

CWP No.8975 of 2016

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

**CWP No.8975 of 2016  
Date of decision:04.08.2016**

Parmod Sharma

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

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

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**Rakesh Kumar Jain, J.**

This petition is filed to challenge the notice dated 04.09.2012 issued under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the "Act") for payment of ₹17,52,008/- towards the amount assessed for theft of electricity and the order dated 18.01.2016, dismissing the appeal filed by the petitioner under Section 127 of the Act.

In short, the petitioner's premises was inspected by the authorized Inspecting Officers along with the checking party on 04.09.2012 at 7.10 a.m., electricity supply was found direct from the LT of 100 KVA T/F through 4/C cable 16mm, 2.45 meters long of the Nigam System and the meter incoming cable and meter output cable were also found open from both sides. It was found that the petitioner has been indulging in theft of electricity and found liable to the payment of ₹17,52,008/- under Section 135 of the Act towards loss caused to the respondents. The petitioner was

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also served with a notice under Section 152 of the Act intimating that a complaint has been lodged to the police and in case the petitioner is interested in compounding the matter, then he shall be liable to pay ₹6,60,000/- as compounding charges. The petitioner filed objections under Section 126(3) of the Act considering the amount claimed by the respondents in terms of their notice bearing Memo No.Ch-4/TC-1813 dated 04.09.2012 as provisional assessment and prayed that he should be joined before passing the final order of assessment. The petitioner also filed an appeal under Section 127 of the Act, which was dismissed on 18.01.2016. He further filed an application alleging that his case is not covered under Section 127 of the Act as it was a case of direct theft. The said application was dismissed, advising the petitioner either to challenge the order passed under Section 127 of the Act or to obtain an order while proceeding under Section 135 of the Act.

It is stated in the petition that when the objections filed under Section 126(3) of the Act were not decided, the petitioner personally approached the respondents and was told that against the notice issued under Section 135 of the Act, the objections under Section 126(3) of the Act cannot be entertained.

Counsel for the petitioner has submitted that in case of theft, the procedure under Section 126(3) has to be followed. In this regard, he has relied upon a decision of this Court in the case of **Satyabir Goyal vs. Dakshin Haryana Bijli Vitran Nigam and others**, 2016(1) RCR (Civil) 514.

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

In the checking report, the respondents have recorded that the petitioner has been found committing theft of electricity and, thus, the proceedings under Section 135 of the Act were initiated. It is not a case of suspected theft. In such a case, the remedy lies with the petitioner to take recourse to Sections 152 to 154 of the Act instead of filing objections under Section 126(3) followed by an appeal under Section 127 of the Act.

In the case of **Ramesh Chand vs. Uttar Haryana Bijli Vitran Nigam Limited and others**, CWP No.13209 of 2013, decided on 19.01.2016, it has been held by this Court that only in the case of a suspected theft, the consumer is granted an opportunity to challenge the provisional assessment order by way of objections, otherwise in case of established theft, as per the respondents, the remedy lies under Sections 152 to 154 of the Act and in this regard, reliance has been placed upon an order passed 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, in which it has been held that Section 126 of the Act is invoked in case of over-consumption of electricity, whereas Section 135 of the Act is invoked in case of theft of electricity.

The petitioner would have been entitled to an opportunity of hearing only in case of suspected theft, under Section 126 of the Act, but case of the petitioner falls within the ambit of established theft under Section 135 of the Act which only talks of final assessment.

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In the present case, the petitioner himself had filed an application after the order dated 18.01.2016 was passed, to contend that his case has wrongly been decided under Section 127 of the Act as it is a case of established theft, upon which the competent authority passed the order dated 10.02.2016, advising the petitioner to take up the matter before an appropriate forum either to set aside the order dated 18.01.2016 passed under Section 127 of the Act or to obtain a decision under Section 135 of the Act.

In view of the aforesaid discussion, I do not find any merit in the present petition and hence, the same is hereby dismissed.

**August 04, 2016**  
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**(Rakesh Kumar Jain)**  
**Judge**

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No