

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.22063 of 2013

Date of decision: 19.01.2015

Dharam Pal son of Shri Nanak Chand, resident of Devi Mandir Road, near Kapil Nursing Home, Village and Post Office Fatehpur, Tehsil Pundri, District Kaithal.

... Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Limited, through its Secretary, Sector 6, Shakti Bhawan, Panchkula, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Raj Kapoor Malik, Advocate,
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The petitioner, who has been slapped with imputation of theft and for illegal extraction of electricity energy is before this court, after going to Consumer Grievances Redressal forum and the Electricity Ombudsman to contend that the statutory notices were not given and the proceedings are vitiated.
2. The petitioner would file a document Annexure P1 which is a copy of a check report made on 03.09.2010 in the presence of

the petitioner which showed that the steel strips connected with the incoming wires of cable under the terminal block of meter had been removed and connection had been given directly to the main supply by bye-passing the meter. Videography had been done and the supply was disconnected and the meter removed. A provisional notice of assessment for theft of electricity had been served on 14.09.2010 reiterating that it was a case of direct theft and the memorandum of inspection and seizure had been duly handed over to him, being present at the time of inspection and assessing ₹4,08,837/- as payable. This amount is reported to have been disputed. A fresh provisional assessment was made again on 28.10.2010 making a demand for an additional amount of ₹3,13,192/-. The petitioner stated his objection before the Consumer Grievances Redressal forum which found that the case of theft had been proved and there was no interference which was possible. The additional amount was said to have been raised by the second notice on account of the fact that an assumption had been wrongly made that it was a rural supply and the correct calculation had to be worked out with reference to the number of hours that had to be taken on an average for non-rural supply and that an additional amount became payable. The petitioner had made a complaint to the forum on 18.11.2010 and after noticing the respective versions of parties, the forum found that the missing of one phase was not due

to any technical fault but was the result of tactics adopted by the petitioner to steal the energy cautiously and carefully. The forum, however, found that the Electricity Corporation must bear a fine of ₹1,000/- for not appearing before the forum. The forum also found that the Power Corporation itself was guilty of deficiency and the assessment should have been made only on the sanctioned load. In appeal filed by the petitioner to the Electricity Ombudsman, the petitioner admitted the actual arrangement of stealing the energy had been done by his son but before it was put to use, the meter was taken possession of by the Vigilance team as a case property. I find that the theft of energy was an admitted fact and the inferences made thereof by designated authorities were on adequate evidence. Hence, I find no scope for intervention.

3. The learned counsel for the petitioner states that the notices have not been issued in requisite proforma and the manner of assessment was not clearly spelt out in the notices. The counsel would argue that the requisite format as prescribed, exhibited as Annexure P4 would give also the details of the date of inspection, the actual act of theft of energy and the imputation of theft, but the impugned notices do not contain all these details. The counsel would also argue that the matter would require to be sent to the lab and the final assessment should have been made. The counsel would, therefore, seek for a fresh hearing on the matter.

4. I find the objections taken by the petitioner are not tenable at all. What is contained in the notices under P2 and P3 contain every reference of what are necessary in the proforma. The notice gives the memo number dated 11.09.2010 and makes reference to the inspection of the premises on 03.09.2010 and the detection of theft at the time of inspection as a direct theft. It is also stated that the assessment was made at ₹4,08,837/- by application of a formula that allows for the load factor to be reckoned among other parameters. A compounding fee had been added and the provisional assessment made. In the subsequent notice issued, all these details are again noticed and the additional amount is explained in the reply given by the Corporation before the Consumer Grievances Redressal forum explaining that the first assessment was made taking it to be a rural supply and correct calculation was made subsequently. This aspect has actually been noticed by the forum as well. If there was a necessity for issuing a final order after the provisional order, it could have been done after the objections were raised. In this case, the objection had been before the Consumer Grievances Redressal Forum and the parties have had a full opportunity for explaining the circumstances and the justification for the order imposing a particular sum as payable. Although there is a reference that wrong penalties had been levied and it should be reviewed, it has not been done. The counsel says that the entire amount has been paid since

the case stopped short of passing final assessment by virtue of challenge made by the petitioner, it will be only appropriate that a final order is also passed, referring to actual load of supply to the petitioner or the sanctioned load, if rules/regulations provide.

5. There is hardly any dispute that is residual for consideration now. If the issue of theft itself was assessed by the forum as well as the Ombudsman and the latter had made reference to the petitioner's own admission of the contrivance by his son to bye-pass the meter, a case of theft was clearly established. Now if the case must also be required to be considered that the petitioner must be given the final assessment after the provisional assessment is made, the same is directed to be done in the manner directed by the Consumer Disputes Redressal forum.

6. In sum, the challenge to assessment as theft is dismissed. A fresh final assessment shall be issued in the light of the observations of the Consumer Disputes Redressal forum by taking into account the actual load of supply or the sanctioned load, if the rules or regulations provide for such a course and if the assessment results in any amount less than the amount paid, the excess amount already collected shall be adjusted against future bills.

7. The writ petition is disposed of as above.

(K.KANNAN)
JUDGE

19.01.2015
sanjeev