# IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

**203** **CWP-7601-2018 (O&M)**
**Date of Decision: 21.04.2023**

**PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS**

... Petitioner

VERSUS

**CHAIRMAN, PERMANENT LOK ADALAT AND ANR.**

... Respondents

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

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Present: Mr. Parminder Pal Singh Thethi, Advocate for the petitioners.

Ms. Neha Jain, Advocate for Mr. K.S. Dadwal, Advocate for respondent No.2.

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**VINOD S. BHARDWAJ, J. (ORAL)**

The present petition raises a challenge to the Award dated 03.04.2017 (Annexure P-1) passed by Permanent Lok Adalat (Public Utility Services), Hoshiarpur.

Briefly summarized, the facts of the present case are that the respondent-Applicant had obtained a power connection for tube-well under the Drip/Sprinkler Irrigation Scheme from the petitioner-PSPCL vide Account No.AP19/593. The respondent-Applicant claimed to have been using the power connection for the said purpose. However on 19.06.2014, at about 11.00 A.M. when the respondent-Applicant was present at his house, officials of the petitioner-PSPCL are stated to have visited him and obtained his signatures on certain papers. He appended his signatures on the said documents in good faith. However, a memo No.396 dated 20.06.2014 was served upon the respondent-Applicant calling upon him to deposit a penalty of Rs.2,77,644/- on account of misuse of the power connection. It was also stated that the respondent-Applicant had indulged in commercial sale of water, in addition to irrigating his land holding through flood irrigation in violation of the Drip/Sprinkler Irrigation Scheme. Open flood irrigation through water channel from tubewell is not allowed under the aforesaid scheme and is considered a breach.

The respondent-Applicant claimed that he never misused the power connection and had not indulged in commercial sale of water. The power supply to the respondent-Applicant was disconnected on non-payment of aforesaid penalty. He submitted a request for restoration of the power connection, whereupon he was asked to deposit an amount of Rs.50,000/-. An amount of Rs.46,424/- was deposited by him vide receipt dated 17.11.2014 whereupon, the electricity connection was restored. However, he was again asked to deposit the penalty vide notice dated 10.01.2015, which the respondent-Applicant claimed that he was not liable to pay. It is further averred that the respondent-Power Corporation wanted to lay a power transmission line of 66 KW through the land of respondent-Applicant for providing better services, however, the respondent-Applicant opposed the same and instituted a civil suit for permanent injunction against the petitioner-PSPCL and also prayed for an interim relief. He was being pressurized to withdraw the said civil suit, however, he refused to do so. Imposition of the penalty was a counterblast. He thus sought compensation for being harassed by the PSPCL. The application was accordingly filed on above facts, under Section 22 (C) of the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Hoshiarpur.

The petitioner-PSPCL entered appearance before the Permanent Lok Adalat and contested the claim filed by the respondent-Applicant. On merits, it was averred that the premises of the respondent-Applicant were raided by the enforcement team on 19.06.2014 when it was noticed that the respondent-Applicant had been using the power connection in violation of the terms and conditions and that he had been irrigating his land holding through flood irrigation & constructed water channels and in violation of the scheme for release of connection. He was also found indulging in commercial sale of water as a water tanker was also found parked near the tubewell connection and water was being filled in the said tanker with the help of a ten feet long pipe. A memo of inspection was accordingly prepared wherein the respondent-Applicant admitted the violation of the terms and conditions of the power connection and signed the said memo. The penalty was accordingly assessed and conveyed to the respondent-Applicant vide memo 396 dated 20.06.2014. He was held liable to pay a penalty of Rs.2,77,644/-. An application was thereafter submitted by the respondent-Applicant to the petitioner-PSPCL for seeking permission to deposit the assessed penalty amount in six monthly installments of Rs.46,424/- each. Taking a sympathetic consideration of the said request, the application of the respondent-Applicant was allowed. The respondent-Applicant deposited the first installment of Rs.46,424/- whereupon the electricity supply to the tubewell of the respondent-Applicant was restored. However, the subsequent installments were not deposited by the respondent-Applicant whereupon the electricity supply of the respondent-Applicant was again disconnected. It was also stated that there was no malice in the action of petitioner-PSPCL and that the application for injunction filed by the respondent-Applicant against laying of the transmission line was declined by the Civil Court.

Upon failure of the conciliation proceedings before the Permanent Lok Adalat, the adjudication of the dispute in terms of Section 22 (C) (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat.

Upon consideration of the submissions advanced and the evidence brought before the Permanent Lok Adalat, the impugned Award dated 03.04.2017 was passed by the Permanent Lok Adalat (Public Utility Services), Hoshiarpur and the application was partly allowed. Aggrieved thereof, the present petition been filed by the petitioner-PSPCL.

Learned counsel for the petitioner reiterates his submissions noticed above and contended that the Permanent Lok Adalat has failed to appreciate the evidence adduced on record and has travelled beyond the scope of its jurisdiction in reducing the assessed penalty by 65%. He contends that there was no tangible material to lay the basis for the Permanent Lok Adalat to reduce the assessment done in accordance with the provisions of the Electricity Act, 2003. He refers to the following extract of the Award:

> *"9. The applicant had admitted his fault and had agreed to pay the penalty of Rs. 2,77,644/- in installments. The applicant had not been able to take exception to his application dated 17.11.2014 instituted before the Dy Chief Engineer. The applicant had deposited the first installment but had not deposited the second and subsequent installments. Hence his power connection had been rightly disconnected. Misuse of power connection had to be seriously viewed and had been rightly so viewed.*
>
> *10. The respondents had determined the penalty of Rs.277644/- for one year for irrigation of the holding of the applicant, while power connection in question had been sanctioned for*

*drip/sprinkling irrigation scheme. Penalty aforesaid had also been levied for sale of water. We find that public purchases water only in peak of summer and not in winter and rainy seasons. Irrigation is also not done throughout the year. Also the applicant may not be treated doing commercial business by irrigation of his holding. Due notice has also to be taken of large scale indebtedness in rural sector in this stage. Hence we find that penalty ought not to be levied for alleged misuse of power connection for one year. The applicant could not be said to have misused the power connection for more than 2 months in any case. Hence the penalty may not be levied for more than 4 months and the same is reduced by 65%. The applicant is liable to pay the penalty of Rs. 277644 x 35%-97175. The applicant had paid a sum of Rs. 46424/- and he is liable to pay the balance amount. The application is accordingly disposed of."*

It is contended by the learned counsel that the assessment has to be done in accordance with the provisions of the Electricity Act, 2003 and in the absence of recording any finding that the assessment was contrary to the provisions of the Electricity Act, 2003 and the Rules and Regulations notified thereunder, such assessment could not have been interfered by the Permanent Lok Adalat (Public Utility Services), Hoshiarpur. He further contends that the basis relied upon by the Permanent Lok Adalat for reduction of the assessed amount is conjectural and any such conjectural basis cannot lay foundation for sustaining any order which is not supported by law.

Per contra, learned counsel for the respondent-Applicant submits that the levy of penalty was an outcome of malice as the respondent-Applicant had instituted a civil suit against petitioner-PSPCL for laying of transmission line. She further vehemently contends that the respondent-Applicant had not indulged in sale of water or flood irrigation of his land holdings through open water channel. She has also argued that there could be no basis for levy of the assessment for the entire period especially when the water requirement varies from season to season and in the absence of noticing the crop cycle, the determination of liability was improper.

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.

The present is a case of assessment under Section 126 of the Electricity Act, 2003 that was carried out since the respondent-Applicant was found to be in Unauthorized Use of Energy. The respondent-Applicant was at liberty to raise a challenge to such assessment in an appeal under Section 127 of the Electricity Act, 2003, however, instead of preferring such an appeal, the respondent-Applicant admitted the assessment and undertook to deposit the same. The only request made by the respondent-Applicant was to permit him to pay the assessed penalty in six equated installments. Said request had been acceded to by the petitioner-PSPCL and six equated installments were allowed to the respondent-Applicant to be deposited. In acceptance and acknowledgement of the aforesaid liability, the respondent-Applicant deposited the first installment as well. The respondent-Applicant thus not only admitted the assessment but also acted upon the settlement/permission so granted to him by the petitioner-PSPCL. A consumer would be estopped from raising such a challenge after having accepted the assessment. The respondent No.2 was always at liberty to dispute the allegations levelled by the Authorities in the memo prepared and having chosen not to dispute the same at the given stage, such a challenge thereafter seems belated and an after-thought.

Notwithstanding the above, the Award in question is being examined on various other legal counts to test its legality and validity. Even though the issue as to whether an assessment done under Section 126 of the Electricity Act, 2003 would be amenable to challenge in the proceedings under Section 22 (C) of the Legal Services Authorities Act, 1987 has not been raised in the pleading, however, the same being a legal issue, is being examined. Section 22 (C) (1) of the Legal Services Authorities Act, 1987 prohibits the jurisdiction of the Permanent Lok Adalat (Public Utility Services), where a person has already approached a Court in relation to a lis. 'Court' has been defined under Section 2-aaa of the Legal Services Authorities Act, 1987 to mean any Civil Court or Revenue Court including any Tribunal or any other Authority constituted under any law for the time being to exercise judicial or *quasi* judicial function. The relevant provisions are being extracted as under:

> ***"2. Definitions.— In this Act, unless the context otherwise requires,—***
>
> *XXX XXX XXX XXX*
>
> *(aaa) "court" means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions.*
>
> *XXX XXX XXX XXX"*

An assessment of the penalty by the Assessing Authority would *ex facie* fall within the definition of a 'Court' under Section 2-aaa of the Legal Services Authorities Act, 1987. The assessment being a *quasi* judicial function as per the procedure laid down under the Electricity Act, 2003, Proviso to Section 22(C)(1) of the Legal Services Authorities Act, 1987 prohibits jurisdiction of the Permanent Lok Adalat (Public Utility Services) from adjudication upon such an issue. Counsel for the respondent-Applicant, however, does not controvert the same submits that the issue may be kept open as she has not carried out research on the said aspect as such.

Additionally, yet another issue would arise as to whether the assessment would fall within the definition of 'Public Utility Services' as defined under the Legal Services Authorities Act, 1987. The same is reproduced as under:

> *"***22A. Definitions.***—In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,—*
>
> (a) XXXX XXXX XXXX
>
> (b) public utility service" means any—
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> (i) transport service for the carriage of passengers or goods by air, road or water; or
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> (ii) postal, telegraph or telephone service; or
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> (iii) supply of power, light or water to the public by any establishment; or
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> (iv) system of public conservancy or sanitation; or
>
> (v) service in hospital or dispensary; or
>
> (vi) insurance service, and includes any service which the Central Government or the State Government, as the case may be, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.*"*

It is evident from a perusal of the above that insofar as the "Electricity" is concerned, the jurisdiction of Permanent Lok Adalat is only with respect to "supply". Hence, not all disputes under the Electricity Act, 2003 have been subjected to the jurisdiction of the Permanent Lok Adalat and the same are qualified to restrict to issues of supply. An assessment of penalty under Section 126 of the Electricity Act, 2003 would not *prima facie* be a dispute qua supply, but qua Billing and Assessment.

Counsel for the respondent could not refer to any argument or procedure where such dispute has been held to be a supply dispute and prayed that the question may be left open.

Be that as it may, the Award passed by the Permanent Lok Adalat (Public Utility Services), Hoshiarpur and the reasoning given by the Permanent Lok Adalat for carrying out a reduction in the assessment are also being examined on the merits thereof.

It is evident from a perusal of paragraph No.10 of the Award, extracted above, that the Permanent Lok Adalat (Public Utility Services), Hoshiarpur has travelled beyond the scope of jurisdiction to modify the assessment on the basis of a presumption. For interfering in an assessment, unless the said assessment is found to be in violation of the Statute and/or the Rules and Regulations framed thereunder, it did not lie with the Permanent Lok Adalat (Public Utility Services) to substitute its wisdom for the assessment carried out in accordance with law. The provisions of the Electricity Act, 2003 specifically provide that where a period of the alleged misuse of electricity cannot be ascertained, the penalty can be determined for a period of 12 months preceding the date when such Unauthorized Use of Energy was detected. Hence, for the computation of assessment, in the absence of any established period of Unauthorized Use of Energy, the provisions of the Electricity Act, 2003 authorize computation of the penalty for a period of 12 months prior to the detection of the Unauthorized Use of Energy. The test in law is only as to whether the period in question could be definitely ascertained or it could not be. In the absence of any basis for the Permanent Lok Adalat to conclude that the Unauthorized Use of Energy had continued for a period of four months only, it was not within the domain of the Permanent Lok Adalat (Public Utility Services), Hoshiarpur to restrict the penalty to a lesser period in derogation of the statute.

Even while computing the above period, the Permanent Lok Adalat has acted on conjectures. It has proceeded on assumption such as – misuse in only limited to period of summers when demand is high; the sale of water would also be only in peak season of summer and proceeded on the premises that indebtedness in agricultural sector is high and irrigation by water channels instead of sprinkler is not misuse.

The Permanent Lok Adalat is clearly propelled by an overwhelming emotion instead of legality or illegality of an action. It is required to be kept in mind that every person who avails of a benefit under a scheme is required to fulfill the conditions prescribed thereunder. An expeditious out of then tube-well connection was released to farmers using sprinkler irrigation scheme to promote the said scheme and to reduce the ground water consumption. After having sought connection under the said scheme, he cannot be permitted to ignore the same and such violation, if ignored, is likely to cause a heart burn to other farmers who honestly waited for release of agricultural connection and did not deflect to committing violation of law. Compounding a violation which seems like a premium prompts law abiding citizens to commit breach of law. Every Court is required to be conscious of the consequences of its misplaced sympathy and as to whether such sympathy restores the faith in Rule of law or erodes the Rule of law. Where the consequence is later, equitable sympathy is not only misplaced but also fatal to the Rule of law.

The Permanent Lok Adalat presumed as if the connection was only a few months old and has lived only one season. Hence, there is a possibility of water having been used in violation of the scheme ever since release of connection. An Unauthorized Use of Energy does not mandate a "commercial" misuser as ordinarily understood. Even a domestic consumer may commit Unauthorized Use of Energy. The notion of Permanent Lok Adalat is thus not based on legal maxim and definition applicable to Electricity laws.

Even while referring to sale of water and water tanker, the Permanent Lok Adalat presumed sale of water only during summer reason. Such presumption is entirely conjectured. Sale of water takes place all year-not only for drinking and household purposes but also for commercial/construction activities. The demand only increases during summers. Thus, the observations of Permanent Lok Adalat for interfering with the assessment were only hypothetical and on limited appreciation.

Still further, even though the counsel appearing on behalf of the respondent-Applicant contends that there was no Unauthorized Use of Energy on the part of the respondent-Applicant, however, she has not assailed the Award passed by the Permanent Lok Adalat (Public Utility Services), Hoshiarpur which upheld Unauthorized Use of Energy and also failed to establish that there was no Unauthorized Use of Energy.

Having admitted the determination of the liability and submitting an application for permission to deposit the penalty amount in installments, it does not lie with the respondent-Applicant to thereafter dispute the same. The Award passed by the Permanent Lok Adalat (Public Utility Services), Hoshiarpur nowhere holds that the respondent-Applicant did not indulge in

Unauthorized Use of Energy. For the reasons best known to him, the respondent-Applicant never raised a challenge to the finding of fact returned against him.

Even though the Permanent Lok Adalat (Public Utility Services) is governed by the principles of objectivity and natural justice, fairness, equity and other principles of justice, however, such principles cannot be attracted or extended where the same would result i1n violation of the Statute. Exercise of discretion of equity by the Permanent Lok Adalat (Public Utility Services) is to be accepted in the circumstances where exercise of such discretion does not come in conflict with the statutory provisions and the statutory mandate and would be sustainable in law. Without finding any fault in the order of assessment, exercise of such unsubstantiated discretion is only an excess of discretionary powers and reflects a whimsical determination of the lis. Such arbitrariness in exercise of power ought to be checked by judicial review.

I thus find that the Award dated 03.04.2017 passed by the Permanent Lok Adalat (Public Utility Services), Hoshiarpur suffers from legal impropriety, non-appreciation of the statutory provisions and the regulations and also based on conjectures and surmises. Consequently, the same is hereby set aside.

The petition is allowed.

The respondent-Applicant, if so advised, may take recourse to the alternative remedies available to him in accordance with the provisions of the Electricity Act, 2003.

Needless to mention that the benefit of the period spent in pursuing the present remedy shall be duly extended, in the event of the respondent-Applicant preferring any such appeal and/or proceedings before the competent Authority.

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

**21.04.2023**
***rajender***

*Whether speaking/reasoned : Yes/No*

*Whether reportable : Yes/No*