record or document from any court of office; and (e) such other matters as may be prescribed.

17. The paramount consideration for Lok Adalat and PLA is to settle the dispute between the parties amicably in order to avoid prolonged litigation amongst the parties in a traditional way. So far PLA is concerned, the settlement of dispute between the parties in the matter of public utility service is the essence of Permanent Lok Adalat. Therefore, Section 22-C of the Act, 1987 postulates that any party to a dispute may, before the dispute is brought before any Court, make an application to the PLA for settlement of the dispute. "Settlement" means determination of legal proceeding by mutual consent. Compromise means settlement of differences by mutual concessions. [See *Union of India vs. Ananto (Dead) and another*, (2007) 10 SCC 748 and *State of Punjab and others vs. Phulan Rani and another*, 98 (2004) CLT 771 (SC)]

18. In cases where any compromise or settlement could not be arrived at, no order can be passed by the Lok Adalat, whereas in the cases relating to public utility services, if the parties fail to reach any settlement as provided under Section 22-C(7) of the Act, 1987, PLA is empowered under Section 22-C(8) of the said Act to pass appropriate order while deciding the dispute between the parties only after giving reasonable opportunity of hearing to the parties and following principles of fair play and natural justice. Thus, the PLA have both conciliatory and adjudicatory functions.

19. At this juncture, it is necessary to refer to a decision of the Hon'ble Supreme Court in the case of ***Interglobe Aviation Limited v. N. Satchidanand*, (2011) 7 SCC 463**, wherein it has been held as under:

“26.....Each and every provision of Chapter VI-A of the LSA Act emphasises that the *Permanent Lok Adalat* is a Special Tribunal which is not a “court”. As noted above, Section 22-C of the LSA Act provides for an application to the Permanent Lok Adalat in regard to a dispute *before the dispute is brought before any court* and that after an application is made to the Permanent Lok Adalat, no party to the application shall invoke the jurisdiction of any court in the same dispute, thereby making it clear that Permanent Lok Adalat is distinct and different from a court.

27. The nature of proceedings before the Permanent Lok Adalat is initially a conciliation which is non-adjudicatory in nature. Only if the parties  fail to reach an agreement by conciliation, the Permanent Lok Adalat mutates into an adjudicatory body, by deciding the dispute. In short, the procedure adopted by the Permanent Lok Adalats is what is popularly known as “CON-ARB” (that is, “conciliation-cum-arbitration”) in the United States, where the parties can approach a neutral third party or authority for conciliation and if the conciliation fails, authorise such neutral third party or authority to decide the dispute itself, such decision being final and binding. The concept of “CON-ARB” before a Permanent Lok Adalat is completely different from the concept of judicial adjudication by the courts governed by the Code of Civil Procedure. The Permanent Lok Adalat not being a “court”, the provision in the contract relating to exclusivity of jurisdiction of courts at Delhi will not apply.

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32. We may also at this juncture refer to the confusion caused on account of the term *Permanent Lok Adalat* being used to describe two different types of Lok Adalats. The LSA Act refers to two types of Lok Adalats. The first is a *Lok Adalat* constituted under Section 19 of

the Act which has no adjudicatory functions or powers and which discharges purely conciliatory functions. The second is a *Permanent Lok Adalat* established under Section 22-B(1) of the LSA Act to exercise jurisdiction in respect of public utility services, having both conciliatory and adjudicatory functions. The expression “*Permanent Lok Adalat*” should refer only to *Permanent Lok Adalats* established under Section 22-B(1) of the LSA Act and not to the Lok Adalats constituted under Section 19. However, in many States, when Lok Adalats are constituted under Section 19 of the LSA Act for regular or continuous sittings (as contrasted from periodical sittings), they are also called as *Permanent Lok Adalats* even though they do not have adjudicatory functions.

33. In *LIC v. Suresh Kumar*² this Court observed:

“It is needless to state that Permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed.”

The said decision refers to such a “Permanent Lok Adalat” organised under Section 19 of the Act and should not be confused with *Permanent Lok Adalats* constituted under Section 22-B(1) of the Act. To avoid confusion, the State Legal Services Authorities and the High Courts may ensure that *Lok Adalats* other than the *Permanent Lok Adalats* established under Section 22-B(1) of the Act in regard to public utility services, are not described as Permanent Lok Adalats. One way of avoiding the confusion is to refer to the Lok Adalats constituted under Section 19 of the Act on a regular or permanent basis as “*Continuous Lok Adalats*”. Be that as it may.”

20. Section 22D itself prescribes that PLA while conducting conciliation proceeding or deciding a dispute on merit shall be guided by the principles of natural justice, objectivity, fairplay and equity and other principles of natural justices and shall not be bound by the Code of Civil

Procedure and the Indian Evidence Act. Section 22E provides that award of PLA made either on merit or in terms of settlement, agreement shall be final and binding on all the parties and the award shall be deemed to be a decree of Civil Court. Every award by the PLA shall be final and shall not be called in question in any original suit, application or execution proceeding. PLA may transfer any award made by it to a Civil Court having legal jurisdiction and such Civil Court shall execute the order as if a decree or order made by that Court.

21. From the above, it is amply clear that the PLA has been set up to provide compulsory pre-litigative mechanism for conciliation and settlement in cases relating to public utility services urgently so that people get justice without delay even at pre-litigation stage.

22. Section 22(3) of the said Act postulates that all the proceedings before a PLA shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code and every PLA shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

23. The Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. vs. Ajay Sinha and another***, (2008) 7 SCC 454, held as under:

“24. Section 89 of the Code of Civil Procedure, inter alia, was enacted to promote resolution of disputes through mutual settlement. Chapter VI-A of the Act seeks to achieve a different purpose. It not only speaks of conciliation qua conciliation but conciliation qua

determination. Jurisdiction of Permanent Lok Adalat, although is limited but they are of wide amplitude. The two provisos appended to Section 22-C(1) of the Act curtail the jurisdiction of the Permanent Lok Adalat which are as under:

“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:

25. Chapter VI-A stands independently. Whereas the heading of the Chapter talks of pre-litigation, conciliation and settlement, Section 22-C(8) of the Act speaks of determination. It creates another adjudicatory authority, the decision of which by a legal fiction would be a decision of a civil court. It has the right to decide a case. The term “decide” means to determine; to form a definite opinion; to render judgment. (See *Advanced Law Lexicon*, 3rd Edn., 2005 at p. 1253.) Any award made by the Permanent Lok Adalat is executable as a decree. No appeal there against shall lie. The decision of the Permanent Lok Adalat is final and binding on the parties. Whereas on the one hand, keeping in view the parliamentary intent, settlement of all disputes through negotiation, conciliation, mediation, Lok Adalat and judicial settlement are required to be encouraged, it is equally well settled that where ⁴⁶⁵the jurisdiction of a court is sought to be taken away, the statutory provisions deserve strict construction. A balance is thus required to be struck. A court of law can be created under a statute. It must have the requisite infrastructure therefor. Independence and impartiality of Tribunal being a part of human right is required to be taken into consideration for construction of such a provision. When a court is created, the incumbents must be eligible to determine the lis.”

24. The Hon’ble Supreme Court in the case of ***Bar Council of India Vs. Union of India***, (2012) 8 SCC 243 held that Section 22C (8)

which empowers Lok Adalat to adjudicate dispute at pre-litigation stage on failure of settlement is not unconstitutional. In paragraphs-26 and 27 of the said judgment, it is held as under:

“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.

27. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service up to a specific pecuniary limit, if they do not relate to any offence, as provided under Section 22-C(8), be said to be unconstitutional and irrational? We think not. It is settled law that an authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Chapter VI-A has been enacted to provide for an institutional mechanism, through the establishment of Permanent Lok Adalats for settlement of disputes

concerning public utility service before the matter is brought to the court and in the event of failure to reach any settlement, empowering the Permanent Lok Adalat to adjudicate such dispute if it does not relate to any offence.”

25. In view of the above, this Court is of the opinion that the PLA has been set up for providing compulsory pre-litigative mechanism for conciliation and settlement in cases relating to public utility services. Even in absence of consent in writing by parties, i.e., where the parties failed to reach an agreement under sub-section (7) of Section 22-C, the PLA has power/jurisdiction/authority to decide the dispute between the parties on merit in exercise of power conferred under sub-section (8) of Section 22-C of the Act, 1987. Thus, in case the respondent does not appear/cooperate despite service of notice issued by the PLA on an application being made to it for settlement of issues, the PLA has the power and jurisdiction to pass an award on merit as provided under Sub-section (8) of Section 22C after observing/following procedure prescribed under Section 22C of the Act. Therefore, before passing the order under sub-sections (7) or (8) of Section 22C of the Act, 1987, the PLA shall formulate the terms for possible settlement of the dispute and give/serve the same on the parties concerned for their observation, as the case may be. The PLA has power to enforce the attendance of the parties through process of Court.

26. In view of the judgment of the Hon’ble Supreme Court in the cases of **Ajaya Sinha** (supra), **Interglobe Aviation Ltd.** (supra) and **Bar**

Council of India (*supra*), the contrary view expressed by any High Court is of no consequence.

27. For the reasons stated above, the judgments of Gauhati High Court and Jharkhand High Court in the cases of *Smt. Jharna Ghosh (supra)*, *Sandip Ekka (supra)*, *Anand Prakash Handa (supra)*, *Usha Sinha & Ors.,(supra)* and *Urmila Devi & Ors. (supra)*, wherein it has been held that unless the consent is given by both the parties, PLA has no power/jurisdiction/authority to decide the issue on merit under Sub-Section (8) of Section 22-C of the Act, 1987 are of no help to the petitioners.

28. In the instant case, pursuant to the notice issued to the respondents (present petitioners) in PLA Case No.5/2012, the respondent No.2 remained present on 7th April-2012 at 11.00 A.M. and filed a memo stating therein that the Respondents are unable to attend the PLA as they are extremely busy in settlement of disputes of various consumers under the O.T.S. Scheme which was going on then. It was suggested to advise the consumer to avail the benefit of exemption of certain amount under the said OTS scheme and accordingly, a request was made to drop the PLA Case No.5 of 2012. However, the impugned award was passed on 12.06.2012.

29. At this juncture, it is necessary to quote the relevant portion of the impugned award.

“It is pertinent to mention here that despite notice by Regd. Post to the respondents, they did not choose to

file their written statement and sufficient opportunities were given to them for the said purpose. Due to non co-operation of the respondents the Case could not be settled through the process of Conciliation. Therefore, the applicant as well as the respondents were called upon to file evidence in shape of affidavits. On 11.05.2012 the applicant filed evidence in shape of affidavit and the said affidavit was served on respondent No.1 on 16.05.2012 and sent to respondent No.2 by Regd. Post on 16.05.2012 directing them to file their evidence in shape of affidavit if any on 23.05.2012 at 7 a.m. positively before the undersigned failing which the case will be decided in their absence according to law. But the respondents neither filed their written statement nor filed their evidence in shape of affidavit which shows their unwillingness to participate in the present case and the reason is best known to them. Finally, the matter was placed before the Bench for hearing on merit on 06.06.2012.”

30. From the impugned order it does not appear that the terms of any possible settlement of the dispute were formulated and given to the parties concerned for their observation as required under Section 22-C(7) before passing of the award under Section 22-C(8) of the Act, 1987. Whereas on perusal of the said order it appears that the PLA has issued notice to opposite parties by registered post for the purpose of giving them opportunity to file their written statement. Similarly, evidence filed by the applicant in shape of affidavit was sent to respondent No.2 by registered post on 16.05.2012 directing him to file his evidence in shape of affidavit, if any, on 23.05.2012 positively. However, there is nothing in the impugned order to show that before passing the order under Section 22-C(8) of the Act, 1987 the terms of any possible settlement of dispute were formulated and given / served by

any mode to the parties concerned for their observation as required under Section 22-C(7).

31. Needless to say that the PLA while conducting conciliation proceeding or deciding a dispute on merit, shall be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice though shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872, as provided under Section 22-D of the Act, 1987.

32. In the instant case, for the reasons stated above, the requirements of Sections 22-C(7) and 22D of the Act, 1987 have not been complied with and thus the principles of natural justice have been violated before passing of the impugned award while deciding the dispute on merit. Hence, the impugned award dated 12.06.2012 under Annexure-3 is vitiated.

33. There is no dispute over the legal proposition that the principles of natural justice cannot be put in a strait-jacket formula and the party alleging violation of principles of natural justice must be required to show that it has not been noticed properly resulting in serious prejudice on this account, as held by the Hon'ble Supreme Court in the case of *Sohan Lal Gupta (Dead) Thr. L.Rs. & Ors. v. Asha Devi Gupta and Ors.*, AIR 2004 SC 856.

34. For the reasons stated hereinbefore, the judgment of the Hon'ble Supreme Court in the case of *Sohan Lal Gupta (Dead) Thr. L.Rs. &*

Ors. (supra) and judgment of Kerala High Court in the case of Dr. Ambika Kumary & Ors. v. State of Kerala & Ors., AIR 2012 Kerala 16 are of no help to opposite parties.

35. In fitness of the things, the impugned award dated 12.06.2012 (Annexure-3) is set aside and the matter is remitted to the PLA to hear afresh. Liberty is given to the parties to raise their respective contentions both factual and legal before the PLA. For this purpose, both the parties are directed to appear before the PLA on 22.2.2013 and produce certified copy of this judgment. The PLA is directed to dispose of the matter keeping in mind the observations made in this judgment as early as possible, but not later than four weeks from the date of production of certified copy of this judgment before it and pass appropriate order in accordance with law.

36. With the aforesaid observations and direction, the writ petition is disposed of.

No order as to costs.

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B.N. Mahapatra,J.