

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

CWP-25585-2013

Date of decision : 07.01.2016

Rajinder Kumar and another

..... Petitioners

Vs

Uttar Haryana Bijli Vitran Nigam Limited and others

..... Respondents

Coram : Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rakesh Gupta, Advocate,
for the petitioners.

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

Rakesh Kumar Jain, J. (oral)

Petitioner No. 1 is the owner of the poultry farm (for short 'the premises') and petitioner No. 2 is occupying it as a tenant, in which there is an electricity connection bearing No. SP-010055A. The said premises was inspected by the officials of the respondents on 10.10.2013 between 13.10 p.m. to 14.03 p.m. and as per their report, the petitioners were found indulging in theft of electricity, consequently, a case bearing FIR No. 2234 dated 14.10.2013 was registered against the petitioners in Police Station, INP, PS, Jind. On 10.10.2013, electricity connection of the petitioners' premises was disconnected and a demand of ₹1037403/- towards theft of electricity and ₹ 38,000/- towards compounding charges was raised. The petitioners have challenged the order dated 10.10.2013 passed under Section 135 of the Electricity Act, 2003 (for short 'the Act') and the notice

issued under Section 135 read with Section 152 of the Act, asking the petitioner to pay the said amount which is alleged to be exorbitant and in violation of the principles of natural justice, as no opportunity of being heard was given to the petitioners before passing the order dated 10.10.2013 vide which the amount of theft of energy was assessed to the tune of ₹ 1037403/-.

Learned counsel for the petitioners has basically relied upon 3rd proviso of Section 135 (1-A) of the Act which reads as under:-

"Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment."

It is submitted that it is incumbent upon the respondents to have given a show cause notice to the petitioners or should have allowed the petitioners to join the proceedings of assessment of the amount of theft of electricity as it is stipulated in the aforesaid proviso that the assessment has to be made in accordance with the provisions of this Act. In this regard he has referred to the other provisions of the Act, namely, Section 126 which deals with the assessment. The said Section 126 of the Act

is also reproduced 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 unauthorised 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 unauthorised 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 applicable for the relevant category of services specified in sub-section (5)."

On the other hand, counsel for respondents has submitted that there is no relevance of Section 126 of the Act where the recovery is being sought under Section 135 of the Act as Sections 126 and 135 of the Act operate in different fields and have no common premise in law. In this regard he has placed reliance on the decision of the Hon'ble Apex Court in the case of ***The Executive Engineer and another Versus M/s Sri Seetaram Rice Mill, 2012(2) SCC 108.***

I have heard learned counsel for the parties.

On perusal of the record, it is found that Section 126 and 135 has been explained by the Hon'ble Supreme Court in the judgment of the ***The Executive Engineer and another*** (supra). The relevant portion of the distinction drawn in between Sections 126 and 135 of the Act is as under:-

"15. Upon their plain reading, the mark

differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. Section 135 of the 2003 Act falls under Part XIV relating to 'offences and penalties' and title of the Section is 'theft of electricity'. The Section opens with the words 'whoever, dishonestly' does any or all of the acts specified under clauses (a) to (e) of Sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Sub-section (1A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003-Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take

other measures enumerated under Sub-sections (2) to (4) of the said Section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. This assessment /proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'authorized use of electricity'. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of-Section 126 (2) of the 2003 Act. 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 order 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 Sub-sections (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 Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

16. 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 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.

17. Thus, it would be clear that the expression 'unauthorized use of electricity' under Section 126 of the 2003 Act deals with cases of unauthorized use, even in 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 authorization, like providing for a direct connection bypassing the installed meter. 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 unauthorized 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 unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.”

In view of the aforesaid distinction drawn by the Apex Court, it does not lie in the mouth of the petitioner to rely upon Section 126 of the Act in his case. Section 126 of the Act would be applicable to the cases where there is no theft of electricity but the electricity is consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized' use of electricity, whereas Section 135 of the Act deals with theft of electricity.

Thus, the petitioners cannot take advantage of 3rd proviso of Section 135(1-A) to rely upon the provisions of Section 126 of the Act, asking for an opportunity of hearing or association at the time of assessment of the amount, which is being recovered from him, by the respondents on account of theft of electricity. In view thereof, I do not find any merit in the present petition.

Dismissed.

(RAKESH KUMAR JAIN)

JUDGE

07.01.2016

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