

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C) .No. 15098 of 2012 (J)

PETITIONER(S) :-

1. THE ASST.ENGINEER,
ELE. SECTION, K.S.E.BOARD
VELLANGALLOOR, THRISSUR DISTRICT.

2. ASST. EXE. ENGINEER,
ELE. SUB DIVISION, K.S.E. BOARD
VELLANGALLOOR, THRISSUR DISTRICT.

BY ADVS.SRI.P.SANTHALINGAM (SR.)
SRI.S.SHARAN, SC, K.S.E.BOARD

RESPONDENT(S) :-

C.V.SANTHOSH KUMAR,
CIRCLE HEAD, TOWER VISION INDIA PVT. LTD.,
KADAVANTHRA, COCHIN-20.

BY ADV. SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 :- TRUE COPY OF THE LETTER No.DB/MISC/11-12/VGLR/132 DTD.23/9/2011 ISSUED BY THE 2ND PETITIONER TO THE RESPONDENT AND ENGLISH TRANSLATION.

EXT.P2 :- TRUE COPY OF THE ESTIMATE PREPARED BY THE 1ST PETITIONER.

EXT.P3 :- TRUE COPY OF THE AWARD DTD.3/12/2011 IN O.P.No.89/2011 OF THE PERMANENT LOK ADALAT AT ERNAKULAM.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

A.M.SHAFFIQUE, J

W.P(C). No. 15098 of 2012

Dated this the 13th day of November, 2015

J U D G M E N T

Petitioner has approached this Court challenging Ext.P3 award passed by the Permanent Lok Adalath in O.P. No.89 of 2011 filed by the respondent herein. By virtue of the said award passed under Legal Services Authority Act, 1987 (hereinafter referred as the Act), the respondents 1 and 2 namely petitioners herein were directed to give power connection to the petitioner in respect of his mobile tower in question from the existing transformer within one month from the date of the petitioner submitting his completion report and paying the required fee for the connection.

2. The challenge against the above award passed by the Lok Adalath has been made by the petitioner inter alia contending that the Adalath has not complied with the procedure prescribed under section 22C(7) of the Act before proceeding to decide the dispute under section 22C(8) of the Act. Further reference is made to the provisions of the

Electricity Act, 2003, to indicate that the Board is entitled to recover from the customer the charges required for upgradation of transformer which has not been taken into consideration by the Lok Adalath. Reference is made to judgment of this Court in O.P(C) No.149 of 2012, by which this Court in a lis between the very same parties, but in regard to another installation, having set aside the order passed by the Lok Adalath, directed the Board to provide electricity connection to the applicant on the basis of the application submitted by him and if necessary, by alternating or upgrading the transformer without insisting upon the respondent to bear the cost of such upgradation or alteration.

3. Learned Senior Counsel Sri. P. Santhalingam appearing on behalf of the petitioner also relied upon the judgment of Orissa High Court in **Executive Engineer Electrical (NESCO) & Others v. Chairperson, Permanent Lok Adalath (P.U.S.) & Another** [AIR 2013 Orissa 121], especially paragraphs 24 and 25, which reads as under:

“24. The Hon'ble Supreme Court in the case of Bar Council of India v. Union of India (2012) 8 SCC 243: (AIR 2012 SC 3246) 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/co-operate 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."

4. On the other hand, learned counsel appearing for the respondent referred to clause 36 of Kerala State Electricity Supply Code, 2013 and contended that the Board being a licensee shall recover charges or expenditure only in respect of such category of consumers coming under sub clauses (i) to (vi), and that no demand can be made from respondent as the demand is only 16KW. Clause 36 of the Supply Code reads as under :

“36. Expenditure for extension or upgradation or both of the distribution system to be borne by the consumer.-

The expenditure for extension or upgradation or both of the distribution system undertaken exclusively for giving new service connection to any person or a collective body of persons or a developer or a builder, or for enhancing the load demand of a consumer or a collective body of consumers or a developer or

a builder, shall be borne by the respective applicant or consumer or collective body of consumers or developer or builder, as the case may be, in the following cases :-

- (i) for meeting the demand of an applicant with a contract demand above one megawatt (MW);
- (ii) for meeting the additional demand of existing consumers, if the aggregate demand including the additional demand applied for, is above one megawatt (MW);
- (iii) for meeting the demand of the domestic or commercial or industrial complex or colony constructed by a developer or a builder with a demand above one megawatt (MW);
- (iv) for meeting the demand of a high rise building irrespective of its demand;
- (v) for meeting the demand of power intensive unit irrespective of its demand; and
- (vi) for meeting the demand of a consumer requesting for dedicated feeder or protected load status irrespective of its demand:

Provided that, if due to technical reasons, the extension or upgradation or both to be undertaken by the licensee as per this regulation is more than the requirement of such consumer, the expenditure for such extension or upgradation or both to be realised from the consumer shall be limited to the proportionate expenditure."

5. Having regard to the aforesaid contention on behalf of the either side, the question to be considered is whether the order passed by the Lok Adalath is in any way sustainable.

6. The main contention urged by the petitioner is with reference to the connective load of the transformer. According to them, the transformer in the said locality is not capable of providing further power connection of 16KW load as the

transformer's load capacity can be utilised only upto 70% of its maximum capacity and failing which there will be drop in voltage. This aspect of the matter is not considered by the Lok Adalath. This issue is virtually covered by the judgment in O.P.C.149/12. The learned Single Judge in O.P.C. No.149/2012, it was observed at paragraph 5 as under :

“5. But question arises as to the propriety, correctness and sustainability of the decision taken by the Permanent Lok Adalath. It is evident from record that the Permanent Lok Adalath has not decided the issue on the basis of any evidence. No witness was examined on behalf of either sides, the Permanent Lok Adalath has not sought any expert opinion regarding merits of the issue. One of the main contention raised by the petitioner Board is that the authorities of the Board has an obligation to comply with the circular issued, insisting utilization of only 70% capacity of any Transformer utilised. This according to the petitioner, is insisted only to meet unforeseen contingencies. The instruction is to limit average peak load current to 70% of the full load of the Transformer authorised. During summer seasons, festival seasons, reality shows, inter national sports events etc. the consumption will be increased and the same will cause damage to the existing Transformer and may cause even failure to the entire supply, which in turn will effect public interest. Question whether the utilisation of load capacity of the Transformer should be limited to 70% or not is a matter which is purely technical and scientific in nature. The Board is regulating its activities on the basis of various scientific and technical reasons. If the Board issues any circular insisting on its authorities to comply with any technical aspects, normally the court of law cannot interfere on such technical aspects. In the case at hand, in Exhibit P9, the Permanent Lok Adalath had discarded insistence contained in the circular merely by observing that the circular has no statutory force. Being a matter with respect to administration of the day today activities of the Board instructions given to its authorities on technical aspects need not have any statutory force. The Permanent Lok Adalath even without seeking any expert opinion or even without adducing any evidence on the

aspects had issued direction to provide connection ignoring the insistence contained in the circular. This according to me is totally improper and unreasonable conclusion arrived by the Permanent Lok Adalath. Hence I am inclined to set aside Exhibit P9 on the above aspects.”

Therefore, to that extent, the direction issued by permanent Lok Adalath is not sustainable and is liable to be set aside.

7. However, in the same judgment, learned Single Judge after referring to the factual situations involved in the matter directed electric connection to be supplied to the petitioner without calling upon him to bear any cost.

8. Learned Senior counsel however, relied upon section 43 and 46 of the Electricity Act, 2003 which empowers the Board to recover expenditure reasonably incurred in providing electric line or electric plant for giving the electric supply. The proviso to section 43(2), which reads as under:

“43. Duty to supply on request.- (1) xx xx xx

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

Similarly section 46 reads as under:

“46. Power to recover expenditure.- The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

9. The statutory provision enables the Board which is a licensee to demand from the consumer such price as determined by the Appropriate Commission. However we have to refer to the Supply Code as well. The learned Single Judge in O.P(C).No.149 of 2012 relied upon the various statutory provisions and directed the Board to give connection without claiming any additional charges from the petitioner. Even going by the Supply Code, 2013, no such charge can be levied by the Board. Levy of charge can only be on certain special circumstances mentioned in the clause 36 of the Supply Code. Under such circumstances, the contention urged by the petitioners that they are entitled for charge for upgrading or alternating the transformer is baseless, especially on account of the fact that the demand of the petitioner is only 16 KW.

10. In the light of the above discussion, I am of the view that the writ petition can be disposed of as under:

Ext.P3 is set aside. Further there will be a direction to the petitioner to provide the respondent electric connection if necessary by alternating or upgrading the transformer without insisting upon him to bear cost of such upgradation, which shall be done within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
A.M.SHAFFIQUE,
JUDGE

// TRUE COPY //

P.A. TO JUDGE

sou.19/11/15