

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

**CWP NO. 14963 OF 2014
DATE OF DECISION : 16.01.2019**

Punjab State Power Corporation Limited

...Petitioner

versus

Mandip Kaur and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Parminder Singh, Advocate,
for the petitioner.

Mr. Shekhar Verma, Advocate,
for the respondents.

ARUN MONGA, J.

1. The present petition has been filed seeking, inter alia, issuance of a writ in the nature of certiorari to quash the Award dated 12.02.2014 (Annexure P-2) passed by Permanent Lok Adalat (Public Utility Services) Shaheed Bhagat Singh Nagar (earlier known as Nawan Shahar).

2. One of the lead grounds taken to seek quashing of the Award is that the Permanent Lok Adalat lacked the jurisdiction to decide and adjudicate the grievance raised by the petitioner- Punjab State Power Corporation Limited (hereinafter referred to as "the PSPCL/Corporation"). The jurisdiction is stated to be lacking on the ground that since the consumer was found to be indulging in direct theft, therefore, the application filed by him

under Section 22 (c) (8) of the Punjab Legal Services Authorities Amended Act 2002 (in short "the Act"), could not have been entertained.

3. I have gone through the contentions of the writ petition as also annexures appended thereto, particularly the impugned Award dated 12.02.2014 (Annexure P-2).

4. Learned counsel for the petitioner-corporation has placed reliance on the judgment rendered by this Court in CWP No.20825 of 2010 decided on 04.01.2012 titled as "**Reliance General Insurance Company Limited v. Vijay Kumar and another**". The relevant para thereof is extracted herein below :

" If PLA PUS is approached under Section 22 C at the pre litigation stage in relation of public utility services and other party disputes the claim saying claim is bogus and case involves disputed questions of facts and law and cannot be settled by the intervention of the PLA PUS, then conciliation proceedings shall stand terminated and PLA PUS shall have absolutely no jurisdiction to invoke Section 22 C (8) to decide the dispute directly. However, if during the conciliation proceedings under sub-sections (4), (5), (6) and (7) of Section 22 C parties to the application have narrowed down their disputes and are not able to come to the final figure then by invoking sub-section (8) PLA PUS can decide the differences by applying principles of fair play, equity, natural justice, objectivity as provided under Section 22 D of the Act."

5. This Court is of the opinion that the above judgment is not applicable in the facts of present case as the same is on the

issue that during conciliation proceedings the parties are unable to narrow down their dispute, then the Permanent Lok Adalat will not have the jurisdiction to adjudicate under Section 22(C)(8) of the Act. Neither at the time of arguments, this point was canvassed, nor even otherwise, in the petition, much emphasis has been laid on the said point. In any case, the petitioner cannot take advantage of its own wrong. In as much as it declined to participate in conciliation/settlement proceedings, on the ground that since the consumer had committed direct theft, the petitioner-corporation was not bound to participate in the conciliation proceedings. The said objection in any case, was taken before the Permanent Lok Adalat and has been dealt in detail in the impugned Award. I am in agreement with the reasoning given therein for rejecting the said objection.

6. On the other hand, learned counsel for the respondent-consumer has relied upon a judgment rendered by Supreme Court in "**Inter Globe Aviation Ltd. v. N. Satchidnand**" **2011 (7) SCC 463**, as also the judgment rendered by this Court in CWP No. 21079 of 2015 decided on 16.10.2015 "**Magma HDI General Insurance Co. Ltd. and others v. Ashok Kumar and ors.**" Learned counsel for the respondent-consumer contends that as laid down in the said judgments, it is a settled proposition of law that if substantial grounds are made out for assailing the award passed by the PLA PUS, writ petition is maintainable before the High Court under its

supervisory and extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

7. Having gone through the judgments cited by learned counsel for the respondent, I am in agreement with the submissions of learned counsel for the respondents and hold that the case of respondents is covered under Section 22 (c)(8) of the Act and was well within the jurisdiction of the Permanent Lok Adalat and it rightly adjudicated the same.

8. A perusal of the Award passed by the learned Permanent Lok Adalat reflects that the petitioner/Public Utility Service Provider failed to prove theft of energy by producing reliable material before the Lok Adalat. Therefore, Permanent Lok Adalat rightly proceeded to decide the matter on merits.

9. As noticed, PSPCL has not produced any cogent evidence/record before the Permanent Lok Adalat to prima-facie establish that the petitioner had indulged in direct theft. The same has also been noticed in the impugned Award inasmuch as there is no independent witness on the memo prepared by PSPCL at the time of inspection of electric meter; there was no photography/videography carried out of the contended loop wire connection with the meter and there was no load test carried out to determine the commission of theft of energy. It has also been rightly noticed/held by the Permanent Lok Adalat that no seizure memo with regard to taking into possession the loop wire was prepared. Even though the preparation of seizure memo has been

mentioned in letter dated 23.04.2013 vide which the applicant was asked to pay an amount of ₹35,635/-, but there is no mention of taking into possession the said loop wire in the said letter.

10. Another aspect which goes against the petitioner/ PSPCL is that though it is contended that the meter terminal was found burnt due to repeated use of loop wire but the same was not got tested from a meter testing laboratory. Neither any report has been filed before the Permanent Lok Adalat nor before this Court with respect to the meter having been tested by a Meter Examination Laboratory. In this respect, the relevant provision contained in Regulation 64.7 of Electricity Supply Regulations as amended, is reproduced hereunder below :-

“ All the meters removed against MCO shall be first checked by concerned J.E/AAE and only such meters shall be packed in cardboard box where theft of energy is suspected. Cardboard boxes shall be sealed and duly signed by concerned JE/AAE and the consumer/representative of the consumer. Testing of such meters should be done in the presence of the consumer or his representative. In case the consumer refuses to sign the meter test results/report such meter shall be kept sealed in the operation Sub-Divisions till final disposal of the case. In case of meters where theft of energy is not suspected by JE and the meter is sent to M.E. Lab without packing if theft of energy is detected later on pertaining to such meter then J.E concerned shall be held responsible.”

10. Further more, regulation 136.5.1 of Electricity Supply Regulations amended, *ibid*, is also relevant which is extracted herein below :

“ All the meters removed against any meter change order (MCO) shall be sent to M.E. Labs, in the sealed cardboard box duly signed by concerned P.S.E.B officers/officials and the consumer or his representative. In case the consumer refused to sign the meter test results/report, such meter shall be kept in the sealed box by the A.E./X.E.N (ops.) till the final disposal of the case. If the consumer deposits the compensation amount without going to the Dispute Settlement Committee or Civil Courts such sealed meter shall be returned to the M.E Lab. Similar procedure shall be adopted in case of meter sealed by the Enforcement Agency/Operation Organization in theft cases.”

11. Concededly, the regulation 64.7 read with 136.5.1, *ibid*, has not been complied with by the petitioner-PSPCL. Failure of compliance thereof would disentitle the petitioner-PSPCL to claim prima-facie establishment of direct theft. Having failed to proceed in accordance with law, the petitioner-corporation, therefore, has wrongly challenged before this Court the jurisdiction of Permanent Lok Adalat on the ground that being a case of direct theft, application under Section 22 (c) of the Act, was not maintainable.

12. In the circumstances, keeping in view my observations as noted above and the reasoning adopted by learned Permanent

Lok Adalat, I find no ground to interfere with the impugned Award passed by the Permanent Lok Adalat. The writ petition is accordingly dismissed with no order as to costs.

(ARUN MONGA)
JUDGE

JANUARY 16, 2019
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |