

CWP No.25627 of 2017

[1]

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

CWP No.25627 of 2017

Date of decision:09.11.2017

Aakash Garg

...Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ashwani Talwar, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

The present petition is filed for seeking a direction to the respondents to restore electricity supply to the petitioner's old A/c No.2231305UND021026 (New No.6471740000) on imposition of any condition which may be appropriate.

The petitioner is having an electricity connection under the non-domestic category, obtained in the premises of Hotel Pearl Plaza, G.T. Road, Panipat. The respondents found the petitioner indulging in theft of electricity and accordingly, a notice was issued under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the "Act"), asking the petitioner either to pay ₹27,98,025/- or challenge the said order by way of an appeal or may compound the offences. Besides this, the respondents also got registered FIR No.7369 dated 25.07.2017, under Sections 135/151 of the Act at Police Station Irrigation and Power, Karnal against the petitioner.

Learned counsel for the petitioner submits that the petitioner, under a wrong advice, filed a civil suit on 16.08.2017 to challenge the amount of ₹27,98,025/- but it was later on found that the suit is not maintainable rather

the order passed under Section 135 of the Act is amenable to appeal under the Act but the appeal has not been filed so far. He has referred to a Sale Circular No.U-33/2017 dated 04.09.2017, by which the designated Appellate Authority, in case of the petitioner, is Superintending Engineer/SLDC, Design & Construction, Haryana Vidyut Prasaran Nigam, SLDC Complex, Sewah, Panipat and contended that the raid was not conducted by the Competent Authority.

The petitioner, before filing the appeal, has approached this Court alleging that he had already paid half of the amount, i.e. ₹13,99,013/- on 11.08.2017 but the respondents have issued instructions by Sale Circular No.U-23/2017 dated 20.06.2017 for dealing with cases of theft of electricity, in which instruction regarding 'reconnection' is also provided, which reads as under:-

(f) **Reconnection:** The supply of the consumer shall be restored by the licensee of supplier, as the case may be within 48 hours of the deposit of 100% of the assessed amount. In case of default, the consumer is liable to pay the interest for the period of default, which shall be at the rate of 16% per annum compoundable every six months, as per provision contained in clause no.7.5 of HERC Electricity Supply Code Regulation. The above reconnection shall be without prejudice to the obligation on the part of authorized inspecting officer to file the complaint for lodging of FIR to the Police Station. For all the cases of theft of electricity booked under section 135; it is mandatory to file the complaint with I&P police station for lodging of FIR having jurisdiction over the area.”

Learned counsel for the petitioner has submitted that the Appellate Authority does not have the jurisdiction to waive off the deposit of 100% amount of penalty claimed under Section 135 of the Act and until and unless 100% amount is paid, there would be no reconnection of the electricity supply in view of the provision contained in the aforesaid instructions. He has, thus, prayed that the petitioner may be put to terms in regard to 50% balance

amount so that his appeal may be heard and decided in accordance with law.

I have heard learned counsel for the petitioner and examined the available record with his able assistance.

Interestingly, there is no challenge by the petitioner to the validity of the provisions of reconnection provided in the aforesaid instructions/circular. Thus, it is accepted to be correct by the petitioner and all that has been argued is for seeking an equitable order from this Court for the purpose of not depositing the balance 50% amount claimed under Section 135 of the Act.

Since it is a case of theft, therefore, the respondents have designed the aforesaid instructions/circular in such a manner that the consumer, who is indulging in theft of electricity, should deposit 100% of the amount assessed and only then electricity supply shall be reconnected/restored within a period of 48 hours. The consumer/petitioner has been given right to appeal but at the same time, the Nigam has not allowed the Appellate Authority to give any kind of concession from depositing the entire amount for the purpose of reconnection/ restoration of electricity supply as the order of reconnection/restoration has to be passed by the Nigam and not by the Appellate Authority.

In view of the aforesaid facts and circumstances, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

November 09, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned : Yes/No
Whether reportable : Yes/No