

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

CWP No. 25120 of 2016.

Date of Decision: 22.11.2018.

Punjab State Power Corporation Limited

... Petitioner

Versus

M/s. K.J. Steel Industries and another

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Ms. Promila Nain, Advocate,
for the petitioner.

Mr. Aalok Jagga, Advocate,
for respondent No.1.

None for respondent No.2.

JITENDRA CHAUHAN.J.

By filing this civil writ petition, under Article 226 of the Constitution of India, Punjab State Power Corporation Limited (for short “the petitioner-corporation”) seeks quashing of order dated 22.09.2016 (Annexure P-1) vide which, Permanent Lok Adalat (Public Utility Services) (for short “the Lok Adalat”), Fatehgarh Sahib has dismissed the application filed by the petitioner-corporation for dismissal of the main application.

As per the case of the petitioner-corporation, M/s. K.J. Steel Industries-respondent No.1 is habitual defaulter in paying the electricity bills. On 08.03.2016 on a checking being carried out by Additional S.E. Enforcement, Khanna, respondent No.1 was found to be consuming unauthorized electricity as the connection of electricity

was granted for steel rolling mill but respondent No.1 had been using 250 kw of induction furnace which is against the rules. Accordingly, a provisional assessment order dated 29.04.2016 (Annexure P-4) was passed vide which demand of Rs.23,34,329/- was raised against respondent No.1. Thereafter, respondent No.1 moved an application for settlement of dispute before the Lok Adalat, Fatehgarh Sahib.

It is contended that as per the provisions of Sections 126 and 127 of the Electricity Act, 2003 (for short “the Act”) in the case of unauthorized use of electricity, the consumer has the remedy to file objections against the provisional assessment order and to file appeal before the Appellate Authority under the Act. Moreover, as per Section 145 of the Act, the jurisdiction of Civil Court is also barred in the case of unauthorized use of electricity. The application filed by respondent No.1 before the Lok Adalat is not maintainable, therefore, the Lok Adalat has wrongly assumed jurisdiction in deciding the main application.

On the other hand, it is contended that the Lok Adalat has jurisdiction to try and decide the disputes relating to public utility services (as defined in Section 22-A(b) of the Legal Services Authorities Act, 1987. The Lok Adalats are in addition to and not in derogation of Fora provided under various statutes. Learned counsel relies upon **Bar Council of India vs. Union of India 2012(4) Recent Apex Judgments 309 (SC).**

Heard.

The sole issue involved in the present civil writ petition is whether the Lok Adalat had the jurisdiction to decide the matter in issue or not. Respondent No.1 is an industrial unit. On checking being made, the unit was found making unauthorized use of electricity as the connection had been granted for steel rolling mill but the same was being used for induction furnace. A provisional assessment order dated 29.04.2016 (Annexure P-4) was passed calling upon respondent No.1 to make payment of Rs.23,34,329/-. Vide application (Annexure P-6), respondent No.1 approached the Lok Adalat for settlement of the dispute under the provisions of Legal Services Authorities Act, 1987. The relevant provisions of the Act, 2003 are reproduced as under:-

Section 126: (Assessment): --- (1) *If on an inspection of any place or premises or after inspection of the equipment, 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 unauthorized use of electricity, he shall provisionally assess to the best of his judgement 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 unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized 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 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorized use of electricity" means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized."]

Section 127. (Appeal to Appellate Authority): --- (1)
Any person aggrieved by the 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 3[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.”

Keeping in view the fact that as per the provisions of Section 126 of the Act in case of any unauthorized use of electricity, on passing of provisional assessment order, the consumer is entitled to file objections against it, and in case his grievance still survives, he can file appeal under Section 127 of the Act, this Court is of the opinion that the forum chosen by the petitioner i.e. Lok Adalat lacks jurisdiction to try and decide the matter. When the Act provides a complete procedure, then the same has to be followed. Admittedly, respondent No.1 has not resorted to the provisions of Section 126/127 of the Act and has straightway approached the Lok Adalat. Consequently, the present civil writ petition is allowed. The order dated 22.09.2016 (Annexure P-1) and order dated 06.10.2016 (Annexure P-2) are hereby set aside.

22.11.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No