

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

205

CWP-10377-2018

Date of decision: 09.11.2023

UTTAR HARYANA BIJLI VITRAN NIGAM LTD

.....Petitioner

VERSUS

KRISHAN LAL AND ANOTHER

.....Respondents

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

Present:- Mr. R.S. Longia, Advocate
for the petitioner.

Respondent No.1 is proceeded against ex-parte.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 30.10.2017 (Annexure P-9) passed by respondent No.2-Permanent Lok Adalat (Public Utility Services), Karnal whereby the Permanent Lok Adalat has directed shifting of the electric poles and Transformer.

2. The respondent No.1 was proceeded against ex-parte after the counsel representing the respondent No.1 withdrew his Power of Attorney on 27.07.2023 after he remained absent since 12.03.2020. The matter was thereafter adjourned for today to enable any representation on his behalf. However, no one entered appearance today as well. The case pertains to the year 2018. The respondent No.1 had been duly served. Further wait is not justified. Case was thus heard on merits.

3. Counsel for the petitioner contends that the respondent-applicant, who is resident of House No. 37, situated near outside Jundla

Gate, Gobind Colony, Karnal moved an application before the Permanent Lok Adalat seeking shifting of the electricity transformer situated adjacent to the house of the petitioner.

4. The petitioner distribution-licensee preferred its objections including that the Transformer has been installed as per the approved layout plan and that as per the guidelines prescribed by the competent authority and before installing the electric poles, the premises was inspected. Since it was found to be suitable, thereafter, the electric poles for the transformer was installed. The petitioner further pointed out that as a matter of fact, the respondent-applicant has encroached upon the vacant land and has now preferred the petition for shifting of the transformer & the transmission line even though he had no right being an encroacher & notwithstanding the same having been laid as per law.

5. Upon failure of the conciliation proceedings under Section 22-C (4) to (7) of the Act, 1987, adjudication was undertaken. Parties led their respective evidence and upon consideration thereof, the Permanent Lok Adalat held as under :-

“12. In view of the above submissions and after careful perusal of the entire record as well as apprehension of the evidence which has been led on behalf of both the parties, there is no dispute that the electric pole/electric transformer has been installed near the house of the petitioner. The petitioner has been fighting for the last more than seven years that it has been causing a grave inconvenience to public at large and there is always apprehension to pass the electric current through transformer into the premises and specially during the rainy season. In order to ascertain as to whether if there is

any problem to the petitioner by installing the electric transformer near the house of the petitioner, the Ld. Predecessor of this court has deputed the sub divisional officer to inspect the site and then to submit the report. The report Ex.R3 was submitted to the Ld. Predecessor of this court wherein, it was reiterated that at present no electric current was running in the house of the complainant, this may due to fault on electric fitting in the house of the petitioner. When the concerned Sub Divisional Officer had himself verified that there was no electric current passed through the house of the petitioner it may due to the electric fitting of the house as no one would avoid of this kind of problem to him and other family members particularly in the rainy season that the electric current may pass through the house of the petitioner.

13. It is equally important to make a reference here that for redressal of his grievance, the petitioner has also made a letter to the Hon'ble Chief Minister of Haryana which was signed by large number of inhabitants of the locality for redressal of his grievance but reasons are best known as to why the problem of the petitioner was not solved. Similarly, a written information has been furnished by Sh. Satish Kumar, the Municipal Councilor, Ward No. 15, Karnal which is Ex.P4 that due to installing the electric poles or the transformer, there is every possibility of causing the mis-happening to by passers. The photographs Ex.P7 and Ex.P8 which depicts the exact location of electric transformer where some students have also been shown to the present since it is a quite busy area and it is possible that due to installation of the electric transformer at the place where it is right now exist, there is a possibility of mis- happening or loss of human being or any unwanted situation. This court being a public utility court has to see the interest of the public at large.

Under this circumstances, proper safeguard would be taken to save a human life and as such, while accepting the petition in question, the directions are issued to the Superintendent Engineer, Uttar Haryana Bijli Vitran Nigam, City Division, Karnal, Sector 12 and the officials of the respondent Nigam to remove the present electric poles or the transformer within the period of one month and to install it at the appropriate place after inspecting the site so that there could not be any loss of life or the property. Hence, with these directions, the petitioner accordingly stands allowed and the award may be drawn accordingly.

14. Under the provisions of the Act contained in Section 22E (1) and (4), the award made by this court is final and shall not be called in question in any original suite, application or execution proceedings. Further, as per clauses (2) and (5) of that provision, this award shall be deemed to be a decree of a civil court and thus shall be executable as if it were a decree made by that court.”

6. Learned counsel appearing on behalf of the petitioner contends that the jurisdiction of the Permanent Lok Adalat under the Legal Services Authorities Act, 1987 is confined with respect to the issues pertaining to “supply of electricity” under the “Public Utility Services” as defined and that the present issue pertained to shifting of a Transformer. The same not being a Public Utility Service under Section 22-A (b) of the Legal Services Authorities Act, 1987, shifting of a Transformer and/or the Transmission lines could not have been ordered in exercise of the powers under Section 22-C (8) of the Legal Services Authorities Act, 1987.

7. As the arguments advanced by the petitioner have remained uncontroverted and undisputed including the fact that the

prayer made in the application under Section 22 (C) of the Legal Services Authorities Act, 1987 was in relation to shifting of the Transmission line and not qua the supply of electricity to the respondent-applicant, hence, the Permanent Lok Adalat did not have jurisdiction to entertain the application.

8. The question of jurisdiction is fundamental to the exercise of a power by an authority. If a power not vested in an authority is exercised by it, the defect being fundamental, would vitiate the final award. It is an incurable defect & can be examined at any stage, including at the appellate stage.

9. A judicial authority is required to examine the legal issues, even if not raised, at the time of adjudication. An illegality can not be validated. An exercise of discretion beyond authority would render exercise of such jurisdiction liable to be set aside.

10. Finding that the Permanent Lok Adalat did not appreciate the scope of jurisdiction conferred upon it and the qualified expression pertaining to the domain of jurisdiction for the service under the Electricity Act, 2003 which is prescribed, qualified and confined to the “supply of electricity” and not with respect to any other issues under the Electricity Act, 2003. The said aspect goes to the root of the controversy involved.

11. Finding illegality, perversity and impropriety in the award passed, I fail to find myself in agreement with the award passed.

12. The present writ petition is accordingly allowed. The award dated 30.10.2017 (Annexure P-9) passed by respondent No.2-Permanent Lok Adalat (Public Utility Services), Karnal in Application

No. 983/15 titled as “Krishan Lal versus Superintendent Engineer, Uttar
Haryana Bijli Vitran Nigam Ltd.” is set aside.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 09, 2023

Vishal sharma

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