

**226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 17586 of 2015(O&M)
Date of decision:4.03.2016**

UHBVN Ltd. and others

.....Petitioners

versus

**Permanent Lok Adalat for Public Utility Services and another
.....Respondents**

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Pankaj Jain, Advocate
for the petitioners.

Mr. P.P.Chahar, DAG, Haryana.

Mr. Sanjay Jain, Advocate
for respondent No. 2.

Rakesh Kumar Jain, J.(Oral)

The question involved in this writ petition is as to whether the Permanent Lok Adalat (Public Utility Services) (for short, 'Adalat') has the jurisdiction under Section 22-C(8) of the Legal Services Authorities, Act 1987 (for short, 'the Act, 1987) to adjudicate upon a notice issued under Section 126 of the Electricity Act, 2003 (for short, 'the Act, 2003')?

The facts are not in dispute as respondent No. 2 was served with a notice issued under Section 126 of the Act, 2003 vide Memo No. 603 dated 3.04.2013, for unauthorized consumption of the electricity. Respondent No. 2 challenged that notice by way of an application filed under Section 22-C of the Act, 1987 before the

Permanent Lok Adalat (Public Utility Services), Panchkula (Camp District Court Complex Jagadhri) which has been allowed vide order dated 12.05.2015 (Annexure P-5). Hence, the present petition has been filed.

Counsel for the petitioner has submitted that the Adalat has erred in exercising its jurisdiction in adjudicating upon the lis between the parties, which was otherwise pre-mature at that stage, as the application was filed by respondent No. 2 under Section 22-C of the Act, 1987 against the provisional assessment of electricity charges, conveyed to him under Section 126 (2) of the Act, 2003. It is submitted that a complete scheme is provided in Chapter XII of the Act, 2003 in regard to assessment of unauthorized consumption of electricity, in which the authorities under the Act shall first provisionally assess the electricity charges payable and then serve upon a provisional assessment order which can be challenged by the said person by filing objections and those objections are to be decided after affording reasonable opportunity of hearing and then in case, the electricity charges are still to be recovered then final order has to be passed. It is further submitted that the said final order is further appealable under Section 127 of the Act, 2003 and as such, the jurisdiction of the Adalat was ousted.

However, counsel for the respondents contends that Chapter VI-A of the Act, 1987 deals with the Pre-litigation conciliation and settlement in which Section 22-C provides "*cognizance of cases by Permanent Lok Adalat*" and Section 22-C (2) further provides that "*if an application is made under Section*

22-C(1) to the Adalat then no party to that application shall invoke jurisdiction of any court for the same dispute.” He has relied upon the following decisions in support of his contention:

- 1) Dr. Ambika Kumary & Ors. vs. State of Kerala and others
AIR 2012 Kerala 16
- 2) SDO Electricity OP Sub Division No.9, Union Territory, Sector 43, Chandigarh vs. Union of India and others 2008(2) PLR 82
- 3) S.N.Pandey vs. Union of India and another
2012(8) SCC 261

I have heard both the learned counsel for the parties and perused the available record with their able assistance. Since the facts are not in dispute as it is admitted by respondent No. 2 that he has challenged the notice issued under Section 126(2) of the Act, 2003 before the Adalat in terms of Section 22-C, therefore, the question which has been posed in the beginning of this case is to be answered and for that, it would be relevant to refer to basic provisions of both the Acts which read as follows:-

Section 22C of The Legal Services

Authorities Act, 1987

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

Sections 126 & 127 of the Electricity Act, 2003

126. Assessment.- *(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of

provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.;

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

127. Appeal to appellate authority.- (1)

Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

*(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to *[half] of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has*

been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent. per annum compounded every six months.

There is no dispute that Chapter VI-A has been added in the Act of 1987 for expeditious disposal of the dispute relating to Public Utility Service which is defined under Section 22-A(b) of the Act, 1987. It is also not in dispute that any party to the dispute may approach the Adalat by making an application for settlement of their dispute. The Adalat has to first try to resolve the dispute by way of reconciliation as provided upto Section 22-C(7) of the Act, 1987 and in case they fail to reach to any agreement then power is also conferred upon Adalat to decide the dispute on merits in terms of Section 22-C(8) of the Act, 1987.

On the other hand, Section 126 of the Act, 2003 deals with the situation where any person has been found indulging in unauthorized use of electricity. Section 126(2) deals with the provisional assessment, Section 126(3) deals with the notice of provisional assessment and opportunity of hearing before passing an order of final assessment, Section 126(4) provides that in case the final assessment is accepted by that person, he may deposit the said amount within 07 days. Section 127 of the Act, 2003 further provides that in case any order is made under Section 126 which has to be final assessment order, appeal can be filed against i /t within a period of 30 days before the appellate authority which may be prescribed but Section 127(2) provides that no appeal against an order of assessment made under sub-section(1) shall be entertained unless an amount equal to (half) of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit is enclosed along with the appeal.

Since a complete mechanism has been provided for assessment of the electricity charges for unauthorized use in two steps of provisional assessment and final assessment in which the effected party has also been given an opportunity of hearing of filing objections and that principles of natural justice are also to be followed in as much as, an opportunity of hearing is provided to substantiate the objections and then the final assessment order is passed coupled with the fact that it is amenable to challenge by way of an appeal by an authority constituted under the Act and hence the jurisdiction of the Adalat to entertain such a litigation in

the garb of Section 22-C of the Act, 1987 is not permissible. The judgment relied upon by counsel for the respondent in the case of *Dr. Ambika Kumary and others (supra)* is altogether on different facts because in that case the respondent had taken a plea that the applicant in that case had the alternative remedy of civil court. Similarly, there is no dispute with the law laid down by this Court in the case of *SDO Electricity OP Sub Division No.9, Union Territoty, Sector 43, Chandigarh (supra)* that the Adalat has the power to decide the matter on merit in terms of Section 22-C(8). Similarly, the judgment in the case of *S.N.Pandey(supra)* has also no application to the facts and circumstances of the present case.

In view of the facts and circumstances discussed hereinabove, the question posed in the beginning is hereby answered in affirmative holding that if a notice is issued under Section 126(2) of the Act, 2003 regarding provisional assessment for indulging in unauthorized consumption of electricity, no application is maintainable under Section 22-C of the Act, 1987 and the Adalat shall have no jurisdiction at all. Such kind of notice issued under Section 126(2) of the Act, 2003 is only a step towards assessing the final amount of the electricity charges to be paid by the person, found indulging in the unauthorized use of electricity. Even, if the order is passed under Section 126(4) i.e. final assessment order under the Act, 2003, still the Adalat has no jurisdiction at all to entertain any application to decide the lis between the parties because the said order is appealable and that too after depositing half of the amount as prescribed under Section 127(2) of the Act. 2003.

With these observations, the present petition is hereby
allowed.

4th March, 2016

Shivani Kaushik

[Rakesh Kumar Jain]
Judge