

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 522 of 2015**

Mukesh Kumar S/o Shri P. D. Agrawal Aged About 42 Years R/o
Deurgaon, Tehsil- Tokapal District- Bastar (Chhattisgarh) Police
Station Jagdalpur Baster

---- Petitioner**Versus**

Executive Engineer, Chhattisgarh State Electric Distribution Co. Ltd.
S/o Geedam Road, Jagdalpur, District- Bastar (Chhattisgarh)

---- Respondent

For Petitioner	:	Mr. T.K. Jha, Advocate.
For Respondent	:	Mr. Sudeep Agrawal, Advocate.

Order On Board**06/05/2016**

1. With consent of the parties, the matter is heard finally at motion stage itself.
2. Facts in brief necessary for disposal of instant writ petition are that the petitioner/applicant filed an application before Permanent Lok Adalat, Jagdalpur constituted under the authority of Section 22(B) of the Legal Services Authority Act, 1987 (in brevity 'Act of 1987') under the provisions of Section 22(A)(b)(iii) of the Act of 1987 and prayed that he is entitled to get Rs. 50,000/- with interest at the rate of 12% from 18-4-2011 till realization for physical and mental harassment and also in addition, any other amount which the court thinks fit from the non-applicant. Before the court below, respondent/non-applicant filed reply to the application along with preliminary objection under the provisions of Section 22 sub-section (1) of the Act of 1987 and prayed that since the matter is beyond jurisdiction of the court concerned, also barred by limitation hence the same may be dismissed. The petitioner/applicant duly filed reply to the preliminary objection before the court below. After hearing the matter on preliminary objection, the court below vide order dated 19-3-2015 held that the matter relates to civil dispute and jurisdiction lies with the civil court prima facie or the applicant may file appropriate litigation before the Consumer fora and as the original

application is in relation to compensation only hence held that the said matter cannot come under the purview of Section 22(A)(b)(iii) of the Act of 1987. Hence dismissed the application. Against the said order petitioner filed instant writ petition praying that jurisdiction vested to this court under Article 227 of the Constitution of India be invoked and the order dated 19-3-2015 be quashed and the court below be directed to proceed in accordance with provision of Section 22(C) sub-section 7 and 8 of the Act of 1987. The matter is covered under the provisions of Section 22(A)(b)(iii) of the Act of 1987. The court below is having pecuniary jurisdiction for hearing for the amount as claimed by the applicant. As per statutory provisions as mentioned in sub-sections 7 and 8 of the Section 22(C) of the Act of 1987, the court below has power to decide the dispute in relation to the matter referred to it under the provisions of Section 22(A)(b)(iii) of the Act of 1987 hence it is prayed that the relief as sought may be granted.

3. Learned counsel for the respondent has filed reply wherein grounds taken are that court below may hear and dispose of the matter in relation to supply of power, light or water to public by any establishment and other matter as defined in Section 22(A)(b) of the Act of 1987. It is further submitted that as the assessment was made under Section 126 of the Electricity Act, 2003 (in brevity 'Act of 2003'). the petitioner ought to have preferred appeal to the appellate authority under Section 127 of the Act of 2003. It is further submitted that since claim of the petitioner is a money claim i.e. compensation arising out of the agreement executed between the petitioner and the respondent/ SCPDCL, therefore, the court below has rightly held that the petitioner ought to have filed civil suit or has remedy to file petition before the Consumer Forum hence the court below has not committed any illegality by passing order dated 19-3-2015. It is further submitted that the order passed by the court below is strictly in accordance with law and call for no interference from this court. Hence instant petition may be dismissed.
4. Heard learned counsel for the parties and perused the record of the case.
5. Learned counsel for the petitioner submits that provisions of Section

126 of the Act of 2003 are not applicable as the same is in relation to the matters where someone is indulging in the use of unauthorized electricity. Question for filing appeal under Section 127 of the Act of 2003 does not arise. He further submits that wrong bill of power consumption is issued, the petitioner objected for the same for correction and other facts. He placed reliance in **Bar Council of India -v- Union of India** reported in 2012 (117) AIC 13 (SC) wherein Hon'ble Apex Court held in para 20, 21 and 22 of the judgment as under:-

“20. Parliament can definitely set up effective alternative institutional mechanisms or make arrangements which may be more efficacious than the ordinary mechanism of adjudication of disputes through the judicial courts. Such institutional mechanisms or arrangements by no stretch of imagination can be said to be contrary to constitutional scheme or against the rule of law. The establishment of Permanent Lok Adalats and conferring them jurisdiction upto a specific pecuniary limit in respect of one or more public utility services as defined in Section 22-A(b) before the dispute is brought before any court by any party to the dispute is not anathema to the rule of law. Instead of ordinary civil courts, if other institutional mechanisms are set up or arrangements are made by the Parliament with an adjudicatory power, in our view, such institutional mechanisms or arrangements cannot be faulted on the ground of arbitrariness or irrationality.

21. The Permanent Lok Adalats under the 1987 Act (as amended by 2002 Amendment Act) are in addition to and not in derogation of Fora provided under various statutes. This position is accepted by the Central Government in their counter affidavit.

22. 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, the Parliament has intervened and conferred power of adjudication upon the Permanent Lok

Adalat. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service upto 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.

In para 22, considering the question - Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service upto 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, the court answered it negative and observed that 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. It must be a creature of the 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.

6. Further reliance is placed in the order passed by the High Court of Jharkhand at Ranchi in L.P.A. NO. 53/2013 (Life Insurance Corporation of India -v- Harjeet Kaur) decided on 30-4-2014 wherein Hon'ble Division Bench has held in para 16 as under:-

16. In the present case, after the respondent filed the application under Section 22-C for passing an award, there was a conciliation and when the conciliation failed and settlement could not be reached, the appellant is said to have filed a

petition dated 14.11.2008 giving consent to contest the matter on merits. Counter affidavit filed by the respondent/claimant refers to the said petition dated 14.11.2008 filed by the appellant giving consent to contest the case on merits and it is further averred that the Permanent Lok Adalat passed the order dated 14.11.2008 proceeding to decide the matter on merits. Having filed the petition dated 14.11.2008 giving consent to contest the case on merit, the appellant is also estopped from challenging the jurisdiction of Permanent Lok Adalat in deciding a dispute on merits. We find no merit in the contention of the appellant questioning the jurisdiction of Permanent Lok Adalat in adjudicating a dispute between the parties on merits under the Legal Services Authorities Act, 1987.

7. Learned counsel for the respondent supported the entire grounds taken in the return and submitted that as the matter does not relate to supply of power, the court below rightly allowed preliminary objection and dismissed the matter as not maintainable. He further submits that both the case laws are not applicable and are of no help to the petitioner looking to the provisions as mentioned in Section 22(A)(b) (iii) of the Act of 1987. Hence the order of the court below does not require any interference and the instant petition deserves to be dismissed.
8. In order to appreciate the arguments advanced in this behalf by counsel for the parties, perused the petition, its return and the documents annexed therewith.
9. Section 22(A)(b)(iii) of the Act of 1987 is relevant here and reads as under:-

22A. In this Chapter and for the purpose of sections 22 and 23, unless the context otherwise requires;-

- (a) xxx xxx xxx
- (b) "public utility service" means any-
 - (i) xxx xxx xxx
 - (ii) xxx xxx xxx
 - (iii) supply of power, light or water to the public by any establishment; or....

10. Core issue involved in the instant writ petition is that whether the

application as filed is covered under the said provisions or not.

11. While appreciating the cited case law in **Bar Council of India** (supra) it appears that Hon'ble Apex Court found no merit in the challenge to the main provision of Chapter VI-A brought in Act of 1987 by 2002 Amendment Act and held that this is a creature of statute and should adjudicate the disputes before it consistent with the principles of fair play and natural justice. Further it is held that there is no constitutional right of a party to have dispute adjudicated by the court only. On perusal of the case law cited, it appears that adjudication in the **Bar Counsel of India** (supra) is not the triable issue before this court. There is no objection from either side that the matter in question has to be decided by the court only. On the other hand it is the objection made by the respondent that the subject matter of the applicant is not covered by the definition clause 22(A)(b)(iii) of the Act of 1987, therefore, I am of the considered view that the case law cited is not for controversy in the present matter and also the law declared by the above pronouncement is still a good law and applicable where the matter so arises. Principles laid down by High Court of Jharkhand in para 16 of the judgment in the Life Insurance Company of India (supra) are in agreement with Bar Council of India (supra). As observed earlier, the present matter is not in which both the case law can be applied as there is no objection on either side regarding applicability of the above provisions to adjudicate the issues as and when filed before Permanent Lok Adalat.
12. Perusal of entire application goes to show that wrong bill of power of consumption was given to the petitioner for consumption of power. The petitioner attempted to meet the authority for correction of said bill and the said bill was corrected after 1 year, 6 months and 18 days. With the above correction of alleged wrong bill, the petitioner approached to the Permanent Lok Adalat with the prayer that he be granted Rs. 50,000/- from the non-applicant/respondent for economic and physical harassment along with interest as claimed. Bare reading of the concerned provision goes to show, in a case of supply of power only, any aggrieved person has opportunity to choose the forum of Permanent Lok Adalat for redressal of his grievance and that can only

be disposed of under the provisions of Section 22(C) of the Act of 1987 but as the present case is for issuance of alleged wrong bill, after many attempts by the petitioner to get the same corrected, after 1 year, 6 months and 18 days the bill was corrected thereby allegedly respondents acted against the natural law and agreement between the parties and as required under the relevant rules to decide the said matter within 15 days. There is no allegation that there was any obstruction regarding supply of power. The petitioner failed to demonstrate that issuance of alleged wrong bills comes under the purview of supply of power. In absence of any pronouncement by the competent court, the words 'supply of power' shall be for supply of power only unless appreciated and pronounced for issuance of wrong bill also.

13. In the considered view of this court, the court below has not committed any error in holding that the dispute as raised by filing the said application is beyond the jurisdiction of permanent Lok Adalat as the jurisdiction vests for supply of power only. The court below further appreciated that if there is any violation of agreement and post effect of said agreement, the matter is a civil dispute and prima facie jurisdiction vests with the civil court. Court below also appreciated that the applicant may file petition before the consumer forum available under the law. Upon consideration of entire matter, I do not see any illegality or impropriety committed by the court below so as to invoke jurisdiction under Article 227 of the Constitution of India to interfere with the order passed.
14. Consequently, instant writ petition being sans substance deserves to be and is hereby dismissed at motion stage itself.
15. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
Judge