

CWP-10893-2015

Date of Decision : 03.05.2017

Punjab State Power Corporation Ltd. and anotherPetitioners

versus

SDM-cum-Appellate Authority Bathinda and anotherRespondents

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Gursimranjit Singh, Advocate
for the petitioners.

Mr. Inder Pal Goyat, Addl.A.G., Punjab
for respondent No.1.

Mr. Amarpreet Singh, Advocate for
Mr. Binderjit Singh, Advocate
for respondent No. 2.

M.M.S. BEDI, JUDGE (ORAL)

This petition has been filed by the Punjab State Power Corporation Limited through Chief Engineer challenging the order dated 15.07.2014, Annexure P-13, passed by the Sub Divisional Magistrate, Bathinda exercising the powers of Appellate Authority under the Electricity Act allowing the appeal of consumer, respondent No. 2 and setting aside the final order of assessment Annexure P-5 dated

11.06.2012. Vide impugned order Annexure P-13, the demand of Rs.1,92,710/- raised by the petitioners has been set aside on the ground that consumer was not heard and the demand was raised despite of the fact that the house was lying vacant whereas the allegation was that the same was used for paying guests.

Learned counsel for the petitioners has vehemently contended that the objections raised by the consumer against notice issued under Section 126 of the Electricity Act were rightly not considered having been filed after period of more than one month whereas the objections had to be filed within a period of seven days of the notice of provisional assessment having been served upon the consumer. Learned counsel for the petitioners relies upon Paragraph 36.2 of the Supply Code of Punjab State Power Corporation Limited in this regard.

I have considered the contention of learned counsel for the petitioners.

Section 126 of the Electricity Act reads as follows:-

“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 unauthorized 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 may, 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 unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity, has taken place and if, however, the period during which such unauthorized 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).

A perusal of Section 126 of the Electricity Act indicates that no period of limitation is mentioned in the Electricity Act for filing

objections against the provisional assessment but it is by the Regulations framed under the Act that limitation has been prescribed in the Supply Code, Para 36.2, mentioned hereinabove. A joint reading of the provisions of the Act and the Supply Code indicates that the consumer is given a period of seven days to file objections against provisional assessment. The assessing officer is required to scrutinize the case on receipt of the objections within a period of 30 days from the date of service of the provisional assessment. Assessee is permitted to deposit the assessed amount within a period of next 30 days. As per the record, there was gap of about 47 days from the date of issuance of notice of the provisional assessment till the filing of objections by the consumer. Section 126 of the Electricity Act does not specifically mention any period during which the objections are to be filed but Section 126 (3) of the Electricity Act prescribes that after giving reasonable opportunity to the assessee, final order of assessment has to be passed within 30 days from the date of service of order of provisional assessment.

After hearing learned counsel for the petitioners and respondent No.2, it is apparent that before passing the final order Ex P-5 the objections of the consumer which were submitted on 11.06.2012 vide Annexure P-4 had not been considered by the assessing authority. The order of assessing authority Annexure P-5 is a non-speaking order, having been passed without giving fair opportunity to the consumer and without considering the pleas of the consumer contained in objection petition Annexure P-4. Order Annexure P-5 has, therefore, been rightly

set aside in appeal. However, the Appellate Authority has erred in not giving liberty to the petitioner Corporation to decide the matter afresh after giving opportunity of hearing to the consumer. The impugned order to that extent is liable to be set aside.

The writ petition is disposed of holding the finding of the Appellate Authority so far as it has set aside the order of final assessment Annexure P-5. However, a liberty is given to the Assistant Engineer to reconsider the assessment in the light of the objections submitted by respondent No. 2, Annexure P-4, and pass fresh order in accordance with the provisions of Electricity Act. It is ordered that the electricity supply of respondent No. 2 will not be disconnected during the period of consideration of the matter afresh.

The representative of the petitioners and respondent No. 2 will appear before the Assistant Engineer on 24.05.2017 for further proceedings.

(M.M.S. BEDI)
JUDGE

03.05.2017
Neha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No