

LPA No. 376 of 2018 (O&M)

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

LPA No. 376 of 2018 (O&M)

Date of decision: 24.7.2018

Dakshin Haryana Bijli Vitran Nigam Limited and another

... Appellants

Versus

Permanent Lok Adalat (Public Utility Services) Hisar and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. R.S. Longia, Advocate
for the appellants.

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 14.12.2017, rendered by the learned Single Judge, vide which the writ petition preferred by the petitioners-appellants, had since been dismissed.

The facts that are required to be noticed are limited.

Aggrieved by the temper data report dated 13.3.2015, on the basis whereof vide notice dated 5.5.2015, the appellants required respondent No.2 to deposit Rs. 2,98,663/-, he moved an application under Section 22-C of the Legal Services Authorities Act, 1987 (for short '1987 Act'), before the Permanent Lok Adalat (Public Utility Services), Hisar. On a consideration of the matter and the evidence on record, the Lok Adalat, vide its award dated 21.3.2017, held the temper data report, as also the notice of demand,

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dated 5.5.2015, as null and void. And accordingly the appellants were restrained from causing recovery of the penalty amount, i.e. Rs.2,98,663/-. The appellants assailed the award dated 21.3.2017, vide a writ petition, which has since been dismissed and thus, this appeal.

A bare analysis of the impugned order and judgment reveals that the only ground raised by the appellants before the learned Single Judge was that; in the matter at hands, the proceedings were initiated against the respondent under Section 126 of the Electricity Act, 2003 (for short '2003 Act'), for on inspection, electricity meter installed at the premises of the respondent was found slow by 33.33%. And, since the order passed under Section 126 is appealable under Section 127, the application moved by the respondent under Section 22-C of the 1987 Act was incompetent, and consequently, the award rendered by the Lok Adalat was without jurisdiction, and thus, liable to be set aside. The same argument is advanced even before us by the learned counsel for the appellants.

We have heard learned counsel for the appellants and perused the records.

It would be apposite to refer to the provisions of Section 126 (I) of the 2003 Act which show that if on an inspection of any place/ premises or even the equipments, gadgets found connected or used or after inspection of records maintained by any person, the Assessing Officer concludes that such person is indulging in unauthorised use of electricity, he shall provisionally assess the electricity charges payable by such person, or by any other person benefited by such use. Sub-section 2 of the said provision postulates that order of provisional assessment is required to be served upon the person concerned in the manner prescribed. Sub-section 3 provides an

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opportunity to the assessee to file objections, if any, against the provisional assessment, and after affording opportunity of hearing, the Assessing Officer is required to pass a final order of assessment as regards the electricity charges payable by such person. As we do not find it necessary, the provisions of sub-sections 4, 5 and 6 are not being referred to. Ex facie, there exists nothing on record to show if the Assessing Officer had provisionally assessed the electricity charges in terms of sub-section I of Section 126 of the 2003 Act. Resultantly, no such order was served upon the respondent, and thus, there was no occasion to file objections thereto. Likewise, in terms of sub-section 3 of Section 126 of the 2003 Act, no final order of assessment is shown to have been passed, after affording an opportunity to the respondent. Not just that, to enable the appellants to substantiate their claim, learned Single Judge had granted them an opportunity to place on record the complete material as regards issuance of notice, order of provisional assessment, reply, if any, and the final assessment order. But, vide a separate application bearing CM No. 17142-2017, appellants brought on record the documents (Annexures P-4 and P-5), i.e. the temper data report dated 13.3.2015, and the demand notice dated 5.5.2015. Accordingly, it was concluded that the documents produced by the appellants could not be termed or construed as provisional or final order of assessment in terms of Section 126 of the 2003 Act.

The matter can be viewed from yet another perspective. Even if it is assumed that the appellants had, indeed, initiated the proceedings under Section 126 of the 2003 Act, but, the procedure envisaged under the said provision not being adhered to, the penalty imposed upon the respondent was unsustainable. Further, as regards the award, dated 21.3.2017, a

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categorical finding was recorded by the Lok Adalat that appellants failed to examine any officer: JE, SDO or XEN to support the report dated 13.3.2015 as also the penalty imposed by the authorities. On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if conclusions arrived at by the Lok Adalat and the learned Single Judge were either contrary to the record or suffered from any material illegality.

In view of the above, we are dissuaded to interfere with the impugned order and judgment. The appeal being devoid of merit is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

July 24, 2018
AK Sharma

Whether speaking / reasoned:
Whether Reportable:

YES