

**In the High Court of Punjab and Haryana at Chandigarh**

**C.W.P. No.24122 of 2015 (O&M)  
Date of Decision: December 11, 2015**

*Amit Gupta*

*... Petitioner*

*Versus*

*State of Punjab and others*

*... Respondents*

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH**

- 1) *Whether Reporters of the local papers 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?*

Present: Mr. Yogesh Kumar, Advocate,  
for the petitioner.

**Paramjeet Singh, J.**

**CM-16071-CWP-2015**

This is an application filed under Section 151 CPC for fixing the main writ petition.

Allowed, as prayed for. CWP No. 24122 of 2015 is taken up for hearing today.

**CWP No. 24122 of 2015**

the Constitution of India for issuance of a writ in the nature of certiorari quashing final order of assessment dated 05.02.2013 (Annexure P/5) issued under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) and order dated 29.07.2015 (Annexure P/8) passed by respondent no.2 – Sub Divisional Magistrate-cum-Appellate Authority under the provisions of the Electricity Act, Sub Division Ludhiana (East), Ludhiana whereby appeal filed by the petitioner against order (Annexure P/5) has been dismissed.

Brief facts of the case are that Hans Raj son of Late Sh. Banta Ram was earlier owner of the property bearing Municipal No. 1238/1, Street No.10, Guru Arjun Dev Nagar, Tajpur Road, Ludhiana. Petitioner along with his brother Manoj Kumar purchased the said property from Hans Raj vide two registered sale deeds bearing No. 1269 dated 16.04.1999 and No. 19035 dated 16.11.1999. An electric connection bearing A/c No. E-12/CS-01/54 (NRS Commercial category) has already been installed in the premises in the name of Banta Ram. After the purchase of the property, petitioner along with his brother Manoj Kumar became owner of the electricity connection as well and the petitioner got increased the load of this connection from time to time. Presently, the sanctioned load of the said connection is 90 KW. After the

and style of M/s Krishna Steels since 1999. The petitioner is using the said electricity connection since then and paying the electricity bills regularly. In the record of the Electricity Department, said electricity connection is lying in the name of late Sh. Banta Singh son of Sh. Moti Ram. In view of Section 2(15) of the Act, the petitioner falls in the definition of consumer. On 11.12.2012, the premises of the petitioner where the said connection is installed were checked by the Additional Superintending Engineer (Enforcement No.2), Ludhiana. At the time of inspection, connected load on the electric meter was found only 60.30 KW, whereas the sanctioned load was, in fact, 89.62 KW. It was reported in the inspection report that petitioner was manufacturing shuttering plates and found using the connection for industrial purpose, whereas the said electricity connection was issued under Non Resident Supply (NRS) meant for commercial purposes. So, action was recommended against the petitioner under Section 126 of the Act for unauthorized use of electric connection. In pursuance of said inspection, memo no. 4361 dated 17.12.2012 (Annexure P/2) was issued to the petitioner whereby provisional assessment order along with penalty to the tune of Rs.4,15,062/- was assessed to be payable by the petitioner on account of unauthorized use of electricity for industrial purpose instead of commercial purpose for which electric connection was actually

installed. It is averred in this petition that as per unit charges of the Non Resident Supply connection are more than the industrial connection, so the demand raised by the respondents was illegal. The petitioner made representation/objections under Section 126(3) of the Act to the Assistant Executive Engineer (Commercial) - respondent no.4 requesting him to provide the opportunity of personal hearing. The Executive Engineer (Commercial) vide order (Annexure P/4) rejected the representation/objections of the petitioner. Thereafter, final assessment order dated 05.02.2013 (Annexure P/5) has been passed. Against order (Annexure P/5), petitioner filed a statutory appeal under Section 127 of the Act before the Appellate Authority - respondent no.2, which has been dismissed vide order dated 29.07.2015 (Annexure P/8). Hence, this writ petition.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner vehemently contended that petitioner is a consumer in view of Section 2(15) of the Act. Learned counsel further contended that this is not in dispute that petitioner has purchased the land along with electricity connection from Hans Raj son of late Banta Ram. It is contended that sanctioned load of the electricity connection is 90 KW, actually being 89.62 KW and the connected load was much less but the same has been termed as an industrial use and the

activities of the petitioner at the time of inspection has been wrongly assessed as industrial use. Petitioner is not indulging any type of industrial work. He was using the connection only for commercial purpose. It is further contended that no opportunity of hearing was afforded to the petitioner. The orders passed by the authorities are non-speaking. It has been wrongly concluded by the authorities as well as appellate authority that petitioner was unauthorizedly using the connection for industrial purpose. The case of the petitioner does not fall in the definition of unauthorised use of electricity. A reference to Section 126 of the Act was made.

I have considered the contentions raised by learned counsel for the petitioner and perused the record.

Before I deal with the contentions raised by learned counsel for the petitioner, it would be appropriate to reproduce Section 126 of the Act, which reads 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 judgment 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 sub section(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 within thirty days from the date of service of such order of provisional 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 unauthorized use of electricity has taken place and if, however, the period during which such unauthorised 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 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 authorized.”

Hon'ble Supreme Court in the case of **The Executive Engineer & Anr. vs. M/s Sri Seetaram Rice Mill, 2012(3) R.C.R. (Civil) 633** has examine the scope of Sections 126, 127 and 135 of the Act against the backdrop of the scheme of the said Act and summed up its conclusion as under:-

*“58. Having dealt with and answered determinatively the questions framed in the judgment, we consider it necessary to precisely record the conclusions of our judgment which are as follows:-*

1. *Wherever the consumer commits the breach of the terms of the Agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such*

*consumer would be 'in blame and under liability' within the ambit and scope of Section 126 of the 2003 Act.*

2. *The expression 'unauthorized use of electricity means' as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.*
3. *In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126 (3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126 (2) is not appealable.*
4. *Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing officer in terms of Section 126 (3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India.*
5. *The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25th July,*

*2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the Assessing Officer relating to passing of an order of assessment and determining factual controversy of the case.*

6. *The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the Assessing Authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the Authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law.”*

Learned counsel for the petitioner has tried to distinguish the judgment on the ground that there is change of classification in this case. The contention of the learned counsel for the petitioner is that the connection was in the name of late Banta Ram from whom the petitioner has purchased the premises as well as electric connection. There is no dispute regarding the petitioner is not a consumer. Only dispute in the present case is that the connection was issued for Non-Resident Supply for commercial purpose and it was found to be used for making shuttering plates which is fall in the category of industrial connection. Explanation (iv) to Section 126 of the Act clearly specifies that if a

usage of electricity was authorized, it will come within the definition of unauthorized use of electricity.

Admittedly, Banta Ram from whom the petitioner is a purchaser was issued a connection for NRS commercial, but the petitioner was using for manufacturing shuttering plates for industrial purposes. Meaning thereby, he was using for the purpose other than for which the usage of electricity connection was authorized. Banta Ram had entered into an agreement with the Punjab State Power Corporation Ltd. for NRS (Commercial) connection. Certainly unauthorized use of electricity in the manner is undisputed, rather learned counsel for the petitioner admitted that connection was for the NRS commercial and was being used for making shuttering plates which is industrial use and an industrial connection is required for this purpose.

The only contention of the learned counsel for the petitioner is that the tariff rate of the NRS Commercial is more than the industrial connection, so its use will not cause any loss to the respondents. The distribution of electricity is given at different stages to different categories of consumers. For various reasons, the different connections are categorized. In this manner, it would be appropriate to refer to relevant paragraphs from **Sri Seetharam Rice Mills's case (supra)**:-

*“31. The unauthorized use of electricity in the manner as is*

*undisputed on record clearly brings the respondent 'under liability and in blame' within the ambit and scope of Section 126 of the 2003 Act. The blame is in relation to excess load while the liability is to pay on a different tariff for the period prescribed in law and in terms of an order of assessment passed by the assessing officer by the powers vested in him under the provisions of Section 126 of the 2003 Act.*

*42. The expressions 'means', 'means and includes' and 'does not include' are expressions of different connotation and significance. When the Legislature has used a particular expression out of these three, it must be given its plain meaning while even keeping in mind that the use of other two expressions has not been favoured by the Legislature. To put it simply, the Legislature has favoured non-use of such expression as opposed to other specific expression. In the present case, the Explanation to Section 126 has used the word 'means' in contradistinction to 'does not include' and/or 'means and includes'. This would lead to one obvious result that even the Legislature did not intend to completely restrict or limit the scope of this provision.*

*43. Unauthorised use of electricity cannot be restricted to the stated clauses under the explanation but has to be given a wider meaning so as to cover cases of violation of terms and 49 conditions of supply and the regulations and provisions of the 2003 Act governing such supply. 'Unauthorised use of electricity' itself is an expression*

*which would, on its plain reading, take within its scope all the misuse of the electricity or even mal practices adopted while using electricity. It is difficult to restrict this expression and limit its application by the categories stated in the explanation. It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the regulations framed and the provisions of the 2003 Act. The requirement of grant of licence itself suggests that electricity is a controlled commodity and is to be regulated by the regulatory authorities. If a person unauthorisedly consumes electricity, then he can certainly be dealt with in accordance with law and penalties may be imposed upon him as contemplated under the contractual, regulatory and statutory regime. The Orissa Electricity Regulatory Commission, in exercise of its powers under Section 181(2)(t), (v), (w) and (x) read with Part VI of the 2003 Act, Orissa Electricity Reforms Act, 1995 and all other 50 powers enabling it in that behalf, made the regulations to govern distribution and supply of electricity and procedure thereof such as system of billing, modality of payment, the powers, functions and applications of the distribution licensees form for supply and/or suppliers and the rights and obligations of the consumers. These were called `Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004 (hereinafter referred to as `Conditions of Supply) vide notification dated 21st May, 2004. The Agreement has been placed on record. This Agreement was undisputedly*

*executed between the parties. Clause (2) of the Agreement deals with Conditions of Supply. It states that consumer had obtained and perused a copy of the Grid Corporation of Orissa Ltd. (General Conditions of Supply) Regulations, 1995, understood its content and undertook to observe and abide by all the terms and conditions stipulated therein to the extent they are applicable to him. The respondent was a consumer under the 'medium industry category'. Clause (A) of the terms 51 and conditions applicable to medium industry category reads as under :*

*"This tariff rate shall be applicable to supply of power at a single point for industrial production purposes with contract demand/connected load of 22 KV and above up to but excluding 110 KVA where power is generally utilized as a motive force."*

*44. Minimum energy charges are to be levied with reference to 'contract demand' at the rate prescribed under the terms and conditions. These clauses of the Agreement clearly show that the charges for consumption of electricity are directly relatable to the sanctioned/connected load and also the load consumed at a given point of time if it is in excess of the sanctioned/connected load. The respondent could consume electricity up to 110 KVA but if the connected load exceeded that higher limit, the category of the respondent itself could stand changed from 'medium industry' to 'large industry' which will be governed by a higher tariff.*

45. Chapter VII of the Conditions of Supply classifies the consumers into various categories and heads. The electricity could be provided for a domestic, LT Industrial, LT/HT Industrial, Large Industry, Heavy Industries and Power Intensive Industries, etc. In terms of Regulation 80, the industry would fall under LT/HT category, if it relates to supply for industrial production with a contract demand of 22 KVA and above but below 110 KVA. However, it will become a 'large industry' under Regulation 80(10) if it relates to supply of power to an industry with a contract demand of 110 KVA and above but below 25,000 KVA. Once the category stands changed because of excessive consumption of electricity, the tariff and other conditions would stand automatically changed. The licensee has a right to reclassify the consumer under Regulation 82 if it is found that a consumer has been classified in a particular category erroneously or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category etc. The Conditions of Supply even places a specific prohibition on consumption of excessive electricity by a 53 consumer. Regulation 106 of the Conditions of Supply reads as under :

*"No consumer shall make use of power in excess of the approved contract demand or use power for a purpose other than the one for which agreement has been executed or shall dishonestly abstract power from the licensee's system."*

46. On the cumulative reading of the terms and

*conditions of supply, the contract executed between the parties and the provisions of the 2003 Act, we have no hesitation in holding that consumption of electricity in excess of the sanctioned/ connected load shall be an 'unauthorised use' of electricity in terms of Section 126 of the 2003 Act. This, we also say for the reason that overdrawal of electricity amounts to breach of the terms and conditions of the contract and the statutory conditions, besides such overdrawal being prejudicial to the public at large, as it is likely to throw out of gear the entire supply system, undermining its efficiency, efficacy and even increasing voltage fluctuations. In somewhat similar circumstances, where the consumer had been found to be drawing electricity in excess of contracted load and the general 54 conditions of supply of electricity energy by the Board and clause 31(f) of the same empowered the Board to disconnect supply and even levy higher charges as per the tariff applicable, this Court held that such higher tariff charges could be recovered. While noticing the prejudice caused, the Court in the case [Bhilai Rerollers & Ors. v. M.P. Electricity Board & Ors.](#) [(2003) 7 SCC 185], held as under :*

*"21. The respondent-Board, therefore, is entitled to raise the demand under challenge since such right has been specifically provided for and is part of the conditions for supply and particularly when such drawal of extra load in excess of the contracted load is bound to throw out of gear the*

*entire supply system undermining its efficiency, efficacy not only causing stress on the installations of the Board but considerably affect other consumers who will experience voltage fluctuations. Consequently, we see no merit in the challenge made on behalf of the appellants. The appeals, therefore, fail and shall stand dismissed but with no costs."*

49. *There is another angle from which the present case can be examined and obviously without prejudice to the other contentions raised. It is a case where, upon inspection, the officers of the appellant found that respondent was consuming 142 KVA of electricity which was in excess of the sanctioned load. To the inspection report, the respondent had not filed any objection before the competent authority as contemplated under [Section 126 \(3\)](#) and had approached the High Court. Limited for the purposes of these proceedings, excess consumption is not really in dispute. As stated above, the contentions raised by the respondent were to challenge the very jurisdiction of the concerned authorities. Consumption in excess of sanctioned load is violative of the terms and 57 conditions of the agreement as well as of the statutory benefits. Under Explanation (b)(iv), 'unauthorised use of electricity' means if the electricity was used for a purpose other than for which the usage of electricity was authorised. Explanation (b) (iv), thus, would also cover the cases where electricity is being consumed in excess of sanctioned load, particularly*

*when it amounts to change of category and tariff. As is clear from the agreement deed, the electric connection was given to the respondent on a contractual stipulation that he would consume the electricity in excess of 22 KVA but not more than 110 KVA. The use of the negative language in the condition itself declares the intent of the parties that there was an implied prohibition in consuming electricity in excess of the maximum load as it would per se be also prejudiced. Not only this, the language of Regulations 82 and 106 also prescribe that the consumer is not expected to make use of power in excess of approved contract demand otherwise it would be change of user falling within the ambit of 'unauthorised use of electricity'. Again, there is no occasion for this Court to give a restricted meaning to the language of Explanation (b)(iv) of [Section 126](#). According to the learned counsel appearing for the respondent, it is only the actual change in purpose of use of electricity and not change of category that would attract the provisions of [Section 126](#) of the 2003 Act. The contention is that where the electricity was provided for a domestic purpose and is used for industrial purpose or commercial purpose, then alone it will amount to change of user or purpose. The cases of excess load would not fall in this category. This argument is again without any substance and, in fact, needs to be noticed only to be rejected. We have already discussed in some detail above that the expressions of the Explanation to [Section 126](#) are to be given a wider and amplified meaning so as to ensure the implementation of the*

*provisions in contradistinction to defeating the very object of the 2003 Act. Without being innovative and while predicating, we only state the principles which have been authoritatively pronounced by this Court in different cases. In the case of [Association of 59 Industrial Electricity Users v. State of A.P. & Ors.](#) [(2002) 3 SCC 711], this Court, while expressing that fixation of tariff in electricity or allied matters can hardly be a subject matter of judicial review. The courts would not venture to examine the tariff on merit and restrict its power of judicial review only to procedural matters that too where it is ex facie arbitrary. The Court rejecting the contention raised before it that Section 126 of the Andhra Pradesh Electricity Reforms Act does not envisage classification of consumers according to the purpose for which the electricity is used and held that the supply of electricity permits differentiation according to the consumer's load factor or power factor, total consumption of energy during the specified period, the time at which the supply is required and the need for cross-subsidisation or such tariff as is just and reasonable and such as to promote economic efficiency in the supply and consumption of electricity. The tariff may also be such as to satisfy all other relevant provisions of the 2003 Act and the relevant conditions of the Agreement. Thus, there is a direct relation between the quantum of electricity demanded, supplied and tariff rate. The purpose, therefore, would include by necessary implication, the category under which the electricity supply is being provided by the licensee to the*

consumer. Still, in another case of Punjab State Electricity Board v. Vishwa Caliber Builders Private Ltd. [(2010) 4 SCC 539], this Court was primarily concerned with the question whether the ombudsman would have the jurisdiction to issue directions for regularization of unauthorized electricity. Answering the same in the negative and dealing with the question of excess load, this Court held as under :

*"The fact that the appellant could not release connection with a load of 2548 KW on account of non-availability of transformer necessary for transfer of 8 MVA load from 66 KV sub station, G.T. Road, Ludhiana had no bearing on the issue of consumption of electricity by the respondent beyond the sanctioned load. Undisputedly, in terms of the request made by the respondent, the Chief Engineer had sanctioned connection on the existing system with a load of 1500 KW, but the respondent used excess load to the tune of 481.637 KW and this amounted to unauthorized use of electrical energy."*

In view of this, I hold that case of the petitioner falls in the definition of unauthorised use of electricity. Since the petitioner has admitted that it was a commercial connection and was used for making Shuttering Plates which falls within the definition of industrial purpose.

In view of language of Section 127 of the Act, final order of assessment

passed under Section 126(3) of the Act is an order appealable under Section 127. Once the final order of assessment is passed by the Assessing Officer in accordance with law, High Court is not required to interfere unless there is some jurisdictional issue. The instant case is squarely covered by the conclusion drawn by the Hon'ble Supreme Court in **M/s Sri Seetaram Rice Mill's case (supra)**.

So far as the contention that this is a non-speaking order, is concerned, the order specifically states that it was a case of use of electricity for the purpose other than for which the usage of electricity was authorized. This is covered under Explanation (b)(iv) to Section 126 of the Act and the authorities rightly came to the conclusion that this is a case of unauthorised use of electricity. Opportunity of hearing has already been given to the petitioner as the petitioner has filed representation, which has been considered, in the nature of objections, although filed belatedly.

In view of this, I do not find any illegality or perversity in the impugned orders.

Dismissed.

**December 11, 2015**

**vk d**

**[Paramjeet Singh]  
Judge**