

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4272 of 2016

Date of Decision: December 06, 2016

Lakha Singh

...Petitioner

Versus

Punjab State Power Corporation Ltd., Patiala & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Rajan Bansal, Advocate,
for the petitioner.

Mr.Ashok Kumar Sharma, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Petitioner-consumer is aggrieved of the impugned order, whereby the petition filed by invoking the provisions of Section 153 of the Electricity Act, 2003 (for short “2003 Act”) before the Court of additional District Judge, i.e., the authority constituted under 2003 Act, against the issuance of Memo No.876 dated 11.7.2012 demanding ₹44,002/- for having used unauthorised electricity connection, has been dismissed.

Mr.Rajan Bansal, learned counsel for the petitioner submits that the Additional District Judge has strictly applied the provisions of Section 145 of 2003 Act to form an opinion with regard to the jurisdiction without adhering to the provisions of Explanation (b) (iii) of Section 126 of 2003 Act. In fact, it has only referred the provisions of Sections 126 and 135 of 2003 Act and dismissed the petition. In support of his contention, he has relied upon the ratio decidendi culled out by this Court in **Regular Second**

Appeal No.5811 of 2015 (Mahipal Singh Versus Dakshin Haryana Bijli

Vitran Nigam and others), decided on 29.8.2016, wherein by invoking the aforementioned provisions, the Court held that the Civil Court did not have the jurisdiction in respect of the unauthorised use of the electricity by any means and, thus, the order under challenge is not sustainable in the eyes of law.

Mr.Ashok Kumar Sharma, learned counsel for the respondents submits that the order under challenge is perfectly legal and justified, which is in strict compliance of the provisions of Section 145 of 2003 Act. The argument of Mr.Bansal for taking into consideration the provisions of Section 126 of 2003 Act is not only fallacious but perverse.

I have heard the learned counsel for the parties and appraised the paper book.

For the sake of brevity, Explanation attached to Section 126 of 2003 Act reads thus:-

“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

2[(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.”]”

It also subscribes the unauthorised use of electricity through artificial means, therefore the Civil Court, though the memo has been issued under Section 135 of 2003 Act, would have the jurisdiction to try the matter

as per the provisions of Section 145 of 2003 Act.

I am in agreement with the ratio decidendi culled out by this Court in **Mahipal Singh's case (supra)**. The relevant paragraph of the same reads thus:-

“On reading of provisions of Section 126 Explanation (b) (iii) of 2003 Act, unauthorized use of electricity also means the usage of electricity through a tampered meter. The allegation in the present case is that the appellant had tampered the meter. In my view, the Civil Court did not have the jurisdiction, in view of the provisions of Section 145 of 2003 Act.

No doubt, certain provisions of Section 126 of 2003 Act would be different from the cases where dishonest abstraction of electricity by means of artificial methods enlisted under Section 135 of 2003 Act and would be applicable to the cases where there is no theft of energy but energy consumed in violation of terms and conditions of supply would lead to authorised use of energy. Provisions of aforementioned sections should be read in whole and not in isolation. I have already given a judgment on this point in RSA No.2092 of 2015 titled as M/s Gill Rice Mills vs. Punjab State Electricity Board and another decided on 21.08.2015.

*Thus, I am of the view that the judgments referred (supra)** would not be applicable to the facts and circumstances of the present case as per the provision of Section 126 Explanation (b)(iii) of 2003 Act, which though have been extracted but not brought to the notice of the Court in cited judgment minutely. Had it been so, perhaps there would not have been a finding to entertain such type of dispute at this stage. I am of the view that the appellant should be granted a liberty to approach the Special Court.”*

- RSA No.4054 of 2013 Dakshin Haryana Bijli Vitran Nigam Limited and others Versus M/s Sirohi Medical Centre.
- Dakshin Haryana Bijli Vitran Nigam Limited, Panchkula & others Vs.Poonam Vashisth, 2009 (2) RCR Civil 677.

For the foregoing reasons, the order under challenge is set-aside. Revision petition is allowed. The matter is restored to its original number. Additional District Judge is directed to decide the appeal in accordance with law.

December 06, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No