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Revisiting *Bar Council of India v. Union of India* (AIR 2012 SC 3242): Is Permanent Lok Adalat a choice or a mandate?

ADV. MILIND S. HARTALKAR*

**ABSTRACT:** The Bar Council of India challenged Sections 22-A, 22-B, 22-C, 22-D and 22-E of the Legal Services Authorities Act, 1987 as inserted by the Legal Services Authorities (Amendment) Act, 2002 on several grounds including they being arbitrary per se and thus violative of the Constitution of India. The provisions deal with the powers of permanent Lok Adalat to decide disputes on merits where the parties have failed to arrive at a settlement. The author has critically analyzed the case in light of principles of Alternative Dispute Resolution and important judgments that have been overlooked while deciding the present case.

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Alternative Dispute Resolution (hereinafter ADR) is a generic term and it denotes a range of private dispute resolution processes that have been developed as alternative to litigation before domestic courts. Recently, the attention of the business communities was drawn to ADR, which in fact is the tradition in countries like China, England and America.¹

ADR is a form of facilitated settlement, which is confidential and without prejudice.² Conciliation is a form of ADR and like litigation and arbitration and it also involves an independent third party. But his/her function is fundamentally different from that of a judge or arbitrator and is best described as a neutral facilitator. He/She does not impose a decision on the parties; on the contrary, his/her role is to assist the parties to resolve the dispute themselves. He/She may give opinions on issues in dispute but his/her primary function is to assist in achieving a negotiated solution.³ Thus conciliation is considered purely as a consensual procedure. The neutral person has no authority to impose its decision on the parties.

To encourage ADR in India, the Legal Services Authorities Act, 1987 (for short, 1987 Act) was amended in the year 2002 by the Legal Services Authorities (Amendment) Act, 2002 (for short, 2002 Amendment Act). The Permanent Lok Adalats are established thereby for settlement of disputes regarding public utility service. Section 22-C (8) of the said Act empowers the Permanent Lok Adalats to decide dispute on merits upon failure between the parties to arrive at a settlement. In 2012, the Supreme Court decided on the validity of the said Section 22(C) in the case Bar Council of India v. Union of India.⁴ The said case is analyzed here in below.

FACTS & RULES


⁴. AIR 2012 SC 3242.
(for short, 1987 Act) as inserted by the Legal Services Authorities (Amendment) Act, 2002 (for short, 2002 Amendment Act). The challenge is principally on the following grounds:

(i) Sections 22-A, 22-B, 22-C, 22-D and 22-E are arbitrary per se; violate Article 14 of the Constitution of India and are contrary to the rule of law as they deny fair, unbiased and even-handed justice to all.

(ii) Permanent Lok Adalats have been empowered to decide dispute on merits upon failure between the parties to arrive at a settlement under Section 22-C (8). While deciding the case on merits, the Permanent Lok Adalat is not required to follow the provisions of the Civil Procedure Code or the Evidence Act. Section 22-C(8) prevents the courts and the consumer fora from examining the deficiencies in services such as transport, post and telegraph, supply of power, light or water, public conservancy or sanitation, service in hospital, etc. Thus, it makes a case for rendering the provisions under challenge arbitrary and irrational.

(iii) No right to appeal has been provided against the award in any court of law. Since all the public utility services basically relate to the fundamental right to life provided under Article 21 of the Constitution, any adverse decision on merits by the Permanent Lok Adalat would immediately impinge upon fundamental right of an aggrieved citizen. Therefore, even absence of one's right of appeal makes these provisions unconstitutional as it is against the fundamental principles of fair procedure.

(iv) Moreover an award given on merits by the Permanent Lok Adalat has to be by majority. Since the Permanent Lok Adalat consists of one judicial member and two administrative members, there is preponderance of administrative members which is against fundamental principles of justice enshrined in the Constitution.

(v) The public utility services may first move before the Permanent Lok Adalat and thereby shall deprive the citizen to have grievance redressed through consumer fora etc.
The Supreme Court referring to the salient features of the '1987 Act' such as the statement, object and precedents held that the competence of the Parliament to make a law creating tribunals to deal with disputes arising under or relating to a particular statute or statutes or particular disputes, is beyond question. The Supreme Court further held that by non-application of the Code of Civil Procedure and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective and decide the dispute with fairness and follow the principles of natural justice. Sense of justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in deciding a dispute on merit.

JUDGMENT

The Supreme Court thus rejected the petition filed by the Bar Council of India.

ANALYSIS

By amendment in the year 2002 to the Legal Services Authorities Act, 1987, chapter VI-A, “Pre-Litigation Conciliation and Settlement,” containing section 22-A to 22-E was introduced. Section 22-B provides for the establishment of the Permanent Lok Adalats’ in respect of one or more public utility service. Section 22-A of Legal Services Authorities Act, 1987 defines 'the public utility services to mean any (i) transport service for the carriage of passengers or 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.

Basically, this amendment introduces the court-annexed settlement of disputes before it reaches the court. Section 22-C of the Legal Services Authorities Act, 1987 provides that any party to the dispute may, before the dispute is brought before any Court, make an application to the Permanent Lok Adalat for the settlement of dispute.

5. Permanent Lok Adalat is defined to mean a Permanent Lok Adalat established under sub section (1) of section 22 B.
It also provides that the Permanent Lok Adalat does not have jurisdiction in respect of any matter relating to an offence not compoundable under any law. Also pecuniary jurisdiction of the Lok Adalat is limited to settle disputes not exceeding ten lakh rupees. Sub section (8) of the section 22-C provides that where the parties fail to reach at an agreement under sub section (7) of section 22-C the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute. It is pertinent to note that every award of the Permanent Lok Adalat shall be deemed to be a decree of a Civil Court. Every award made by the Permanent Lok Adalat shall be final and not called in question in any original suit, application, or execution proceeding.

The Supreme Court in United India Insurance Co.Ltd. v. Ajay Sinha and another referring to the ‘1987 Act’ observed in para. 21 “The term ‘conciliation’ is not defined under the Act. It should, therefore, be considered from the perspective of Arbitration and Conciliation Act, 1996. In order to understand what Parliament meant by ‘Conciliation’, we have necessarily to refer to the functions of a ‘Conciliator’ as visualized by Part III of the 1996 Act. Section 67 describes the role of a conciliator.”

The Apex Court further observed that, “Sub-section (1) of Section 22-C speaks of settlement of disputes. The authority has to take recourse to conciliation mechanism. One of the essential ingredients of the conciliation proceeding is that nobody shall be forced to take part therein. It has to be voluntary in nature.” It may also be noted that the Supreme Court in Haresh Dayaram Thakur v. State of Maharashtra has held that the conciliator has no authority to write settlement agreement for the parties.

CONCLUSION

It may be noted that voluntary participation of the parties to the dispute is the backbone of the conciliation. The party may withdraw from proceedings at any time and the party cannot be forced to participate in the proceedings. These are the basic requirements of conciliation.

7. Sub Section (4) of section 22-E of the ‘1987 Act’.
8. AIR 2008 2398.
The provisions of sub section (8) of section 22-C of the ‘1987 Act’ which empowers the Permanent Lok Adalat to decide the matter if parties fail to reach at an agreement, is thus violative of the basic principles of concept of ‘Conciliation’. There are no two opinions that it is within the competence of the Parliament to make a law, creating tribunals to deal with disputes arising under, or relating to a particular statute or statutes or particular disputes, or appeal is provided or not, or majority decides matter. But the question remains if a party can be forced to go for adjudication against his/her wish? Parties opt for ADR to avoid adjudication and surprisingly legislature is forcing the parties for adjudication. It is probable that, if conciliation fails, the party may not wish to litigate. This unnecessarily adds burden to the system.

It may be noted that the Supreme Court in Bar Associations of India’s case has not referred to the Ajay Sinha’s case. The Supreme Court in the said case had given indication in the para. 27 that the said sub section (8) of section 22 of the ‘1987 Act’ may not be valid. The Supreme Court had not dealt with the validity of the said section as it was not raised therein. It is surprising that these points were not raised before the Supreme Court either in Bar Association’s case or in Ajay Sinha’s case referred to the Supreme Court.

Hence, the decision in Bar Association of India’s case needs reconsideration as sub-section (8) of section 22-C of the ‘1987 Act’ is against the basic principles of ADR.
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