

CWP No.26366 of 2013

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

**CWP No.26366 of 2013
Date of decision:16.02.2016**

Raj Kumar

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Nitin Singhal, Advocate,
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner has an electric connection of category DS, bearing No.KC-20-1117. On 27.09.2011, the electricity meter was checked which was found slow by 69.35%. The meter was removed, packed in cardboard box, sealed with Khaki tape and sent for testing/checking to the M&T Lab, Kaithal. The supply was restored with the new meter and the checking report was signed by the petitioner. The petitioner received a notice dated 22.12.2011 issued under Section 135 of the Electricity Act, 2003 (for short “the Act”) and another even date notice, under Section 135 read with Section 152 of the Act, asking him to pay the charges of ₹46,495/- for theft of electricity and ₹20,000/- towards compounding. The petitioner challenged the said notice before the District Consumer Disputes Redressal Forum, Kaithal, which was dismissed on 25.10.2013 on the

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ground of its maintainability.

Thus, the petitioner has challenged the notice dated 22.12.2011 on the ground that provisions of Section 126 of the Act have been violated as the provisional order of assessment was not served upon him. However, in the reply filed by the respondents, it is averred that after the meter was sent to the M&T Lab, Kaithal, the petitioner was served with the notice dated 10.10.2011 to attend the proceedings of testing of the meter and it was made clear that in case of default of his appearance, the meter would be tested in his absence. The petitioner attended the proceedings of meter testing at the Kaithal Lab on 17.10.2011 and a case of theft was made because there was no internal abnormality in the meter, rather both the side seals and lash wires were found cut and as such, it was found to be a case of theft. Accordingly, the petitioner was asked to pay for the theft of electricity in terms of notice issued under Section 135 of the Act.

Counsel for the petitioner has submitted that before issuing the final notice under Section 135 of the Act, it was incumbent upon the respondents to serve a provisional notice under Section 126 of the Act and in the absence thereof, the entire proceedings are vitiated, whereas the case of the respondents is that the notice was not issued because of over consumption of electricity by the petitioner but for the theft committed by the petitioner of the electricity. It is also submitted that Section 126 and 135 of the Act are distinct provisions which operate in different fields because Section 126 of the Act deals with the case of unauthorized use even in the absence of intention, for example where the consumer has used

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excessive load as against the installed load, whereas Section 135 of the Act is applicable where the consumer has abstracted energy with dishonest intention and without authorization, like providing a direct connection by-passing the installed meter. The respondents have also relied upon 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.

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

There is no quarrel with the proposition that Sections 126 and 135 of the Act are two distinct provisions which operate in different fields as Section 126 deals with over consumption of the electricity, whereas Section 135 with the theft as has now been settled by the Supreme Court in **M/s Sri Seetaram Rice Mill's case (supra)**. Insofar as Section 126 of the Act is concerned, in case there is over consumption then provisional assessment has to be done of the electricity consumed by the consumer and after hearing objections, the final assessment order is to be passed for which the remedy lies in appeal under Section 127 of the Act, whereas in case of theft of electricity, if it is not a suspected theft, then straightway order is to be passed under Section 135 of the Act but if it is a case of suspected theft, then the meter is checked in the lab in the presence of the consumer, which has been done in the present case as well and then the final assessment is made and the amount of theft is sought to be recovered from the consumer. There is no error on the part of the respondents who have followed the due procedure and in such a case, the remedy lies with the petitioner in

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approaching the Special Court under Section 154 of the Act, which is constituted under Section 153 of the Act and as such, the writ petition by itself is not maintainable.

Thus, in view of the aforesaid discussion, I do not find any merit in the present writ petition and hence, the same is hereby dismissed as the petitioner does not have any right to challenge the impugned order in the writ petition as the remedy lies under the Statute.

February 16, 2016
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(Rakesh Kumar Jain)
Judge