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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.6767 of 2016
Date of decision: 15.05.2023

Punjab State Power Corporation Limited and another
..... Petitioners

versus

Madhav Industries (Rice Sheller) and another
..... Respondents

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

Present:- Ms. Meena Bansal, Advocate
for the petitioners.

Mr. Sanjeev Goyal, Advocate
for respondent No.1.

VINOD S. BHARDWAJ, J. (Oral)

The questions that arise for consideration in the present petition is as to whether the dispute relating to billing and metering is to be considered as a dispute relating to "supply of electricity" and subject to jurisdiction of Permanent Lok Adalat and further as to whether dismissal of a complaint on merits as not maintainable gives rise to some legal fiction as withdrawal of a complaint or not?

This petition raises a challenge to the Award dated 12.05.2015 (Annexure P-7) passed by the Permanent Lok Adalat (Public Utility Services), Sangrur whereby application No.1125, dated 15.07.2013 submitted by the respondent-Madhav Industries (Rice Sheller), Tolewal Road, Cheema has been allowed.

Briefly summarized the facts of the present case are that originally one Smt. Jasbir Kaur, wife of Hari Singh, sole proprietor of "Sat Kartar Foods" had applied for LS connection for the Rice Sheller. A&A form along with accompanying necessary documents and security as well service connection charges of Rs.2,57,850/- was also deposited by her. Electricity connection bearing Account No.LS-3, with sanctioned load of 170.68 KW was thereafter released on 17.11.2007.

Respondent No.1 thereafter purchased the above rice sheller vide sale deed No.2032 dated 18.08.2010. Thereafter, respondent No.1 applied for change of the name of the electric connection on 24.12.2010 and deposited the statutory dues. The change of name in favour of respondent No.1 was sanctioned and electricity connection No. LS-6 was released in the same rice sheller premises by connecting the security and service connection charges of erstwhile owner Jasbir Kaur. Hence, nothing additional was deposited other than the revised additional security. Interest qua the security is also being regularly claimed to be paid by the PSPCL.

An affidavit dated 03.12.2010 in the shape of an undertaking was also given by respondent No.1 to take over the responsibility and liability for the Rules and Instructions of the petitioner-corporation.

The data of the above electricity connection in the name of respondent No.1 was de-loaded by the Additional S.E. for the period from 15.03.2011 to 24.05.2011 and conveyed vide letter No.1375 dated 27.06.2011 and for the prior period from 12.02.2010 to 23.04.2010 as de-loaded on 23.04.2010 vide communication No.1374 dated 27.06.2011. The petitioner Distribution Licensee demanded a sum of Rs.1,39,592/-

and Rs.2,28,933/- on account of penalty due to the violation of peak load hours.

The respondent-applicant claimed that the industry in question did not fall in the said category and that the demand raised against peak load violation was invalid. However, as the Distribution Licensee was alleged to have threatened to disconnect the electricity supply, the amount in question was deposited by him without prejudice to his rights and under protest vide receipt No.13 dated 11.07.2011. He further objected that the officers of the Distribution Licensee still disconnected the electricity supply of the respondent-applicant firm on 08.09.2011. On enquiring the reasons for disconnection, it was informed that the notice was *qua* the violations of peak load hours from 12.02.2010 to 23.04.2010, i.e., before the rice sheller had been purchased by the respondent-applicant. A complaint No.739 was thus filed by him before the District Consumer Disputes Redressal Forum, Sangrur along with an application seeking restoration of the electricity connection. An interim order was passed directing to restore the electricity connection on deposit of 50% of the amount. The needful was done by the respective parties. The complaint in question was however thereafter dismissed by the District Consumer Disputes Redressal Forum, Sangrur on 15.04.2013 on the ground that the connection being a commercial connection, the respondent-applicant did not fall under the definition of a consumer.

Thereafter, an application under Section 22-C of the Legal Services Authorities Act, 1987 was filed by the respondent-applicant before the Permanent Lok Adalat (Public Utility Services), Sangrur on

15.07.2013. Notice was issued to the petitioner-PSPCL. In its reply, before the PLA (PUS), the petitioner had specifically raised issues to the maintainability of the petition. On merits, it was also informed that the demand notices have been served upon the respondent-applicant for violation of the peak hours and having earlier preferred a complaint before the Consumer Forum, the petition in question could not have been filed under the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services) in view of the proviso and that jurisdiction of PLA can be invoked only when no other authority is approached.

Efforts were made to amicably resolve the dispute between the parties. However, the same failed to yield any result. Accordingly, adjudication under Section 22-C of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat. Vide its Award dated 12.05.2015, the application was allowed and petitioner-PSPCL was directed to refund the amount deposited by the respondent-applicant along with interest at the rate of 9% per annum from the date of filing of the application till its actual payment. A compensation of Rs.20,000/- also awarded towards harassment.

Learned counsel appearing on behalf of the petitioner has raised two fold arguments:

i) That the Permanent Lok Adalat (Public Utility Services) did not have any jurisdiction to entertain the dispute. She has referred to the application moved by the petitioner and appended as Annexure P-5 under Section 22-C of the Legal Services Authorities Act, 2003. The prayer made therein is extracted as under:

"10. That the respondents may kindly be directed to withdraw the letter no.1374 dated 27.06.2011 for Rs.2,28,933/- being totally illegal. To refund the amount of Rs.1,14,467/- deposited by the petitioner vide receipt no.23 dated 30.09.2011 and to further refund the amount, if, any deposited by the petitioner under protest during the pendency of present petition along with interest @ 18% p.a. To also withdraw the illegal letter no.1375 dated 27.06.2011 for Rs.1,39,592/- raised on account of peak load charges and to refund the above amount deposited by the complainant under protest vide receipt no.13 dated 11.07.2011 along with interest @ 18% from the date of deposit till the realization of entire amount. To not to disconnect the electric connection of the petitioner during the pendency of present petition. The respondents may kindly be further directed to pay Rs.50,000/- as compensation on account of mental tension, pain, agony and harassment and to also pay Rs.11,000/- as litigation expenses and counsel fee.

Hence, it is most respectfully prayed that the petition of the petitioner may kindly be accepted and the relief claimed in para No.10 of the petition may kindly be granted in favour of the petitioner and against the respondents and any other relief to which the petitioner is found to be entitled may also be granted."

Referring to the aforesaid prayer, wherein the respondent-applicant had claimed that the demand of peak load hour charges as raised by the PSPCL be withdrawn, it is contended that the jurisdiction of Permanent Lok Adalat as per Section 22(A)(b)(iii) relates only to supply of power, light and water. It is contended that the dispute being a billing dispute for which the notice was served, it cannot be portrayed as a dispute relating to supply of power. Consequently, the jurisdiction of the Permanent Lok Adalat could not have been invoked and the

Award could not have been passed. The appropriate remedy as per the statute, available to the petitioner, was to approach the Consumer Grievances Redressal Forum constituted under Section 42(5) of the Electricity Act, 2003 and if the grievance still subsisted, to prefer appeal before the Ombudsman under Section 42(7) of the Electricity Act, 2003.

ii) The second contention raised by learned counsel for the petitioners is that the petitioners had undisputedly approached the District Consumer Disputes Redressal Forum for the same dispute and the Forum had initially taken cognizance of the said dispute. Section 22-C(i) of the Legal Services Authorities Act, 1987 specifically stipulates that "<u>a party to a dispute may before the dispute is brought before any Court</u>" make an application to the Permanent Lok Adalat (Public Utility Services). She contends that "<u>Court</u>" as stipulated in the Legal Services Authorities Act, 1987 has been defined under Section 2(aaa) which includes "<u>any civil, criminal or revenue and any other Tribunal or Authority constituted under any law to exercise judicial or quasi judicial functions</u>". It is thus contended that the District Consumer Disputes Redressal Forum being a Court within the definition of 2(aaa) of the Legal Services Authorities Act, 1987, the petitioner having first approached the District Consumer Disputes Redressal Forum, the jurisdiction of the Permanent Lok Adalat (Public Utility Services) was ousted.

Rebutting the submissions advanced by learned counsel for the petitioners, learned counsel for respondent No.1 contends that the dispute in question is in fact in relation to the supply of electricity and the jurisdiction had been rightly invoked. Since illegal charges were being demanded by the respondent-applicant including for a period during which the title to the property did not vest with the respondent-applicant, hence, the jurisdiction was rightly invoked.

In so far as the second argument of learned counsel for the petitioners is concerned, he contends that the jurisdiction would not be barred since the District Consumer Disputes Redressal Forum did not adjudicate the matter on merits and the same was dismissed on technical grounds holding that the respondent-applicant was not a consumer. He refers to a judgment dated 24.10.2016 passed in **CWP No.20280 of 2016** titled as "***Uttar Haryana Bijli Vitran Nigam Limited and others vs. Shakeela and another***" to substantiate his aforesaid contention.

Rebutting the arguments advanced by the respondent-applicant and his reliance on the judgment in the matter of ***Shakeela's case (supra)***, learned counsel for the petitioners contends that in the said case, the respondent-applicant had withdrawn the complaint and there was no adjudication on merits of the complaint. Per contra, in the present case, there was an adjudication done by the District Consumer Disputes Redressal Forum and the respondent-applicant was not held to be a consumer under the Consumer Protection Act. She further contends that the prohibition as imposed under the Legal Services Authorities Act, 1987 denies the remedy of approaching the Permanent Lok Adalat to the respondent-applicant herein who is a rice sheller. There can be no presumption that such person with means and operating a rice sheller would not be aware of the appropriate remedy or the ability to seek appropriate legal assistance/guidance and to approach the Competent Forum for seeking redressal of his grievances.

I have heard learned counsel appearing on behalf of the parties and perused the documents available on the record.

A perusal of the prayer made by the petitioners in the application submitted under Section 22-C of the Legal Services Authorities Act, 1987 shows that the prayer pertained to issuance of directions to the respondents to withdraw the demand raised by the petitioner vide the letter no.1374 and 1375 dated 27.06.2011 on account of peak load charges. The aforesaid dispute is not in the relation of failure to effect supply and/or the discrepancies/defects in the supply. The abovesaid dispute strictly would fall within the domain of a billing dispute. As per the definition of the "Public Utility Services" as per under Section 22-A(b) of the Legal Services Authorities Act, the jurisdiction of the Permanent Lok Adalat (Public Utility Services) is confined to the "matters of supply of power to the public by any establishment". The nature of the dispute in hand is not in relation to the supply but in relation to the charges and penalty being demanded against the supply made. The petitioner is disputing the legality and validity of the period qua which the demand has been raised i.e. for the period prior to his purchase of the sheller. The said dispute is thus not in reference to the supply of the service but for the charge/bill that was being claimed. Since the Public Utility Services in connection with electricity have been brought under the purview of the Permanent Lok Adalat only to the extent of "supply", hence, it is necessary to understand the scope of services intended to be brought under the jurisdiction of the Permanent Lok Adalat.

"Supply" has been defined under Section 2(70) of the Electricity Act, 2003 to read thus:

> "supply", in relation to electricity, means the sale of electricity to a licensee or consumer.

The same relates to sale of electricity to a licensee or consumer. However, it needs to be understood as to whether the legislature intended to use the above expression in a wide meaning or a restricted scope.

The PSERC notified the (Forum & Ombudsman) Regulations of 2005 which defined "electricity service" under Section 1(1.5)(k), the same reads thus:

> "In particular and without prejudice to the generality of the term the "electricity service" means supply, billing, metering and maintenance of electrical energy to the consumer and all other attendant sub-services etc;

The electricity supply is thus further classified as "supply"; "billing"; "metering" and "maintenance". Hence, a separate classification has been carved out for billing as distinct from "supply". Even though all activities under the Electricity Act, 2003, including executing Power Purchase Agreement or determining the tariff or wheeling charges or any other tariff, levy, etc. may fall under a framed definition of "supply", however, it cannot be construed that the legislature extended to vest the entire scope of Electricity Act, 2003 with the Permanent Lok Adalat. If all secondary or ancillary issued under the Electricity Act, 2003 were to be brought under the preview of Permanent Lok Adalat; there was no need to qualify the Public Utility Services and restrict it to "supply" only.

Moreover, the Electricity Act, 2003 is the specific law and Legal Services Authorities Act, 1987 is a general law.

Subsequently, PSERC notified the Regulation of 2016 which retained the above said definition of Electricity Service under the Regulation 1(1.5)(k).

Part VI of the Electricity Act, 2003 deals with Distribution of Electricity and deals distinctly with the expression "supply of electricity" and charge/expenses" to be recovered. Relevant Sections read as thus:

Section 42. (Duties of distribution licensee and open access): -

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

3[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.]

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known

as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.

Section 43. (Duty to supply on request): *---*

(1) 1[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

1[Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) : Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with

the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

Section 44. (Exceptions from duty to supply electricity):

Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricityto any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control.

Section 45. (Power to recover charges): *---*

(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

Section 46. (Power to recover expenditure):

The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

Section 47. (Power to require security): ---

(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him -

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

Section 48. (Additional terms of supply):

A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept -

(a) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under section 53;

(b) any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.

Section 49. (Agreement with respect to supply or purchase of electricity):

Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them."

Similarly, relevant provisions of Electricity Supply Code are also significant. Chapter III of the Electric Supply Code 2014 deals with matters related to supply of Electricity, while Chapter IV relates to recovery of the expenditure for supply of electricity and other miscellaneous charges. Chapter VII of the Electricity Supply Code 2014 deals with Meter reading, billing, payment and settlement of disputed bills. Hence, the supply code further clarifies the distinction of supply and billing or payment and settlement issues amongst others. The legislature intent was to restrict the jurisdiction of Permanent Lok Adalat to the "<u>general service of supply</u>" and not the other technical disputes or the secondary issues that relate to the supply of electricity such as to determination of expenses and charges for supply; the recovery of ACD, determination of tariff; assessment of Unauthorized use of electricity etc. to illustrate a few.

The ancillary issues related to the <u>cost of supply</u> and not just supply. The aspect of "service" is thus to be distinguished from "cost/charges to be paid for such service." As the distinction in both the expressions is real and distinct, such legislative intent has to be respected.

The scope of powers of Permanent Lok Adalat is thus to the extent of "supply" and not qua the cost/charges on incidental issues. Statute itself provides for a well structured dispute resolution process for such issues. The regulatory mechanism and legislature has taken effective measures to redress such grievances and should ordinarily be redressed accordingly.

Hence, the dispute in question being relatable to "billing" and "metering" was not within the scope of Public Utility Services relating to "<u>supply of Electricity</u>" under the Legal Services Authorities Act, 1987.

While adverting to the second argument, the award of the consumer Court dated 15.04.2013 has been perused. It is evident from the above that the complaint was actually dismissed after noticing that the respondent No.1 was not a consumer as per the Act. The dismissal was thus after an adjudication on merit qua the issue and the same cannot be equated to an eventuality where there is a withdrawal of suit/complaint to pursue appropriate remedies. The legislature consciously intended to impose such restriction for approaching the Permanent Lok Adalat. Such exclusively of jurisdiction is expressed not only in Section 22 C(1) where Permanent Lok Adalat would not have jurisdiction, if the issue is brought earlier before any other Court but also under Section 22 C(2) which restricts factors to approach any other forum after approaching Permanent Lok Adalat.

The clauses consciously impose such limitation and cannot be ignored. Failure to establish merit of maintainability is not the same thing as not having approached the Court. A legal fiction which accrues on withdrawal of a lis is not akin to the meaning which flows from its dismissal on ground of maintainability.

Hence, even though the consequences/outcome of the complaint may be same, however, the legal effect of both the situations is distinct and cannot be equated. Once the legislature intended to impose a curb on jurisdiction of a forum on occurrence of a particular event, the interpretation which logically flows from ordinary understanding has to be given effect rather than finding a hyper-technical distinction to dilute or to violate the legislature restriction. The process of Legal Services Authorities Act, 1987 was not intended to substitute for all eventualities but only in certain circumstances, such conditions, thus must be complied with before such jurisdiction can be invoked.

The Permanent Lok Adalat (Public Utility Services) Sangrur, thus was not competent to adjudicate on the application and to pass an award ignoring the objections that went to the root of the dispute and would vitiate the award.

Since the award is being examined on the issue of maintainability, it would not be appropriate to comment on the merits of the award rest it may cause prejudice to the respective case.

The present petition is accordingly allowed. The Award dated 12.05.2015 (Annexure P-7) passed by the Permanent Lok Adalat (Public Utility Services), Sangrur is set aside.

The parties shall however be at liberty for seeking recourse to the remedies available to them in accordance with law. In the event, the respondent-applicant approaches the Competent Forum for seeking rectification of the demand raised or challenging the abovesaid demand, the period during which the present dispute remain pending before different Forums be taken into consideration while computing the limitation.

Petition allowed.

15.05.2023 **(VINOD S. BHARDWAJ)**
rittu **JUDGE**

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