

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.7493 of 2016
Date of decision:05.04.2017

Smt. Anita

... Petitioner

Vs.

Uttar Haryana Bijli Vitran Nigam and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Malik, Advocate
for the petitioner.

Mr. Deepak Sabherwal, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The petitioner is aggrieved of the impugned order dated 14.11.2013 (Annexure P-1) along with notice of assessment bearing Memo No.4742/CA dated 15.11.2013 (Annexure P-2) vide which penalty of Rs.69,149/- has been imposed by respondent No.3 and Memo No.4743/CA dated 15.11.2013 (Annexure P-3), whereby, the notice for compounding the offence of theft of electricity under Section 135 and Section 152 of Electricity Act, 2003 (hereinafter referred to as "2003 Act"), has been initiated by the respondents on the premise that the petitioner had allegedly been found to be committing theft of electricity on account of using the connection meant for commercial purpose.

Mr. Rajesh Malik, learned counsel appearing on behalf of the petitioner submits that an FIR bearing No.1976 dated 19.11.2013 under

Section 135 of 2003 Act was registered by the Electricity Board and the petitioner has been acquitted on 26.05.2015 by the Special Court, Sonapat as constituted under Chapter 15 of 2003 Act. He further submits that checking report dated 14.11.2013 (Annexure P-1) and impugned notice of assessment dated 15.11.2013 (Annexure P-2) under Section 135 of 2003 Act, are without jurisdiction in the absence of any provisions. The legislature in wisdom had already been incorporated provisions of sub-sections (5) and (6) of Section 154 of 2003 Act, for determining the civil liability.

In support of his aforementioned contention, relies upon the ratio decidendi culled out by this Court in **CWP No.12600 of 2011 titled as M/s JTG Alloys Private Ltd. vs. Punjab State Power Corporation Ltd. & others decided on 16.10.2014** and Kapoor Singh vs. Punjab State Power Corporation Limited and others 2015(2) RCR (Civil) 891 to contend that once the petitioner has been acquitted of the alleged theft, the question of civil liability is to be determined by the Special Court, but did not do so. The Electricity Board cannot proceed further in pursuance thereto, in essence, the alleged theft has not been found to be substantiated. Even otherwise, the order of acquittal has not been challenged.

Per contra, Mr. Deepak Sabherwal, learned counsel appearing on behalf of the respondents submits that Annexures P-1 and P-2 are to be construed under Section 126 instead of 135 of 2003. Non-mentioning of the provisions is not prejudicial, therefore, the Electricity Board cannot be

prevented to recover the amount and the petitioner has the remedy by invoking the provisions of Section 127 of 2003 Act as the Civil Court had already been called upon to determine the issue relegated the petitioner to do so and thus, urges this Court for upholding the orders under challenge. He also submits that so far as compounding notice (Annexure P-3) is concerned, present writ petition has been rendered infructuous, in view the acquittal order having attained finality.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Rajesh Malik as plain and simple language of sub-sections (5) and (6) of Section 154 of 2003 Act which reads as under:-

“ (5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the

Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation. - For the purposes of this section, “civil liability” means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 140 and section 150.”

reveals that the Special Court has been enshrined/vested with the powers to determine the civil liability. These provisions in legislature have been incorporated for the reason that the Electricity Board owing to undergo rigmarole of multifariousness of litigation by seeking recovery of the amount, i.e, through independent suit, in essence, civil liabilities determined can be executed as a civil Court decree. The notices, Annexures P-1 and P-2 do not remotely indicate the applicability of the provisions enshrined under Section 126 of 2003 Act as there is reference of Section 135. Once the Electricity Board has not been able to prove the alleged theft, the Special Court did not determine the civil liability and cannot recover the amount for which the theft has not been proved. This view of mine is also reiterated from the aforementioned judgments.

Resultantly, the checking report dated 14.11.2013 (Annexure P-1) and notice dated 15.11.2013 (Annexure P-2) are hereby set

aside and Memo dated 15.11.2013 (Annexure P-3) has been rendered infructuous, in view of the acquittal order having attained finality.

Accordingly, the writ petition stands allowed.

(AMIT RAWAL)
JUDGE

April 05, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No