

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 16657 of 2013 (O&M)

Date of Decision: March 30, 2017

M/s R.R. Industry

.....Petitioner

Vs.

ADC (J), Mohali and anr.

.....Respondents

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

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Present:- Mr. Puneet Jindal, Sr. Advocate with
Mr. Varun Goyal, Advocate
for the petitioner.

Ms. Meena Bansal, Advocate for respondents No.2 to 4.

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M.M.S. BEDI, J.

The petitioner through instant petition under Articles 226/227 of the Constitution of India has sought issuance of a writ in the nature of certiorari for setting aside the order dated May 23, 2013, annexure P-5, passed by Additional Deputy Commissioner (J), SAS Nagar, Mohali, dismissing the appeal of the petitioner under Section 127 of the Electricity Act.

Brief facts relevant for adjudication of the present writ petition are that the petitioner is owner in possession of plot No. D-142, Industrial Area, Phase VII, SAS Nagar, Mohali having electric connection of medium supply Account No. MS-57/459 having sanctioned load of 87.410 KV. The petitioner had been using the industrial plot and electric connection for running the industrial unit for processing of plywood, flush door, panel doors and windows etc. as sanctioned by the electricity department. The petitioner has employed about 15 workers for making panel and flush doors in the premises and has installed machines like wood planner, chain saw, chool machine, ara machine etc. The premises of the petitioner was inspected by Enforcement Officer/Executive Engineer of respondent Corporation on September 22, 2012 in the presence of the petitioner. Three rooms of the factory were inspected by the Enforcement Officer having three tubes, three fans, one computer and A.C. The Enforcement Officer prepared an ECR (Enforcement Checking Register) dated September 22, 2012, reporting as under:-

“WORKING OF METERS:-

“Meter pulse found blinking on all the 3 phase segments (1, 2, 3) of running load. Meter along with L.T.C. to be replaced and installed outside the premises, and be brought to ME lab duly seal packed for further hacking/ investigation. Meter be replaced with metering load skittering parameters and dry type. Sale of glass is

being done at this premises. There is notice board for full payment at the site. Videography done. So it is a case of UUE. Action may be taken as per electricity regulations 36 and ESIM regulation 101-1 and other related matters.

Sd/-Enforcement Officer

Dated: 22.9.2012.”

It was also reported in the claim of “Details of Connection load”, that the total sanctioned load installed is 87.410 KW and being used only 14.634 KW. Petitioner was issued a provisional assessment order under Section 126 of the Electricity Act, 2003, for short ‘the Act’, raising a demand of Rs.1,42,099/- on account of unauthorized use of electricity by respondents no.2 and 3 (PSPCL) on the allegation that the sale of glass is being done at the petitioner’s premises and the connection was issued under Industrial/ Udyog category but due to sale of glass as alleged by respondents No.2 and 3 the connection has become commercial. The petitioner claims that the allegations regarding sale of the glass are vague and flimsy. The provisional order for assessment dated December 5, 2012 has been appended as annexure P-1. The only objection in the inspection report is that sale of glass is being done in the premises, therefore, electric connection was being used for commercial purposes. The petitioner claims that objections were filed to the provisional order of assessment as provided under section 126 (3) of the Act. Petitioner claims that he was entitled to reasonable opportunity of hearing before passing of the final order of assessment

besides an opportunity to file objections within 30 days from the date of service of the order of provisional assessment of the electricity charges. Copy of the objections dated December 5, 2012 has been appended with the petition as annexure P-2. Respondents No.2 and 3 passed final order of assessment on December 6, 2012 under Section 126 of the Act, copy of which has been placed on record as annexure P-3. Against the final order, annexure P-3, the petitioner preferred an appeal under Section 127 of the Act, vide memo of appeal annexure P-4. Respondent No.1 vide order dated May 23, 2013 dismissed the appeal of the petitioner on the ground that the petitioner did not file any objections to the provisional assessment order dated December 5, 2012 as such the final assessment order raising the demand of Rs.142099/- was issued under Section 126 of the Act. Copy of the order dated May 23, 2013 has been appended with the petition as annexure P-5. The petitioner had deposited half of the amount of the demand i.e. Rs.71050/- vide receipt annexure P-6 which appears to be dated December 21, 2012. The grievance of the petitioner is that the final assessment order is violative of rules of natural justice and is not in consonance with the procedure laid down under Section 126 of the Act.

Counsel for the petitioner has argued that it is not a case of theft of electricity and there has also not been any unauthorized use of electricity. A wrong formula has been applied for calculating the amount for penalty against the petitioner and the decision of the respondents regarding

unauthorized use of electricity is contrary to ESIM Regulation 101.1 which reads as follows:-

“101.1 UNAUTHORIZED USE OF ELECTRICITY (UUE) UNDER SECTION 126 OF THE ELECTRICITY ACT-2003:--

- a) As per the provisions of Section 126 of the E.A.2003, the unauthorized use of electricity means usage of electricity:-
- i. by any artificial means. Or
 - ii. by a mean not authorized by the concerned person or authority or PSPCL, or
 - iii. through a tampered meter, or
 - iv. for the premises or areas other than those for which the supply of electricity was authorized.”

The petitioner claims that the PSPCL has issued notification dated June 21, 2013 in which the Corporation has amended some regulations regarding transfer and installation of meters and amendment to Regulation 36 i.e. UUE. As per this amendment if a person is using electricity under Section 126 (6) (b) (v) of the Act, then only the consumption of electricity used for the premises and the items of the electricity being used are to be taken into consideration and the Enforcement Officer is duty bound to assess the particular area to find out as to how much load is being used in that premises and the penalty shall be imposed on that load. Copy of the said notification has been appended as annexure P-7. Petitioner has challenged

the provisional and final assessment order on the ground that there is no violation of Regulation 36 (3) and Regulation 101.1. The petitioner was issued electric connection of minimum supply having sanctioned load of 87.410 KW and had been paying bills regularly. As per the inspection report of respondents No.2 and 3, the load used by the petitioner is 14.634 KW which was within the sanctioned load of 87.410 KW and that there was no unauthorized use of electricity.

Reply has been filed to the writ petition by the Additional Superintendent Engineer (Operations) Special Division, PSPCL, Mohali on behalf of respondents No.1, 2 and 4. In the reply, it is mentioned that the provisional assessment order is dated November 1, 2012. The provisional assessment has been sought to be justified on the ground that the petitioner indulged in the activity of sale of glass at the premises and it was displayed on the notice board of the premise as—

“100% advance before delivery”

which was videographed, therefore, the case comes under the unauthorized use of electricity. The extract of the print of videography is annexed as annexure R-2. Respondents have denied that any objection was filed by the petitioner as annexure P-2 before the competent authority within prescribed time as the objections are required to be filed within 7 days under Regulation 36.3 (a) of the Supply Code. The main contention of counsel for the respondents is that of no objection having been filed within period of 7 days

as per Regulation 36.2 (a) of the Supply Code and petitioner being unauthorized user as per Electricity Supply Instructions Manual.

The petitioner has filed replication reiterating that the objections had been filed within 7 days of the receipt of the provisional assessment order annexure R-1, on December 1, 2012. It is claimed that the notice videographed only shows that '100% advance before delivery', means that only manufactured items i.e. doors and windows are sold after fitting glass in it and are delivered by the petitioner concern only after receipt of their value. No receipt has been produced on the record to show that any sort of retail sale of any material was being undertaken by the petitioner.

I have heard counsel for the petitioner as well as counsel for the respondents. Following controversies arise for determination in the present case:-

- i) Whether the provisions of Section 126 (3) of the Act have been followed giving an opportunity to the petitioner to explain that no sale of glass was being done at the premises and that it is not a case of unauthorized use of electricity under Regulation 36 of the Supply Code and ESIM Regulation 101.1?
- ii) Whether the allegation of sale of glass are vague and there is no material relied upon by the respondents to arrive at a conclusion that the

connection is being used for commercial purposes;

and

- iii) Whether the order of final assessment is illegal on account of reply annexure P-2 dated December 5, 2012 having not been considered.

It is not disputed that on receipt of notice of provisional assessment the aggrieved person after service of the notice is required to file objections before the Assessing Authority who would afford reasonable opportunity of hearing to the said person and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the electricity charges payable by the person. Section 126 of the Act is reproduced hereunder:-

“Section 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

incharge 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).

Explanation : For the purposes of this section,--

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity—

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was Authorized ; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”

It is admitted fact that the petitioner has taken connection of Medium Supply and the sanctioned load is 87.410 KW which is used for industrial purpose. When the premises was checked on September 22, 2012, the Executive Engineer, Mohali found that the user was not more than the sanctioned load. Petitioner claims that the load used was 14.634 KW. Unauthorized use of electricity under Section 126 of the Act is defined in

ESIM Regulation 101.1 which is reproduced hereinabove. Section VII of the Electricity Supply Instructions Manual describes the unauthorized use of theft of electricity as follows:-

“The cases covered under Section 126 of the Act in regard to unauthorized use of electricity (UUE) and the cases relating to theft of electricity covered under Section 135 of the Act shall be dealt with in accordance to the provisions of Regulation No.36 and 37 of Supply Code.”

Regulation 36.2 (a) of the Supply Code gives a statutory right to the consumer to file objections to the provisional assessment order within seven days of the service of the order on him. Regulation 36 2 (a) of the Supply Code is reproduced hereunder:-

Regulation 36.2 (a):- Any consumer/ person not satisfied with the provisional assessment shall be entitled to file objections, if any, against the provisional assessment order before the Assessing Officer within seven days of the order having been served upon him.

(b) Within the seven days of submission of the objections, the Assessing Officer will scrutinize the case and if no unauthorized use of electricity is established, the case will be dropped immediately and the person/ consumer informed accordingly.

(c) If the Assessing Officer is still of the view that unauthorized use of electricity has taken place, he shall after providing an opportunity of hearing to the consumer/ person pass a final order of assessment specifying the amount payable within

thirty days of the date of service of order of provisional assessment. In such a case the Assessing Officer will assess the electricity consumption and electricity charges as per the procedure given in Annexure-8.”

A disputed question of fact has been raised before this Court regarding the petitioner having exercised his right within seven days of filing objection to the provisional assessment vide annexure P-2, I am of the considered opinion that the prejudicial order has been passed against the petitioner without consideration of his pleas that he has been running the industry for processing of the glass and flush doors, panel doors/ Plywood etc. by using machinery which consumed load only to the extent of 14.634 KW and he was not running any commercial activity. The presumption has been drawn by the respondents on the basis of the notice existing on the industry saying “100% advance before delivery”.

The right to file an objection under Section 126 (3) of the Act is a very important safeguard provided to the consumer before the final assessment is made. It is mandatory for the Assessing Authority to consider the reply filed by a consumer on receipt of notice of provisional order of assessment. Since the petitioner has not been given advantage of the said important safeguard granted to the consumer before passing an assessment order, I deem it appropriate to revert back the arms of the clock to a stage of consideration of reply to the notice of provisional order of assessment by issuing a direction to the Superintendent Engineer, PSPCL, Mohali to consider annexure P-2 by giving a fair opportunity to the petitioner.

The petition is allowed. The order of final assessment annexure P-3 dated December 6, 2012 passed by the Additional Superintending Engineer, PSPCL, Mohali, in exercise of powers under Section 126 (3) of the Act is hereby set aside. The order annexure P-5 dated May 23, 2013 passed by the Appellate Authority is also set aside being violative of rules of natural justice and it is ordered that the claim of the petitioner will be re-determined after giving him a fair opportunity of hearing by the Assessing Authority i.e. the Additional Superintending Engineer, PSPCL, Mohali, as per the Section 126 of the Act.

In case the petitioner is held not liable to pay the assessed amount, the amount already deposited by the petitioner either, would be returned to him or will be adjusted in the future bills.

March 30, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.