

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

201

**CWP-14367-2011 (O&M)
Date of Decision: 17.08.2023**

REKHA GROVER

... Petitioner

VERSUS

PSPC LTD AND OTHERS

... Respondents

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

Present: Mr. Sanjiv Gupta, Advocate and
Mr. Naveen Kumar, Advocate
for the petitioner.

Mr. Dhruv Walia, Advocate
for respondents No.1 and 2.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the assessment bearing Memo No.2225/ 13.07.2010 in furtherance of the provisional assessment vide memo dated 17.06.2010 as well as Award dated 02.06.2011 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana.

Briefly summarized, the case of the petitioner is that the property bearing description No.481/2A, Gali No.O, Janakpuri, Ludhiana was earlier owned by one Babu Ram and the same was transferred in favour of Mahender Kumar son of Bhagwan Dass vide registered sale deed. The above said property was thereafter gifted to the petitioner vide Gift Deed dated 27.01.2005. Even since then, the petitioner became the absolute owner and is in continuous possession of the said property. Electricity supply connection No.OS54/183 has been installed therein and the petitioner claims to be making

regular payment of all the bills/invoices raised with respect to the energy consumption. It is alleged that on 03.06.2010, the premises in question were inspected by the staff of the respondent/PSPCL and an excess load of 15.459 KWs was found to be running over and above the sanctioned load of 19.990 KWs. The provisional memos bearing No.1911 and 1912 dated 17.06.2010 was sent in the name of the owner reflected in the records of the respondents/PSPCL communicating the demand. It was averred that notwithstanding the objections raised by the petitioner, a final order of assessment raising a demand of Rs.8,26,955/- was served upon the petitioner. Aggrieved of the said assessment, the petitioner preferred an application before the Permanent Lok Adalat (Public Utility Services), Ludhiana under Section 22 (C) of the Legal Services Authorities, Act, 1987. The Permanent Lok Adalat (Public Utility Services), Ludhiana dismissed the application alongwith costs of Rs.1,000/- vide Award dated 02.06.2011. Aggrieved, thereof the present petition has been filed.

Written statement on behalf of the respondents was filed pursuant to the notice issued by this Court. It was pointed out that the premises in question were checked by the representatives/staff of the respondents/PSPCL on 03.06.2010 in the presence of the representative of the petitioner namely "Kamal", who had signed the said checking report and he had also received the copy of the same. The plea to the said effect taken in the writ petition was thus denied as false. It was further contended that even the checking at the ME lab on 15.06.2010 was conducted in the presence of Sushil Grover, who is husband of the petitioner which establishes that the petitioner was duly represented at the time of checking. It is also averred that the objection of the petitioner that

notices had been issued in the name of Babu Ram, who was the erstwhile owner of the premises in question, whereas the property in question had been gifted to her, is not tenable since the petitioner never sought transfer of the electricity connection in her name over the last five years despite being the owner of the property. Having stepped into the shoes of the earlier owner, it was obligatory on the part of the petitioner as per Regulation 11 to seek a transfer of the electricity connection in her name and that having chosen not to do the needful, she cannot now take benefit of her own lapse. Moreover, when representative of the petitioner was present on both occasions i.e. at the time of inspection as well as the checking in M.E. Lab, there is no loss or prejudice caused. It is also averred that the aforesaid account was having a sanctioned load of 19.990 KWs in the name of Babu Ram and that when the same was checked by the Addl. Superintending Engineer-III, Ludhiana, the actual load being used was 35.449 KWs. Out of the same, a load of 26.339 KWs was being used for industrial purpose and 09.110 KWs was being consumed for domestic purposes. Due opportunity of hearing was granted to the petitioner and that all the issues raised were duly considered by the Permanent Lok Adalat (Public Utility Services), Ludhiana and the application filed by the petitioner was rightly dismissed.

Counsel for the petitioner has argued that the petitioner was never associated at the stage of making the assessment and/or raising the demand and was also not served with any notice when the meter was inspected at the ME Lab. He submits that in view of the judgment of Division Bench in the matter of *M/s Tirupati Industries Vs. Punjab Electricity Board* reported (2000) 2 CCC 377, the petitioner was required to be given intimation of the proposed

testing of the meter in the ME Lab and that in the absence of such notice, the impugned order of assessment would be liable to be set aside. Reference was made to the Commercial Circular No.45, which envisages affording of opportunity to the consumer to remain present at the time of testing of the meter in ME Lab. It is, thus, argued that the order of assessment having been passed without affording of an opportunity, is liable to be set aside. The aforesaid defect has not been properly appreciated by the Permanent Lok Adalat (Public Utility Services), Ludhiana rendering the Award liable to be set aside.

Controverting the aforesaid submission, counsel for the respondent has argued that the submissions advanced by the petitioner are misconceived. Clause 11 of the Electricity Supply Code, 2007 stipulates that a consumer of all categories is under an obligation for seeking transfer of title/change of the category by submitting an application alongwith the prescribed document and on payment of the requisite fee. He thus contends that the petitioner herself committed a default in not seeking a change/transfer of the electricity connection despite being aware of the regulations. He further submits that as per Regulation 36 of the aforesaid Electricity Supply Code of 2007 Sub-Clause (P) stipulates that the inspection report is required to be signed by the Assessing Officer and a copy of the same has to be handed over to the person/consumer or his/her representative present at the site. The aforesaid procedural requirement was duly complied with and the inspection report was handed over to one 'Kamal', the representative of the petitioner who was present at the site. Hence, the procedural requirement of handing over a copy of the inspection report stood complied with. It is further argued that

before final assessment, the procedure as stipulated under Regulation 36.2 of the Code of 2007 was also followed. It is submitted that a person, who is aggrieved of an order of provisional assessment, may file objections and that the same shall be decided after providing an opportunity of personal hearing. It is further submitted that the mandate of law is to intimate the consumer about the checking of meter in the ME Lab and that notice in this regard was duly received by Sushil Grover, husband of the petitioner and he was present at the time of inspection of the meter in ME Lab. As such, it cannot be held that opportunity of being present at the time of testing of the meter at the ME Lab was not afforded to the petitioner. He submits that the judgment of *M/s Tirupati Industries (supra)*, relied upon by the petitioner has been rendered in the context where the petitioner had not been given intimation of the proposed testing of the meter in the ME Lab despite such a provisions contained in commercial Circular No.45-C. Hence, the order of assessment was set aside. It is submitted that the ratio of the aforesaid judgment is not applicable to the facts of the present case since representative of the petitioner was duly present at the time of inspection of the meter in the ME Lab.

He further submits that all the issues raised by the petitioner were duly noticed by the Permanent Lok Adalat (Public Utility Services), Ludhiana. He further submits that in the reply to the notice/objections to the order of provisional assessment, the pleas taken by the petitioner are as under:

- (i) no notice served upon the objector personally;
- (ii) Babu Ram is not the owner of the property in which the electricity connection is installed and that the petitioner is the owner;

- (iii) meter was not checked in the presence of the objector or her authorised representative.
- (iv) objector was never called in the ME Lab.
- (v) the assessment is not in accordance with the Regulations.

I have heard learned counsel for the parties and have gone through the documents appended alongwith the present case.

Insofar as the objection with respect to the petitioner not being informed and instead Babu Ram was served with notice is concerned, it is the lapse of the petitioner herself in not intimating the same. Nonetheless, the fact that the petitioner was duly aware of the notice and was in receipt thereof stands corroborated also by the fact that her representative was present at the time of inspection of the premises and her husband was present at the time of testing of the meter in the MR Lab. Thus, merely because the notice was initially issued in the name of Babu Ram, who was the recorded owner as per the record of the respondent has not caused any prejudice to the petitioner. Insofar as the default in the name of the owner as reflected from the record of the Electricity Board is concerned, such default is attributable solely to the petitioner as she never got the electricity meter transferred in her own name. The petitioner cannot, at this stage, be permitted to take benefit of her mischief and lapses in failing to seek transfer of the electricity connection in her own name.

Insofar as the objections with regard to the inspection report having not been supplied and/or the notice of the testing of the meter at ME Lab having not been sent to the petitioner are concerned, both these objections are not tenable in view of Annexures R-1 and R-2 appended alongwith the

reply. The credibility of both these documents has not been impeached by any cogent material. Consumer's representative Kamal had signed the receipt of the aforesaid inspection report. Even though the rejoinder was filed by the petitioner, however, there is no such averment that no person by the name of Kamal was employed with the petitioner. It is rather averred that Kamal was not authorised to put his signatures. The said assertion is an afterthought and cannot be accepted for dispelling the compliance made by the respondents.

The remnant objection is that the assessment has not been done as per the approved regulations, however, the petitioner has failed to point out any error in the formula and/or violation of the regulation for assessment that may have been committed by the Assessing Officer. No such material has been placed on record of the petition or pleaded. Hence, all the objections raised by the petitioner have been duly taken into consideration and the findings have been recorded against the petitioner. The Division Bench judgment in the matter of *M/s Tirupati Industries (supra)* relied upon by the petitioner is not applicable in the facts of the present case and does not advance the case of the petitioner any further.

It would also be relevant to refer to the Award of the Permanent Lok Adalat (Public Utility Services), Ludhiana (Annexure P-11). The relevant extract of the same is reproduced hereinafter below:

"10. We have given our thoughtful consideration to the rival contentions and we feel ourselves inclined to agree with the learned counsel for the respondents. So far as the affidavit of the applicant is concerned it stands amply rebutted with the affidavit Ex RA of Sh. Naresh Watts, Senior Executive Engineer. This affidavit Ex.RA gets corroboration from the documentary evidence which has been led by respondents. As per affidavit

Ex.RA connection was checked on 3.6.2010 and consumer was found using 35.449 KW load out of which consumer was using 26.339 KW for industrial purpose and 9.110 KW for domestic purpose. Checking was conducted in the presence of the representative of the consumer i.e. Shri Kamal. Ex.R1 is the copy of the checking report. It was signed by one Sh. Kamal as representative of the applicant and he received the copy of the checking report. After checking Addl. S.E. had directed Shri Nirpal Singh, J.E to change the meter, pack and seal the same and to get the same checked from M.E. Lab. Ludhiana in order to know the internal condition of the meter. This direction has been given as per checking report itself. Accordingly meter was changed vide MCO copy of which is Ex R3. It was sent to the M.E. Lab. Copy of the report of M.E. Lab. is Ex R4. A perusal of the same reveals that meter received in the M.E. Lab. was duly packed and sealed. Seals on the pack were in order. Contention of the learned counsel of the applicant that meter should have been got checked from Chief Electrical Inspector cannot be given any weight. No provision has been shown to us that in such like situation there is no other authority than Chief Electrical Inspector to check the meter. In our view meter can be got checked from the M.E. Lab as per Electricity Supply Regulations, 2005. After checking dated 3.6.2010 account of the consumer was overhauled and amount of Rs. 1,22,529/- was charged from the consumer on account of load surcharge and SOP on account of difference of 23184 units vide Memo No.1911 dated 17.6.2010 and other amount of Rs.52,690/- vide Memo.No.1912 dated 2.6.2010 on account of difference of tariff. Removal meter was not checked from the M.E. Lab. on 15.6.2010 in the presence of Sh. Sushil Grover. On the checking report copy of which is Ex4 Sh. Sushil Grover had appended his signature. On the basis of the record, it appears that in fact he is not the son of the applicant. In fact, he is her husband. This becomes evident from the copy of the gift deed which is Ex.P1. It has been placed on record by the

applicant herself. In this document, she has been recorded as wife of Shri Sushil Grover. Thus it is clear that meter in the M.E. Lab. was checked in the presence of Shri Sushil Grover husband of the applicant. All the meter seals were found fake and the ultrasonic welding of the meter was also found tampered and the security seal of the meter counter of the box was also found tampered. We find that meter was got checked from the M.E. Lab as per rules and regulations and that too in the presence of husband of the applicant. Respondents have rightly found it a case of unauthorized use of electricity. After checking from the M.E. Lab account of the consumer was overhauled and another amount of Rs.8,26,953/- was found recoverable. Copy of the computations is Ex R8. Provisional order of assessment was sent to the consumer. Thereafter final order of assessment raising demand of Rs.8,26,955/- was issued copy of which is Ex.R11. There is nothing to hold that it is illegal, null and void. Applicant had sent representation against the provisional order of assessment dated 17.6.2010 to the respondents copy of which is Ex.R2. It was marked to Sr. Executive Engineer who sent reply to the Deputy Chief Engineer, Central Zone, Ludhiana through letter copy of which is Ex.R14 explaining that after hearing the representative i.e. Shri Sushil Grover final order of assessment was issued. Hence it does not lie in the mouth of the applicant that representation made by her has not been disposed of.

11. In view of our foregoing discussion we are of the considered view that demand of Rs.8,26,955/- raised by the respondents which has been assailed by the applicant, is justified. It is not illegal, null and void.

12. In the premises written above application is meritless. Accordingly, it is dismissed with cost of Rs.1,000/-. Copy of the award be given to the parties free of cost and copy thereof be sent to the Court of Civil Judge (Senior Division), Ludhiana for execution. File be consigned."

It is evident from the above that the objections of the petitioner were duly taken into consideration by the Permanent Lok Adalat (Public Utility Services), Ludhiana and findings were recorded against the petitioner. No illegality, perversity or impropriety in the abovesaid conclusion has been pointed out by the petitioner so as to render the said Award bad and liable to be set aside.

Further, it is also well established that the inspection of the electricity meter was conducted by the ME Lab in the presence of Sushil Grover, who is stated to be the husband of the petitioner (wrongly mentioned as son). Even though, averred that the said Sushil had also not been authorized to visit the ME Lab as alleged. I am afraid that such a contention on the part of the petitioner cannot be accepted as there was no other occasion for her husband to remain present at the place of inspection of the meter in ME Lab and that the petitioner having opted not to remain present in person and being represented by her husband at the time when the electricity meter was inspected in ME Lab, she cannot claim benefit of her absence at the said time. The presence of her husband also establishes the fact that the petitioner was fully aware of the date when the ME Lab was to test the meter. As an afterthought, the petition now wants to take a benefit by raising a hyper-technical objection. The provisions of the Electricity Act, 2003 require the presence of the owner and/or the representative; and once at both the said occasions the representative of the petitioner was present, it cannot be held that the procedural requirements, laid down in the Regulations, have not been complied with by the respondents.

It is well established law that a discretion exercised by the Permanent Lok Adalat (Public Utility Services) in exercise of the powers under the Legal Services Authorities, Act, 1987 and guided by the principles enumerated under Section 22 (D) of the Legal Services Authorities, Act, 1987 are not to be ordinarily interfered with solely for the reason that any other view is also possible. A discretion exercised has to be ordinarily accepted till such time that such discretion is based upon an illegality, impropriety, perversity or is perpetuated by mischief or based upon glaring misappreciation of the evidence brought on record. I find that there is thus no infirmity in the impugned Award passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana.

The present petition is accordingly dismissed.

Any other misc. application(s) also stand(s) disposed of accordingly.

AUGUST 17, 2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No