

LPA No.951 of 2017 (O&M) -1-

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

LPA No.951 of 2017 (O&M)

Date of Decision : 10.08.2017

Punjab State Power Corp Ltd. and another

....Appellants

Versus

M/s Akal Foods Pt.Ltd. and another

....Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

...

**Present: Mr.Ashok Kumar Sharma, Advocate
for the appellants.**

...

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the learned Single Judge dated 12.01.2017.

Respondent No.1 (hereinafter referred to as 'the consumer') was allegedly found indulging in theft of electricity and an assessment qua his liability framed without taking recourse to the criminal prosecution which was one of the eventualities contemplated under Section 135 of the Electricity Act (hereinafter referred to as 'the Act'). It is the conceded case of the appellants that the consumer was not charged criminally and only proceeded for monetary consequences regarding which the assessment was framed which he challenged by way of an appeal

before the Appellate Authority under the Electricity Act.

Learned counsel for the appellants contends that if a person is proceeded against under Section 135 of the Act for theft, the only remedy available with him is under Section 154 of the Act which provides for determination of the controversy by a special court constituted under a notification issued by the State Government. It is the categoric case of the appellant that only an assessment framed for unauthorised use of electricity under Section 126 can be subjected to an appeal as the consumer has done. We would extract Sections 126 and 135 of the Act herebelow :

“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.

135.Theft of electricity.—(1)Whoever, dishonestly,--

- (a) taps, makes or causes to be made any connection with overhead, underground or

under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting

supply of electricity for that period from any other source or generating station:

Provided also that if it is provided that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four

hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2) Any officer of the licensee or supplier as the case may be, authorized in this behalf by the State Government may--

- (a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;
- (b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being, used for unauthorised use of electricity;
- (c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the

person from whose custody such books of account or documents are seized to make copies thereof or take extracts there from in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.”

The learned Single Judge negated the plea of the appellants in this regard which is now a cause of grievance before us.

We have considered the argument of the learned counsel for the appellants and found that there is no merit in the instant appeal. If the order impugned by the consumer is to be

seen, it reveals that it was an order of assessment for unauthorised use of electricity though Section 135 is also mentioned therein. This order was preceded by provisional order of assessment for unauthorised use of electricity. Evidently, the appellants themselves have described the assessment on account of unauthorised use of electricity and the consumer cannot be faulted for availing the remedy of appeal under the Act considering that the provisional assessment as also the final one under the Act was for unauthorised use of electricity alone and mere mention of Section 135 would not alter the situation at all. That apart, Section 154 could be invoked by a consumer only if he has been proceeded against for criminal prosecution and the reliance placed by the appellants on Section 154 (5) of the Act to enhance their argument is totally misplaced for which additional power given to file an appeal determining culpability of a consumer is also authorised to proceed against him and determine the civil liability as per the prescribed rate of tariff. Section 154 (5) is also extracted herebelow :

“154. Procedure and power of Special Court.--

(1) to (4)

(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.”

For the aforesaid reasons when the appellants themselves had proceeded against the consumer to frame an assessment for unauthorised use of electricity, mere mention of Section 135 would not make any difference to the cause of the appellants as espoused before us. Rather, the consumer was very well within his right to go before the Appellate Authority particularly when he was not criminally prosecuted and the jurisdiction of the civil court would not be available to him.

Apart from this, the appeal is also barred by 63 days which we do not intend to condone in the absence of any plausible explanation.

Dismissed.

(MAHESH GROVER)
JUDGE

10.08.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

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