

**Sr. No. 205
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.26100 of 2015 (O&M)

Date of Decision: 14.12.2018

Saroj Bala

... Petitioner

Versus

Permanent Lok Adalat and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. B.S.Mittal, Advocate,
for the petitioner.

Mr. P.S.Longia, Advocate,
for respondents No. 2 to 4.

ARUN MONGA, J.(ORAL)

Present petition has been filed for issuance of a writ in the nature of certiorari for quashing the notice dated 09.10.2012 (Annexure P-2) issued by respondent No.4-S.D.O., UHBVNL and also for quashing of the impugned order dated 13.01.2015 (Annexure P-3) passed by Permanent Lok Adalat whereby Lok Adalat gave a finding that the UHBVNL is entitled to claim the electricity charges for consumption of electricity by the petitioner in view of the fact that meter was found to be functioning properly. The petitioner has also impugned notice dated 01.09.2015 (Annexure P-6) vide which the arrears of Rs.3,29,769/- were found to be due against the electricity charges.

2. Learned counsel for the respondent contends that the present writ petition is liable to be dismissed on the ground of

concealment of facts alone. He contends that the petitioner had earlier preferred a Civil Suit impugning the same very notice Annexure P-6 in the Court of Civil Judge, Dabwali. States that respondent caused appearance in the civil suit proceedings and had filed their written statement. When the matter was fixed for evidence, the Civil Suit was dismissed as withdrawn in the following terms:-

“Today counsel for the plaintiff has made a statement that he does not want to proceed further and withdraw the present suit. So in view of statement suffered by counsel for the plaintiff, present suit stands dismissed as withdrawn. File be consigned to the Record room after due compliance.”

3. He further contends that while dismissing the suit, no leave was granted by the Court to file fresh one on the same cause of action and, therefore, the present writ petition is barred by *res judi cata* as also in view of the specific bar under Order 23 Rule 3 CPC since the petitioner did not seek leave of the Court as envisaged therein.

4. Learned counsel for the respondents further states that permanent Lok Adalat is not vested with the jurisdiction under Section 22 (C) (VIII) of the Legal Services Authorities Act to adjudicate upon a notice issued under Section 126 of the Electricity Act, 2003.

5. There is no quarrel about the proposition that jurisdiction of the Permanent Lok Adalat does not include adjudication upon the assessment orders passed under Section 126 of the Electricity Act. However in the present case, the

assessment order was not under challenge before the Permanent Lok Adalat who was considering only arrears of bill towards consumption of the electricity dues.

6. On merits learned counsel for the respondents contends that electricity connection No.M-3-41/0044 was installed in the name of the petitioner at her seed factory near FCI Godown, Mandi Dabwali, District Sirsa. On 20.09.2012, the officials of respondent-Nigam visited the site and inspected the meter installed in the premises. They found that the meter was installed on the wall outside the premises. It was further found that electric supply was used through the meter. The meter was sent to M & T Lab to check the accuracy thereof. Meter was packed in the presence of witnesses and proper videography was done. Electricity supply was restored through another meter. As per M & T Lab report, meter was found to be working correctly and showing a consumption of 59427 units and accordingly bill was raised after deducting the previous billed units and the average bills.

7. Per contra, learned counsel for the petitioner argues that as per Annexure P-4, consumption detail of Account No. M-3-41/0044 reflects that average consumption never crossed 2499 units per month, whereas the respondent-DHBVNL has raised a bill of showing consumption 54927 units (Annexure P-7) and therefore, the charges for that much consumption is not sustainable. He also relies on latest consumption pattern after change of meter and the consumption reflecting that the maximum consumption units in any

given month never exceeded 907 units per month. He further relies on Division Bench judgment of Kerala High Court (Nirmala Metal Industries Vs. K.S.E.B. and others, 2007(4) RCR Civil 441) which contemplates that if metre installed is defective, it is duty of the Board to get the metre tested and without doing the same, Board cannot raise the bills on the basis of defective metre.

8. Learned counsel for the respondent contends that the said judgment is not applicable in the facts of present case as the meter was admittedly taken from the premises in the presence of witness and the report was sought from M & T Lab. The report is not under challenge before this Court and it is only the bill which is under challenge.

9. Be that as it may, learned Permanent Lok Adalat has threadbare gone into the issues which are in the domain of factual controversy and this Court sitting in writ jurisdiction cannot go into said disputed facts. The reasoning given by the permanent Lok Adalat is as below:-

“Whatever may be the reason for not recording the actual consumption but one thing is clear that the consumer has consumed the electricity as shown by the meter during checking I.e. 59427 units whereas the petitioner has paid the electricity consumption charges of 21094 units. Once it is held that the consumer/petitioner has consumed 59427 units, she is bound to make the payment of these units of electricity energy consumed by her to the respondents. However, she is entitled to get adjusted the amount which she has already paid during the aforesaid period vide bills, copies of which are EX.P-10 to Ex.P-27. The respondents

have already adjusted the amount in Memo under challenge, copy of which is Ex.P-5 (Ex.R-6).

A perusal of checking report dated 20.09.2012 (Ex.P-6) goes to show that connected load of the petitioner was 11.011 KW against the sanctioned load of 19.595 KW. Therefore, it is clear that the petitioner was not consuming electricity excess than the sanctioned load.”

10. Having gone through the findings recorded in the impugned award as also the contentions of learned counsel for the respondents as noted in this order, no interference in the impugned notices is warranted.

11. Petition is dismissed, with no order as to costs.

14.12.2018

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No