

Court No. - 6

Case :- WRIT - C No. - 4652 of 2022

Petitioner :- Madhyanchal Vidyut Vitran Nigam Ltd Lko Thru Executive Engineer And Another

Respondent :- Smt.Alka Pandey

Counsel for Petitioner :- Abhinav Singh

Counsel for Respondent :- Kshemendra Shukla

Hon'ble Alok Mathur,J.

1. Heard Sri Abhinav Singh, learned counsel for the petitioners as well as Sri Kshemendra Shukla, learned counsel for the respondent.

2. By means of present writ petition the petitioner - Madhyanchal Vidyut Vitran Nigam Ltd., Gonda has approached this Court assailing the award dated 02.05.2022, passed by the Permanent Lok Adalat/Electricity Ombudsmen, Gonda.

3. The main thrust of arguments of the petitioner is that the said award has been passed contrary to the provisions contained in Section 22-C of the Legal Services Authority Act, 1987 (*hereinafter referred to as "the Act, 1987"*), as no conciliation proceedings were initiated or held by the Permanent Lok Adalat without assuming jurisdiction to decide the dais under Section 22-C(8) of the Act, 1987.

4. The brief facts giving rise to present writ petition are that the petitioner is a Distribution Licensee Authorised to operate and maintain a distribution system for supplying electricity to the consumers in District - Gonda under the provisions of Electricity Act, 2003. The respondent is an electricity consumer running a hospital at a building House No. 182, Chedipura, Station Road, Gonda. For running of the said hospital, an electricity connection of 7.5KVA was taken from the petitioners and after construction was completed, a request was made for supply of 80KW electricity to run a 300 bed Super Speciality Hospital in the said premises.

5. The dispute in the present case pertains to the fact that two transformers which were installed at the premises of the respondent one was "Current Transformer" and the other was "Potential Transformer" (*hereinafter referred to as "CT/PT"*) and the ratio divided by meter current transformer and potential transformer is called the "multiplying factor". In the present

case, at the time of installation of new meter after enhancement of sanctioned load the multiplying factor was wrongly entered as MF-1 instead of MF-3 and therefore the bills raised during this period were on lower side than they should have been. The error came to the knowledge of the petitioners at the time of inspection of the meter of the respondent on 13.11.2017, when the meter ceiling certificate was issued by the petitioners to the respondent. On coming to know about the aforesaid error in CT/PT, a rectified bill was raised, raising an additional demand and also for recovery of additional charges and accordingly the respondent was directed to pay an amount of Rs.56,39,552/- towards the rectified bill issued by means of letters dated 30.12.2017.

6. It seems that the respondent did not pay the enhanced charges raised by the petitioners consequently, after discovery of the mistake in the multiplying factor and accordingly petitioners issued final reminder vide letter dated 09.03.2018, asking the respondent to deposit an amount of Rs.84,62,316/- towards electricity dues within one week of the said demand. Despite repeated reminders, the respondent did not pay the electricity dues, but the respondent instead of submitting any reply before the petitioners sent a legal notice dated 17.06.2018.

7. It is in the aforesaid circumstances the respondent approached this Court by filing Writ Petition No. 25490 (M/B) of 2018, where this Court directed the respondent to deposit an amount of Rs.20,00,000/- by 10.09.2018 and on deposit of said amount an interim protection was granted with regard to disconnection of the electricity connection. The said writ petition was finally dismissed by order dated 20.01.2020, with liberty to the respondent to submit an application before the appellate authority who would look into and pass appropriate orders.

8. The respondent instead of filing an appeal before the appellate authority, preferred an application before the Permanent Lok Adalat on 08.04.2021, praying for setting aside of the notice dated 30.05.2018, where recovery for an amount of Rs.84,62,316/- was raised against the respondent and also sought compensation for mental harassment etc. The Permanent Lok Adalat issued notice to the petitioners to which it put in appearance and filed their objections on 03.09.2021. In their objections the petitioners supported the proceedings and submitted that the impugned demand was valid and it was merely due to mistake on account to which multiplying factor was wrongly entered into the records of the petitioners.

9. From the perusal of order sheet filed by the petitioners it

seems that repeatedly dates were fixed, but it seems that no conciliation proceedings ever took place. The order sheet further indicates that no terms of settlement were formulated and on 21.12.2021, issues were framed and the Permanent Lok Adalat consequently decided the said matter by means of impugned award dated 02.05.2022.

10. Learned counsel for the petitioners while assailing the impugned award has submitted that procedure with regard to such matters before the Permanent Lok Adalat has been clearly stated under Section 22C of the Act, 1987. For the sake of brevity the provisions of Section 22C of the Act, 1987 are quoted herein below :-

"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 the opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of the 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."

11. It is stated that in the present case none of the provisions contained in sub-section (1) to (8) of Section 22C of the Act, 1987 were fulfilled by the Permanent Lok Adalat. It is stated that even in clause (8) of Section 22C, it is only when the parties fail to reach to an agreement, the Permanent Lok Adalat shall decide such dispute. It was vehemently urged that the parties have failed to reach to a settlement, that the Permanent Lok Adalat could have proceeded to decide the said dispute.

12. In the present case the order sheet indicates that there was no exercise pertaining to conciliation proceedings and straight away the Permanent Lok Adalat has framed issues and decided the matter by passing the impugned award. It did not at any stage recorded the fact that the parties have failed to reach to an agreement and proceeded contrary to the provisions contained in Section 22C of the Act, 1987 and hence the impugned award deserves to be set aside.

13. Learned counsel for the petitioners in support of his contentions has relied upon the judgment of Hon'ble Supreme Court rendered in the case of **Canara Bank Vs. G.S. Jayarama, 2022 SCC OnLine SC 656**.

14. Learned counsel appearing for the respondent has opposed the writ petition by submitting that the Permanent Lok Adalat was functioning and performing duties of Legislature where any person aggrieved by an of the public utility company, has been given a right to approach the Permanent Lok Adalat for settlement of dispute. It was stated that it is in this regard the dispute pertaining to bill against respondent, was raised before the Permanent Lok Adalat and the petitioners had put in appearance and were heard before the impugned award was passed and consequently prays for dismissal of the writ petition.

15. Heard learned counsel for the parties and perused the record.

16. From the facts of the present case it seems that the respondent who is running a 300bed super speciality hospital had applied for electricity connection before the petitioners and was granted the same. Supply was made to the tune of 11KVA power line where CT/PT both type of transformers were installed to give supply to the respondent hospital. Multiplying factor of CT/PT was '3' in the case of respondent but due to certain reasons in the records maintained by the petitioners the multiplying factor was registered "1" and not "3". It is due to this error in multiplying factor that bills of reduced amount continued to be issued to the respondent hospital. It is only when the transformers installed in the respondent's premises were inspected, that the said discrepancy was discovered and it was sought to be rectified by issuing revised bill to the respondent. The present dispute pertains to the revised bill and demand raised by the petitioners in the facts of the present case.

17. The respondent preferred writ petition before this Court which was ultimately dismissed on the ground that respondent had alternate remedy of filing appeal. The respondent thereafter approached Permanent Lok Adalat on 08.04.2021 by filing an

application. The issue before this Court is as to whether while exercising jurisdiction under Section 22C of the Act, 1987, the Permanent Lok Adalat followed the procedure as prescribed therein. Foremost consideration while exercising jurisdiction under Section 22C of the Act, 1987 is to see that amicable settlement is arrived at between the respective parties. To arrive at a amicable settlement sufficient powers have been given to the Permanent Lok Adalat under the Act, 1987.

18. From the perusal of order sheet has filed by the petitioners, it seems that no such effort was made by the Permanent Lok Adalat to conciliate the dispute between the parties in the present case. It straight away framed issues and decided the matter in terms of sub-section (8) of Section 22C of the Act, 1987. The manner of exercise of power by Permanent Lok Adalat has been dealt by the Apex Court in the case of **Canara Bank Vs. G.S. Jayarama (supra)**, wherein in para 35 the Court has held as under :-

"35. Section 22-C(8) is amply clear that it only comes into effect once an agreement under Section 22-C(7) has failed. The corollary of this is that the proposed terms of settlement under Section 22-C(7), and the conciliation proceedings preceding it, are mandatory. If Permanent Lok Adalats are allowed to bypass this step just because a party is absent, it would be tantamount to deciding disputes on their merit ex parte and issuing awards which will be final, binding and will be deemed to be decrees of civil courts. This was simply not the intention of the Parliament when it introduced the LSA Amendment Act. Its main goal was still the conciliation and settlement of disputes in relation to public utilities, with a decision on merits always being the last resort. Therefore, we hold that conciliation proceedings under Section 22-C of the LSA Act are mandatory in nature."

19. From the perusal of aforesaid judgment it is clear that once the Permanent Lok Adalat has failed to conciliate in the said matter, can it embark on the exercise of deciding the dispute in terms of sub-section (8) of Section 22C of the Act, 1987. The Apex Court has held that the Permanent Lok Adalat is not permitted to by-pass the step because it was not the intention of the Parliament to give such powers to the Permanent Lok Adalats without making an attempt to conciliate in the disputes. It also took note of the fact that the award is final and binding on the parties and has a measure of last resort, in the present case the Permanent Lok Adalat proceeded to decide the dispute without entering into conciliation proceedings, is per-se illegal and arbitrary and violative of Section 22C of the Act, 1987.

20. In the light of above this Court is has no hasitation in

holding that the impugned award is arbitrary and deserves to be set aside being squarely violative and contrary to the provisions of law.

21. Accordingly, the impugned award dated 02.05.2022, passed by the Permanent Lok Adalat, Gonda, is hereby set aside. The writ petition stands **allowed**.

22. Considering the fact that the respondent is running a hospital and has deposited Rs.20,00,000/- with the petitioners against the demand raised by them and has also been granted protection by this Court by means of order dated 07.09.2017, passed in Writ Petition No. 25490 (M/B) of 2022, during pendency of the dispute before the Permanent Lok Adalat, hence, it is provided that in case respondent approaches appropriate forum/Electricity Ombudsman by filing an application within next two weeks, the same shall be considered and decided expeditiously on merits, say within three months thereafter in accordance with law, and till final order is passed on the application of respondent, the electricity supply to the respondent-hospital shall not be discontinued, and the amount deposited as per directions of this Court shall be adjusted.

Order Date :- 19.2.2024

A. Verma

(Alok Mathur, J.)