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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2037-2015 (O&M)

Date of decision : 09.02.2017

Chairman, Punjab State Power Corporation Limited and another

... Petitioners

Versus

Harjinder Singh Dhillon and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Brig. B.S. Taunque, Advocate
for the petitioners.

Mr. Raghav Gulati, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

CM-8657-2016

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the reply on behalf of respondent No.1 has been taken on record subject to all just exceptions.

CM stands disposed of.

CWP-2037-2015 (O&M)

The petitioner(s)-Punjab State Power Corporation Ltd. is aggrieved of the impugned order dated 30.07.2014 passed by the Sub-Divisional Magistrate-cum-Collector while exercising the powers of Appellate Authority under Section 127 of the Electricity Act, 2003 (for short 'the Act').

Brig. B.S. Taunque, learned counsel appearing on behalf of the

petitioner(s) submits that the consumer was found to have been stealing the electricity directly from the transformer and in this regard, an FIR bearing No.312 dated 08.10.2007 registered under Sections 353, 186, 323, 379, 382, 148, 149 of the Indian Penal Code and Section 39 of the Electricity Act, 1910 was registered. Since it was a case of a theft, the Electricity Board ought not to have issued a provisional assessment order by putting the process under Section 126 of the Act in motion, resulting into, filling of the appeal. In fact, it was a clear cut case of theft, the provisional assessment was not required to be done. The appeal before the Sub-Divisional Magistrate, thus, was not maintainable. No doubt the FIR was cancelled, but the consumer cannot get away with the allegation of theft. This aspect has not been examined, much less, noticed by the authority, thus, the order under challenge is liable to be set aside.

Mr. Raghav Gulati, learned counsel appearing on behalf of the consumer/respondent No.1 submits that concededly cancellation report in the aforementioned FIR was submitted which has not been challenged, much less, no protest petition has been filed. The procedure for initiating the action against the consumer in respect of theft is prescribed under Section 154 Chapter XV. The provision of sub-Section 6 of Section 154 of the Act provides the determination of a civil liability by an appropriate authority which is none-else, but a Sessions Court. Having failed to avail the remedy, the Electricity Board has not been able to establish the alleged theft, thus, urges this Court for dismissal of the writ petition. The consumer had no other option, but to avail the remedy under Section 127 of the Act on receipt of the final assessment which has been deliberated upon and examined *in*

extenso and it does not call for interference under Article 226 of the Constitution of India.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Brig. B.S. Taunque, for, it was incumbent upon the Electricity Board to proceed in respect of alleged theft of electricity under Section 135 of the Act, even, the FIR was wrongly registered under the provisions of the repealed Act. The procedure prescribed under Section 154 of the Act, as indicated above, is self-contained and it also enables the competent authority/Court to determine the civil liability as per sub-Section 6 of Section 154 of the Act. In other words, the interest of the Electricity Board is safeguarded in initiating the fresh procedure by filing a civil suit for recovery of the amount. Having failed to proceed with the FIR, in essence, by not assailing the cancellation report, the proceedings in the aforementioned FIR came to an end, rather on the other hand, initiated the proceedings under Section 126 of the Act which does not deal with the theft of electricity, but prescribes the unauthorized use of the electricity. There is no overlapping of the provisions as per the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Executive Engineer, Southern Electricity Supply Company of Orrissa Limited (Southco) and another V/s Sri Seetaram Rice Mills” (2012) 2 Supreme Court Cases 108** and rightly so, the consumer had availed the remedy and findings arrived at by the Appellate Authority are in consonance with the facts and the provisions of law.

For the foregoing reasons, I do not find any illegality and

perversity in the impugned order under challenge, much less, no ground for interference is made out and accordingly, the present writ petition is dismissed.

09.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No