

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-10726-2019 (O&M).
Date of Decision: 11.09.2023.

SUB DIVISIONAL OFFICER (SDO), ELECTRICITY OPERATIONS
'OP' SUB DIVISION NO.10, SECTOR 40, CHANDIGARH.

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Sukhmani T. Patwalia, Advocate,
Mr. Anil Kumar Sharma, Advocate and
Mr. Akshit Pathania, Advocate,
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the award dated 19.11.2018 (Annexure P-4) passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, in Application No.752 of 2018 titled as 'Surjit Singh Vs. SDO Electricity Operation.'

Briefly summarized, the facts of the case are that the petitioner is an authorized distribution licensee in the U.T. of Chandigarh. Different sites in Sector 39, Chandigarh were occupied by the security personnel working under ADGP, Security Punjab Police. The layout plan of the property, meant for security personnel and under occupation of the ADGP,

Security, Punjab has been attached as Annexure P-1. The electricity connections were checked and finding illegal connection being drawn, the petitioner, vide Electrical Checking Report (ECR), demanded the amount of compensation as per regulation No.10.5 of the Supply Code Regulations of 2010 notified by the Joint Electricity Regulatory Commission Chandigarh, and assessed as under:-

Sr. No.	ECR No.	Name and Address of Site	Amount charged	Remarks
1	9/585 dated 12.06.2012	ADGP, Security Minister House, Sector 39, Chandigarh.	4,49,453/-	Deposited
2	10/585 dated 12.06.2012	ADGP, Security Circuit House, Sector 39-A, Chandigarh.	42,71,006	Not deposited increased to Rs.62,53,179 by adding annual charge

The electricity connection bearing ECR NO.10/585 dated 12.06.2012 was found to be illegally extended to the security barracks adjoining Circuit House Building Sector 39, Chandigarh. The security personnel of Punjab Police were using the aforesaid illegal extension connections. Numerous notices were issued by the petitioner to the respondents on 13.06.2012, 16.07.2012, 18.08.2012, 19.11.2012 as well as on 21.05.2013 for making the payments. After the above said efforts, the respondents deposited only the amount as against ECR 9/585 but did not deposit the remaining amount, due to which the supply was disconnected. Finding it to be violation of the Electricity Laws and the Regulation framed thereunder, an assessment was made and the same was conveyed to the respondent ADGP, Security, Circuit House, Punjab. The above said communication was challenged by the ADGP, Security Circuit House

Punjab by filing complaint No.127/2016 before the Consumer Grievances Redressal Forum (hereinafter referred to as 'CGRF') Room No.531, 5th Floor, U.T. Secretariat Building, U.T. Chandigarh. The said complaint was dismissed by the CGRF vide order dated 10.11.2016 on the ground that the cases falling under Section 135 of the Electricity Act, 2003 do not fall under the purview of the CGRF as per the regulations.

Instead of preferring any appeal against the said order, the respondent filed the above said Application No.752 of 2018 before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh. The respondent moved an application for appointment of a Local Commissioner in the above application for determination of possession as it stood on the date of moving of the application. It was claimed by the respondent that the premises in question were not occupied by the Police Department and that there is nothing to establish the identity of the persons who occupied the said building or that they belonged to the Punjab Police.

While dealing with the aforesaid application relating to the appointment of a Local Commissioner, the Permanent Lok Adalat (Public Utility Services), U.T Chandigarh, decided the issue on merits and returned a finding that the proceedings for recovery of the amount due to theft is unsubstantiated and the same was set aside. The petition was ordered to have become infructuous. The relevant extract of the said order reads thus:-

“Application for appointment of Local Commissioner is considered. The petitioner has sought the appointment of Local Commissioner to know the factum of possession as it stands today for the disputed premises. According the petitioner it is not occupied by anybody much less than the police department.

Moreover, there is no identity established with respect to the persons who have occupied this building.

This case has emanated on the basis of raid conducted by the Electricity Department during which a Kundi connection was found feeding electricity, this department which is known as 'Security Barrack'. However, ADGP Security / Punjab has denied their possession over it. Also it has been stated by him in his reply to the petition that it was never allotted to the security wing of the Punjab Government. In order to establish the identity of the culprits or the persons responsible for this illegal act, an FIR should have been registered by the electricity department during investigation which would have established the liability for the commission of this offence which is defined under Section 379 of I.P.C.

The present proceedings are for recovery of the consumed amount of electricity but identity having not been established, no cause of action has arisen, against the present petitioner. Hence, the request of electricity department for recovery of the amount for consumed electricity from the petitioner is not substantiated. Hence, their claim of recovery is set aside. Therefore, the petition becomes infructuous. So, petition is dismissed.”

Aggrieved thereof, the present writ petition has been filed.

A short reply has been filed on behalf of respondents No.1 and 2 by way of affidavit of Paramdip S. Sandhu, PPS AIG, Security, Punjab wherein the order passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, was stated to have been rightly passed and it was averred that the building in question was never allotted to the security wing of the Punjab Police and it never remained under their possession and control. The security personnel had never been authorized by the competent

authority to the use and occupy the building and that in the absence of any official record/documents of use, occupation and possession of the premises by respondents, the office of the respondents could not have been held liable for the alleged misuse of the electricity at the said premises. It was further averred that the building in question was under the possession of Director, Hospitality Department, Punjab.

A replication to the above short reply was filed by the petitioner wherein it was pointed out that the respondents had initially submitted an application before the Chairman, CGRF, U.T. Chandigarh on 25.07.2016 for seeking waiver of bill/fine imposed by the Electricity Department, U.T. Chandigarh. It was averred therein that the possibility of some police personnel who may have come from Punjab on temporary law and order duty occupying the said building cannot be ruled out.

A detailed reply to the aforesaid application before the CGRF was submitted by the petitioner wherein it was pointed out that the security personnel of the VIPs' in the Circuit House used the electricity supply through kundi (extension) connections by providing PVC 2 C services wire and flexible copper wire and different colour with many LT Line. There are about 25 number of rooms and the security persons were residing therein. They used the electricity supply for ironing their clothes and daily chores. One canteen was also found running in the said premises. The assessment was duly conveyed to the respondents but the supply was not disconnected as it involved the security of the officials residing therein. The letter was accordingly sent to the AGDP, Security, Circuit House for payment of the amount as demanded. It was further averred that even though the building in question had not been allotted to the police employees, however the police

personnel were found using the said building and had also drawn electricity for maintaining their consumption. The question as to whether the building in question was allotted by the Government of Punjab to the Police Department is an internal matter, however, the occupation and possession of the said building was with the police personnel and therefore being the users of the energy, they are liable to pay the charges. The said application was eventually dismissed by the Consumer Grievances Redressal Forum. A similar application was thereafter filed by the petitioner before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh seeking a waiver of the said charge. The detailed reply was again submitted by the petitioners before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh. However, instead of deciding the same in a manner known to law, the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh passed an award in favour of the respondent-ADGP without following the process prescribed under Section 22 C (4) to (8) of the Legal Services Authorities Act, 1987.

Learned counsel appearing on behalf of the petitioner has vehemently argued that the action of the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh suffers from illegality, impropriety and procedural irregularity. The impugned order has been passed in an arbitrary and illegal manner. Instead of following the procedure prescribed under Section 22 C (4) to (7) of the Legal Services Authorities Act, 1987 and to thereafter proceed to adjudicate on the merits of the case, the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh preferred to decide the matter on the application seeking appointment of Local Commissioner and to set aside the demand claimed by the petitioner.

There was no occasion for the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh to pass a final order while dealing with the application for appointment of Local Commissioner.

She further argues that the procedural requirements are mandatory as per the judgment of the Hon'ble Supreme Court in the matter of **Canara Bank Vs. G.S.Jayaram, Civil Appeal No.3872 of 2022 decided on 19.05.2022** and that in the absence of following the said procedure, adjudication of issues brought before the Permanent Lok Adalat (Public Utility Services), cannot have been done. The relevant part of the judgment is extracted as under:-

“23 We must now address the first issue, i.e., whether the conciliation proceedings before the Permanent Lok Adalats are mandatory before it can decide a dispute on its merits.

24 This issue is clearly resolved from a bare reading of Section 22-C. Section 22- C provides a step-by-step scheme on how a matter is to proceed before the Permanent Lok Adalat. The first step is the filing of the application which ousts the jurisdiction of other civil courts, in accordance with sub-Sections (1) and (2). The second step is the parties filing requisite submissions and documents before the Permanent Lok Adalat, in accordance with sub-Section (3). On the completion of the third step to its satisfaction, the Permanent Lok Adalat can move to the fourth step of attempting conciliation between the parties, in accordance with sub-Sections (4), (5) and (6). Subsequently, in the fifth step in accordance with sub-Section (7), the Permanent Lok Adalat has to draw up terms of settlement on the basis of the conciliation proceedings, and propose them to the parties. If the parties agree, the Permanent Lok Adalat has to pass an award on the basis of the agreed upon terms of settlement.

Only if the parties fail to reach an agreement on the fifth step, can the Permanent Lok Adalat proceed to the final step and decide the dispute on its merits.

25 Such an interpretation is also supported by the decision of a two-Judge Bench of this Court in Bar Council of India (supra), where the constitutionality of Chapter VI-A of the LSA Act was upheld. Speaking for the Bench, Justice R M Lodha highlighted that the Permanent Lok Adalats would proceed to adjudication of a dispute on its merits only after attempting and failing to generate a settlement between the parties:-

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 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.

23. The Statement of Objects and Reasons itself spells out the salient features of Chapter VI-A. By bringing in this law, the litigation concerning public utility service is sought to be nipped in the bud by first affording the parties to such dispute an opportunity to settle their dispute through the endeavours of the Permanent Lok Adalat and if such effort fails then to have the dispute between the parties adjudicated through the decision of the Permanent Lok Adalat.

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26. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to Permanent Lok Adalats only if the process of conciliation and

settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat. It is for this reason that sub-section (1) of Section 22-C states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok PART C 24 Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat.”

(emphasis supplied)

26 The appellant’s argument, however, is that if the opposite party does not appear before the Permanent Lok Adalat, it can dispense with the conciliation proceedings and straightaway adjudicate the dispute under Section 22-C (8). We are unable to accept this submission. Even if the opposite party does not appear, the Permanent Lok Adalat is still bound to follow the step-by-step procedure laid down by Section 22-C. Under Section 22-C (3), it would require the party before it to file their submissions and documents, and make the best efforts to communicate them to the opposite party for their response. If it is satisfied that no response is forthcoming from the absent opposite party, the Permanent Lok Adalat shall still attempt to settle the dispute through settlement under Section 22-C (4). It is important to remember that Section 22-C (5) imposes a duty upon the Permanent Lok Adalat to be independent and impartial in attempting to amicably settle the dispute, while

Section 22-C (6) imposes a duty upon the party present before the Permanent Lok Adalat to cooperate in good faith and assist the Permanent Lok Adalat. Thereafter, the Permanent Lok Adalat, based on the materials before it, shall propose terms of settlement and communicate them to both parties, regardless of whether they participated in the proceedings. If the party present before the Permanent Lok Adalat does not agree or if the absent party does not respond in a sufficient period of time, only then can the Permanent Lok Adalat adjudicate the dispute on its merits under Section 22-C(8). Keeping in mind the principles enshrined in Section 22-D, the Permanent Lok Adalat shall once again notify the absent party of its decision to adjudicate the dispute on its merits, in case it wishes to join the proceedings at that stage.

27 Section 22-C (8) is amply clear that it only comes into effect once an agreement under Section 22-C (7) has failed. The corollary of this is that the proposed terms of settlement under Section 22-C (7), and the conciliation proceedings preceding it, are mandatory. If Permanent Lok Adalats are allowed to bypass this step just because a party is absent, it would be tantamount to deciding disputes on their merit ex parte and issuing awards which will be final, binding and will be deemed to be decrees of civil courts. This was simply not the intention of the Parliament when it introduced the LSA Amendment Act. Its main goal was still the conciliation and settlement of disputes in relation to public utilities, with a decision on merits always being the last resort. Therefore, we hold that conciliation proceedings under Section 22-C of the LSA Act are mandatory in nature.”

Counsel for the respondents, on the other hand, has argued that the building in question has been constructed by the PWD Department,

Government of Punjab and it was never allotted to the Police Department. There was thus a dispute with respect to the Department occupying the said premises and that they cannot be held liable to pay any energy consumption charges once there was no valid authorization/occupation of the premises in question. Reliance is again placed on the order passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, to contend that the reasons assigned by the Permanent Lok Adalat (Public Utility Services), cannot be said to be absurd or illegal.

I have heard the learned counsel for the respective parties and have gone through the documents available on record.

It is evident from a perusal of the same that after approaching the Consumer Grievances Redressal Forum and dismissal of the application by the Consumer Grievances Redressal Forum on the ground of maintainability, the respondent preferred the application before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh notwithstanding that there is an impediment contained under Section 22 C of the Legal Services Authorities Act, 1987, that a person can approach the the Permanent Lok Adalat (Public Utility Services) only before approaching any other "Court" as defined under Section 2 (aaa) of the Act of 1987.

The relevant provision of the Legal Services Authorities Act, 1987 are extracted as under:-

"22 C. 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 often lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section(1), it—

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section(3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of the every party to the application 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.

(7) 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.

(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.

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2. Definitions.—In this Act, unless the context otherwise requires,—

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(aaa) “Court” means a civil, criminal or revenue Court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial function.”

It is evident from a perusal of the above that jurisdiction of the Permanent Lok Adalat (Public Utility Services), can be invoked only before approaching any other “Court”. The prohibition ingrained in the Statute becomes applicable on approaching a Court and the language does not suggest final outcome by such Forum. Despite the same, the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh chose not to examine the legal issue that would have a bearing on the jurisdiction as also the maintainability of the proceedings before it especially when the record showed that it was seized of the said fact being part of reply.

Further, it is evident also from the provision that the procedure of conciliation before adjudication is mandatory and has to be followed. Non-adherence to the same would vitiate the award.

Surprisingly, the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, adopted a novel method of deciding the case. It was actually seized of the application for appointment of Local

Commissioner and it proceeded to return a finding on maintainability of the demand and set aside the same, even though the application of the respondents was disposed of as having become infructuous. Hence, a finding was returned against the action/demand by the petitioner, even while dismissing the application.

Surprisingly, the Permanent Lok Adalat (Public Utility Services), returned a finding about the premises not being occupied by respondents, even though the application for appointment of Local Commissioner was moved for determination of the said fact and the Local Commissioner was actually never appointed (there is no reference to any Local Commissioner appointed or report received). There was thus no basis for the Permanent Lok Adalat (Public Utility Services), to return any finding about occupation and possession of the building.

Thirdly, the jurisdiction of the Permanent Lok Adalat (Public Utility Services), is restricted under Section 22 A (b) to the Public Utility Services defined therein. In so far as the subject of “Electricity” is concerned, the jurisdiction is in relation to “supply of electricity” only and not on all issues relating to electricity. The dispute raised herein is about an assessment/demand on account of theft and wrongful extension of electricity. The dispute is thus prima facie not a dispute about supply of electricity.

Considering the order from any of the said perspectives, the impugned order fails to consider any of the said issues even though they were legal and were core for determination of the case by the Permanent Lok Adalat (Public Utility Services), .U.T. Chandigarh.

No merits have been discussed by the Permanent Lok Adalat (Public Utility Services).

It is also not reflected from a perusal of the said award that the mandatory procedure as enshrined under Section 22 C (4) to (7) of the Act of 1987 has been adhered to by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh. Evidently, the Award passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, suffers from non-compliance of the mandatory procedural requirements as prescribed and also from complete failure to appreciate the stand taken by the respective parties. An adjudicatory process requires the adjudicatory Forum to take into consideration all objections that had been raised and to deal with them in a judicious manner. Any abrupt conclusions drawn, without referring to the pleadings brought before it or the arguments advanced, is itself a travesty of justice.

The conclusions drawn by the Permanent Lok Adalat (Public Utility Services), are not borne out from the pleadings raised before the Permanent Lok Adalat (Public Utility Services) and are not compliant thereof and that in the absence thereof, the award would suffer from an illegality, impropriety, perversity and mis-appreciation of the evidence brought on record.

I fail to find myself in agreement with the arguments advanced by the learned State counsel or to come to a conclusion that the impugned award dated 19.11.2018 (Annexure P-4) has been passed after taking into consideration the statutory requirements and/or is guided by the principles of equity, objectivity, fairness, principals of natural justice and other

principles of justice. The impugned award dated 19.11.2018 (Annexure P-4) is thus liable to be set aside.

Accordingly, the present petition is allowed and the impugned order/award dated 19.11.2018 (Annexure P-4) passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, is set aside. The parties are at liberty to pursue their remedies in accordance with law.

September 11, 2023.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No