

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

202

CWP-22919-2015

Date of Decision: 09.05.2023

Punjab State Power Corporation Limited, Amritsar

..... Petitioner

Versus

Permanent Lok Adalat, Public Utility Services, District, Amritsar and
another

..... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJPresent: Ms. Promila Nain, Advocate
for the petitioner.Ms. Bindu Goel, Advocate
for respondent No.2.

VINOD S. BHARDWAJ, J.(ORAL)

1. The present writ petition seeks setting aside of the award dated 03.06.2015 passed by respondent No.1 i.e. Permanent Lok Adalat (Public Utility Services), Amritsar in Case No. 39/15 whereby the application filed by the respondent No.2-applicant has been allowed and the tubewell connection bearing No. AP12/S-157 standing in the name of late Sh. Puran Singh has been ordered to be transferred in the name of respondent No.2- Salinder Singh within a period of one month from the date of passing of the award. Further, the notices demanding an amount of Rs. 68,746/- as penalty were also sought to be declared as illegal and void.

2. Learned counsel for the petitioner contends that the Flying

Squad of Enforcement Wing, PSPCL had conducted a checking of meter connection of respondent No.2 on 04.08.2014 and a penalty of Rs. 68,746/- was imposed upon the respondent for committing theft of electricity as per the provisional assessment order dated 13.08.2014. Sub Divisional Officer, Lopoke also recommended registration of FIR against respondent No.2.

3. The assessment so done under Section 135 of the Electricity Act, 2003 was challenged by respondent No.2 by filing an application under Section 22-C of the Legal Services Authorities Act, 1987 (for short 'the Act').

4. Learned counsel appearing on behalf of the petitioner-PSPCL contends that as per provisions of Section 22-C(4) to 22-C(7) of the Act, once a dispute has been brought before a Permanent Lok Adalat it is required to take steps for resolution of the dispute through conciliation proceedings. It is only after the conciliation proceedings fail to arrive at an agreement, the adjudicatory function under Section 22-C(8) of the Act can be invoked. She further contends that a perusal of the zimini orders appended along with the present petition as Annexure P-8 clearly shows that no conciliation efforts had been made by the Permanent Lok Adalat (Public Utility Services).

5. She also contends that the proceedings under Section 135 of the Electricity Act, 2003, being criminal provisions, the same were also not within the jurisdiction of the Permanent Lok Adalat (Public Utility Services).

6. Further, the question would also arise as to whether the dispute in hand would fall within the domain of "Public Utility Service" defined

under the Act of 1987. It is further contended that the Act qualifies the Electricity Services by “Supply” theft not being a dispute qua supply and rather an offence, Permanent Lok Adalat had the power to examine the case of theft.

7. Learned counsel for the respondent, on the other hand, reiterates the maintainability of the proceedings before the Permanent Lok Adalat (Public Utility Services) and contends that it shall have the jurisdiction to examine the said aspect. She, however, fairly concedes that a perusal of the zimini orders of the Permanent Lok Adalat (Public Utility Services), Amritsar shows that no conciliation efforts have been made by the authorities concerned.

8. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

9. As per the judgment of the Hon'ble Supreme Court in the matter of “***Canara Bank vs. G.S. Jayarama***”, ***Civil Appeal No. 3872 of 2022*** decided on ***19.05.2022***, the adjudicatory power of the Permanent Lok Adalat (Public Utility Services) can be invoked only after the conciliation efforts have been initiated and it failed to arrive at an amicable resolution. The recourse to the provisions of Section 22-C(4) and 22-C(7) has been held mandatory by the Hon'ble Supreme Court. The relevant extract of the said judgment reads thus :

“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... [...]

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.”

10. Since the counsel for the respondent No.2 fairly concedes that the aforesaid mandatory recourse has not been adopted by the Permanent Lok Adalat (Public Utility Services), the other issues regarding maintainability are not required to be considered at this stage.

11. The present petition is accordingly allowed at this stage without going into merits of the present controversy. The impugned awarded dated 03.06.2015 passed by the respondent No.1 i.e. Permanent Lok Adalat (Public Utility Services), Amritsar is set aside. The parties are relegated to appear before the Permanent Lok Adalat (Public Utility Services), Amritsar on 04.07.2023 whereupon the Permanent Lok Adalat (Public Utility Services), Amritsar shall fix the case No. 39/15 for final adjudication and pass a fresh order in accordance with law after affording opportunity of hearing to the respective parties and keeping all objections open.

(VINOD S. BHARDWAJ)
JUDGE

09.05.2023
Satyawar

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No