

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CWP No.16907 of 2016
Date of Decision : 7.9.2016

Uttar Haryana Bijli Vitran Nigam Ltd.

.....Petitioner

Vs.

M/s Himalaya Flour Mill

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Aditya Jain, Advocate for the petitioner.

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RAMESHWAR SINGH MALIK, J

Instant writ petition is directed against the impugned award dated 5.10.2015 (Annexure P-1) passed by the learned Permanent Lok Adalat, whereby application of respondent no.1, moved under Section 22-C of the Legal Services Authority Act, 1987, was allowed.

Heard learned counsel for the petitioner.

It is a matter of record that the entire case of the petitioner was based on an internal audit report. Thereafter, neither the consumer-respondent was granted due opportunity, putting the internal audit report to it, nor the mandatory procedure, provided under the relevant provisions of the Electricity Act, 2003, was followed. When this crucial aspect of the matter was put to the learned counsel for the petitioner, during the course of

hearing, he had no answer and rightly so, it being a matter of record. In fact, the authorities of petitioner-corporation proceeded on a patently illegal approach. It has been rightly recorded by the learned Permanent Lok Adalat in para 16 of the impugned award that neither notice was served on the consumer-respondent, nor an order for provisional assessment was passed.

Similarly, no order for final assessment was passed nor any opportunity of being heard was granted to the consumer, before recording the exorbitant amount in its electricity bill, thereby causing manifest injustice to the consumer-respondent. Having said that, this court feels no hesitation to conclude that the impugned award passed by the Permanent Lok Adalat is based on true facts of the case as well as the same has been passed strictly in accordance with law, thus, deserves to be upheld.

It goes without saying that the administrative authorities, including that of petitioner-corporation, were duty bound to follow the basic principles, while dealing with and deciding the valuable rights of citizens. However, in the present case, the authorities of the petitioner-corporation failed to appreciate the relevant provisions of law for provisional assessment as well as for final assessment, contained in the Electricity Act, 2003. Since the mandatory provisions stand glaringly violated, the learned Permanent Lok Adalat was well within its jurisdiction to pass the impugned award and the same deserves to be upheld, for this reason also.

Relevant observations made by the learned Permanent Lok Adalat, in paras 17 to 19 of the impugned award, which deserve to be noticed herein, read as under :-

“ In this way it is clear that the penalty amount Rs.6,25,681/- has been imposed upon the petitioner

illegally without giving him any opportunity of hearing even no specific order has been passed by the competent authority regarding imposing penalty. It will be pertinent to mention here that earlier petitioner used to pay the electricity bills regularly. The alleged penalty amount has been added in the electricity bill of the petitioner merely mentioning that there was increase in MDI. In the electricity bills Ex.P-2 and Ex.P-5 placed on the file MDI is mentioned as '4'. There may be certain reasons of increase in MDI, the increase in MDI may be due to overload of the transformer, there may be increase due to increase in consumption being more than sanctioned load. In this case in fact in the petition, written statement or any other document it is not made clear that what is the sanctioned load on this electricity connection. Moreover if there was increase in MDI I feel at the earliest it should have been brought to the notice of the petitioner. If legally and technically there was need to impose penalty amount the respondent should have imposed penalty amount as and when there was increase in MDI. If the respondent would have adopted this procedure in the very beginning after two or three months the petitioner might not have faced so many problems. Petitioner would have got opportunity to save himself from the violation of the rules and provisions of law. If there was excess electricity load he could have

requested the respondent to extend the sanctioned load. Keeping in mind all these circumstances as the petitioner used to pay the routine electricity consumption charges he deserves a sympathetic view because he is facing this problem due to technicalities. As a result as per discussion above in detail I have no hesitation in holding that imposing of an amount of Rs.6,25,681/- as penalty upon the petitioner is wrong and illegal and the same is hereby set aside. It is held that respondent Nigam is not entitled to recover the disputed amount of Rs.6,25,681/- from the petitioner. Petitioner is entitled for deduction of the surcharge amount imposed upon the petitioner due to non-payment of the amount in dispute Rs.6,25,681/-.

Petitioner has taken plea in his petition that he had to face unnecessary harassment and mental torture due to faults of the respondent. Petitioner requested that he be awarded compensation amount along with litigation charges. Petitioner has not taken specific plea regarding compensation amount. Petitioner itself does not appear to be so serious regarding claiming compensation amount. Moreover findings in this case are being given because no specific order has been passed by the officer of the respondent-Nigam regarding imposing penalty and no opportunity of hearing was given to the petitioner before imposing penalty amount. There appears to be possibilities that all it happened because the SDO (OP)

was of the different view that penalty amount mentioned in the audit report is binding and there is no need to pass a specific order in this regard. Keeping in mind the facts and circumstances of this case I feel it will be justified not to award any amount of compensation. However, keeping in mind as the petitioner had to face hardships unnecessarily by involving himself in this litigation for such a long time by spending amount it will be justified to assess cost and the litigation expenses in this case as Rs4000/- to be paid by the respondent.

Keeping in mind the abovementioned circumstances I feel in this situation when every body in public life is facing such type of difficulties it becomes the duty of the courts as well as of this Adalat also to pass some effective meaningful, relief giving and purposeful orders and award. Moreover this Adalat is required to pass awards and orders which should be based on equity and helpful for providing justice that is also natural justice. I feel courts should pass awards and orders as the situation demands and should not hesitate to come out a little out of the tight cordon of rules and procedure also if the situation so demands. Under Section 22D of the Legal Services Authorities Act, 1987, it is purposely provided that provisions of Civil Procedure Code and Evidence Act shall not be applicable in the proceedings of the petitions filed under this Act.”

A bare reading of the above said observations made by the learned Permanent Lok Adalat makes it crystal clear that the petitioner-corporation had no case either on facts or in law. Case of the petitioner-corporation, if at all, was based on technicalities alone. Under these circumstances, learned counsel for the petitioner could not substantiate any of his arguments. In fact, since the petitioner-corporation has not placed on record, before the learned Permanent Lok Adalat, sufficient and relevant material in support of its case, learned counsel for the petitioner could not have make out a fresh case in favour of the petitioner-corporation, at this stage, despite making his sincere and best efforts.

The fault lies with the petitioner-corporation, when it failed to follow the mandatory procedure at the initial stage. The patent illegality committed by the authorities of the petitioner-corporation could not have been upheld, either by the learned Permanent Lok Adalat or by this court. Under this undisputed fact situation, it can be safely concluded that the Permanent Lok Adalat rightly examined, considered and appreciated true facts of the case as well as the basic principles of law applicable thereto. It committed no error of law, while recording the above said cogent findings in support of the impugned award and the same deserves to be maintained as it is.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that since the impugned award passed by the Permanent Lok Adalat has not been found suffering from any patent illegality or perversity, it deserves to be upheld. The present writ petition has been

found wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, the present writ petition stands dismissed, however, with no order as to costs.

7.9.2016
GS

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No