

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5073 of 2021

Date of Decision: 04.03.2021

Naveen Kumar

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. & another

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Naveen Kumar, Advocate
for Mr. Rahul Makkar, Advocate for the petitioner

Mr. Rajesh Gaur, Addl. A.G. Haryana for respondent No.1

ALKA SARIN, J.

Heard through video conferencing.

The present writ petition under Articles 226/227 of the Constitution of India is directed *inter alia* against the impugned order/award dated 24.12.2020 (Annexure P-5) passed by the Permanent Lok Adalat for Public Utility Services, Rohtak (hereinafter referred to as the 'Lok Adalat') whereby the petition (Annexure P-2) filed by the petitioner under Section 22C(1) of the Legal Services Authorities Act, 1987 (hereinafter referred to as the 'LSA Act') was partly allowed. Challenge is also made to the impugned order dated 11.01.2021 (Annexure P-9) whereby the petitioner's review application was rejected by the Lok Adalat.

The brief facts, relevant to the present *lis*, are that the petitioner is a consumer of electricity. In July 2018, the petitioner filed an application (Annexure P-2) before the Lok Adalat under Section 22C(1) of the LSA Act

raising disputes regarding his electricity connection and billing. Respondent No.1 filed its reply (Annexure P-3) to the said application. Thereafter, conciliation proceedings were undertaken by the Lok Adalat which did not bear fruit. On 16.03.2020 the Lok Adalat suggested the following terms of settlement for observations/consent of the parties :

“1. Whether the respondent is ready to overhaul the bills for the period 25.09.2007 to 23.02.2014 on the basis of average consumption & whether the petitioner accepts such overhauling of bills.

2. Whether the respondent is ready to exempt surcharge for the bills period 08.02.2016 and 13.04.2016 and adjust this surcharge amount in the final bill and whether the petitioner is ready to accept this term.”

Thereafter, the Lok Adalat passed the impugned order/award dated 24.12.2020 (Annexure P-5) partly allowing the application filed by the petitioner. The petitioner's counsel immediately filed an application (Annexure P-6) before the Lok Adalat seeking review of the order/award dated 24.12.2020 (Annexure P-5). Vide impugned order dated 11.01.2021 (Annexure P-9) the Lok Adalat dismissed the review application. Hence, the present writ petition.

Learned counsel for the petitioner has contended that on 24.12.2020 neither the petitioner nor his counsel were present before the Lok Adalat on which date the impugned order/award (Annexure P-5) was passed. In fact, it is contended, that the Lok Adalat functions from the premises of the District Legal Services Authority, Rohtak which remained closed for a few days in December 2020 as some staff of the District Legal Services

Authority, Rohtak were infected with Covid-19. Counsel for the petitioner submitted that on 24.12.2020 when the Clerk of the petitioner's counsel had visited the Lok Adalat to note the next date of hearing, he was asked to come on 28.12.2020 for that purpose. However, on 28.12.2020 the petitioner's counsel was surprised to learn that the case had been finally decided on 24.12.2020, without hearing the petitioner or his counsel. The petitioner's counsel immediately filed the application (Annexure P-6) before the Lok Adalat seeking review of the order/award dated 24.12.2020 (Annexure P-5) which application was supported by affidavits of the petitioner's counsel as well as his Clerk.

Since a copy of the writ petition was supplied in advance to respondent No.1 through email, Mr. Rajesh Gaur, Additional A.G. Haryana put in appearance on behalf of respondent No.1.

I have heard counsel for the parties. A perusal of the impugned order/award (Annexure P-5) reveals that on 16.03.2020 the Lok Adalat had suggested certain terms of settlement for observations/consent of the parties. As per the averments made in para 6 of the writ petition, the petitioner filed his observations dated 06.08.2020 (Annexure P-4) to the proposed terms of settlement and the observations by respondent No.1 were awaited. The impugned order/award (Annexure P-5) makes no mention about what transpired after the Lok Adalat suggested certain terms of settlement on 16.03.2020. The impugned order/award (Annexure P-5) does not even notice the observations (Annexure P-4) filed by the petitioner to the proposed terms of settlement suggested by the Lok Adalat. Section 22C(7) of the LSA Act provides that *“When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such*

proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned”. It is only where the parties fail to reach at a settlement that the Lok Adalat can decide the dispute on merits. In the present case on 16.03.2020, the Lok Adalat formulated the terms of a possible settlement, to which the petitioner filed his observations (Annexure P-4). However, there is nothing forthcoming in the impugned order/award (Annexure P-5) as to what happened thereafter – did the parties accept the suggested terms of settlement or they proposed certain modifications to it or they rejected it. After formulating the terms of a possible settlement on 16.03.2020, the Lok Adalat seemingly went on to decide the case on merits. Such an approach is against the provisions of Section 22C(8) of the LSA Act and goes against the spirit of enacting the LSA Act.

Further, the petitioner’s counsel in his affidavit filed with the application for review (Annexure P-6) very candidly stated that he had not come to the Lok Adalat on 24.12.2020 and had not addressed any arguments on 24.12.2020 and rather his Clerk had come to the Lok Adalat on 24.12.2020 to note the next date of hearing and was told to note the same as 28.12.2020 and that was when he learnt about the passing of the impugned order/award (Annexure P-5). The affidavit of the Clerk of the petitioner’s counsel is also to the same effect. There is no reason for this Court not to accept the contents of the said two affidavits, one of which is of an

Advocate, that on 24.12.2020 the petitioner's counsel had not come to the Lok Adalat and had not addressed any arguments. Counsel for the respondent No.1 was also unable to counter the averments made in the affidavits of the petitioner's counsel and his Clerk.

The impugned order/award (Annexure P-5) has been passed behind the backs of the petitioner as well as his counsel without affording to them a proper opportunity of hearing. The petitioner's counsel in his affidavit filed with the application for review (Annexure P-6) also submitted that his father was 75 years of age and he was coming to Court restrictively. The Court cannot shut its eyes to the fact that during the prevailing Covid-19 Pandemic appearance of lawyers and litigants before different Fora has been severely restricted. Not only must Justice be done, it must also be seen to be done. Deciding a case by marking the presence of a counsel or a party, when they were not actually present, is against our jurisprudence. Even Section 22D of the LSA Act provides that *"The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit 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 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872)"*. The narration above makes it patent that the impugned order/award Annexure P-5 has been passed in violation of the provisions of Section 22D of the LSA Act and is violative of the principle of *audi alteram partem* and thus cannot be sustained.

The impugned order/award dated 24.12.2020 (Annexure P-5) is, therefore, set aside. Consequently, the impugned order dated 11.01.2021 (Annexure P-9) passed on the review application is also set aside. The matter

is remitted to the Lok Adalat to decide the application (Annexure P-2) filed by the petitioner under Section 22C(1) of the LSA Act afresh, in accordance with law. Parties are directed to appear before the Lok Adalat for Public Utility Services, Rohtak on 01.04.2021.

The writ petition is allowed as indicated above.

(ALKA SARIN)
JUDGE

4th March, 2021
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO