IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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C.W.P. No.1457 of 2016
Date of Decision:20.09.2017

M/s Alkem Laboratories Ltd. .....Petitioner

Vs.

Additional Deputy Commissioner-cum-Appellate Authority under Electricity Act, 2003 and others
.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Pankaj Jain, Advocate for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

Mr. Y.P. Khullar, Advocate for respondents No.2 to 6.

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Rakesh Kumar Jain, J. (Oral)

The petitioner is seeking a writ, in the nature of certiorari, for quashing the Final Assessment Order dated 19.02.2015 and the appellate order dated 28.05.2015 passed under Section 126(2)(3) and 127 of the Electricity Act, 2003 (for short, `the Act') respectively.

The brief facts are that the petitioner applied for Change of Land Use of land measuring 18 kanals 13 marlas (233.12 acres) located at Village Sundra, Hadbast No.363, Tehsil Derabassi, District SAS Nagar. The permission of Change of Land Use from agricultural to industrial (warehouse) was granted. Thereafter, the petitioner applied for electricity connection from the respondent- Corporation mentioning the nature of industry as warehouse for medical items. The industrial electricity connection with Account No.MS21/0558 was granted to the petitioner. The premises of the petitioner was allegedly inspected on 25.04.2012 by the Additional SE/ Enforcement PSPCL Mohali, who at the time of Inspection had found that the petitioner was unauthorisedly using the electricity because according to him, warehouse is not an industrial activity and is rather a commercial activity. The petitioner was served with a provisional order of assessment on 04.05.2012 of an amount of ₹6,52,043/-. The petitioner was also informed that it may submit its objections, if any, within seven days of the receipt of notice and shall be provided personal hearing, if required, within 15 days of the submission of the reply and final order of assessment would be passed only after personal hearing. Apropos, the petitioner filed its objections dated 24.05.2012 in which it reiterated its stand that the electricity connection granted to it was for industrial use.

It is submitted that the petitioner was not given any opportunity of hearing in respect of objections filed to the Provisional Assessment Order rather it had found that the respondents have been asking it to pay sundry charges in the regular bills. Since the petitioner has been storing sensitive medicines which required to be stored in a regulated temperature, therefore, it deposited the demand made by the respondents and were not even aware of as to whether the sundry charges are those charges which were levied upon it in terms of the order of the Provisional Assessment of unauthorised use of electricity. After some time, the petitioner asked the respondents about the nature of the sundry charges since the sundry charges were continuously been levied in the subsequent bills on 08.10.2013 and 11.05.2014, therefore, the petitioner asked in writing from the respondents about nature of sundry charges. It did not get any answer and ultimately, it chose to file an appeal under Section 127 of the Act against the Provisional Assessment Order as no Final Assessment Order was served upon it. While the appeal was pending before the Appellate Authority, the respondents passed the Final Assessment Order on 19.02.2015 . It was so recorded in the impugned order dated 28.05.2015 and has been made the basis for dismissal of the appeal as well.

Counsel for the petitioner has argued that the entire proceedings, at the instance of the respondents, is in violation of mandatory provisions of Sections 126 and 127 of the Act. It is submitted that Section 126 of the Act provides that in case, the respondents are of prima-facie view, that the consumer is indulging in unauthorisied use of electricity, then a Provisional Assessment Order has to be served upon the person in possession of premises and would be granted an opportunity to file objection against the Provisional Assessment Order and also an opportunity of hearing before passing the final assessment order. It is submitted that no such procedure has been adopted and in the absence of the final assessment order, the petitioner had to approach the Appellate Authority against the provisional assessment as it has been made to pay sundry charges time and again without disclosing its nature.

On the other hand, learned counsel for the respondents has submitted that the electricity consumed by the petitioner was unauthorised in terms of Section 126(6)(b) Explanation (iv) wherein it is provided that "for the purpose other than for which the use of electricity was authorised." According to the respondents, the electricity connection was given to the petitioner for industrial use whereas warehouse is not an industrial activity and thus the electricity was being used by the petitioners for commercial purposes and, therefore, it was held to be indulging in unauthorised use of electricity for which the provisional assessment order was served upon it. It is also the stand of the respondents that the petitioner did not file any objection as provided under Section 126(2) of the Act and, therefore, the sundry charges were raised in the bill served upon them on 10.03.2013. It is also submitted that even the appeal filed by the petitioner against the provisional assessment order was not maintainable as the appeal could have been filed only against the final assessment order. It is further submitted that now since the final assessment order has been passed on 19.02.2015, therefore, the Appellate Authority has rightly decided against the petitioner.

I have heard learned counsel for both the parties and perused the record. In order to appreciate the rival contentions of the parties, it would be relevant to refer to Sections 126 and 127 of the Act which read as under:-

> **"Section 126: (Assessment): ---**
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> (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.
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> (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:

[xxx]

[(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 unauthorized 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 rates 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 authorised; or

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

Section 127. (Appeal to Appellate Authority): ---

(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to 3[half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing

officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months."

In this case, one fact is admitted that no opportunity of hearing was given to the petitioner before passing the order of final assessment.

As per the scheme of the provisions of Section 126 of the Act, in case it is found in inspection that the consumer is indulging in unauthorised use of electricity then the Corporation can assess provisionally, to the best of its judgment, the electricity charges payable by the consumer. The Provisional assessment order has to be served upon the person who is in occupation and possession or is in-charge of the premises. After service of the provisional assessment order, the consumer is to be afforded an opportunity to file objection, if any. In case, objections are filed, then the objections are to be decided by the competent authority by affording an opportunity of hearing. Once the final assessment order is passed, the right of appeal is also provided under Section 127 of the Act. Section 126(6)(b) of the Act also deals with the definition of unauthorised use of electricity. In the present case, the respondents have alleged that the petitioner has been found indulging in unauthorised use of electricity because the petitioner has been found using the electricity for the purpose for which it was not authorised, meaning thereby, the electricity connection was given to the petitioner for industrial purposes but it was found using it for commercial purposes. Be that as it may. The provisional assessment order was undoubtedly passed by the Assessing Authority but objections filed by the petitioner were not dealt with in terms of Section 126(3) of the Act as no opportunity of hearing was granted and on the other hand, the petitioner was asked to pay sundry charges with normal bill of the consumption of electricity in routine which the petitioner had to pay because otherwise the medicine stored by the petitioner in the warehouse would have been destroyed. The respondent ultimately found that final assessment order has to be passed and as such it was passed when the appeal of the petitioner was pending before the Appellate Authority but the Appellate Authority instead of taking into account this fact that the final assessment order has been passed without affording an opportunity of hearing, dismissed the appeal also on the ground that now the final assessment order has been passed. To my mind, the entire exercise on the part of the respondents is contrary to the provisions of Section 126 of the Act and, therefore, I am of the considered opinion that the final assessment order dated 19.02.2015 and the appellate order are patently erroneous and is hereby set aside. As a result thereof, the matter is remanded back to the respondents to take into consideration the objection filed by the petitioner on 24.11.2012 (attached as Annexure P.4) and after affording an opportunity of hearing to the petitioner in terms of Section 126(3) of the Act and pass the order of the final assessment, if so, advised. In case any such order is passed by the respondent against the petitioner, on assessing the unauthorised use of electricity, finally, the petitioner would be at liberty to file the appeal against that order in terms of Section 127 of the Act. The sundry charges, which the petitioner had already paid repeatedly shall be adjusted by the respondent in the future bills of the petitioner towards the normal consumption of the electricity.

With these observations, the present petition is allowed.

September 20, 2017 **(RAKESH KUMAR JAIN)**
renu **JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No