
Dakshin Haryana Bijli Vitran Nigam Ltd v. Permanent Lok Adalat Public Utility Services, (P&H) ***: Law Finder Doc Id # 832454***

2017(2) R.C.R.(Civil) 287 : 2017(2) LJR 515

PUNJAB AND HARYANA HIGH COURT

Before:- Amit Rawal, J.

CWP No. 2644 of 2016 (O&M). D/d. 11.1.2017.

Dakshin Haryana Bijli Vitran Nigam Ltd & another - Petitioners

Versus

Permanent Lok Adalat Public Utility Services & another - Respondents

For the Petitioners :- R.S. Longia, Advocate.

For the Respondent No.2. :- Deepak Choudhary, Advocate.

Constitution of India, 1950 Articles 14 and 226 Electricity Act, 2003 Sections 126 and 135 Natural justice - Change of defective meter - Addl. demand on overhauling the account of consumer after report of M.T. Lab - Meter not tested in the presence of consumer nor copy of report of laboratory supplied to him - No show cause notice given to him before raising additional demand - Meter was changed on the request of consumer - Demand including the period when meter reader had reported meter as O.K. - Liability imposed in violation to the principles of natural justice cannot be sustained in view of M/s Tirupati Industries case 2000(1) RCR (Civil) 681 P&H (DB) - Permanent Lok Adalat rightly set aside the impugned demand - Not a fit case for judicial review U/Art. 226 of the Constitution - Petition dismissed.

[Paras 8 to 10]

Cases Referred :-

M/s Tirupati Industries v. Punjab State Electricity Board, 2000(1) RCR (Civil) 681

State of Orissa v. Dr. (Miss) Binapani Dei, AIR 1967 Supreme Court 1269.

JUDGMENT

Amit Rawal, J. - Dakshin Haryana Bijli Vitran Nigam Limited - petitioners are before this Court under Article 226 of the Constitution of India for quashing of the impugned order dated 18.11.2015 (Annexure P-4) passed by Permanent Lok Adalat in the proceedings initiated under Section 22 of Legal Services Act, 1987 (hereinafter referred to as "1987 Act") on the premise that electric connection bearing No. N.KMID-0546 was installed in a house which was purchased by respondent No.2 measuring 4 marlas situated in D.C.Colony, Faridabad.

2. Mr. R.S. Longia, learned counsel for the petitioners submits that respondent No.2 filed a petition under Section 22-C of 1987 Act on the ground that the petitioners had issued bills on the average basis for the months of April 2014 to November 2014 and in the month of November 2014, moved an application for changing/replacement of the meter. In the month of March 2015, the petitioners changed the electric meter and thereafter, started issuing bills on consumption basis but on 8.6.2015 issued a bill of ₹ 76,267 including the amount of ₹ 74,104/- as arrears on the premise that at that time the reading of old meter was 17913 and the new meter was installed at 0 reading. After installation of the new meter, the consumer consumed 143 units and on the basis of the consumption, the account of the consumer was overhauled by taking the last reading 17913. Accordingly, the demand was raised.

3. He further submits that the aforementioned connection was in the name of Kali Ram

resident of D.C.Colony, Fatehabad. However, the same was replaced vide MCO No.93/599 dated 18.02.2015. The finding of the Lok Adalat is erroneous and illegal, much less capricious on the premise that it was on request of the consumer, the meter was replaced. On replacement, he had consumed the units aforementioned. On the basis of aforementioned calculation, the demand was raised. The demand is perfectly legal and justified as per the consumption of units on replacement. The aforementioned dispute involved intricate question of facts and law which could have been only adjudicated in civil Court and not by the Lok Adalat, therefore, it did not have the jurisdiction to try and entertain the application. He further submits that the meter reading reported 0 reading from April 2014 to November 2014 and the average bills had been issued. When the consumer objected to the same, meter was replaced on 18.02.2015. The bills were accordingly issued, therefore, the Lok Adalat was totally wrong in allowing the complaint. There was no material on record to show that the meter was reported O.K during April 2014 to March 2015 allegedly noticed by the Lok Adalat. The consumer had made a request for checking of the meter replacing the same. When the meter reader reported 0 reading, it was replaced. The meter was actually got checked from M&T Lab and found dead stopped on its counter display vide lab report dated 13.03.2015 (Annexure P-5). Since the petitioners were required to controvert the case but the report of the Lab indicated the slow running of the meter. It is on that basis, much less consumption of units as per the new bill, therefore, there was no fault of overhauled.

4. Per contra, Mr. Deepak Chaudhary, learned counsel appearing on behalf of respondent no.2 submits that no show cause notice has been issued to the consumer for checking of the meter in the laboratory. The alleged inspection is in his absence. Such an action is wanting compliance of principles of natural justice.

5. In support of his contention, relies upon the ratio decidendi culled out by the Hon'ble Division Bench of this Court in ***M/s Tirupati Industries v. Punjab State Electricity Board 2000(1) RCR (Civil) 681*** and thus, urges this Court for dismissal of the writ petition.

6. I have heard learned counsel for the parties, appraised the paper book, impugned award and the annexures attached thereto and of the view that there is no force and merit in the submissions of Mr. Longia.

7. The conceded position on record as per the averments is that the aforementioned meter was checked in the laboratory on 13.03.2015 (Annexure P-5) but the said report reveals that inspection was done in the absence of the consumer.

8. It is settled law that inspection of the meter has to be done in the laboratory in the presence of the consumer. Having failed to do so, the alleged demand of arrears on the basis of checking by overhauling the account is fatal to the claim of the Board.

9. There is another aspect of the matter. The meter reader found that the meter was O.K for the period aforementioned, i.e., in the month of August 2014 but the bills on the basis of average consumption for the months of April, September, November, 2014 and January 2015 were issued. The consumer got worried and requested for replacement of meter in February 2015. The authorities are enjoined upon an obligation to raise the demand after compliance of the principles of natural justice. Having adhered to the aforementioned fact, in my view, the demand was rightly set aside by the Lok Adalat.

10. I do not find any illegality and perversity in the same. My observations are reiterated from the judgment relied upon by Mr. Deepak Chaudhary, Advocate, wherein, this Court, in paras 10 and 13 of M/s Tirpuati Industries's case (supra) held as under:-

> "10. In our opinion, failure of the concerned authorities and the Committees to supply a copy of the report sent by M.E. Laboratory and to give an action-oriented notice and opportunity of hearing to the petitioner will have to be construed as a denial of effective opportunity of hearing and, therefore, the finding recorded by the Senior Executive Engineer, M.M.T.S. (Enforcement), Ludhiana and the two Committees that the petitioner is guilty of committing theft is legally unsustainable. We are further of the opinion that the action taken by the respondents is liable to be voided due to non-compliance of Clause (c) of Commercial Circular No. 45 issued by the Board. The said clause reads as under :-
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> "c) In future all the meters removed against any meter change order (MCO) shall be sent to M.E. Laboratory in the sealed Card Board Box duly signed by the concerned PSEB officer/official and the consumer or his representative. The testing of such meters shall be done in the presence of consumer or his representative. In case, the consumer refuses to sign the meter test results/report, such meter shall be kept in the sealed box by the Operation S/Divn. till the final disposal of the case. If the consumer deposits the compensation amount without going to the Dispute Settlement Committees or Civil Courts such sealed meter shall be returned to the ME Labs. Similar procedure shall be adopted in case of meter sealed by the

Enforcement Agency/Operation Organisation in theft cases."

13. The rule of hearing and the rule of fairness in State action which form part of the concept of rule of law imposes an obligation on the State and its agencies/instrumentalities to give notice and opportunity of hearing and also to disclose reason for their actions which may adversely affect the rights of a person or which may visit such person with evil consequences. The rule that no man can be condemned unheard has been treated as an integral part of the concept of rule of law which permeates the scheme of our Constitution. The thin line of distinction between purely administrative actions and quasi judicial actions has been completely obliterated by the judicial verdicts. More than 30 years ago, their Lordships of the Supreme Court in ***State of Orissa v. Dr. (Miss) Binapani Dei and Others, AIR 1967 Supreme Court 1269*** ruled that even administrative decisions may be invalidated on the ground of violation of the principles of natural justice. Some of the observations made in that action are extracted below :

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional setup that every citizen is protected against exercise for arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a persons, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.... It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

For the reasons aforementioned, I am in agreement with the findings rendered in the impugned order. No ground is made out for interference. The order is perfectly legal and justified. The writ petition does not fall within the doctrine akin to judicial review for interference under Article 226 of the Constitution of India.

Accordingly, the writ petition stands dismissed.

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