203 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2989-2016
Date of Decision : April 19, 2022

M/s Goyal Rice Mill .... **Petitioner**

Versus

Lok Adalat and others .... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Kashish Garg, Advocate for the petitioner.

RAJ MOHAN SINGH J. (ORAL)

Petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of cererroi, quashing the impugned order dated 19.09.2015 passed by the Permanent Lok Adalat (Public Utility Services), Bathinder under Section 22(c) of the Legal Services Authority Act, 1987. The petitioner has also sought writ in the nature of mandamus directing the respondent nos.2 and 3 to refund the amount already deposited by the petitioner under protest.

In the month of July 2007, M/s Maa Saraswati Rice Mills applied for a new electricity connection under the LS category. The connection was installed after payment of necessary charges in the month of October, 2011, the aforesaid unit was sold to Guru Nanak Agro Foods. The vendee continued to avail electricity from the electricity connection in the name of M/s Maa Saraswati Rice Mills. The said electricity connection was never transferred in the name of Guru Nanak Agro Foods. Guru Nanak Agro foods made default in the making payments of electricity bills regularly. As a result of persistent default, the electric connection was disconnected in the month of December, 2013. The aforesaid Rice Mill was auctioned and purchased by the petitioner in auction conducted by the bank along with plant and machinery on as is where is basis. After purchasing the property, the petitioner applied for new electricity connection and deposited the requisite amount of Rs.2,24,710/- as security on 12.08.2014. On 04.09.2014, the respondent nos.2 and 3 issued a demand notice, raising a demand of Rs.8,46,800/- as service charges and extra wire charges. Bifurcation of the aforesaid amount was Rs.3,63,000/- towards service charges and Rs.4,83,800 towards extra wire charges. Since the petitioner was in dire need of electric connection, therefore, the petitioner deposited the aforesaid amount of Rs.8,46,800/- under protest on 10.09.2014. Thereafter, electric connection was given in the premises so purchased by the petitioner in the auction. On 24.12.2014, the petitioner laid challenge the aforesaid demand of Rs.8,46,800/- which was deposited under protest. The challenge was made before the Permanent Lok Adalat (Public Utility Services), Bathinda, by filing an application under Section 22(c) of the Legal Services Authority Act, 1987. The Permanent Lok Adalat, vide order dated 19.09.2015 dismissed the said application that is how the present writ petition came to be filed. Notice of motion was issued on 15.02.2016 to respondent nos.2 ad 3 only. In pursuance of the aforesaid notice, respondent nos.2 and 3 appeared through their counsel. Respondent nos.2 and 3 did not file reply and resultantly vide order dated 26.04.2017, their defence was struck off. On 05.02.2020, last opportunity was granted to the parties to address arguments.

A perusal of the record would show that there was no representation on behalf of the respondent nos.2 and 3 on 24.07.2019 as well as on 05.02.2020. Since there was no representation on behalf of the respondent nos.2 and 3 earlier and their defence was struck off, therefore, on the insistence of learned counsel for the petitioner, this Court has proceeded to hear the arguments of learned counsel for the petitioner.

Learned counsel for the petitioner submited that the petitioner is a bonafide purchaser having purchased the property in question in open auction free from all the incumbrances. Old wires laid at the instance of original owner are already in existence and the said infrastructure has not been uprooted by respondent nos.2 and 3 at the time of disconnection of the electricity connection. Circular dated 24.08.2011 issued by the Chief Engineer of respondent no.1 would apply in the present case when new power connection is going to be installed for which no recovery of charges as per rules can be insisted upon. The Department itself at the time of making estimate informed the Assistant Electrical Engineer (Administration), Sub Division, PSPCL, Nathana, and gave the history of the present case. Necessary relevant recycle of the history is reproduced herein as under:-

> *"PUNJAB STATE POWER CORPORATION LIMITED*
> *HISTORY:- This estimate has been prepared for connection to M/s Goyal Rice Mill (Dhelwa Road) Village Nathan A& A No.31647 dt. 22/8/14 under L.S. Category. The proposal of 11 KC L.S. Connection from Nathana City Feeder has been given. Its ADA No. is 31647 dated 22.8.14 and applicant demands 150 Kw Load. In this Estimation at Point 1, earlier one account LS/03 was running under the name of M/s Maa Saraswati Rice Mills Nathana, which had gone PDCO and point G to L one idle line of 1400 mt is available and 3/c XLPE cable 35 mm, 30 mt along with I/D and O/D Cable box 35 mm available be used. Estimate has been prepared after including the cost of new goods, transportation, labor charges and other expenses. Khata NO.LS-03 has be PDCO on 08.12.13."*

Evidently, the petitioner had applied for new power connection for which the respondent nos.2 and 3 have demanded deposit of Rs.8,46,800/- towards charges. Since, the petitioner was in dire need of electric connection, therefore, he had deposited the aforesaid amount under protest. The stand of the respondents is that consumer could not sell the power connection since the power connection is already existing in the name of original owner. There are arrears of electricity bills against the second transfree from original owner, therefore, with the change of the owner of the land, power connection cannot be transferred without there being clearance of the pending dues. Knowing fully well the aforesaid criteria, the Department-respondent nos.2 and 3 itself prepared demand notice vide memo no.5343, dated 29.08.2014, thereby demanding an amount of Rs.48,510/- under Head No.14.622. The aforesaid amount was towards estimated costs of installation after taking into consideration the infrastructure and the wiring already in existence.

Learned counsel for the petitioner submitted that recovery of charges cannot be insisted upon in view of the Circular dated 24.08.2011 as the present case relates to installation of new connection. As per letter dated 24.08.2011 issued by the Chief Engineer, directions were issued that no service wire and maintenance charges including augmentation and bifurcation were to be levied from the consumer since the service wires were already laid at the site in question. Laying of service wire and necessary infrastructure have been elaborately discussed in the history as reproduced in the preceding para.

No reply has been filed by respondent nos.2 and 3 nor has any argument come forth on behalf of respondent nos.2 and 3. Petitioner is ready and willing to pay the estimated amount of Rs.48,510/- as calculated vide memo dated 29.08.2014.

In view of the aforesaid position, learned counsel for the petitioner further relied upon Regulation No.6 read with Regulation Nos.9 and 19 to contend that fresh power connection can be made subject to fulfillment of requirements as shown in the demand notice. Regulation 9 relates to power to recover expenditure for which the petitioner is always ready and willing to pay the same as per the estimate prepared by the Department. Regulation 19.2 is also in the context of deposit of security against the expenditure for providing electric lines which will be estimated by the licensee as per Regulation 9 of the Regulation. The cumulative effect of the aforesaid Regulation and Rule shows that a specific demand notice has to be issued in relation to estimated cost of installation.

Evidently, the same was done vide memo dated

29.08.2014 having the history of the case viz. a viz. the point of old installation.

In the reply filed before the Permanent Lok Adalat, the stand of respondents no.2 and 3 was that no fresh wire for giving connection has been laid at the site.

In view of the aforesaid factual position, the claim laid by the petitioner before the Permanent Lok Adalat is a justified claim and the petitioner is entitled for refund of the aforesaid amount except the amount of Rs.48,510/- which was calculated towards the estimated cost of installation after considering the entire history of the case. The petitioner is ready to part with the aforesaid amount or the said amount can be deducted while making the refund of remaining amount in favour of the petitioner.

For the reasons recorded herein above, this petition is allowed. Respondent nos.2 and 3 are directed to refund the amount of Rs.7,98,290/-(Rs.8,46,800- Rs.48,510) to the petitioner within a period of two months from the date of receipt of certified copy of this order.

(RAJ MOHAN SINGH)
JUDGE

April 19, 2022
sarita
Whether speaking / reasoned Yes / No
Whether Reportable: Yes / No