

High Court of Uttarakhand, At Nainital

Notification

No. 293 /UHC/Admin.B/2023 Nainital,

Dated-22.07.2023

In pursuance of directions of Hon'ble Court, following Standard Operating Procedure for conducting Mediations is being issued, which will come into force with immediate effect:

Standard Operating Procedure for Conducting Mediations (hereinafter referred to as the "SOP")

In this SOP, the expression "District Courts" shall include all rungs in the hierarchy of the District Judiciary in the State of Uttarakhand, including Family Courts.

1. Background:

- i. A Memorandum of Understanding (MoU) has been executed between the Uttarakhand High Court and Delhi High Court Mediation and Conciliation Centre (*SAMADHAN*) on 14th April, 2023, *inter-alia*, to take advantage of the experience and expertise developed by *SAMADHAN* in the field of mediation, and to associate with each other to conduct mediation sessions for the matters referred by the Uttarakhand High Court, and District Courts and to hold trainings and awareness programs through the Trainers/Experts of *SAMADHAN*.
- ii. In view of the above, in matters referred by the Uttarakhand High Court, or District Courts, in pursuance of the MoU, mediation shall be conducted by a trained Mediator appointed by *SAMADHAN*, with one trained co-mediator enrolled in the State. Since Delhi High Court Mediation and Conciliation Centre (*SAMADHAN*) has suitable infrastructure to carry out online mediations effectively, so the same may be utilized for conducting all the mediation trainings/sessions.
- iii. Accordingly, this Standard Operating Procedure is being developed to facilitate Mediation proceedings in all cases pending in the courts in the State of Uttarakhand, including those which are referred for mediation under the MoU.

2. Appointment of Nodal Officers:

- i. The Secretary, UKHCLSC, and the Secretary, DLSA, stand appointed as the Nodal Officers at the High Court of Uttarakhand and at the District Courts concerned. The responsibility of the Nodal Officers shall be to facilitate

conduct of online/physical mediation of all cases referred for mediation by the High Court, or the District Court, as the case may be.

- ii. The Nodal Officer concerned shall act in respect of the cases pending in the High Court, which may be referred for mediation, and in respect of the cases pending in the respective Districts, which may be referred for mediation, under this SOP.
- iii. The names and all the necessary particulars, such as mobile number, email id, official address, of the Nodal Officers shall be uploaded on the official website of the High Court and displayed on the Notice Boards of the Court concerned.

3. Appointment of Mediators:

- i. A list of trained and empanelled Mediators in the Uttarakhand High Court and the District Courts shall be prepared with their particulars, including name, registration number as Advocate with the Bar Council, email ID, mobile phone number, address, and the Court where they are registered as Mediators, and the said List shall be made available to all Courts, and also uploaded on the website of the Uttarakhand High Court.
- ii. Empanelled Mediators registered with the Uttarakhand High Court, and with the District Courts, shall stand empanelled with Uttarakhand State Legal Services Authority (UKSLSA) and the High Court Legal Services Committee (UKHCLSC) respectively.
- iii. The Uttarakhand High Court, or District Courts, may refer the cases before them for Mediation, including under the MOU dated 14.04.2023. In cases referred for mediation, under the MoU dated 14.04.2023, one Mediator shall be appointed by *SAMADHAN*, who will be assisted by a Co-mediator appointed by the referring Court from the panel of trained Mediators in the State.
- iv. The Court, referring the matter under the MoU, shall appoint the Co-mediator by name in terms of this SOP, preferably by rotation. The Co-Mediator shall be paid the fee according to the schedule fixed by the UKSLSA.
- v. The Mediator/Co-mediator shall strictly follow the ethics for Mediators, as provided under the Rules framed by the Delhi High Court and the Uttarakhand High Court. In cases where there are more Mediators than one, the Co-Mediator shall follow the instructions of the Mediator, and shall not undertake independent steps for interaction with either of the parties, jointly or separately.
- vi. The panel of Mediators, empanelled by the High Court, or the District Courts, may be reviewed from time to time.

4. Platform for Mediation under the MoU dated 14.04.2023:

- i. The Mediator from *SAMADHAN*, and the Co-Mediator shall conduct proceedings physically / online / through the hybrid mode, through the WebEx System, available with *SAMADHAN*, link whereof will be shared by *SAMADHAN* with the Mediator, the Nodal Officer concerned, the Co-mediator, and the parties, on the email address of all. In case, any of the parties do not have their own email id, the email containing the link for the mediation session shall be shared with the concerned Nodal Officer, whose responsibility it shall be to inform the party/parties of the date and time of online mediation, so that the party/parties are able to join the proceedings either from the concerned court premises, or from any other location that they, or any of them, may choose to. The Co-mediator will be provided with the necessary infrastructure at the premises of the Uttarakhand High Court, or the District Courts concerned, to the extent necessary, and the parties will be given access to the infrastructure by the concerned Nodal Officer, as provided in this SOP, if they do not have their own computer devices or physical infrastructure, for the purposes of participating in the said mediation proceedings.
- ii. In case of unavailability of VC facility at the Mediation Centre, VC facility available at the nearest Court complex may be used for the Mediation proceedings.
- iii. The Nodal Officer shall, however, not join the mediation proceedings and shall not be privy to any of the mediation sessions.

5. Platform for Mediation in other cases:

In all other cases, referred by the Court for mediation, the following procedure shall apply:

- i. The Mediator shall conduct proceedings physically / online / through the hybrid mode, through the Google Meet System, link whereof will be generated and shared by the Nodal Officer concerned with the Mediator, and the parties, on the email address of all. In case, any of the parties do not have their own email id, it shall be the responsibility of the Nodal Officer to inform the party/parties of the date and time of online mediation, so that the party/parties are able to join the proceedings either from the concerned court premises, or from any other location that they, or any of them, may choose to. The Mediator will be provided with the necessary infrastructure at the premises of the Uttarakhand High Court, or the District Courts concerned, to the extent necessary, and the parties will be given access to the infrastructure by the concerned Nodal Officer, as provided in this SOP,

if they do not have their own computer devices or physical infrastructure, for the purposes of participating in the said mediation proceedings.

- ii. In case of unavailability of VC facility at the Mediation Centre, VC facility available at the nearest Court complex may be used for the Mediation proceedings.
- iii. The Nodal Officer shall, however, not join the mediation proceedings and shall not be privy to any of the mediation sessions.

6. Initiation of Proceedings:

- i. Mediation between disputing parties may be initiated upon a reference being made by the High Court or the District Court, as the case may be, to the Mediation Centre annexed with the Court (in the case of High Court, the High Court Mediation Centre, and in the case of the District Court, the District Court Mediation Centre). The Court shall inform the parties of the facility available for conduct of mediation under the MoU, and its advantages. In cases, where the parties agree to mediation under the MoU, the Court shall record their consent and refer the parties to mediation under the MoU. Where any of the parties opts out of mediation under the MoU, but is otherwise agreeable to mediation, the Court shall refer the parties to mediation by a trained Mediator before the Mediation Centre of the UKHCLSC or DLSA, as the case may be.
- ii. Any litigating party, interested in exploring settlement of his/her disputes through mediation, may approach the concerned Mediation Centre at the High Court, or the Mediation Centre of the District Court, personally, or through email, or by calling a dedicated phone line, which shall be prominently displayed on the website of the High Court / District Court. The interested party shall be explained the process of mediation, and the nuances thereof by the Nodal Officer. The Nodal Officer shall take in writing the willingness of the party/parties approaching the Mediation Centre for exploring settlement through mediation and, thereafter, contact the opposite party/parties to enquire whether they are also willing to explore mediation as a method of dispute resolution. The Nodal Officer shall explain to the called party/parties the process of mediation; its benefits; and its voluntary nature. The parties shall also be informed of the facility of mediation under the MoU, and the advantages thereof. If both the parties agree to explore mediation under the MoU, the Nodal Officer shall collect and communicate the case details and party details to *SAMADHAN*, and shall also move a “note” in the pending case, for orders of the Court for appointment of a Co-Mediator. In all other cases, the matters shall be

referred for mediation to a trained enrolled mediator with the UKHCLSC or DLSA, as the case may be.

- iii. The website of UKSLSA shall notify the dedicated email id and phone numbers of the Mediation Centres through which any of the litigating party may request for exploring the process of mediation. The Nodal Officer shall be responsible for checking the emails and taking all necessary actions. A consolidated list of all such email addresses of all the DLSAs and UKHCLSC shall also be notified on the website of the Uttarakhand High Court, District Courts, UKSLSA, etc.
- iv. The Referral Court, in its referral order, shall also mention the necessary ingredients, such as, email addresses of parties, mobile/whatsapp number, the mediation centre or the Court where physical and computer device facilities may be availed of by the parties, the case particulars, the disputes whereof are referred for mediation.
- v. Services of Para Legal Volunteers (PLVs) engaged with the DLSAs may be taken to assist the parties, whenever required.

7. Mediation shall be done Free:

No fee shall be charged in respect of mediation conducted either under the MoU, or by the UKHCLSC, or the DLSAs.

8. Effect of Settlement and Report:

- i. Once the process of mediation is over, the report/settlement signed by the Mediator and, if there is a Co-mediator, by the Co-Mediator, and the parties, and their counsels, if any, shall be submitted to the concerned Nodal Officer. The Mediator/Co-Mediator may sign the Settlement Agreement digitally as well. The Nodal Officer shall file the Settlement Agreement before the concerned Court, with copies to the parties/their counsels on record.
- ii. The Settlement Agreement shall be examined by the concerned Court to determine whether the same appears to be legal and voluntary, and not vitiated by coercion or undue influence, and, whether the same is executable. Once satisfied on the above aspects, the Court shall accept the Settlement and pass an Order/Judgment or Degree in terms of the Settlement.
- iii. In case, mediation fails, or is a Non-Starter, the Non-Settlement Report shall be sent by the Mediator to the Nodal Officer, who shall file the same before the concerned Court.
- iv. The Nodal Officer shall be bound to maintain complete confidentiality with regard to the mediation proceedings, and the Settlement Agreement, if any.

Any breach of this condition by the Nodal Officer, if established, shall constitute a serious misconduct by the Nodal Officer.

9. Format of the order referring the parties for mediation under the MoU:

- i. Only for the guidance of the Courts, which refer the matters pending before them for mediation under the MoU, the format of the order that may be passed, is appended as **Appendix-1**. In cases referred for mediation, *de hors* the MoU, the other relevant and material ingredients of the format may be incorporated.
- ii. The referring court shall be free to pass the order on its own, keeping in view the fact situation before it, and the appended format is only to facilitate the referring court, so that the necessary ingredients get incorporated in the order of reference.

APPENDIX-1
To
Standard Operating Procedure for conducting mediations as per MOU dated
14.04.2023

Both / all the parties / their counsels are present.

2. The parties have been explained the process of mediation as a faster, and less expensive means of settlement of their disputes. It has been explained to them that the process of mediation is completely free, voluntary and strictly confidential. Whatever transpires in meetings between the parties with the Mediator(s), either jointly or separately, is kept confidential and is not disclosed by the Mediator(s) to the Court, even if mediation does not succeed. Discussions held by the Mediator(s) with the parties separately are also kept confidential, and not disclosed to the opposite party/parties, unless the concerned party is agreeable. They have been explained that even if mediation fails, it is not open to either of the parties to rely upon, what may have transpired during mediation, before the Court, and the Court shall not permit either party to place any such material before the Court, or rely upon the same. They have been explained that, since the process of mediation is completely voluntary, either, or both/all of them, may withdraw from mediation at any stage, without any adverse consequences. They have also been explained that mediation is a way of settling disputes in the spirit of give and take, and has the advantage of expeditiously ending all disputes between the parties, and not just the disputes, which are before the Court presently.

3. The parties are agreeable to explore the possibility of mediated settlement. The present case has the elements of a settlement, which may be acceptable to the parties. The High Court of Uttarakhand has entered into a Memorandum of Understanding with the Mediation and Conciliation Centre of the Delhi High Court, namely, *SAMADHAN*, dated 14.04.2023, for conduct of mediation by one Mediator appointed by *SAMADHAN*, in cases pending in this Court, with one Co-Mediator from within the State of Uttarakhand. The parties have been informed of the facility of mediation available under the MoU, and the advantages thereof. They are agreeable to conduct of mediation under the MoU.

4. The parties have provided their respective names, mobile phone numbers, e-mail IDs (if any), as below:

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5. Accordingly, I refer the parties to mediation under the MoU dated 14.04.2023, to endeavour to resolve their disputes and differences. Mr./Ms....., who is empaneled with the UKHCLSC/DLSA (as the case may be), is appointed as the Co-Mediator. The parties and the Co-Mediator shall appear before the Mediation Centre attached to this Court and present themselves before the Nodal Officer for taking further steps.

6. The parties shall also inform the Nodal Officer whether they would join the online mediation proceedings from their own place of residence/office; through their own computer device (including smart phone), or; whether they would join the proceedings on the appointed date and time from the Mediation Centre attached to this Court. The Nodal Officer shall communicate to *SAMADHAN* the particulars of the case fixed for mediation, and shall also communicate to the Co-Mediator appointed by the Court, the particulars of the case and the parties.

7. To await the outcome of the mediation proceedings, list the case on ...(after four weeks).

By the order of Hon'ble the Chief Justice

Sd/-
(Anuj Kumar Sangal)
Registrar General

No.3867/UHC/ADMIN.B/2023

Dated: 22 July, 2023

Copy forwarded for information to:

1. Member Secretary, Delhi High Court Mediation and Conciliation Centre (SAMADHAN), New Delhi.
2. Principal Secretary Law-cum-L.R., Government of Uttarakhand, Dehradun.
3. All District Judges/Principal Judge/Judges, Family Courts with the request to circulate it amongst all the Judicial Officers of their respective Judgship/Family Courts. Copy of this Notification should be available in all the courts at all times.
4. Director, Judicial and Legal Academy, Bhowali, Nainital.
5. Member Secretary, UKSLSA, Nainital to circulate amongst all the DLSAs.
6. P.P.S. to Hon'ble the Chief Justice.
7. All the P.S.s of Hon'ble Judges with the request to place it before His Lordship's kind perusal.
8. All the Head Bench Secretaries/ Bench Secretaries of the Hon'ble Court with a request to keep the copy of this Notification in their respective Courts.
9. All the Registrars/JRs/DRs/ARs/Section Officers of the Hon'ble Court.
10. Deputy Registrar (IT) with a request to upload the notification in official website of the Hon'ble High Court.
11. Guard file.

Sd/-
Registrar General