

Dakshin Haryana Bijli Vitran Nigam Ltd vs Smt. Sulekha on 14 August, 2013

Author: Rameshwar Singh Malik

Bench: Rameshwar Singh Malik

Civil Writ Petition No. 17593 of 2013

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 17593 of 2013
Date of Decision: August 14, 2013

Dakshin Haryana Bijli Vitran Nigam Ltd.

.....Petitioner

Versus

Smt. Sulekha

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Atul Nanda, Sr. Advocate with
Mr. Ravi Parkash, Advocate for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

The present writ petition is directed against the order dated 15.07.2013 (Annexure A-1) passed by the Permanent Lok Adalat (Public Utility Services) Gurgaon, thereby directing the petitioner to receive the application of the respondent for supplying the electric connection, get deposited the requisite amount for security and meter etc., as per the rules and then releasing the electric connection to the respondent.

The facts of the case, which are necessary for the disposal of the present writ petition can be put into a narrow compass. Respondent-Smt. Sulekha purchased a plot bearing No. C- 186, situated in Block-C, Mayfield Garden, Gurgaon, by way of sale deed dated 19.06.2009 (Annexure A-2). The liability to set-up 66 K.V. Sub-station was that of the builder i.e. Sheetal International Pvt. Ltd. However, the builder failed to comply with the terms and conditions of its license, while not setting up the 66 K.V. Sub-station, thereby adversely affecting the facility of electricity to the residents of Mayfield Garden. Sub-station was not set up despite undertaking given on behalf of the builder, vide

Annexure A-3 (Colly.). Dissatisfied with the inadequate power supply, residents of the area approached the Haryana Electricity Regulatory Commission, who passed the order dated 20.12.2007 (Annexure A-4), directing the builder company not to sanction any further load beyond the provision agreed by way of additional occupancy or otherwise in the project Chief Engineer (operation) of the petitioner-Company appeared before the Haryana Electricity Regulatory Commission ('the Commission' for short) and in view of the difficulties of residents of the area, agreed to provide an additional load of 2 MVA for its two residential complexes from another 66 K.V. Sub Station. Thereafter, vide order dated 18.08.2009 (Annexure A-5), the commission directed the petitioner-Company to provide electricity connection to all the residents of the colony, who have occupied the premises and applied for the electric connections. Petitioner further alleges that the builder has not meticulously complied with the directions issued by the Commission, vide abovesaid two orders contained in Annexure A- 4 and A-5. Respondent has been issued occupation certificate by the Competent Authority i.e. District Town Planner, Gurgaon, vide Annexure A-6 dated 03.12.2012. Since there was a mushroom growth of residential colonies in and around Gurgaon, petitioner expressed its inability to provide new connections without submitting bank guarantee for supply of electricity by the builder. It was so said, vide communication dated 07.06.2013 (Annexure A-7).

In the meantime, the respondent approached the permanent Lok Adalat, seeking a direction against the petitioner for supply of electricity connection, at her premises, vide her application Annexure A-8. Having been served with the notice issued by the Permanent Lok Adalat, petitioner filed its reply at Annexure A-9.

After hearing learned counsel for the parties and after perusal of the record of the case, Permanent Lok Adalat passed the impugned order dated 15.07.2013 (Annexure A-1), Hence, this writ petition.

Learned counsel for the petitioner submits that the impugned order passed by Permanent Lok Adalat was without jurisdiction, in view of the fact that the Electricity Act, 2003 ('the Act' for short), being a complete and exhaustive Code, every consumer must seek redressal of her/his grievance only under the said Act. He further submits that if the respondent was aggrieved against the orders passed by the Commission (Annexures A-4 and A-5), she should have approached the Competent Authority, only under the said Act. He further submits that since the Permanent Lok Adalat had no jurisdiction to entertain the complaint of the respondent, the impugned order passed thereon, would be without jurisdiction. He further submits that since the orders contained in Annexures A-4 and A-5 passed by the Commission, were binding on the Permanent Lok Adalat, the impugned order having been passed contrary to the orders passed by the Commission would be illegal. Finally, he prays for setting aside the impugned order by allowing the present writ petition.

Having heard learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in view of the given fact situation of the case, no interference is warranted, at the hands of this Court, while exercising its writ jurisdiction under Article 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

The argument raised by learned counsel for the petitioner that the Permanent Lok Adalat had no jurisdiction to pass the impugned order, has been found to be without any force. It is so said because, Section 43 of the Act casts a duty on the distribution licensee, like the petitioner herein, that on an application by the owner or occupier of any premises, licensee shall supply electricity to such premises within one month after receipt of the application, with certain conditions envisaged in the proviso thereto. Section 42 provides the duties of distribution licensees and rights to the consumers.

Since learned counsel for the petitioner did not advert to Section 42 of the Act, it would be appropriate to reproduce the relevant part thereof. Sub-sections 5,6,7 and 8 of Section 42 are relevant for the purpose of the present case, the same read as under:

"Duties of distribution licensee and open access.(1) X X X X
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (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 grievance 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 grievance 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."

A bare reading of the abovesaid provisions of law and particularly contained in Section 42 (8) would make it clear that the legislature protected the other rights of the consumers, which were not covered under sub-section (5), (6) and (7) of Section 42. Such a right of the consumer would also include his or her right to approach the Permanent Lok Adalat because supply of power certainly comes within the ambit of Public Utility Services. Any contrary interpretation of Section 42(8) would be against the letter and spirit of the Act and would also defeat the object thereof. Having said that, this Court feels no hesitation to conclude that Permanent Lok Adalat committed no error of law, while passing the impugned order and the same deserves to be upheld.

Learned counsel for the petitioner was right in submitting that the Electricity Act, 2003 was a complete code in itself. However, he failed to substantiate his argument in this regard because sub-sections (5), (6), (7) and (8) of Section 42 provide complete answer of this issue, so far as the facts and circumstances of the present case are concerned.

Again, Section 145 of the Act, which deals with the jurisdiction of Civil Court, is also limited to the issues arising out of Sections 126 and 127 of the Act. Section 145 of the Act, reads as under:

"Civil court not to have jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Giving due respect to the legislative intent behind the object sought to be achieved and also keeping in view the given fact situation of the present case, it is unhesitatingly held that the Commission while passing the orders Annexures A-4 and A-5, as well as the Permanent Lok Adalat while passing the impugned order Annexure A-1, have rightly proceeded in their separate and independent fields of operation. The arguments of the learned counsel for the petitioner raised in this regard that the orders passed by the Commission would be binding on the Permanent Lok Adalat, have also been found to be misplaced.

Thus, no scope has been found to find any fault with the jurisdiction of the learned Permanent Lok Adalat, while entertaining the application of respondent and deciding the same by way of impugned order dated 15.07.2013 (Annexure A-1).

The abovesaid view taken by this Court also finds support from the judgment of Allahabad High Court in *Dakshinanchal Vidyut Vitran Nigam Ltd. Vs. M/s. Prakancha Metal Works Pvt. Ltd.*, AIR (2012) (Allahabad) 176, judgment of Delhi High Court in *B.S.E.B. Rajdhani Power Ltd. Vs. Ashok Kumar* 2008 (72) AIC 613 and judgments of this Court in *Sahota Public School, Basi Machhian, Tehsil Zira, District Ferozpur Vs. Chairman, Permanent Lok Adalat (Public Utility Services), Ferozpur & another*, 2012(1) R.C.R. (Civil) 628, as well as in *Uttar Haryana Bijli Vitran Nigam Vs. Sh.Harjit Singh*, CWP No. 14405 of 2013, decided on 09.07.2013.

Discussing the overriding effect of Section 174 of the Act and the jurisdiction of the Permanent Lok Adalat, Allahabad High Court, in *Dakshinanchal Vidyut Vitran Nigam Ltd.'s case* (Supra), observed as under:

"Moreover the claim of damages on account of deficiency of service provided under the Consumer Protection Act, 1986 has already been protected and excluded by operation of Section 174 read with Section 173 and this Act, 2003 has no effect on the provisions of Consumer Protection Act. The Permanent Lok Adalat has been constituted as an alternative redressal forum for settlement of dispute speedily either by a settlement and in case of failure to settlement, by adjudication. It is well settled that special provision shall override a general provision.

The provisions of Legal Service Authorities Act, 1987 (hereinafter referred to as the "Act, 1987") are meant for different objective, i.e., for adjudication of dispute by

settlement. While the Act, 2003 is for the purpose of basically considering the subject relating to generation, transmission, distribution of electricity and use of electricity and the all incidental matters but so far as Dispute Redressal Forum with respect to damages against an act or omission on the part of Licensee is concerned, in my view, for that purpose Act, 1987 would construe a special Act and, therefore, shall have precedence for Act, 2003.

Moreover, the provisions of Act, 1987 are not exclusive but supplementary in nature. A reading of Section 19 and 20 of Act, 1987 would show that a matter shall be referred to Lok Adalat on an application filed by one of the parties under Section 19(5) (ii) with the request that such matter needs be determined by Lok Adalat but only when an opportunity is granted to other side of being heard.

Again, in Sahota Public School's case (*supra*), this Court observed as under:

"The Permanent Lok Adalat has proceeded to pass an award against the petitioner only on the ground that when a final assessment had been made, the petitioner had not challenged the same in the manner, which is provided under Section 126 of the Electricity Act and, therefore, it had become final. Learned counsel also argues that if there is a separate enactment that governs the rights of parties, there shall be no scope for the Board to approach the Permanent Lok Adalat to initiate proceedings. He would contend that in matters where there is exclusive jurisdiction for Motor Accident Claims Tribunal, a petition shall not be filed before the Permanent Lok Adalat. In this case, it is not as if the Electricity Board is coming before the Permanent Lok Adalat to justify a levy that it has made. On the other hand, there is already a final assessment of charges that are made against the petitioner and when the petitioner has not availed of any benefit by an appeal under the Act, they have sought to recover the same by approaching to Permanent Lok Adalat. I do not find any error in the approach of the 2nd respondent-Board and the award passed by the Permanent Lok Adalat would not require any interference.

3. Learned counsel for the petitioner states that he should be granted liberty to challenge the final assessment made by the 2nd respondent. If the petitioner has any right of ventilating his grievance in any other forum, he will not be barred from doing so by virtue of this order."

Similarly, in UHBVNL's case (*supra*), this Court, held as under:

It is undisputed factual aspect in the present case that the dispute between the parties clearly falls within the scope of Section 56 of the Act and this is what the pleaded case of the petitioner. Learned counsel for the petitioner strenuously argued that remedy available to the respondent would have been only under sub-section 5 of Section 42 of the Act. However, when this argument is examined in view of the provisions of sub-section 8 of Section 42 of the Act, the argument raised by learned counsel for the

petitioner falls flat. It is so said because the only harmonious interpretation of Section 42(8) is that the consumer like the respondent herein has been given the choice either to avail the remedy under Section 42(5) of the Act or he may approach the civil court. Notwithstanding sub-sections 5,6, and 7 of Section 42 of the Act, sub-section 8 thereof makes it very clear that the provisions contained in sub-sections 5,6 and 7 shall be without prejudice to the right of the consumer, which he may have apart from the rights conferred upon him by these sub-sections. When this specific query was put to learned counsel for the petitioner, he had no answer. Learned counsel for the petitioner failed to substantiate his argument in this regard. Having said that, this court feels no hesitation to conclude that the respondent was entitled to choose either to approach the Consumer Grievance Redressal Forum constituted under Section 42(5) of the Act or to go to the civil court invoking the provisions of Section 42(8) read with Section 145 of the Act.

The relevant observations made in Ashok Kumar's case (supra), read as under :-

" 5. It is apparent that Section 145 of Electricity Act is not an omnibus Section which restricts the jurisdiction of civil court in respect of all and every matter that may arise concerning use of electricity by a consumer. Section 145 bars the jurisdiction of civil court only in respect of those matters which fall under Section 126 and 127. No other interpretation can be given to Section 145. Adverting to Section 42(5) and (6) of the Electricity Act, it is clear that these two provisions put an obligation on the distribution licensee to create a forum for grievance redressal of the consumer in accordance with guidelines laid down by the State Commission and an option is given to the consumer to make a representation for redressal of his grievance to the forum and if he is not satisfied with the action taken by the forum then to approach ombudsman to be appointed by the State Commission.

6. Section 42 does not provide that the jurisdiction of civil court shall be barred once the forum is created and comes into action. Rather Section 42(8) specifically states that provisions of Sub-section (5) (6) and (7) shall be without prejudice to the right of consumer which he may have apart from the right conferred upon him by these sub-sections. If these sub-sections had not been there, the consumers only remedy for redressal would have been to approach the civil court. No other mechanism is provided in the Electricity Act where a consumer could go against the faulty bills. Thus where a bill is faulty, the consumer has an option that before approaching the civil court he may take resort to Grievance Redressal system created under Section 42 (5). However, even after approaching to the Grievance Redressal system, if he is not satisfied, he still has the remedy to approach the civil court for adjudication of his dispute.

7. XXX XXX XXX When the attention of the court was drawn to Section 42(8) the court observed that if petitioner has rights before any other forum, he can avail those rights and that would not mean that principle of alternate remedy available to him under law has to be ignored in view of Section 42(8). This only means that Section 42 (8) could also be resorted by the consumer as it provided for alternate remedy. The High Court was only concerned with the flood of writ petitions that may come to High court despite the fact that the Grievance Redressal system was provided in

the Act itself.

8. This court had not observed that the jurisdiction of civil court was barred. Even otherwise it is settled law that exclusion of jurisdiction of a civil court must be construed very strictly. Ordinarily, a civil court has jurisdiction to entertain all civil disputes and unless and until the jurisdiction of civil court is barred specifically, the court cannot infer the barring of jurisdiction of civil court."

Recapitulating the facts of the present case and being in respectful agreement with the judgment of Allahabad High Court, as well as of this Court, it is held that the learned Permanent Lok Adalat committed no error of law, while passing the impugned order. The Permanent Lok Adalat was conscious of the peculiar fact situation of the present case while passing the impugned order. That was the reason that it was clarified that the order will not be taken as precedent for other such applicants in future.

The relevant operative part of the impugned order passed by learned Permanent Lok Adalat, reads as under:

"Learned counsel for the respondent has also drawn our attention to the order dated 18.08.2009 passed by Haryana Electricity Regulatory Commission. But in our considered opinion, this order is not binding upon the applicant because the applicant has already purchased the plot on 19.06.2009. The respondent could not produced any agreement between the applicant and the alleged vendee company. No such agreement has been produced to show that it was the responsibility of the vendee company to provide electricity connection to the plot holder. If there was any agreement between the vendee company and the respondent the respondent should take steps in this matter. It is also submitted by learned counsel for the applicant that even the application of the applicant for the electric connection is not received by the respondent. It is not justified on the part of the respondent. In our considered opinion conduct of the respondent uncalled for. It will not make much difference if one more connection is provided to the applicant who is a lady. However, at this juncture it may be mentioned that this award will not be taken as precedent for other such applicants and their case will be considered on merits in view of the facts and circumstances of the particular case submitted before this Court.

So as a result of above discussion, respondent is directed to receive the application for supplying electric connection from the applicant and to get deposited the requisite security and meter etc. if any as per rules and then the respondent is directed to issue electric connection to the applicant within ten days of the receipt of the application and the electric meter will be got tested in M&P Lab. The present application is allowed accordingly. File be consigned to record room."

During the course of arguments, learned counsel for the petitioner failed to point out any jurisdictional error or patent illegality in the impugned order passed by learned Permanent Lok Adalat, so as to persuade this Court to take a different view than the one taken by learned

Permanent Lok Adalat, while passing of the impugned order.

Further, it is settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002(3) SCC 533.

In view of the peculiar fact situation of the present case, discussed hereinabove, coupled with the legal position referred in foregoing paragraphs, it is held that learned Permanent Lok Adalat proceeded on correct appreciation of facts and was also justified in law, while passing the impugned order, which deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that in the given fact situation of the present case, instant writ petition has been found to be misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, the present writ petition stands dismissed, however, with no order as to costs.

August 14, 2013
ANJAL

(RAMESHWAR SINGH MALIK)
JUDGE