

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 30.06.2020

+ W.P.(C) No.7749/2016

TATA POWER DELHI DISTRIBUTION LIMITEDPetitioner
Through: Mr. Manish Srivastava &
Ms.Shivangi Krishna, Advs
versus

RAMPALRespondent
Through: Dr. L.S. Chaudhary, Mr.
Viresh Chaudhary, Mr. Parambir
Singh & Mr. Manoj Kumar
Bhagat, Advs.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The petitioner/Tata Power Delhi Distribution Limited is aggrieved by order dated 20.07.2016 made by the learned Permanent Lok Adalat in case No. EPLA-II/180/2016, whereby, while remanding the case as “unsettled” (sic) and giving opportunity to the respondent/Rampal to seek redressal of his grievance before the appropriate court or forum, the Presiding Officer has directed that the supply of electricity by the petitioner to the respondent shall not be disconnected for non-payment of misuse charges and penalties without due process of law. The petitioner is also aggrieved by the fact that in the impugned order the Presiding Officer has made certain adverse remarks against it and has directed that a copy of the order be circulated to various governmental authorities and senior officials. It is the petitioner’s contention that the impugned order has been made

by the Presiding Officer without jurisdiction and/or by exercising power and jurisdiction not vested in him by law.

2. It may be mentioned at the outset that the use of the words Presiding Officer, Lok Adalat and Permanent Lok Adalat in this judgement *are to be read subject to what is stated in the concluding paragraphs*, for the reason that regardless of the nomenclature given to the forum in the course of the proceedings leading upto to the present petition, the nomenclature used is, at places, inaccurate and incorrect in view of what has been clarified by the Supreme Court.

Petitioner's case :

3. The genesis of the matter is the disconnection of an electricity connection bearing CA No.60002943599 by the petitioner for alleged non-payment of about Rs. 8 lacs by the respondent towards dues for consumption of electricity. It is the petitioner's case that in view of the demand raised by it, *earlier-on* the respondent filed a case before the Lok Adalat for settlement of the dues; consequent whereupon, on 03.06.2015 the matter was mutually settled between the parties and it was agreed before the Lok Adalat that the respondent would pay to the petitioner Rs.6,08,910/- by 12.06.2015 in settlement of the amounts owed. It was further agreed between the parties that upon payment of the said amount, the petitioner would restore the electricity supply to the respondent. However, it would appear that the respondent failed to pay the agreed amount, and as a result, the petitioner did not restore the electricity supply. Thereafter the respondent filed civil suit bearing No.223/2015 before the Civil Judge, Rohini Courts, New Delhi in which, *vidé* order dated 21.07.2015, the Civil Court directed that the respondent's electricity connection be

restored subject to the respondent paying 50% of the total outstanding demand. However, yet again, the respondent failed to comply with the direction of the Civil Court and the respondent's electricity connection was therefore not restored.

4. Now, the respondent's electricity connection was disconnected on 26.05.2010 on account of non-payment of dues of about Rs. 8 lacs. However it is alleged that during an inspection conducted by it on 28.07.2015 the petitioner found that the respondent had unauthorisedly restored the electricity connection; by reason of which petitioner initiated proceedings under section 126 of the Electricity Act 2003 ("Electricity Act" for short) and raised upon the respondent a demand of about Rs.30 lacs on account of unauthorised use of electricity, including misuse charges and a late payment surcharge.

5. The respondent sought amicable settlement of this demand, without however challenging the bill raised; and made an application to the Delhi State Legal Services Authority (DSLISA) for settlement of the dispute. The application made was referred to, *what has been called*, Permanent Lok Adalat-II by way of case No.EPLA-II/180/2016 from which the present proceedings have arisen.

6. The petitioner points-out that the prayer made by the respondent in the application filed before the DSLISA was for *settlement* of his misuse demand and *not for adjudication* of the dispute. However, when the petitioner offered to waive 50% of the misuse penalty and late payment surcharge in settlement of the dispute, the offer was not accepted by the respondent; and therefore on 09.07.2016 the petitioner made a request that the matter be 'closed'.

7. It is the petitioner's contention that instead of closing the matter *simpliciter*, the Presiding Officer proceeded to record serious, adverse observations and remarks against the petitioner and also granted to the respondent interim relief by directing that the respondent's electricity connection be not disconnected for non-payment of misuse penalty without following the due process of law. The Presiding Officer also directed that a copy of the order be circulated to various governmental authorities and senior officials, which the petitioner contends was entirely without jurisdiction or authority of law.

8. In the above factual backdrop, the petitioner has raised the following legal issues for decision in the present proceedings under Articles 226 and 227 of the Constitution:

- (a) *Firstly*, the petitioner contends that the Lok Adalat was constituted *not* under the Legal Services Authorities Act 1987 ("LSA Act" for short) but under the directions issued by this court in ***Abul Hassan and National Legal Services Authority vs. Delhi Vidyut Board & Ors.***¹ : whereby it was directed that a *permanent and continuous* Lok Adalat be established only to facilitate settlement of disputes by mutual agreement between parties, *purely as a measure of conciliation* without the Lok Adalat having any adjudicatory powers;
- (b) *Secondly*, the petitioner contends that even assuming, while denying, that the Lok Adalat was set-up under the LSA Act, since the Lok Adalat in the present case was only a *one-member* body, the constitution of the Lok Adalat was not in accordance with law as section 22B(2)

¹ 77 (1999) ILR 1 Delhi 20

of that statute requires setting-up of a *three-member* Permanent Lok Adalat;

- (c) *Thirdly*, the petitioner contends that in view of section 22C(1) of the LSA Act, the Lok Adalat was barred from entertaining a matter relating to an offence which is not compoundable under any law; and in the present case the offence alleged was one under section 138 of the Electricity Act 2003 (“Electricity Act” for short), which invites imprisonment of upto 3 years or fine; which offence, *according to the petitioner*, is non-compoundable;
- (d) *Fourthly*, the petitioner contends that the Lok Adalat could not have entertained the dispute in view of section 22C of the LSA Act, as the property in dispute exceeds Rs.10 lacs, since the misuse demand raised upon the respondent was about Rs. 30 lacs ;
- (e) *Lastly*, the petitioner contends that the jurisdiction of the Lok Adalat was barred in view of section 145 of the Electricity Act which mandates that if the assessing officer (under section 126) or the appellate authority (under section 127) or the adjudicating officer is/are empowered to decide the dispute under the Electricity Act, then no Civil Court has jurisdiction to entertain such dispute and no injunction can be granted in respect thereof.

9. It is the petitioner’s contention that for all the above reasons, the Presiding Officer ought not to have entertained the matter in the first place; and having entertained the matter, the Presiding Officer could in any case not have made the offending observations and remarks, nor could he have granted any interim relief to the respondent, especially since the Presiding Officer was referring the respondent to get his grievances adjudicated before an appropriate

court or forum. The petitioner contends that once settlement had failed, the Presiding Officer could only have ‘closed’ the matter.

10. It may be mentioned for completeness that by order dated 01.09.2016 made in these proceedings, the operation of impugned order dated 20.07.2016 was stayed; and subsequently, on the respondent offering to pay the outstanding principal consumption charges excluding late payment surcharge, with the petitioner’s consent, the respondent’s electricity connection was directed to be restored. At that stage the matter was also referred for possible settlement to the Delhi High Court Mediation & Conciliation Centre. It transpired however, that settlement proceedings before the Mediation Centre failed and the matter was closed as being a “non-starter” *vidé* Mediator’s report dated 16.01.2017. It also transpired that the respondent did not pay even the principal consumption charges of about Rs.7.60 lacs; and so the respondent’s electricity connection was not restored.

11. It would be appropriate at this stage to extract the portions of the impugned order, as referred to by the petitioner, which set-out the discussion and reasoning :

“3. This is yet another case that brings to the fore the sad state of affairs which comes to resolving and settling disputes between the consumers of Electricity and the monopolistic distribution company when some officials of the company indulge in raising bills in utter violation of legal provisions having cascading effect on similarly situated consumers. If the petitioner is coerced to settle this prima facie, illegal demand, the respondent would be encouraged to levy such demands against other customers who might be suspected of illegally restoring electric supply.

In May and June 2012, I was officiating the work of respondent Distribution Company in the absence of regular

Presiding Officer. To my utter surprise, I had found that the respondent was levying illegal charges by including additional consumption security and service line charges among other charges in the alleged theft bills on the difference of sanctioned load and connected load allegedly found during inspection as no such levies were included by BSES RPL and BSES YPL in their theft bills whose cases used to be dealt by me as Presiding Officer of PLA-II.

When I asked AGM, Sh. Sharma, whether such levies should not be stopped, he insisted that the respondent Distribution Company was legally entitled to levy such charges. I was therefore, constrained to pass a detailed order in the last week of June 2012 after hearing submission of Sh. Sharma who had also submitted lengthy written response, seeking response of the CEO of the respondent company and had sent the copies of my order to the Secretary, DSLSA, Chairman of DERC and Principal Secretary (Power), Govt. of NCT of Delhi.

Thereafter, this illegal practice was stopped by the respondent company, after already realizing, it is alleged, several crores of rupees every month for a very long period. During May and June 2012, I had also noticed, another illegal practice of the respondent, who used to debit accounts of consumers with a penalty of Rs. 5,000/- to 10,000/- in case of alleged suspected illegal restoration of supply, by arrogating the power of prosecutor as well as a Magistrate because in such cases, the respondent acting as a complainant could only file criminal complaint u/s 138 of Electricity Act before Metropolitan Magistrate for a regular trial attracting maximum sentence of 3 (three) years of fine Rs. 10,000/- or both. This illegal practice was also stopped when I wished to pass a similar order.

Now, the respondent seems to have resorted to levy misuse penalty of about Rs. 10,00,000/- lacs in this case of suspected illegal restoration of Electricity although Section 138 of Electricity Act attracts maximum fine of Rs. 10,000/- only.”

(Emphasis supplied)

Referring to the foregoing portion of the impugned order, the petitioner points-out that the Presiding Officer has imported into the dispute at hand, what he says had transpired when he was presiding over the Lok Adalat in May and June 2012. The Presiding Officer has then based his order of 20.07.2016 on what is alleged to have happened in May and June 2012, which is wholly untenable.

12. The petitioner also points-out that in the impugned order the Presiding Officer records as follows :

“4. I will now discuss the case in hand. Section 12(6)(b)(ii) which has been relied upon by the respondent reads as under:

“Unauthorised use of Electricity means the usage of electricity by a means not authorised by the concerned person or authority or licensee.”

Sh. Sharma has not explained nor there is a whisper in the lengthy written response dated 16.03.2016 as what means not authorised by the respondent licensee were used by the petitioner in allegedly making unauthorised use of electricity.

Section 138 is the relevant provision of Electricity Act which applies on all fours to the facts of the present case.
The relevant provision of this action (sic) reads as under :

Section 138 (b) whoever unauthorisedly reconnects any meter with any electric line when the said electric line has been cut or disconnected shall be punishable with imprisonment for a term which may extend to 3 years or fine which may extend to Rs. 10,000/- or with both. This action can be initiated by filing criminal complaint before a competent court of criminal jurisdiction."

In view of the aforesaid discussion, even if it is assumed for the sake of argument that the supply has been unlawfully (sic) disconnected by the respondent on 26.05.2015 and it has been unlawfully and illegally restored by the petitioner for his tenant, the respondent could not

have invoked and resorted to Sec 126(6)(b)(ii) for making assessment by charging misuse penalty twice the amount payable on normal tariff. It is admitted case of the department that the petitioner had made payment of all the payable demand for the period under dispute.

5. I have been constrained to pass this order as repeated requests of the learned Counsel for the Petitioner to drop this illegal misuse penalty has not been acceded to despite several adjournments as the petitioner had already made payment of regular bills raised on the relevant tariff for the period in dispute.

The saddest irony is that in all of these cases, the Legal Department of the respondent has been represented by Shri D.P. Sharma AGM Legal who not only endorsed but had also vehemently justified these demands causing pecuniary loss to thousands of similarly placed poor consumers who have no means to withstand his unfair stand for settlement of their cases by taking a rigid stand "Accept his offer or leave".

Since there is no meeting ground between the parties. I have no option except to close the case.

The case is therefore, closed as unsettled (sic) with liberty to the petitioner to seek redressal of his grievances in any court/forum. However, supply of the petitioner's connection bearing CA No. 60002943599 shall not be disconnected for non-payment of these misuse penalties without due process of law."

(Emphasis supplied)

Based upon the foregoing paras of the impugned order, the petitioner argues that the Presiding Officer has evidently undertaken an exercise in *adjudication* by holding that section 138 of the Electricity Act is applicable to the facts of the present dispute. Furthermore, it is argued, that the Presiding Officer has also granted an interim order in favour of the respondent by directing that the respondent's electricity connection be not disconnected for non-

payment of misuse charges/penalties without due process of law ; though the law entitles the petitioner to disconnect electricity in the circumstances and for the wrongdoing committed by the respondent.

13. In support of its contention the petitioner has cited the following judicial precedents :

- (a) *Abul Hassan* (supra) : to argue that the Permanent Lok Adalat was not constituted under the LSA Act but in compliance of orders of this court in *Abul Hassan* whereby the court directed that Permanent Lok Adalats be set-up in view of the huge pendency of cases against State departments and agencies;
- (b) *State of Punjab & Anr. vs. Jalour Singh & Ors.*² : to contend that a Lok Adalat does not have any adjudicatory or judicial functions; and that an award made by a Lok Adalat is not an independent verdict arrived at by any decision-making process, but is merely an administrative act ;
- (c) *B.P. Moideen Sevamandir & Anr. vs. A.M. Kutty Hassan*³: to say that the non-adjudicatory role of the Lok Adalats has been reiterated by the Supreme Court and it has been held that a Lok Adalat cannot make any directions determining the rights/obligations/titles of parties if there is no settlement between them;
- (d) *Hindustan Lever Ltd. & Anr. vs. State Consumer Redressal Forum*⁴ : to contend that the principle laid down in this case, which would apply equally to the present matter, is that proceedings conducted in the absence of the President of the State Consumer Disputes

² (2008) 2 SCC 660

³ (2009) 2 SCC 198

⁴ (1996) 1 CALLT 254 (HC)

Redressal Commission would be contrary to the provisions of the Consumer Protection Act 1986 which mandates the presence of the President, and the proceedings and the order so passed would stand vitiated for that reason;

- (e) ***Competent Authority vs. Barangore Jute Factory & Ors.***⁵ : to urge that where a statute requires a particular act to be done in a particular manner, it must be done in that manner alone. In *Barangore Jute Factory*, the court held a notification issued under section 3A of the National Highways Act 1956 to be illegal for not specifying the land sought to be acquired as per the mandate of the relevant section;
- (f) ***Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors.***⁶ : to further contend that where a statute vests certain power in an authority to be exercised in a particular manner, such power has to be exercised only in the manner specified. In *Anjum M.H. Ghaswala*, the court held that a Settlement Commission constituted under section 245-D of the Income Tax Act 1961 does not have the power to reduce or waive interest under the procedural provision contained in section 245-D(6) of the statute;
- (g) ***Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO) & Anr. vs. Sri Seetaram Rice Mill***⁷ : to urge that in a case where Article 226 of the Constitution was invoked against issuance of notice under section 126 of the Electricity Act, the Supreme Court has held that while the High Court may exercise its extraordinary jurisdiction to decide

⁵ (2005) 13 SCC 477

⁶ AIR 2001 SC 3868

⁷ (2012) 2 SCC 108

jurisdictional issues, it ought not to decide the merits of the matter, which should be remanded to the competent authority for adjudication.

The case law cited by the petitioner is discussed below in this judgement.

Respondent's case :

14. On the other hand, the respondent has canvassed the following case before this court:

- (a) *Firstly*, it is the respondent's contention that the Presiding Officer has not decided anything on merits; and if the petitioner was aggrieved by the observations made against it in the impugned order, the petitioner could have sought expunging of such observations instead of asking for the impugned order to be set-aside in its entirety;
- (b) *Secondly*, it is the respondent's contention that under section 22C(8) of the LSA Act a Permanent Lok Adalat can indeed 'decide' a matter on merits in accordance with the procedure provided under section 22D. It is contended that an award rendered by a Permanent Lok Adalat is final and binding on the parties, whether the award is the result of a settlement or an adjudication on merits as contemplated under section 22E of the LSA Act;
- (c) *Thirdly*, it is the respondent's contention that there is a difference between a Lok Adalat set-up under section 19 of the LSA Act and a Permanent Lok Adalat set-up under section 22B(1) of the LSA Act inasmuch as a Permanent Lok Adalat is an adjudicatory body which can decide a dispute on merits if the parties fail to reach an agreement by conciliation; whereas a Lok Adalat is only a conciliatory body with no powers of adjudication;

- (d) *Fourthly*, the respondent also contends, although referring to the merits, that the alleged action of the respondent, at most amounts to an offence under section 138 of the Electricity Act which attracts a fine of not more than Rs.10,000/- and that too after a full-dressed trial. The petitioner could therefore not have raised upon the respondent a demand to the tune of Rs. 32 lacs ;
- (e) *Lastly*, for completeness it may be recorded, that the respondent also states that in compliance of interim order dated 14.03.2016, he had deposited Rs.12 lacs for reconnection of his electricity, which however was not done by the petitioner.

15. In support of his contentions the respondent has cited the following case law :

- (a) ***Interglobe Aviation Ltd. vs. N. Satchidanand***⁸ : to contend that a Permanent Lok Adalat constituted under section 22B(1) should not be confused with a Lok Adalat organized under section 19; and that the former has both conciliatory and adjudicatory functions, having the power to decide a dispute if the parties fail to reach an agreement by conciliation;
- (b) ***Bar Council of India vs. Union of India***⁹ : whereby the Supreme Court has *inter-alia* upheld the power conferred on Permanent Lok Adalats under section 22C to adjudicate disputes where efforts at settlement between the parties fail.

The case law cited by the respondent is discussed below in this judgement.

⁸ (2011) 7 SCC 463

⁹ AIR 2012 SC 3246

Discussion and conclusions :

16. Based on the submissions made by the parties, the following questions arise for decision in the present proceedings:

- a. Whether the forum that rendered the impugned award was a 'permanent and continuous Lok Adalat' set-up in compliance of the directions issued by this court in the case of *Abul Hassan* (supra); *or* was it a 'Lok Adalat' set-up under section 19 of the LSA Act; *or* was it a 'Permanent Lok Adalat' set-up under section 22B of the LSA Act ?
- b. Depending upon the answer to question (a) above, is the impugned award within the ambit of the power and authority vested in the forum ?

17. The relevant statutory provisions which are required to be considered to answer the above questions are the following :

Provisions of the Legal Services Authorities Act 1987 :

"Section 19 - Organization of Lok Adalats

*(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee **may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.***

*(2) **Every Lok Adalat organised for an area shall consist of such number of :-***

*(a) **Serving or retired judicial officers and***

*(b) **Other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalats.***

*(3) **The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.***

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of :-

(i) Any case pending before or

(ii) Any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

“Section 22B. Establishment of Permanent Lok Adalats

x x x x x

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of :-

(a) A person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat and

(b) Two other persons having adequate experience in public utility services to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be prescribed by the Central Government."

“Section 22C. Cognizance of cases by Permanent Lok Adalat

(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute;

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law;

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees;

Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

x x x x x

*(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does **not** relate to any offence, **decide the dispute.***

“Section 22D. Procedure of Permanent Lok Adalat

The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit (sic, merits) under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.”

“Section 22E. Award of Permanent Lok Adalat to be Final

(1) Every award of the Permanent Lok Adalat under this Act made either on merits (sic, merits) or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a Civil Court.

(3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings.

(5) The Permanent Lok Adalat may transmit any award made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the order as if it were a decree made by that court.”

(Emphasis supplied)

Provisions of the Electricity Act 2003 :

“Section 138-Interference with meters or works of licensee.

(1) Whoever,

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is

supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or.

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering,

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

“145. Civil court not to have jurisdiction.-

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(Emphasis supplied)

Discussion & Conclusions

18. While this court has consciously been using the term ‘forum’ to refer to the body that has passed the impugned order, it is necessary

at this point to decide the true nature of such forum, namely as to whether the forum was a ‘permanent and continuous Lok Adalat’ set-up in compliance of the directions issued by this court in the case of *Abul Hassan* (supra); or was it a ‘Lok Adalat’ set-up under section 19 of the LSA Act; or was it a ‘Permanent Lok Adalat’ set-up under section 22B of the LSA Act.

19. In *Abul Hassan* (supra) cited by the petitioner, a single Judge of this court had expressed the dire need for setting-up Lok Adalats to address the huge pendency of cases relating *inter-alia* to public utility services and had directed as follows (para numbers as in the ILR Delhi report):

“3. ... It was in this context that the Parliament enacted the Legal Services Authority Act 1987 (sic). One of the aims of the act is to organise Lok Adalats to secure that the operation of legal system promotes justice on the basis of an equal opportunity. The Act gives statutory recognition to the resolution of disputes by compromise and settlement by the Lok Adalats. The concept has been gathered from system of Panchayats which has roots in the history and culture of this country. It has a native flavour known to the people. The provisions of the Act based on indigenous concept are meant to supplement the Court system. They will go a long way in resolving disputes at almost no cost to the litigants and with minimum delay. At the same time the Act is not meant to replace and supplant Court system. The Act is a legislative attempt to decongest the Courts of heavy burden of cases.”

x x x x x

“13. Already a lot of precious time has been lost in the implementation of the Act. It was in October, 1987 that the Act was enacted by the Parliament with a view to creating legal authorities and establishing Lok Adalats and ensuring that the people of India receive expeditious justice on the basis of equality. Despite the urgent need to take steps to remove clogging of cases in Courts, the Act was not enforced for almost eight years after its enactment. It was only on November 9, 1995 the provisions of the Act except Chapter III relating to setting up of Legal Services Authorities were extended to all States

and Union Territories. Chapter III, however, was enforced in eleven States and one Union Territory during the period November, 1995 to September, 1996. Since the remaining States and Union Territories failed to enforce and implement the provisions of chapter III, the Supreme Court in **Supreme Court Legal Aid Committee v. Union of India and Others**, JT 1998 (6) 645 = III (1998) SLT 658 (SC) and **Supreme Court Legal Services Committee v. Union of India and Others**, JT 1998 (4) 320 = X (1998) SLT 214 (SC), intervened in the matter in passed directions for enforcing and implementing the Act. Even today despite such a heavy backlog of cases there are certain quarters who are still not willing to make use of the provisions of the Act. It appears that the misgivings of the DDA and MTNL in regard to the setting up of permanent Lok Adalats must be ignored. It is in the interest of the citizens of India that permanent Lok Adalats are established and held continuously so that the purpose for which the Act was enacted could be achieved. It appears to me that unless permanent and continuous Lok Adalats are set up, it may not be possible to reduce the pendency in Courts. Besides, the solitary appearance of parties before a Lok Adalat which is organised for a day or two may not be adequate for arriving at a compromise or settlement. The need of the hour is frantically beckoning for setting up Lok Adalats on permanent and continuous basis.”

x x x x x x

“16. The need to establish permanent and continuous Lok Adalat(s) and to resort to alternative dispute resolution mechanism cannot be overlooked. The Lok Adalat and alternative dispute resolution experiment must succeed otherwise the consequence for an overburdened court system would be disastrous. The system needs to inhale the life giving oxygen of justice through the Lok Adalats.

“17. In the circumstances, therefore, it is directed that permanent Lok Adalats shall be set up in the Delhi Administration, Delhi Development Authority, Mahanagar Telephone Nigam Limited, Municipal Corporation of Delhi, New Delhi Municipal Committee, General Insurance Corporation of India by the Delhi State Legal Services Authority within a period of four weeks. It is further directed that these Lok Adalats shall meet at such intervals as may be dictated by the necessity to hold the same according to the workload. However, to start with Lok Adalats in the Delhi Administration, D.D.A., M.T.N.L., M.C.D., N.D.M.C. and the G.I.C. can be held twice a week. In case of D.V.B. the Lok Adalat shall be held five days a week in view of the

large number of cases which are pending in various courts. The D.V.B. shall comply with the order dated October 15, 1998 and subsequent orders. Each of the above said organisations shall provide adequate and proper infrastructure for holding the Lok Adalats. Affidavits in compliance shall be filed by the Delhi State Legal Services Authority, Delhi Administration, D.V.B., D.D.A., M.T.N.L., M.C.D., N.D.M.C. and the G.I.C.”

(Emphasis supplied)

20. A meaningful reading of the aforesaid judgement shows that the directions issued by the single Judge of this court in *Abul Hassan* (supra) for establishment of “*permanent and continuous Lok Adalat(s)*” were in fact by way of implementation of the LSA Act which, as the single Judge observed, though enacted in October 1987 was not implemented at least till November 1995; and thereafter the Supreme Court was constrained to issue directions for enforcement and implementation of the LSA Act in ***Supreme Court Legal Services Committee vs. Union of India & Ors.*** : AIR 1998 SC 2940 and in ***Supreme Court Legal Aid Committee vs. Union of India & Ors.*** : (1998) 5 SCC 762. Accordingly the directions for setting-up of Lok Adalats in *Abul Hassan* (supra) were required to be implemented *in accordance with* the provisions of the LSA Act *and not de-hors* that statute.

21. In *Interglobe Aviation Ltd.* (supra) the Supreme Court has explained the essential nature of the proceedings before a Permanent Lok Adalat, and the difference between a *Lok Adalat* and a *Permanent Lok Adalat* in the following words:

“27. The nature of proceedings before the Permanent Lok Adalat is initially a conciliation which is non-adjudicatory in nature. Only if the parties fail to reach an agreement by conciliation, the Permanent Lok Adalat mutates into an adjudicatory body, by deciding the dispute. In short, the procedure adopted by the Permanent Lok Adalats is what is popularly known as “CON-ARB” (that is, “conciliation-cum-

arbitration”) in the United States, where the parties can approach a neutral third party or authority for conciliation and if the conciliation fails, authorise such neutral third party or authority to decide the dispute itself, such decision being final and binding. The concept of “CON-ARB” before a Permanent Lok Adalat is completely different from the concept of judicial adjudication by the courts governed by the Code of Civil Procedure. The Permanent Lok Adalat not being a “court”, the provision in the contract relating to exclusivity of jurisdiction of courts at Delhi will not apply.

x x x x x

“32. We may also at this juncture refer to the confusion caused on account of the term Permanent Lok Adalat being used to describe **two different types of Lok Adalats**. The LSA Act refers to two types of Lok Adalats. The first is a **Lok Adalat constituted under Section 19** of the Act which has no adjudicatory functions or powers and which discharges purely conciliatory functions. The **second is a Permanent Lok Adalat established under Section 22-B(1)** of the LSA Act to exercise jurisdiction in respect of public utility services, having both conciliatory and adjudicatory functions. The expression “Permanent Lok Adalat” should refer only to Permanent Lok Adalats established under Section 22-B(1) of the LSA Act and not to the Lok Adalats constituted under Section 19. However, in many States, when Lok Adalats are constituted under Section 19 of the LSA Act for regular or continuous sittings (as contrasted from periodical sittings), they are also called as Permanent Lok Adalats even though they do not have adjudicatory functions.

“33. In LIC v. Suresh Kumar this Court observed:

“It is needless to state that Permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed.”

The said decision refers to such a “Permanent Lok Adalat” organised under Section 19 of the Act and should not be confused with Permanent Lok Adalats constituted under Section 22-B(1) of the Act. To **avoid confusion**, the State Legal Services Authorities and the High Courts may ensure that Lok Adalats **other than the Permanent Lok Adalats established under Section 22-B(1)** of the Act in regard to public utility services, are not described as Permanent Lok Adalats. One way of avoiding the confusion is to refer to the Lok Adalats constituted under Section 19 of the Act on a regular or permanent basis as “Continuous Lok Adalats”. Be that as it may.”

(Emphasis supplied)

22. In its verdict in *Bar Council of India* (supra) the Supreme Court has further considered the adjudicatory powers of the Permanent Lok Adalat in the following words:

“19. Sub-section (3) of Section 22-C provides for the procedure to be followed by the Permanent Lok Adalat once an application is made before it by any party to a dispute under sub-section (1). This procedure includes filing of a written statement by each party to the application stating therein the facts and nature of the dispute and highlighting the points or issues in such dispute and the documents and other evidence in support of their respective written statement and exchange of copy of such written statement together with copy of documents/other evidence. The Permanent Lok Adalat may require any party to the application to file additional statement before it at any stage of the conciliation proceedings. Any document or statement received by Permanent Lok Adalat from any party to the application is given to the other party. On completion of the above procedure, the Permanent Lok Adalat proceeds with conciliation proceedings between the parties to the application under sub-section (4) of Section 22-C. During conduct of the conciliation proceedings under sub-section (4) of Section 22-C, the Permanent Lok Adalat is obliged to assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner. Every party to the application has a duty to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

x x x x x

“22. Chapter VI-A inserted by the 2002 Amendment Act in the 1987 Act, as its title suggests, provides for pre-litigation conciliation and settlement procedure. The disputes relating to public utility service like transport service for carriage of passengers or goods by air, road or water or postal, telegraph or telephone service or supply of power, light or water or public conservancy system or sanitation or service in hospital or dispensary or insurance service, etc., in the very scheme of things deserve to be settled expeditiously. Prolonged dispute in respect of the above matters between the service provider and an aggrieved party may result in irretrievable damage to either party to the dispute. Today, with increasing number of cases, the judicial courts are not able to cope with the heavy burden of inflow of cases and the matters coming before them. The disputes in relation to public utility service need urgent attention with focus on their resolution at the threshold by conciliation and settlement and if for any reason such effort fails, then to have such disputes adjudicated through an appropriate mechanism as early as may be possible. With large population in the country and

many public utility services being provided by various service providers, the disputes in relation to these services are not infrequent between the service providers and common man. Slow motion procedures in the judicial courts are not conducive for adjudication of disputes relating to public utility service.”

(Emphasis supplied)

23. On the other hand, in its verdict in *Jalour Singh* (supra) and in *B.P. Moideen Sevamandir* (supra), as cited by the petitioner, when the Supreme Court holds that the Lok Adalat has *no adjudicatory or judicial function* and its function relates purely to *conciliation*, that is with reference *only* to Lok Adalats organised under section 19 and *not* to *Permanent Lok Adalats* constituted under section 22B of the LSA Act. It is in the context of Lok Adalats that the Supreme Court has also held that the “award” of the Lok Adalat is not an independent verdict or opinion arrived at by any decision-making process; and the making of such award is merely an *administrative act* of incorporating the terms agreed by the parties in the presence of the Lok Adalat in the form of an executable order under the signatures and seal of the Lok Adalat. The relevant extracts of *B.P. Moideen Sevamandir* which refer to the earlier decision in *Jalour Singh*, that make this clear, are :

“7. It is unfortunate that the learned members of the Lok Adalat and the learned Single Judge totally lost sight of the purpose and scope of Lok Adalats. We may conveniently recall what this Court has said about the scope of Lok Adalats (after referring to the relevant provisions of the Legal Services Authorities Act, 1987), in State of Punjab v. Jalour Singh: (SCC p. 665, para 8)

“8. It is evident from the said provisions that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by

making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to ‘hear’ parties to adjudicate cases as a court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by principles of justice, equity and fair play. When the Legal Services Authorities Act refers to ‘determination’ by the Lok Adalat and ‘award’ by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The ‘award’ of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.”

“8. When a case is referred to the Lok Adalat for settlement, two courses are open to it: (a) if a compromise or a settlement is arrived at between the parties, to make an award, incorporating such compromise or settlement (which when signed by the parties and countersigned by the members of the Lok Adalat, has the force of a decree); or (b) if there is no compromise or settlement, to return the record with a failure report to the court. There can be no third hybrid order by the Lok Adalat containing directions to the parties by way of final decision, with a further direction to the parties to settle the case in terms of such directions. In fact, there cannot be an “award” when there is no settlement. Nor can there be any “directions” by the Lok Adalat determining the rights/obligations/title of parties, when there is no settlement. The settlement should precede the award and not vice versa.”

x x x x x

“10. Although the members of Lok Adalats have been doing a commendable job, sometimes they tend to act as Judges, forgetting that while functioning as members of Lok Adalats, they are only statutory

conciliators and have no judicial role. Any overbearing attitude on their part, or any attempt by them to pressurise or coerce parties to settle matters before the Lok Adalat (by implying that if the litigant does not agree for settlement before the Lok Adalat, his case will be prejudiced when heard in court), will bring disrepute to Lok Adalats as an alternative dispute resolution process (for short “ADR process”) and will also tend to bring down the trust and confidence of the public in the judiciary.”

x x x x x

“14. The Lok Adalats should also desist from the temptation of finding fault with any particular litigant, or making a record of the conduct of any litigant during the negotiations, in their failure report submitted to the court, lest it should prejudice the mind of the court while hearing the case. For instance, the observation in the failure report dated 3-4-2008 of the Lok Adalat in this case (extracted in para 3 above) that there is no chance of settlement on account of the “nature of demands made by the appellants”, implied that such demands by the appellant were unreasonable. This apparently affected the mind of the learned Single Judge who assumed that the appellants were cantankerous, when the second appeal and application for restoration came up for hearing before the court.”

x x x x x

“17. When a case is to be heard and decided on merits by a court, the conduct of the party before the Lok Adalat or other ADR fora, howsoever stubborn or unreasonable, is totally irrelevant. A court should not permit any prejudice to creep into its judicial mind, on account of what it perceives as unreasonable conduct of a litigant before the Lok Adalat. Nor can its judgment be “affected” by the cantankerous conduct of a litigant. It cannot carry “ill will” against a litigant, because he did not settle his case. It is needless to remind the oath of office, which a Judge takes when assuming office. He is required to perform his duties without fear or favour, affection or ill will. Any settlement before the Lok Adalat should be voluntary. No party can be punished for failing to reach the settlement before the Lok Adalat.

“18. Section 20(5) of the Act statutorily recognises the right of a party whose case is not settled before the Lok Adalat to have his case continued before the court and have a decision on merits.”

(Emphasis supplied)

24. The petitioner has also pointed-out that a Constitution Bench of the Supreme Court in *Anjum M.H. Ghaswala* (supra) has re-affirmed the settled principle that when a statute vests a certain power in an authority, such power must be exercised only in the manner provided. In this case the Supreme Court was seized of the question of whether the Settlement Commission constituted under section 245-B of the Income Tax Act 1961 has the jurisdiction to reduce or waive the interest chargeable under certain provisions of the Income-Tax Act while passing an order of settlement under section 245-D(4) of that statute. In this context, the Constitution Bench reiterated the well-worn principle of construction of a statute in the following words :

“27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119.”

(Emphasis supplied)

and upon this established legal principle, the Supreme Court held that the Settlement Commission did not have the power to reduce or waive interest payable under the provisions of the IT Act except to

the extent of granting relief under the circulars issued by the Central Board for Direct Taxes.

25. Reliance placed by the petitioner on the decision of the Supreme Court in *Barangore Jute Factory* (supra) also commends itself for acceptance. It is a well-settled legal position that when a statute provides that something is to be done in a particular manner, the same *must be done in that manner alone and not otherwise*. In para 5 of *Barangore Jute Factory* (supra) the Supreme Court has held as under :

“ It is settled law that when a statute requires a particular act to be done in a particular manner, the act has to be done in that matter alone. Every word of the statute has to be given its due meaning. ”

26. Insofar as the issue of quorum is concerned, this court also accepts the view taken by the Calcutta High Court in *Hindustan Lever Ltd.* (supra) in which, while dealing with proceedings under the Consumer Protection Act 1986, the High Court has held that no proceedings before the State Commission or District Forum can be conducted in the absence of the President; and that the number of Members required under section 14 of the Consumer Protection Act is mandatory. In the present case it is seen that while section 22B(2) of the LSA Act conceives of a Permanent Lok Adalat as a 3-member forum, the forum that has rendered the impugned order was a one-member body, which therefore does not pass muster as a Permanent Lok Adalat under the statutory provision.

27. Section 22C provides that if parties fail to reach an agreement, a Permanent Lok Adalat may decide the dispute. But the first proviso to section 22C(1) to the LSA Act also says that a

Permanent Lok Adalat does not have jurisdiction in respect of a matter relating to a non-compoundable offence; and the second proviso to section 22C(1) stipulates that a Permanent Lok Adalat does not have jurisdiction if the value of the matter in dispute exceeds Rs.10 lacs.

28. Now, from a reading of section 138 of the Electricity Act, the wrongful act alleged falls within the mischief of section 138(1)(b) of the Electricity Act and attracts imprisonment for a term upto 3 years or fine upto Rs.10,000/-. In order dated 22.01.2018 made in Criminal Appeal No. 156 of 2018 titled **Suresh Ganpati Halvankar vs. The State of Maharashtra & Ors.**, the Supreme Court has held that the *offence under section 138 of the Electricity Act is a compoundable offence* in the following words :

"It will be seen that both Sections 135 and 138, which impose a maximum sentence of three years, both deal with theft of electricity. The High Court has taken a very narrow view of Section 152 by stating that an offence of theft is related stricto sensu to Section 135 since that section alone deals with the offence of theft, but would not specifically refer to Section 138 which only indirectly relates to the offence of theft. Both the respondent as well as the petitioner before us have moved the High Court stating that Section 138 would also be so subsumed and have continued to argue the same position before us. We are of the view that this is correct in law inasmuch as the language of Section 152 specifically states "an offence of theft" which according to Stroud's Judicial Dictionary, as well as Ramanatha Iyer's Law Lexicon, states that one meaning of 'an' is 'any'. If the word 'any' is substituted for the word 'an' in Section 152, it becomes clear that any offence relating to the theft of electricity is also within the ken of Section 152. Section 138 also relates to theft of electricity, be it through maliciously injuring meters, and is therefore also within Section 152, and can therefore be compounded.

(Emphasis supplied)

Accordingly there is no merit in the petitioner's contention that the allegation against the respondent amounts to a non-compoundable offence. Therefore the statutory bar under the first proviso to section 22C(1) *does not apply* in the present case.

29. However, the petitioner had raised upon the respondent a demand towards unauthorised use of electricity, including misuse charges and late payment surcharge, in the sum of about Rs. 30 lacs. In view of this, the statutory bar contained in the second proviso to section 22C(1) *does apply* ; and therefore the forum did not have jurisdiction to entertain the dispute between the petitioner and the respondent.

30. Besides, the provisions of section 145 of the Electricity Act also stand in the way of the forum having entertained the dispute. Since the case at hand relates to misuse of electricity, it is covered under section 126 of the Electricity Act. The dispute is therefore amenable to determination by the assessing officer under section 126, by the appellate authority under section 127 and by the adjudicating officer under section 143 of the Electricity Act, by reason of which even the jurisdiction of the Civil Court was barred under section 145. So the Presiding Officer could not have entertained the dispute and no injunction could have been granted.

31. Regardless of the above, it is evident from a perusal *inter-alia* of para 4 of the impugned order that the Presiding Officer has expressed his opinion on the merits of the dispute by observing that it is section 138 and not section 126(b)(ii) of the Electricity Act which

applies to the facts of the case. This also the Presiding Officer could not have done.

32. Furthermore, in *Sri Seetaram Rice Mill* (supra), while dealing with the scheme for redressal of grievances against an electricity utility company under sections 126 and 127 of the Electricity Act, the Supreme Court has said :

"87. Having dealt with and answered determinatively the questions framed in the judgment, we consider it necessary to precisely record the conclusions of our judgment which are as follows:

1. Wherever the consumer commits the breach of the terms of the Agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be "in blame and under liability" within the ambit and scope of Section 126 of the 2003 Act.

2. The expression "unauthorised use of electricity means" as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.

3. x x x x x x

4. Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India.

5. The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25-7-2009. However, the High Court transgressed its

jurisdictional limitations while travelling into the exclusive domain of the assessing officer relating to passing of an order of assessment and determining the factual controversy of the case.

6. The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the assessing authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law.”

(Emphasis supplied)

the purport of which observations is that if a dispute falls within section 126, even the High Court *should ordinarily not interfere* in exercise of its jurisdiction under Article 226 ; and if it decides to do so, it must not transgress the limits of its jurisdiction and should remand the matter to the assessing authority by directing the consumer to file objections before the assessing authority, after dealing with any jurisdictional issues. Clearly, once it is the mandate of the Supreme Court that even the High Court should forbear from exercising its extraordinary jurisdiction under Article 226 since there is a specific mechanism provided under sections 126 and 127 of the Electricity Act, there is no question that the Presiding Officer ought not to have entered upon the merits of the case, even *prima-facie* at initial stage, and ought not to have granted any interim relief to the respondent.

33. Once parties had failed to settle the matter amicably, it was impermissible for the Presiding Officer to have granted interim relief to the respondent, since that amounted to taking a *prima-facie* judicial view in the matter, which the forum could not have done in the light of section 22C(8) of the LSA Act.

34. In view of the above discussion this court is of the opinion that :

- a. *Firstly*, the forum that has rendered the impugned order is neither a Lok Adalat organised under section 19 nor a Permanent Lok Adalat constituted under section 22B of the LSA Act, since the statute requires a Lok Adalat or a Permanent Lok Adalat to be a multi-member body, as defined in sections 19 and 22B respectively, with the members having qualifications specified in those provisions;
- b. *Secondly*, even if the forum that has rendered the impugned order was set-up under the directions issued by this court in *Abul Hassan* (supra), that should have been done in accordance with the provisions of section 19 or section 22B of the LSA Act; and the forum should accordingly have had the composition and constitution as mandated by the statutory provisions, *which it did not*. It may be stated here that no material has been placed on record to show as to how, and in what manner the forum came to be set-up, either by way of a notification or direction of the State Government, and therefore it is not apparent from the record as to whether the forum was *intended* to be a Lok Adalat or a Permanent Lok Adalat;
- c. *Thirdly*, a Lok Adalat is only entrusted with conciliatory function and has no adjudicatory powers, and only a Permanent Lok Adalat could have entered upon an

adjudicatory role, if conciliation between the parties had failed;

- d. *Fourthly*, since the statute provides the mechanism to address the dispute at hand under the scheme of sections 126 and 127 of the Electricity Act, a Lok Adalat could not have entered upon any form of *adjudication* of the dispute and could not have granted any interim relief;
- e. *Lastly*, even if the forum was intended to be a Permanent Lok Adalat set-up under section 22B with the power to adjudicate, it could not have decided the dispute at hand since the quantum of the dispute was in excess of Rs. 10 lacs, which is the pecuniary threshold of the jurisdiction of a Permanent Lok Adalat as per section 22C of the LSA Act.

35. Insofar as the remarks and observations made by the Presiding Officer against the petitioner in the impugned order are concerned, this court is constrained to observe that the Presiding Officer was out of line in having made such adverse comments, especially since they were based upon his stated experience in *some other cases*, in some earlier tenure when he had dealt with electricity disputes. For one there is nothing on record, based on which the Presiding Officer could have made the comments; and moreover those who man tribunals and hold other similar quasi-judicial positions, must always ensure that the comments and observations they make in their orders are objective, well-founded, restrained and are based on the record of the concerned case; and do not take the colour of a tirade against one litigant or another, since such

observations can have serious repercussions and consequences. This has been stressed by the Supreme Court in *State of Uttar Pradesh vs. Mohd. Naim*¹⁰ in the following words:

*“11. ... If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is **evidence on record** bearing on that conduct, justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.”*

(Emphasis supplied)

36. As a *sequitur* to the above discussion and conclusions, impugned order dated 20.07.2016 is set-aside ; without however any order as to costs.

37. The respondent shall however be at liberty to approach the appropriate authority, to seek his remedy against the demand raised by the petitioner, in accordance with law. It is made clear that, if and

¹⁰ AIR 1964 SC 703

when, the dispute between the parties comes before any authority or court (whether in its civil or criminal jurisdiction, if and as may be maintainable), such authority or court will proceed to decide the dispute on its own merits and in accordance with law, without in any manner being influenced by the observations made by the Presiding Officer in the impugned order.

ANUP JAIRAM BHAMBHANI, J.

June 30, 2020/vk/uj