

CWP No.20323 of 2016

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

**CWP No.20323 of 2016
Date of decision:07.12.2016**

S. Kapur Singh, Babe Ke Medical College ...Petitioner
Versus
Punjab State Power Corporation Ltd. and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rakesh Bhatia, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner is a religious and charitable trust running the medical college and has an electricity connection bearing Account No.GC 51/0013NRS. It received a demand notice bearing No.1925 dated 11.01.2010 issued by respondent No.5, raising the demand of ₹46,13,337/- on account of theft of electricity. The petitioner challenged the said demand notice by way of Civil Suit No.37/10 titled as “Kapur Singh Babe Ke Medical College vs. Punjab State Electricity Board and others”, which was dismissed by the Additional Civil Judge (S.D.), Moga on 16.12.2013. The respondents got registered FIR No.2 dated 13.01.2010, under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) at Police Station Anti Power Theft, Ludhiana, in which Kapur Singh S/o Sant Nahar Singh, Chairman of the Trust, was arrayed as an accused. The Special Court, Moga, vide its judgment dated 23.12.2014, held the Chairman of the

Trust guilty for the offence committed under Section 135 of the Act and by order of the same date passed on sentence, released him on probation as the petitioner had deposited the entire amount raised in the demand notice. Thereafter, the petitioner filed a petition under Section 154 of the Act before the Special Court, challenging the amount raised in the demand notice dated 11.01.2010 but the said petition was dismissed by the Special Court on 02.08.2014 for want of jurisdiction on the ground that the petitioner has the remedy to file appeal under Section 127(1) of the Act. The petitioner then filed the appeal under Section 127 of the Act before the Commissioner, Ferozepur Division, Ferozepur, which has been dismissed on merits on 10.03.2016.

Thus, the petitioner has challenged the validity of the demand notice No.1925 dated 11.01.2010, order dated 02.08.2014 passed by the Special Judge, Moga, under Section 154 of the Act and the order dated 10.03.2016 passed under Section 127 of the Act.

Counsel for the petitioner has submitted that the presumption of theft cannot be drawn only with the tampered seals of the meter and has referred to the decision of the Patna High Court in the case of **Kamaljeet Singh vs. The Bihar State Electricity Board**, 2011(1) RCR(Civil) 745.

I have heard learned counsel for the petitioner and perused the available record.

Although the petitioner has not argued that the Special Court had committed an error in dismissing the petition filed under Section 154 of the Act on the ground that the remedy lies with the petitioner to file an

appeal under Section 127 of the Act but after considering the entire facts and circumstances, I have come to the conclusion that there is a patent error in the approach of the Special Court in dismissing the petition filed by the petitioner under Section 154 of the Act against the demand raised under Section 135 of the Act on the ground that the remedy with the petitioner would lie under Section 127(1) of the Act.

As per the scheme of the Act, Section 126 deals with the unauthorized use of electricity and Section 135 with the theft. The procedure provided in both the cases is altogether different as in case of unauthorized use of electricity, a provisional assessment has to be made under Section 126 of the Act and after affording an opportunity to file objection to the provisional assessment, the assessing officer has to pass the final assessment order which can be further challenged under Section 127 of the Act by way of an appeal before the prescribed authority. However, in case of theft, demand is to be raised by the respondents under Section 135 of the Act and the respondents can also launch the criminal prosecution by registration of FIR as both the recovery of the amount on account of theft of electricity and the punishment for the act of theft are different. However, in both the situations, the remedy lies with the Special Court, under Section 154 of the Act, as has been done initially by the petitioner in the present case as the petitioner was prosecuted on account of the FIR No.2 dated 13.01.2010, registered under Section 135 of the Act, in the Electricity Case No.22/2013 by the Special Court, Moga, holding the accused/authorized person of the petitioner-Trust guilty vide order dated 23.12.2014 and

releasing him by giving benefit of probation but the petition filed against the civil liability of the recovery of the amount raised under Section 135 of the Act has been erroneously dismissed by the same Special Court, Moga, on the ground that the petitioner would have the remedy under Section 127 of the Act by way of an appeal before the prescribed authority.

It has been held by this Court in the case of **Rajinder Kumar and another vs. Uttar Haryana Bijli Vitran Nigam Limited and others**, CWP No.25585 of 2013 decided on 07.01.2016 that Sections 126 and 135 of the Act operate in different fields. Section 126 is invoked in case of over-consumption/unauthorized use of electricity, whereas Section 135 of the Act is invoked in case of theft of electricity. In this regard, reference has been made to a decision of the Supreme Court in the case of **The Executive Engineer and another vs. M/s. Sri Seetaram Rice Mill**, 2012(2) SCC 108, in which the following has been held:-

“The officer is also under obligation to serve a notice in terms of Section 126 (3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment under upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of subsections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Part XII and relates to investigation and enforcement and empowers the

assessing officer to pass an order of assessment.

Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

Thus, it would be clear that the expression “unauthorised use of electricity” under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135 (a) to 135 (e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.

Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

Section 135 of the 2003 Act significantly uses the words “whoever, dishonestly” does any of the listed actions so as to

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abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. "Dishonesty" is a state of mind which has to be shown to exist before a person can be punished under the provisions of that section."

Consequently, the present petition is hereby allowed, the orders passed by both the Commissioner, Ferozepur Division, Ferozepur under Section 127 of the Act and the Special Court under Section 135 of the Act are set aside and the matter is remanded back to the Special Court, Moga, to decide the petition filed before it by the petitioner under Section 154 of the Act against the notice issued under Section 135 of the Act, in accordance with law. The petitioner is directed to appear before the Special Court at Moga on 16.01.2017.

December 07, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No