

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

CWP No.2745 of 2016 (O&M)
Date of Decision:13.09.2017

Punjab State Power Corporation Ltd. and anotherPetitioners
vs.

Baldev Singh and another**Respondents**

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Ms. J.K. Gurna, Advocate for the petitioners.

Mr. J.L. Kapoor, Advocate for respondent No.1.

Rakesh Kumar Jain (Oral)

This petition is filed to challenge the order dated 19.08.2015 by which appeal filed by respondent No.1 under Section 127 of the Electricity Act, 2003 (for short, 'the Act') has been allowed.

The petitioners have challenged the order on the ground that the proceedings were actually initiated under Section 135 of the Act and, therefore, appeal filed under Section 127 of the Act was not maintainable.

On the other hand, counsel for the respondents has submitted that notice issued to the respondent was for unauthorised use of electricity, therefore, it was presumed to have been sent under Section 126 of the Act and thus appeal filed under Section 127 of the Act was maintainable. In order to resolve the controversy, the petitioners were directed to produce the record. Accordingly, the record is produced today. The checking report which is in vernacular (Punjabi) is translated by counsel for the petitioners herself which reads on translation in English as under:-

“Above meter was checked with the consent of consumer. All the three seals of the meter were tampered with. Ultrasonic welding of the meter has also been tampered. Cover of the box

of meter counter stands missing. Consumer is trying to conceal the actual consumption by changing figures. Case is of unauthorised consumption of electricity. Meter alongwith consent application has been handed over to Chamkaur Singh for safe custody. Action be taken as per instructions of department.”

Counsel for the petitioners has submitted that since the seals of the meter were tampered, allegedly by the respondent, therefore, it is a case of theft which falls within the domain of Section 135 of the Act.

I have heard learned counsel for the petitioners and after examining the record, am of the considered opinion that there is no merit in her argument. As per Scheme of the Act, the consumer can be proceeded against by the Corporation in case of unauthorised use of electricity (for short, ‘the UUE”) and for committing theft of the same. Section 126 of the Act deals with the procedure for assessing the unauthorised use of electricity. It provides that if the Assessing Authority comes to the conclusion that the consumer is indulging in unauthorised use of electricity then he would provisionally assess to best of his judgment, the payable electricity charges. Thereafter, he would serve the provisional assessment order upon the consumer/ person in occupation or possession or incharge of the place in the manner which may be prescribed. The person to whom the provisional assessment order is served would be entitled to file objections before the Assessing Officer who shall thereafter provide him opportunity of hearing and pass a final order of assessment within 30 days from the date of such order of provisional assessment. The Legislature has also given an explanation in Section 126 of the Act which is a part of the Section defining

as who would be the Assessing Officer and what would be the unauthorised use of electricity. Explanation A of Section 6 deals with Assessing Officer which means an officer of State Government or Board or licensee as the case may be, designated as such by the State Government and Section 126 (6)(b) defines the UEE which means usage of electricity through a tampered meter.

In case any order is passed under Section 126 of the Act against the consumer then remedy has been made available to him of an appeal to the Assessing Authority in terms of Section 127 of the Act. On the other hand, Section 135 of the Act deals with the theft of electricity. In Section 135 of the Act, there is no provision for provisional assessment and opportunity of hearing. However, there is a provision for informing the consumer allegedly indulging in theft of electricity to compound the offence or to proceed to challenge the order of imposing the penalty in respect of theft before the Special Court which is constituted under Section 153 of the Act as per the procedure provided under Section 154 of the Act. Thus, the UEE and thefts dwells in indifferent spheres for which different authorities have been designated for the purpose of assessment and punishment and also for the purpose of redressing the grievance of the consumer. The present case is only with regard to tampering of seals of the meter and therefore, the team who had checked the meter itself had in checking report mentioned about the UEE. The petitioner has also served provisional assessment order to which objection was filed by the consumer after which final order of assessment was passed under Section 126 of the Act and, thereafter, respondent had filed appeal under Section 127 of the Act. In my considered opinion, it is not a case of theft as provided under Section 135 of

the Act rather it is a case of UEE as provided under Section 126 of the Act for which respondent has rightly availed his remedy of appeal under Section 127 of the Act. Therefore, there is no error of jurisdiction committed by the Assessing Authority. Hence, the present petition is hereby dismissed.

September 13, 2017
renu

(Rakesh Kumar Jain)
Judge

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