

(2015) 05 P&H CK 0247
In the Punjab And Haryana At Chandigarh
Case No : CR No. 2606 of 2005 [O&M]

Uttar Haryana Bijli Vitran Nigam and Others	APPELLANT
Vs	
Kusum Jain	RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22C, 22-C, 22C (1), 22C (8), 22C(8)

Citation : (2015) 179 PLR 360 : (2015) 3 RCR(Civil) 690

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : R.A. Sheoran, for the Appellant

Judgement

Dr. Bharat Bhushan Parsoon, J.

1. This revision petition by Uttar Haryana Bijli Vitran Nigam [for short, "UHBVNL"] is directed against order dated 11.3.2005 [Annexure P/1] passed by Permanent Lok Adalat [PLA], Panipat vide which, pursuant to an application filed by applicant - Smt. Kusum Jain, adjudicating the dispute, the respondents had been directed to release power connection in favour of the applicant of her premises earlier known as M/s. Mahavir Woollen Mills, Panipat, on receipt of usual charges etc.

2. It is claimed by the revisionists-petitioners, who were respondents before the PLA that Anil Jain, husband of applicant, Smt. Kusum Jain, was having an electric connection bearing No. BM-544 for the aforesaid Mill, which hitherto was functional in the premises bearing No. E-33A, Industrial Area, Panipat and he was partner in the said firm. Due to non-payment of arrears amounting to Rs. 5,19,086.05 paise for electric consumption, the electric supply was disconnected.

3. It is averred that the applicant, now respondent herein, in connivance with her husband, had wrongly claimed herself to be lessee of the said property and without payment of arrears of electricity charges, had got the impugned order. It is further pleaded that the impugned order was obtained by the respondent

without bringing correct facts to the notice of the PLA.

4. It is claimed that the PLA could not have adjudicated the matter on merits, particularly when the procedure prescribed for conducting proceedings before the PLA had not been followed. Raising jurisdictional issue and also explaining attending facts and circumstances, acceptance of the revision petition has been sought.

5. Respondent, though had put in appearance earlier on 22.5.2006, but never turned up thereafter. The revision petition was admitted for hearing on 30.10.2006 when operation of the impugned order, dated 11.3.2005 [Annexure P/1] had also been stayed in the meanwhile.

6. Hearing has been provided to counsel for the petitioners while perusing the impugned order as also the grounds of revision petition.

7. Before embarking upon the controversy between the parties, it would be of avail to recapitulate the facts about which there is no dispute. M/s. Mahavir Woollen Mills, Panipat was carrying on its manufacturing activity in premises i.e., E-33A, Industrial Area, Panipat. Industrial electric connection bearing No. BM-544 had been installed therein. This consumer of electricity had fallen in arrears of payment of consumption of electric energy. When arrears for a sum of Rs. 5,19,086.05 paise remained unpaid for a considerable period, the electricity supply was disconnected by the petitioners herein.

8. Trouble stated thereafter. Applicant claimed herself to be a lessee of the premises and claiming independent, set part and different possessory title to possession of the property, she sought electric connection in the premises. When the non-applicant - UHBVNL and another appeared before the PLA, the matter was contested tooth and nail. Despite strong opposition and resistance offered by the petitioners herein, the PLA passed the impugned order.

9. No doubt, there is a provision providing sanctity to the Award of PLA where it has been described as final. For ready reference, Section 22-E of the Legal Services Authorities Act, 1987 [hereinafter referred to as "the Act"] is appended as below:--

"22E. Award of Permanent Lok Adalat to be final - (1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.

(3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution

proceeding.

(5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court."

10. In terms of these provisions an award rendered by PLA is to be treated as final and is not to be called in question.

11. Chapter VIA was inserted in the Act of 1987 by Act No. 37 of 2002. It was on 11.6.2002. The impugned order is of 11.3.2005 and thus, is subsequent to this insertion of 11.6.2002. If we consider the entire scheme as envisaged in Chapter VIA of the Act, dealing with Pre-litigation, Conciliation and Settlement, it becomes evident that PLA dealing with public utility services, deal with matters requiring conciliatory approach.

12. PLA is a multiple members body and decisions are to be taken per majority. Once any party to a dispute, before the dispute is taken to the Court, by way of making an application to the PLA brings such dispute for a settlement, the said procedure is sacrosanct. A look at the entire procedure reveals that it is sequential in nature. Perusal of Chapter VIA of the Act reveals that as per Section 22C of the Act, if any party to a dispute wants to bring the dispute before the PLA before taking it to the Court, jurisdiction of such a Lok Adalat may be invoked by way of a simple application to be made to the PLA.

13. On application made by respondent - Smt. Kusum Jain and thereafter on notice having been issued, the present petitioners had made appearance. The first thing, the PLA is to aspire for, is an amicable settlement of the dispute between the parties which is to be brought in an independent and impartial manner. Reference may be made to sub-section [4] of Section 22C of the Act which, for ready reference, is appended as below:--

"(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate, taking into account the circumstance of the dispute."

14. Not only this, while conducting conciliation proceedings between the parties before the PLA, an attempt is to be made to assist the parties to reach an amicable settlement. For this, reference is required to be made to sub-section [5] of Section 22C of the Act. It is appended as below:--

"(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner."

15. If the PLA feels it necessary that some oral or documentary evidence is required, it may ask for such evidence or other related documents. Every party

in good faith is to make efforts to enter into conciliation of the dispute. Sub-section [6] of Section 22C of the Act, for ready reference, is appended below:

"(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it."

16. It is only after making such efforts that a PLA may come to an opinion that there exists an element of settlement in such proceedings. When some element of settlement is existing, then efforts are made and settlement so arrived at between the parties, it tentatively is acceptable to them, then the PLA is to formulate the terms of possible settlement of the dispute and is to give the said text to the parties for their observations or in case the parties reach an agreement qua the settlement of the dispute, they are required to sign the settlement agreement and the PLA is to pass an award thereafter on the basis of such settlement. Copy of the Award is to be given to each of the parties.

17. It is only in a situation where a party does not reach any settlement or fails in this regard that under sub-section [7] of Section 22C of the Act in terms of the settlement, the award is to be made, but only at the end of the proceedings under Sub-section [7] of Section 22C of the Act. In short, if conciliation proceedings are not initiated in terms of provisions of sub-section [4] of Section 22C of the Act and the PLA is neither assisted nor guided by the parties, to initiate possible amicable settlement, then provisions under sub-section [8] of Section 22C of the Act can be invoked.

18. Perusal of the impugned order reveals that the PLA without following the procedure provided under sub-sections [4] to [7] of Section 22C of the Act, has straightway invoked the provisions of sub-section [8] of Section 22C of the Act and has decided the dispute on merits arrogating the powers of a regular Court to itself. If PLAs misses the "content", "meaning" and purpose of Lok Adalat and act only as a substitute of regular Courts, then neither the purpose of the Act nor of this particular amendment is fulfilled. Even aura and utility of PLA with concomitant acceptability as a major instrument of alternative dispute resolution mechanism, is lost. In absence of compliance of provisions of Sections 22C and 22D of the Act, in matters of pre-litigation stage references, a PLA has no power to take cognizance or to invoke jurisdiction. In short, once a pre-litigation reference is received before a PLA, steps starting from Section 22C of the Act are required to be taken. It is not expected of a PLA to invoke the provisions of sub-section [8] of Section 22C of the Act directly and to decide the dispute on merits. If a dispute involves questions of facts and of law, which need debate, discussion and adjudication, a PLA is not expected to proceed further.

19. In the present case, as the impugned order reveals, the PLA straightway went in adjudicatory mode by invoking the provisions of sub-section [8] of Section 22C of the Act. It is only in circumstances where dispute between the

parties is very near a solution, but due to trifles, the matter is not ending in settlement, then the PLA can step in.

20. To demonstrate, if upon issuance of notice by PLA, a service provider, as in this case UHBVNL, does not dispute genuineness of the claim, but quantum of the claim is marginally disputed, then after commencement of conciliatory proceedings and assisting the parties to reach a settlement, congenial atmosphere is to be provided for resolution of the dispute amicably and terms of the possible settlement are to be formulated in terms of sub-section [7] of Section 22C of the Act. Respective opinion of the parties is to be sought.

21. In other words, when the dispute is considerably close to solution and differences have been removed and solution is insight on narrowing down the respective claims of the parties, then the PLA can decide the difference of quantum of claim by invoking provisions of sub-section 8 of Section 22C of the Act, whereafter the Award is to be passed by applying principles of fair play, equity, natural justice, objectively as provided under Section 22-D of the Act.

22. In short, there is a different between pre-litigation stage and references sent to the PLAs in pending cases. The present dispute pertains to pre-litigation stage where jurisdiction of PLA was invoked by respondent - applicant, Smt. Kusum Jain. Genuineness of the claim of respondent - Smt. Kusum Jain is itself under a question mark. She claims herself to be a lessee whereas, her husband is a partner in M/s. Mahavir Woollen Mills, Panipat, which is in arrears to the tune of Rs. 5,19,086.05 ps. towards payment of consumption of electric energy. She has no where stated the name and particulars of her lessor. Moreover, as per Sale Circular No. 4.32/2003 of the petitions which is binding on her no new connection can be given at any particular place where there is already an electric meter and non payment of arrears of electricity consumption charges has resulted in disconnection. Liability goes with the premises.

23. To sum-up, if jurisdiction of PLA is invoked at a pre-litigation stage in terms of provisions of Section 22C of the Act in relation to a public utility service provider and rival claim hitting the very foundation of the case of the applicant is taken by the respondent, such dispute cannot be settled by adjudication by invoking provisions of Section 22C[8] of the Act. In any case, conduct of conciliation proceedings alone would pave way for further course of action. Provisions of sub-sections [4], [5], [6] and [7] of Section 22C of the Act are required to be complied with, and only when the parties before the PLA have narrowed down their difference and are rather in the close vicinity of a solution then by invoking provisions of sub-section [8] of Section 22C of the Act, the PLA can decide the differences by applying principles of fair play, equity, natural justice etc., as provided under Section 22-D of the Act.

24. Almost in a similar situation, when the PLA had straightway jumped to apply provisions of Section 22C[8] without even invoking the provisions of sub-sections [4] to [7] of Section 22C of the Act, this Court in Reliance General Insurance

Company Limited v. Vijay Kumar and another 2012 [1] PLR 794 had held invocation of provision of sub-section [8] of Section 22C of the Act directly to be bad in law. Reference may be made to para 16 of the judgment, which reads as under:--

"16. PLA PUS, having territorial jurisdiction, can be approached under Section 22C (1) of the Act at the pre litigation stage for the settlement of dispute by moving appropriate application. Having received application, PLA PUS under sub-section (3) shall direct both the parties to file their statements in writing supported by any document or evidence which parties intend to file in support of their respective claims. Having received statements and evidence PLA PUS under sub-section (4) and (5) of Section 22C shall commence conciliation proceedings and assist the parties to reach an amicable settlement of the dispute in an independent impartial manner. While assisting the parties to reach to an amicable settlement Lok Adalat shall not use any coercion or pressure on the parties concerned. If during the conciliation proceeding Lok Adalat finds that their exist elements of settlement which may be acceptable to the parties, shall formulate the terms of a possible settlement of the dispute and supply to the parties concerned enabling them to reach an agreement on the settlement of dispute. If settlement is arrived at between the parties with the assistance of the PLA PUS an award shall be passed by the PLA PUS as per the terms and conditions of the settlement between the parties."

25. If no settlement takes place, PLA has no inherent authority to invoke the provisions of sub Section [8] of Section 22C of the Act to pass an award on merits without even being compliant of the provisions of Sub-Sections [4] to [7] of Section 22-C of the Act. Compliance of Section 22D of the Act is to be made after compliance of Sub-sections [4] to [7] of Section 22C of the Act. Reference may be made to para No. 21 of Vijay Kumar"s case [supra], which is reproduced as under:--

"21. However, if on notice Public Utility Service Provider does not dispute the genuineness of the claim and comes with the plea claimant is not entitled for the sum claimed, however, is entitled for the lesser amount and agrees for the conciliation PLA PUS shall commence conciliation proceedings under sub-section (4) and assist the parties to reach to the settlement. Thereafter, if PLA PUS finds that dispute can be resolved amicably, it shall formulate the terms of the possible settlement under sub-section (7) and shall supply the same to the parties for their respective opinions. If having received terms of possible settlement formulated by PLA PUS parties have narrowed down their respective claims and are unable to reach to the final conclusion PLA PUS shall proceed to decide the differences by invoking Section 22C (8) and shall pass the award on merit by applying principles of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act."

26. However, it is clear that straightway invocation of provisions of sub-section [8] of Section 22C of the Act is not permissible. Reference may be made to

further relevant portion of para No. 27 of the judgment in Vijay Kumar's case [supra] which is extracted below:--

"27....If PLA PUS is approached under Section 22C at the pre litigation stage in relation of public utility services and other party disputes the claim saying claim is bogus and case involves disputed questions of facts and law and cannot be settled by the intervention of the PLA PUS then conciliation proceedings shall stand terminated and PLA PUC shall have absolutely no jurisdiction to invoke Section 22C(8) to decide the dispute directly. However, if during the conciliation proceedings under sub-sections (4), (5), (6) and (7) of Section 22C parties to the application have narrowed down their disputes and are not able to come to the final figure then by invoking sub-section (8) PLA PUS can decide the differences by applying principles of fair play, equity, natural justice, objectivity as provided under Section 22D of the Act."

27. In view of the discussion made earlier, the impugned order, dated 11.3.2005, Annexure P/1 does not have legs to stand. It is wrong both on facts as also in law. Without following the procedure prescribed in sub-sections [4] to [7] of Section 22C of the Act, the PLA straightway invoked the provisions of sub-section [8] of Section 22C of the Act and adjudicated upon the dispute arrogating to itself the powers of a regular Court.

28. Accepting the revision petition, the impugned order is set-aside. The applicant-respondent would be free to approach the Court of competent jurisdiction, if so advised, for seeking relief in accordance with law. Since the impugned order has been set-aside, the petitioners are free to take appropriate recourse available to them for recovery of the amount due and to deal with the matter of installation or continuation of electric connection as per their procedure.