

CWP No.23193 of 2013

KUMAR MANOJ
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CWP No.23193 of 2013
Date of Order: 09.02.2016**

Dakshin Haryana Bijli Vitran Nigam Ltd and Anr.

....Petitioners

Versus

Permanent Lok Adalat, Public Utility Services, Gurgaon & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Anil Rathee, Advocate for the petitioners.

Mr. Vikrant Rana, Advocate for respondent No.2.

RAKESH KUMAR JAIN, J

Petitioners have challenged the award dated 24.07.2013 of the Permanent Lok Adalat (Public Utility Services), Gurgaon on the ground that it had no jurisdiction to entertain an application filed under Section 22-C of the Legal Services Authority Act, 1987 (for short "1987 Act") in a case where consumer of the electricity has been asked to pay for the theft of electricity.

In short, respondent No.2 has alleged that she is a consumer of the petitioners and is holding a NDSP electricity connection, bearing Account No.JR-11-0248. She had been making regular payment of the electricity bills till the false bill of ₹1,26,379/-, as detailed in Bill No.00471 dated 18.11.2012, was

asked to be paid on 03.12.2012. She challenged that bill by way of an application filed under Section 22-C of 1987 Act before the Permanent Lok Adalat, Gurgaon.

Petitioners have challenged the jurisdiction of the Lok Adalat on the ground that the said bill was raised on account of theft of electricity. It is alleged that checking party had inspected the premises No.2 on 26.9.2012, and found that :

'at the time of checking, Sh. Sunil is present at the premises and supply is running direct by providing cut in incoming 2/C PVC wire by which the meter was by-passed. By this means, the supply is running direct for house paili at where rest of portion running through meter bearing A/C No.JR11-0245, which may be confirmed from record particular of meter Sr.No.67041 make Awn R-33018. Take action as per nigram instruction'.

The Lok Adalat observed that the photo copy of the checking report does not bear the signatures of the consumer and nowhere it is the case that the consumer had refused to sign the report, the checking was not conducted in accordance with rules and thus demand raised by the petitioners was not justified, and as such it was set aside and the petitioners were directed to take average consumption of six months from the month of January 2013 till July 2013 and on that basis, electricity consumption bill of the disputed period was ordered to be recovered from respondent No.2.

The only question raised by learned counsel for the petitioners is as to whether the Permanent Lok Adalat (PUS) has jurisdiction to decide the case of theft of electricity?

It is argued by learned counsel for the petitioners that theft of electricity is defined under Section 135 of the Electricity Act, 2003 (for short “2003 Act”) and both suspected and per se theft is compoundable under Section 152 of Act 2003 but the Special Courts are constituted under Section 153 of 2003 Act to follow the procedure provided under Section 154 of the Act for dealing with offences of theft, referred to under Section 135 to 140 of 2003 Act. It is further submitted that even otherwise, if it was a case of over consumption, which is dealt with in terms of Section 126 of 2003 Act, then an appeal lies under Section 127 and the Civil courts shall have no jurisdiction to deal with the issues raised under Section 126 being barred under Section 145 of 2003 Act. Learned counsel has relied upon an order of this court passed in CWP No.15748 of 2011 on 31.07.2012 titled Punjab State Power Corporation Ltd Vs. Vikas Mittal, Director, J.P Agri. Solutions Pvt Ltd and another.

On the other hand, learned counsel for respondent No.2 has argued that the application has rightly been considered and entertained by the Lok Adalat because as per Section 22-C, First Proviso, the Lok Adalat shall have no jurisdiction in respect of a matter relating to not compoundable offence whereas offence under Section 135 of 2003 Act is compoundable under Section 152 of 2003 Act. It is further submitted that the Permanent Lok Adalat shall not have jurisdiction in the matter where value of the property in dispute does exceed ₹10 lacs whereas in the present case, it was even below ₹1.5 lacs. It is

further submitted that the theft of the Electricity is not made out because the checking was not even conducted in her presence and even no case is made out under Section 126 either because in that situation, the petitioners had to pass an order of provisional assessment and after hearing respondent No.2, final assessment order could have only been made, which has not been followed at all. Learned counsel has also relied upon a decision of this Court passed in CWP No.22839 of 2015 decided on 02.11.2015 titled Dakshin Haryana Bijli Vitran Nigam Ltd and Others Vs. Permanent Lok Adalat (Public Utility Services), Hisar and another.

I have heard learned counsel for the parties and perused the record.

Chapter 6-A deals with Pre-litigation Conciliation and Settlement for which Permanent Lok Adalats have been established under Section 22-B (1) of 1987 Act. Permanent Lok Adalat takes cognizance of the cases under Section 22-C of 1987 Act if the offence is compoundable and has the pecuniary jurisdiction. Procedure is provided under clauses (2) to (7) of Section 22-C of 1987 Act for conciliation whereas clause (8) of Section 22-C of 1987 Act empowers the Lok Adalat to adjudicate on facts if the dispute does not relate to any offence.

The Electricity Act, 2003 repealed the Indian Electricity Act, 1910, which envisaged growth of the electricity industry in India and created the legal framework for laying down of wires and other works relating to the supply of

electricity. The Electricity (Supply) Act, 1948 mandated creation of a State Electricity Board and Electricity Regulatory Commission Act, 1998, was enacted to determine the electricity tariffs etc. Part XII of 2003 Act deals with Investigation and Enforcement in which Section 126 deals with the unauthorized use of electricity and the assessment of the charges. It provides that where there is unauthorized use of electricity, provisional assessment has to be made to the best of the judgment of the Authority concerned and provisional order is served upon the person concerned, who would have a right to file objections, if any, and shall have to be afforded opportunity before passing final order of assessment but if any person is aggrieved of the final assessment order passed under Section 126 of 2003 Act, he may prefer an appeal to the Appellate Authority as prescribed. Chapter 14 of 2003 Act deals with the offences and penalties. Section 135 of 2003 Act deals with the theft of electricity, which may be suspected or established. In the case of suspected theft of electricity, inquiry is conducted but in the case of established theft, the assessment is made as per Section 154 (5) of 2003 Act and offer is given to the person concerned for compounding of offence under Section 152 of 2003 Act. The jurisdiction of Civil Court is barred under Section 145 of 2003 Act in respect of proceedings initiated under Section 126 and jurisdiction has been conferred upon Special Court, constituted under Section 153 (3) of 2003 Act to try the offence alleged to have been committed under Sections 135 to 140 and 150 of 2003 Act.

Since the petitioners have alleged that respondent No.2 was found committing theft by cutting in incoming 2/C PVC wire by which the meter was bye-passed, therefore, the only remedy available with respondent No.2 was to approach Special Court, constituted under Section 153 of 2003 Act, who would have acted in terms of Section 154 of 2003 Act, but in so far as the jurisdiction of the Lok Adalat (PUS) is concerned, it illegally and erroneously exercised as held by this Court in Punjab State Power Corporation's case (supra). Judgment relied upon by respondent No.3 in Dakshin Haryana Bijli Vitran Nigam's case (supra) is not on the issue involved and thus inapplicable.

Thus, in view of the facts and circumstances, present petition is allowed and the order dated 24.7.2013 passed by the Lok Adalat (PUS), Gurgaon is set aside. Respondent No.2, may, if so advised, seek her remedy under the provisions of 2003 Act.

February 09, 2016
manoj

(RAKESH KUMAR JAIN)
JUDGE