

CWP-25213-2016

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

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CWP-25213-2016.

Decided on: February 1, 2017.

Punjab State Power Corporation Limited and another

.. Petitioner(s)

VERSUS

Harpal Singh and another

.. Respondent(s)

*** * ***

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

*** * ***

**PRESENT Ms.Meena Bansal, Advocate,
for the petitioners.**

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

The petitioner-Corporation has challenged the order dated 9.12.2015, Annexure P5, passed by respondent no.2 exercising powers under the Electricity Act, 2003, on an appeal under Section 127 of the Electricity Act, 2003.

Counsel for the petitioners has submitted that the impugned order has been passed by the SDM under Section 127 of the Electricity Act, without jurisdiction. It has been contended that in the present case the assessment had been made pursuant to inspection conducted which indicated that the petitioner was using the electricity in an unauthorised manner as such, the remedy for respondent no.1 was to

approach the Special Court constituted under Section 153 of the Electricity Act, as per the procedure prescribed under Section 154 of the Electricity Act.

Counsel for the petitioner-Corporation has admitted that no FIR under Section 135 of the Electricity Act, had been registered against respondent no.1. The provisions of Section 154 of the Electricity Act, will come into operation in case an FIR is registered under Section 135 of the Electricity Act and the consumer fails to compound the offence by paying the amount assessed.

In the present case, respondent no.1 had earlier approached the District Consumer Disputes Redressal Forum by depositing 50% of the amount assessed. The District Consumer Forum as well as State Consumer Forum, held that respondent no.1 had alternative remedy to file an appeal under the Electricity Act by availing the remedy under Sections 5 and 14 of the Limitation Act. The petitioner in said circumstances approached the Court of Sub Divisional Magistrate exercising the powers of appeal under Section 127 of the Electricity Act.

In the present case, the assessment had been made on inspection of the premises of the petitioner when he was found involved in unauthorised use of electricity.

Section 126 of the Electricity Act reads as follow: -

“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 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:

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 authorised.”

Any order of assessment under Section 126 of the Electricity Act is appealable under Section 127 of the Electricity Act.

Section 127 of the Electricity Act, reads as follow-

127. Appeal to appellate authority.-

1.Any person aggrieved by a 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 [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 month.”

In the present case, power has been exercised by the Appellate Authority-cum-Sub Divisional Magistrate-cum-Assistant Collector First Grade, Tarn Taran, as such, the order does not suffer from the vice of lack of jurisdiction.

In the present case, no FIR having been registered under Section 135 of the Electricity Act and the assessment having been made under Section 126 of the Electricity Act when respondent no.1, had availed the appropriate remedy by invoking the provisions of Sections 5 and 14 of the Limitation Act.

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In view of above said circumstances, it is held that the order Annexure P5 dated 9.12.2015, has been passed by a Court of competent jurisdiction.

Next coming to the merits of the case, the assessment order has been held to be bad on the following grounds: -

(i) No statement of any independent private witness having been recorded at the time of inspection;

(ii) No video or photograph has been produced by the Electricity Department against respondent no.1 regarding theft having been committed; and

(iii) The Inspecting Team has not found any instrument on the spot which could help the team to arrive at a conclusion regarding commission of theft of electricity by respondent no.1.

The claim of respondent no.1 has been objectively considered by the competent authority.

I do not find any ground to interfere in the order.

The petition is dismissed. However, the amount deposited by respondent no.1 may be adjusted in the future bills instead of refunding the same.

(M.M.S. BEDI)
JUDGE

February 1, 2017.

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Whether speaking / reasoned
Whether reportable:

Yes / No
Yes / No