IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

236 **CWP-18259-2020 (O&M)**
Date of Decision: 22.02.2023

UTTAR HARYANA BIJLI VITRAN NIGAM AND ORS

... Petitioner

VERSUS

M/S DURGA OIL MILLS AND ORS

... Respondents

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

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Present: Mr. R.S. Longia, Advocate
for the petitioners.

Mr. Siddharth Gulati, Advocate
for the respondents.

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VINOD S. BHARDWAJ, J. (ORAL)

The present petition raises a challenge to the Award dated 28.02.2022 (Annexure P-5) passed by Permanent Lok Adalat (Public Utility Services), Kaithal, whereby the application submitted by the respondent-applicant has been allowed and the demand raised by the petitioners has been set aside.

Briefly summarized, the facts of the present case are that the respondent-applicant is running an oil mill and has an electric connection bearing Account No.3116200000 in his premises. The respondent-applicant claimed to be regularly paying the electricity charges and that no amount was outstanding towards him. However, a bill of Rs.6,54,422/- was raised in the month of February 2015 which included an amount of Rs.3,01,243/- towards sundry charges. The above said amount was deposited by the respondent-applicant under protest on 23.02.2015 as he was threatened with disconnection of the electricity supply in the event of non-payment. The respondent-applicant thereafter enquired about the reasons for imposition of the sundry charges, whereupon it was disclosed that the meter of the respondent-applicant was found running slow by 30% on 30.12.2013 when the premises of the respondent-applicant was checked. It was also informed that they found carbon in R-PCT wire, which was then set right. It was also alleged that in the month of August 2015, the petitioner-Distribution Licensee again imposed a penalty of Rs.84,940.42/- in an illegal and arbitrary manner.

Feeling aggrieved of the aforesaid illegal demands that were being raised from the respondent-applicant by the petitioner-Distribution Licensee without any checking of the premises and without pointing out any error in the meter recording, the respondent-applicant preferred an application under Section 22 (C) of the Legal Services Authority, Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Kaithal. Notice of the aforesaid application was served upon the petitioner-Distribution Licensee who appeared and filed written statement taking an objection that the application was barred by time and that the meter installed on the premises of the respondent-applicant was checked on 30.12.2013 by the officials of the M&P Division, UHBVNL, Ambala. Upon checking, it was found to be running slow to the extent of 30% in comparison of the electricity being consumed through the connection in dispute. Neeraj, son of respondent-applicant put his signatures on the aforesaid checking report and thereafter, moved an application to the petitioner-Distribution Licensee to correct the meter and also consented to deposit the aforesaid amount calculated on account of the slowness of the meter. The amount of

Rs.3,01,243/- which was found due towards the respondent-applicant was deposited by him in the month of February 2015. He thus contends that the application under Section 22-C of the Legal Services Authority Act, 1987 had been filed on 01.08.2018 i.e. after a lapse of more than three years from the date of accrual of right to first sue. Proceedings for amicable resolution of the dispute were undertaken, however, they failed to yield any result. Consequently, adjudication in terms of Section 22 (C) of the Legal Services Authority, Act, 1987 was initiated by the Permanent Lok Adalat.

The parties led their respective evidences and upon consideration thereof, the Permanent Lok Adalat (Public Utility Services), Kaithal allowed the application preferred by the respondent-applicant vide Award dated 28.02.2020 and held that the respondent-applicant was entitled to claim the entire amount deposited by him by means of its adjustment in future bills. Aggrieved thereof the present petition has been filed.

Learned counsel for the petitioner-Distribution Licensee has submitted that the Permanent Lok Adalat failed to appreciate that the application in question had been preferred after the expiry of period of limitation. The bill to the sum of Rs.3,01,243/- had been raised in the month of February 2015 and the said amount was also deposited by the respondent-applicant. A challenge to the aforesaid demand was made in the month of August 2018, i.e. after expiry of nearly three and a half years from the accrual of right of first sue. Since the maximum period prescribed for raising a challenge to the aforesaid demand was three years, hence, the Permanent Lok Adalat was not entitled to entertain the application after the expiry of period of limitation. He further submits that the petitioner never disputed the aforesaid assessment undertaken by the petitioner-Distribution Licensee or the finding recorded by the M&P Division to the extent of the meter running slow by 30%. Having accepted and acknowledged the aforesaid lapse by way of depositing the aforesaid amount, it was not open to the respondent-applicant to raise a challenge by preferring any application before the Permanent Lok Adalat.

Per contra, counsel appearing on behalf of the respondent-applicant submits that there were two different issues that were agitated by the respondent-applicant before the Permanent Lok Adalat. The first dispute pertains to the demand of Rs.3,01,242/- raised pursuant to the checking and inspection undertaken by the official of the petitioner-Distribution Licensee in December 2013. The second aspect agitated before the Permanent Lok Adalat pertains to the bill raised in the month of August 2015 for a sum of Rs.84,940/-. He submits that no reasons have been assigned by the petitioner-Distribution Licensee for raising such a huge demand towards sundry charges. He thus submits that the demand having been raised in the month of August 2015, the petition was preferred well in time and without any delay. He submits that he has instructions not to press upon the aspect qua first demand to the extent of Rs.3,01,243/- and to press his claim for the illegal amount demanded by the petitioner-Distribution Licensee in August 2015 to the tune of Rs.84,940/-.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

A perusal of the application submitted by the respondent-applicant with Permanent Lok Adalat (Public Utility Services), clearly shows that an averment had been raised by him in the aforesaid application that an illegal demand had also been raised to the tune of Rs.84,940/-in the month of August 2015. No specific response giving details of the reasons for demanding the aforesaid amount had been filed by the petitioner-Distribution Licensee before the Permanent Lok Adalat. Besides, even at the time of filing of the present petition against the Award, no explanation has given as to how and on what basis the petitioner-Distribution Licensee was entitled to claim the aforesaid amount of Rs.84,940/- towards sundry charges. Surprisingly, the present petition confines merely to the extent of raising a challenge to the setting aside of the amount of Rs.3,01,243/- as included in the Bill of February 2015 and does not respond to the aforesaid Bill of 14.08.2015. It was incumbent upon the petitioner-Distribution Licensee to have explained as to under what circumstances, the aforesaid demand of Rs.84,940/- was raised towards sundry charges especially when the same was under challenge and had been awarded in favour of the respondent-applicant. Failure on the part of the petitioner-Distribution Licensee to give reasons justifying the aforesaid demand, despite having been granted sufficient opportunity to respond to the same would lead to an infernce against the petitioner-Distribution Licensee. In the absence of any justification for raising the aforesaid claim, the same cannot be held to be justified. No material to justify that demand has been referred to from the pleadings or during arguments, by the petitioner.

The present petition is accordingly, partly allowed. The impugned Award passed by the Permanent Lok Adalat (Public Utility Services), Kaithal is hereby set aside to the extent whereby the demand of Rs.3,01,243/- was raised pursuant to the checking conducted in the month of December 2013. The Award is affirmed to the extent of the demand towards sundry charges for a sum of Rs.84,940/- raised in the Bill of August 2015 and the demand is held to be unsustainable. Further, since the said amount is claimed to have been already deposited by the respondent-applicant under protest and without prejudice to his right, the respondent-applicant shall be entitled to the adjustment of the said amount alongwith an interest @ 6% per annum from the date of its deposit till the benefit of such adjustment is extended to the respondent-applicant.

The petition thus stands partly allowed.

(VINOD S. BHARDWAJ)
JUDGE

22.02.2023.
rajender

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