

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

* * *

WRIT PETITION No.26413 of 2009

Between:

Mahindra & Mahindra Financial Services Ltd. Rep. by its Chief Manager
and another

Petitioners

VERSUS

The Chairman, Permanent Lok Adalat for Public Utility
Services, Karimnagar
and another.

Respondents

ORDER PRONOUNCED ON: 12.02.2024

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

P. SAM KOSHY, J

N. TUKARAMJI, J

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! Counsel for Petitioner(s) : Mr. Valluri Mohan Srinivas

^Counsel for the respondent(s) : Mr. Shashikiran Pusluri for R-1.
Mr. D.Bhasker Reddy, for R-2.

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> HEAD NOTE:

? Cases referred

**THE HON'BLE SRI JUSTICE P. SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI**

WRIT PETITION No.26413 of 2009

ORDER: *(Per Hon'ble Sri Justice N. Tukaramji)*

By this writ petition under Article 226 of the Constitution of India, the petitioner prays for issuance of a writ in the nature of certiorari for setting aside/quashing the order dated 08.07.2009 passed by the Chairman, Permanent Lok Adalat for Public Utility Services, Karimnagar/respondent No.1, as the same is beyond the scope of jurisdiction.

2. We have heard Mr.Valluri Mohan Srinivas, learned counsel for the petitioners, Mr.Shashikiran Pusluri, learned Standing Counsel for Telangana State Legal Services Authority/respondent No.1 and Mr. D.Bhasker Reddy, learned counsel for the respondent No.2

3. The relevant facts in brief are that one Mr. Lingamalla Yellaiah filed a petition under Section 22-B of the Legal Services Authorities Act, 1987 (for short, 'the Act') before the Chairman, Permanent Lok Adalat, Karimnagar with a prayer to direct the Mahindra and Mahindra Financial Services Limited/petitioners to issue no objection certificate (for short, 'NOC') for the vehicle under

loan. The Permanent Lok Adalat vide order dated 08.07.2009 in Permanent Lok Adalat Case No.6 of 2009 allowed the petition in part directing the petitioners herein to issue NOC in respect of the loan account of the respondent No.2 and to return the amount paid in excess and costs of Rs.5,000/- within a month, else liable for interest at 6% per annum.

4. The petitioners would contend that it is a non banking Financial Company extends financial assistance to its customers for purchasing the automobile vehicles. The respondent No.2 had availed loan of Rs.3,60,000/- to purchase Tata Sumo and agreed to repay the amount in 36 equal monthly instalments at Rs.12,250/- per month from 20.11.2003. However, for the defaults the respondent No.2 became liable to pay additional finance charges of Rs.44,063/- as per the agreement. Upon the notice for payment of the dues the respondent No.2 filed a petition before the Legal Services Authority. Nonetheless, the Lok Adalat without considering its jurisdiction adjudicated the petition *ex parte*, without hearing the parties particularly the petitioners. Thus the impugned award is legally unsustainable. Hence, prayed for setting aside the same.

5. In support of the pleadings, the petitioners cited decision of the Hon'ble Supreme Court in *State of Punjab & another v. Jalour Singh and others - AIR 2008 SC 1209*.

6. In spite of due notice the respondent No.2 did not choose to appear.

7. Learned Standing Counsel for the respondent No.1 would submit that in the award of Permanent Lok Adalat it has been categorically mentioned that a notice has been served on the petitioners during the proceedings. However, as there was no representation the petitioners as respondents were set *ex parte* and basing on the materials the award has been passed. The Permanent Lok Adalat is vested with statutory authority to adjudicate the issue brought before it, when settlement/agreement could not be arrived between the parties. Therefore, the impugned order is in accordance with law and perfectly justified. In support, he relied on the judgment of the Hon'ble Supreme Court in *Canara Bank v. G.S. Jayarama reported in 2022 LiveLaw (SC) 499*.

8. We have carefully considered the submissions of the learned counsel.

9. The prime contest of the petitioners is that no notice has been served in the proceedings and the Permanent Lok Adalat has no jurisdiction to adjudicate the matter.

10. In regard to service of notice, in the impugned order it is categorically mentioned that the respondent Nos.1 and 2 therein (i.e. petitioners) though received notice and even after ample opportunities, they did not choose to appear and contest the matter, thus by setting *ex parte* proceeded to pass the order. Pertinently, in the affidavit of the Authorised Officer of the petitioners i.e. the writ petitioner, in para No.6 categorically stated that the petitioners' company could not appear to submit their objections before the Permanent Lok Adalat on the day fixed for their appearance i.e. 05.06.2009 for non availability of the officer concerned. This statement of authorised officer of the petitioners itself is establishing proper service of the notice on the petitioners. However, the efforts of the petitioners to pursue the matter thereafter, has not been pleaded. Admittedly the award was passed on 08.07.2009, which is after about a month. The inaction on the part of the petitioners is validating the decision of the Permanent Lok Adalat to proceed *ex parte*.

11. On jurisdiction in the petitioners cited authority i.e. Jalour Singh (*supra*) the Hon'ble Supreme Court by referring to the functions of Lok Adalat by held that, it is a non adjudicatory determination based on compromise or settlement arrived at by the parties with the guidance and assistance from the Lok Adalat. It is pertinent to note that the impugned award was passed by the Permanent Lok Adalat which is distinct body to that of Lok Adalat. Chapter 6-A of the Act whereby for pre-litigation conciliation and settlement, Section 22-A, 22-E were brought into statute book by an amendment Act 37 of 2002.

12. The provision of cognizance of cases by the Permanent Lok Adalat is dealt in the Section 22C. For better appreciation, the provision is extracted hereunder:

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.

13. The constitutional validity of the establishment of Permanent Lok Adalats with the jurisdiction of adjudication of disputes were positively held by the Hon'ble Supreme Court in *Bar Council of India v. Union of India – 2012(8) SCC 243*.

14. Further in *United India Insurance Company Limited v. Ajay Sinha and others – 2008(7) SCC 454* the Hon'ble Supreme Court held that conciliation by the Permanent Lok Adalat is under the Arbitration and Conciliation Act, 1996 and the Code of Civil Procedure, 1908, and that, an act of conciliation achieves a different purpose. If the effort of conciliation and settlement fails, followed by compulsory determination under Section 22-C (8), accordingly the conciliator in such situation assumes the role of adjudicator.

15. In a recent authority of the Hon'ble Supreme Court in *Canara Bank v. G.S. Jayarama (supra)* while affirming the view in *Bar*

Council of India (supra) as to the aspects whether the Permanent Lok Adalat has adjudicatory functions has held in para 28 as under:

“28. The second issue which is in contention before this Court is whether the Permanent Lok Adalat has any adjudicatory function. As highlighted in the Objects and Reasons accompanying the LSA Amendment Act, its introduction led to the creation of two different types of Lok Adalats. The first is a Lok Adalat constituted under Section 19 of the LSA Act, having no adjudicatory power, which can only conduct conciliatory proceedings. The second is a Permanent Lok Adalat, established under Section 22-B(1) of the LSA Act in respect of public utility services, which can carry out both conciliatory and adjudicatory functions, subject to the procedure to be followed under Section 22-C of the LSA Act. The scheme of the LSA Act makes clear the distinction between the two types of Lok Adalats. Section 20 of the LSA Act provides that the Lok Adalat shall aim to arrive at a compromise or settlement between the parties. If no such compromise or settlement is arrived at, then the record of the case is returned to the court from which the Lok Adalat had received the reference. The court would then proceed to adjudicate the dispute. On the other hand, Section 22-C of the LSA Act provides that a party to a dispute, prior to bringing a dispute before the court, i.e., at the pre-litigation stage, can make an application to a Permanent Lok Adalat for the settlement of a dispute. The Permanent Lok Adalat would first conduct conciliation proceedings and attempt to reach an amicable settlement of the dispute. However, if the parties fail to reach an agreement, it shall decide the dispute, as long as the dispute does not relate to an offence. Section 22-D further indicates that the Permanent Lok Adalat is empowered to decide the dispute between the parties on merits.”

16. By the statutory and above legal pronouncements, it is evidently that the Permanent Lok Adalat has conciliatory and adjudicatory functions and in the present case as the petitioners did not avail the opportunity or made any effort to participate in the

conciliation process, we are of the considered opinion that the Permanent Lok Adalat had rightly proceeded to determine the dispute basing on the testimony and the documents placed by the petitioners. In this factual position, we find no tenable ground to interfere with the impugned award passed by the Permanent Lok Adalat.

17. For the aforesaid, in absence of merit the writ petition is liable to be dismissed.

18. In the result, the writ petition is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions if any, stands closed.

P.SAM KOSHY, J

N. TUKARAMJI, J

Date :12.02.2024