

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No. 20461 of 2012 (O&M)

Date of decision: 03.07.2015

Punjab State Power Corporation Ltd. and others

...PETITIONERS

VS.

Sub Divisional Magistrate and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Meena Bansal, Advocate
for the petitioners.

Mr. Suvir Sehgal, Advocate,
for respondent No. 2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

It is the contention of the counsel for the petitioners that the impugned order dated 21.01.2010 (Annexure P-3) passed by the Sub-Divisional Magistrate, Amritsar, is not sustainable as the said order has been passed on the presumption that the final assessment order has been passed by the Assistant Superintending Engineer whereas it was only provisional assessment order, which was passed by the said authority. She places reliance upon the notification issued by the Department of Power (Energy Branch) dated 27.12.2004, to contend that the competent authority to pass an assessment order under Section 126 of the Electricity Act, 2003, is the

Assistant Engineer/Assistant Executive Engineers/Executive Engineers of Operation Wing of the area as regards all other LT Consumers, which have not been specified in the said notification. She thus, contends that in case the conclusion drawn is that the case is one of theft and falls under Section 135 of the Electricity Act, 2003, the final assessment order in the said situation has to be passed by the Superintending Engineer.

Counsel for respondent No. 2 contends that this is precisely which has been done by the appellate authority as the stand taken by the petitioners is that it is a case of theft and, therefore, would fall under Section 135 of the Electricity Act, 2003.

A perusal of the impugned order does not indicate the same and accordingly, the same cannot, therefore, be sustained. Keeping in view the statement made by the counsel for the petitioners that the final assessment order, till date, has not been passed in the case of the petitioners, the impugned order dated 21.01.2010 (Annexure P-3) is set aside.

The submissions, as made by the counsel for the petitioners, clearly indicate that in case it is found, on consideration of the reply which has been filed by the respondents, to be a case of theft which would be covered under Section 135 of the Electricity Act, 2003, the competent authority, as per the notification issued by the respondents and has been relied upon dated 27.12.2004, shall not apply.

Since the matter pertains to the year 2009, a direction is issued to the competent authority to pass the final assessment order within a period of two months from the date of receipt of certified copy of this order.

Counsel for respondent No. 2 points out that an amount of ₹ 1, 50,000/- has been deposited by the said respondent on 12.08.2009 in

pursuance to the provisional assessment order, which, if/or found in excess, may be refunded to it.

Prayer made by the counsel for respondent No. 2 is accepted. In case such a contingency arises, the amount in excess shall be refunded to respondent No. 2 within a period of one month thereafter.

Petition stands disposed of accordingly.

July 03, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE