

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

**C.W.P. No. 20289 of 2013  
Date of Decision: April 21, 2016**

*Lakhwinder Singh*

*... Petitioner*

*Versus*

*Uttar Haryana Bijli Vitran Nigam and others*

*... Respondents*

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

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

Mr. P.S. Poonia, Advocate,  
for the respondents.

**Paramjeet Singh Dhaliwal, J. (Oral)**

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing impugned memo No. 1626 dated 22.10.2012 (Annexure P/2) issued by respondent no.2 - Sub Divisional Officer, Sub Division UHBVN Siwan, District Kaithal, whereby on account of theft of electricity under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the "Act"), penalty of Rs.49,771/- has been imposed upon the petitioner, as well as, memo No. 1627 dated 22.10.2012 (Annexure P/3) whereby notice for compounding the offence of theft of electricity under Sections 135 and 152 of the Act has been issued by the respondent-Nigam.

Brief facts relevant for disposal of the case are that on 20.10.2012 at about 4.00 p.m., checking of the premises of the petitioner

was done. The petitioner was allegedly found to have committed theft of electricity directly through change over switch, as a result of which an FIR No. 105, dated 20.10.2012, under Sections 332/343/186/506/379/356/201/34 of the Indian Penal Code was registered and notice under Section 135 of the Act was issued vide memo no.1626 dated 22.10.2012 (Annexure P/2). Another notice under Sections 135 and 152 of the Act was also issued vide memo No. 1627 dated 22.12.2012 (Annexure P/3). Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that the matter is squarely covered by a judgment of this Court in ***Satyabir Goyal vs. Dakshin Haryana Bijli Vitran Nigam and others, 2016(1) R.C.R. (Civil) 514.***

Learned counsel for the respondents fairly conceded the factual as well as legal position that the instant case is squarely covered by the judgment in ***Satyabir Goyal's case (supra)***.

This Court in ***Satyabir Goyal's case (supra)*** has held as under:-

*“19. There is no provision in the Act in respect of assessment in cases of theft of electricity. However, Haryana Electricity Regulatory Commission exercising the powers provided in the Act has enacted Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2004 and issued instructions. So far as the present case is concerned, Section-VIII (page 188) of Sales Manual (5<sup>th</sup> edition 2013) deals with the theft and unauthorized use of electricity. Instruction No.8.1 (A)(I) deals with the theft of electricity. Instruction 8.1(A)(II) deals with procedure for inspection of premises, detection of*

*theft of electricity and framing a case for theft of electricity. 8.1(A)(III) deals with assessment for theft of electricity. Under Instruction 8.5, vide notification dated 22.09.2010 Special Courts under Section 153 of the Act have been constituted. Courts of Additional District and Sessions Judge at District Headquarters have been empowered to deal with matters covered under theft of electricity. As per Instruction 8.1(A)(II) (12)(A), the petitioner was required to be served with a notice within two working days and afforded opportunity to file reply and consumer may represent within three days and within four days of submission of consumer's reply, Designated Officer shall pass a detailed order after giving personal hearing or on examination of reply and detailed order shall be passed within 15 days of personal hearing or receipt of reply, as the case may be. If the consumer is indulging in theft, the assessment in respect of each act shall be separately made in terms of Instruction 8.1 (A)(III)(c) (page 197 of Sales Manual). In case the amount is deposited the connection shall be restored and unpaid amount of assessment shall be recovered as arrears of electricity consumption charges under the Haryana Govt. Electricity Undertaking (Dues Recovery) Act, 1970. The compounding is permitted under the Instructions.*

*20. The Instructions issued under the Sales Manual make complete distinction in respect of unauthorized use of electricity and theft of electricity. The Instructions of the Sales Manual provide complete scheme for assessment of civil liability as referred to in the foregoing paragraphs, specifically under Instruction 8.1(A)(III) (page 197 of the Sales Manual). Since there are specific provisions in the Act and procedure for calculation, the Special Court is competent to determine the liability which is like a civil Court decree.*

*21. In the light of above discussion, in the present case, petitioner was committing theft of electricity by way of direct supply. It is a clear case of theft of electricity and as such*

*governed by Section 135 of the Act. Under Section 154 of the Act, Special Court has power to determine the civil liability. As per Instruction 8.1(A)(II)(13) at page 196 onwards of the Sales Manual, Assessing Officers have been designated who are authorised to make assessment. SDO (OP) concerned in case of domestic, non-domestic, Agricultural and LT Industrial Supply is the authorised person to make assessment and in cases of H.T. Industrial supply and all other categories above 50KW, concerned XEN (OP) is authorised to assess. The assessment shall be made as per Instruction 8.1A(III)(d). As such the consumer can be penalised under Section 135 of the Act and civil liability can be assessed under Section 154 of the Act read with Instructions by the Special Court. Penal action under Section 135 of the Act does not bar assessment of civil liability by the Special Court. Petitioner apparently appears to have indulged in offence committed under the provisions of Section 135 of the Act but the respondents have not proceeded against him in consonance with the provisions of the Act. The petitioner has opted for compounding in view of Section 152 of the Act and Instruction 8.1A (VI). It is admitted fact on record that petitioner was drawing electricity directly from the main line of the respondents and his case prima facie falls under the definition of “theft”.*

*22. In view of the discussion above, this Court directs that respondents shall proceed in accordance with Instruction 8.1 of the Sales Manual. After following the due procedure a notice should be issued to the petitioner by the Authorised Officer or Designated Authority. In case the amount is deposited by the petitioner, supply to the premises of the petitioner may be released in accordance with law. However, if the petitioner fails to comply with the assessment order, as discussed above, respondents will be at liberty to proceed in accordance with law.”*

In view of above, instant writ petition is allowed. Impugned

memo Nos. 1626 dated 22.10.2012 (Annexure P/2) and 1627 dated 22.10.2012 (Annexure P/3) are set aside. However, respondents will be at liberty to proceed afresh in accordance with law, as observed in **Satyabir Goyal's case (supra)**.

**April 21, 2016**  
vkd

**[Paramjeet Singh Dhaliwal]**  
**Judge**