IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5962 of 2014 (O&M)
Date of Decision: December 22, 2015

Harminder Singh and others .... Petitioners

vs.

Punjab State Electricity Board, now changed into Punjab State Power Corporation Limited .... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Dhirinder Chopra, Advocate for the petitioners.

Ms. Meena Bansal, Advocate for the respondent.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

This revision is preferred against the judgment dated 06.05.2014 (Annexure P5) passed by learned Addl. District Judge, Moga, upholding the order dated 13.05.2013 (Annexure P-4) passed by learned Addl. Civil Judge (Sr. Divn.), Moga, whereby the plaint was rejected.

The plaintiff had filed a suit for declaration challenging notice dated 26.09.2008 and memo No.4628, vide which demand of ₹2,48,940/- was raised from plaintiff No.1. Also challenged was the memo No.4739 dated 11.10.2008, vide which demand of ₹1,72,114/- was raised from plaintiff No.2. The plaintiffs also challenged the letter dated 26.09.2008 written by the defendant to S.H.O., Police Station

Baghapurana, for registration of FIR against the plaintiffs being illegal, null and void. Permanent injunction was also sought restraining the defendants from affecting any recovery.

In the suit, it is claimed that plaintiff No.1 is a Contractor of Government countrymade liquor and is retail vendor of the same under the valid licence at Roopa Patti Village Rode and is selling the liquor from a room taken on rent from its owner Shri Hakam Singh S/o Banta Singh. Room is the part of the building owned by Hakam Singh. Therefore, the electricity in the said room is supplied by the owner himself. Plaintiff No.1 is the sole owner of the retail Government countrymade liquor doing the business at Roopa Patti, Village Rode. Plaintiff Nos.2 and 3 have no title or right in the said business nor they are partners. It is further alleged that S.D.O., PSEB, namely, Kulwant Rai Sharma and R.A. Surinder Pal Kakkarian came to plaintiff No.1 in 2008 and demanded free liquor. On refusal, he was threatened to be taught a lesson and thereafter he received a notice. It is stated that plaintiff No.2 belongs to Village Bhagpurana and plaintiff No.3 belong to village Kotla Mehar Singh Wala and have no interest in the liquor business of plaintiff No.1. It is also alleged that there is no need to steal the electricity. The checking by the S.D.O is arbitrary. The connected load 2.34 KW in case of plaintiff No.1 and 2.42 KW in case of plaintiff No.2 is imaginary.

In the written statement, defendants took the plea that plaintiffs are running their wine shop in the room of Hakam Singh as tenants under licence issued by the Punjab Government for a period from April 2008 to 31.03.2009. No electric connection is installed in the said room. On 07.08.2008, in a cross-checking by Junior Engineer, City Sub Division of PSEB, Baghapurana, it was found that the plaintiffs were getting direct electricity supply from the nearby PVC wire. The said consumption of electricity was not recorded in the electric meter. The plaintiffs were caught red handed while stealing the electricity. Plaintiff No.1 was present at the spot at the time of checking but refused to sign the checking report. Consequently, assessing authority provisionally assessed an amount of ₹82,850/- in lieu of compensation for the theft of electricity but due to clerical mistake in the notice No.3413, dated 14.08.2008 instead of ₹82,550/-, provisional assessment for ₹75,000/-, under Section 126 of the Indian Electricity Act, 2003 (in short 'the Electricity Act') was mentioned. The plaintiffs did not submit any objection and the order became final after the expiry of stipulated period. The said amount has not been deposited yet. It is further averred that again on 17.09.2008, Mohinder Singh, AJE and Surinder Kumar, AAE of P.S.E.B., Sub Urban, Baghapurana checked the premises of wine shop and found that the plaintiffs were getting direct supply from the main LT line and were again caught committing theft of electricity. Plaintiff No.3 was present at the spot at the time of checking on 17.09.2008 but he refused to sign the checking report. Consequently a provisional assessment order No.4688/90 dated 29.09.2008 for ₹2,48,940/- including a sum of ₹82,500/- in lieu of compensation of theft detected during the first checking on 07.08.2008 and

₹1,66,440/- in lieu of compensation for the theft detected during second time of checking on 17.09.2008, was passed. The plaintiffs did not submit any objection to notice No.4688/90, dated 29.09.2008 and the said notice became final.

It was further averred that again on 24.09.2008, the premises of wine shop was checked by Shri Mohinder Singh, AJE and Surinder Kumar, AAE and plaintiff No.2 was found present, who refused to sign the checking report. Consequently, provisional order of assessment of ₹1,72,114/- bearing No.4739/41, dated 01.10.2008 for unauthorized use of electricity was served upon plaintiff No.2 but no objections were ever preferred to the said order of assessment and the same also became final.

The lower court framed the issues and took up issue no.4 first. Issue Nos.1 to 3 were also determined holding that in the light of provisions of 145 and 126 of the Electricity Act, civil court has no jurisdiction to try the suit and the suit is barred. Consequently, the plaint was rejected. The said order was upheld in appeal.

I have heard learned counsel for the parties and have also carefully gone through the case file.

First of all, this Court is to examine the relevant Sections, under which the impugned order was passed. Section 126 of the Electricity Act provides as under"

> "*126. **Assessment. -** (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person,*

the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under subsection (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice times the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) " assessing officer" means an officer of a State

> *Government or Board or licensee, as the case may be, designated as such by the State Government;*
> *(b) " unauthorised use of electricity" means the usage of electricity –*
> *(i) by any artificial means; or*
> *(ii) by a means not authorised by the concerned person or authority or licensee; or*
> *(iii) through a tampered meter; or*
> *(iv) for the purpose other than for which the usage of electricity was authorised; or*
> *(v) for the premises or areas other than those for which the supply of electricity was authorised."*

Section 127 of the Electricity Act provides for appeal against the order passed under Section 126 of the Electricity Act. The words "unauthorized use of electricity" have itself define the explanation, which means that the use of electricity by artificial means or by means not authorized by the concerned person of authority.

In the present case, the plaintiffs were found using electricity by getting direct supply from nearby PVC wire. The said method of use of electricity was never authorized. Therefore, it falls within the definition of unauthorized use of electricity, as defined in explanation of Section 126 of the Electricity Act. Admittedly, the plaintiffs did not file any appeal.

Section 145 of the Electricity Act provides as under"

> 145. **Civil court not to have jurisdiction. -** *No civil court shall have jurisdiction to entertain any suit or proceeding 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."*

It shows that if an assessment order is made under Section 126 of the Electricity Act or an appellate court under Section 127 of the Electricity, the jurisdiction of civil court is barred. It being so, *prima facie*, jurisdiction of civil court is barred and the order rejecting the plaint cannot be called illegal.

Learned counsel for the petitioners has vehemently argued that at the most, getting of electricity from nearby PVC wire amounts to theft of electricity. Therefore, assessment order under Section 126 of the Electricity Act cannot be passed. Therefore, civil suit is competent. He has referred to the provisions of Section 135 (1A) of the Electricity Act. It has been argued that even as per the allegations levelled by the defendant, the tapping of electricity is a theft and therefore, it cannot be called unauthorized use of electricity.

I am of the view that an act of a person may fall under mischief of one or more than one acts as defined in the Electricity Act. The act of the plaintiffs may amounts unauthorized use of electricity only or theft of electricity or it may amount to both.

In the present case, the tapping of electricity from nearby PVC wire, falls within the definition of unauthorized use of electricity as well as theft of electricity. Therefore, the assessment order passed under Section 126 of the Electricity Act will attract the bar of Section 145. Thus, the civil suit to challenge the said assessment order is not competent. The plaintiffs should have availed the remedy of appeal under the Electricity Act.

Learned counsel for the petitioners has relied upon the authority of Hon'ble the Supreme Court delivered in case of ***"The Executive Engineer and another vs M/s. Sri Seetaram Rice Mill", 2012 AIR SC (Civil), 489*** to press that the act of the plaintiffs falls within the definition of theft only and not unauthorized use of electricity.

The matter has already been discussed in the background of the facts of the present case. Therefore, the said authority is of no help to the plaintiffs. So far as the prerogative of the defendant to write a letter to the S.H.O. is concerned, civil court cannot pass any order and it has to be decided at criminal side.

In view of the foregoing discussion, I do not find any illegality or infirmity in the impugner order. Accordingly, the present revision petition stands dismissed.

(KULDIP SINGH)

December 22, 2015 **JUDGE**

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