

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4258 of 2017

Date of Decision: May 29, 2018

Murari Lal

...Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.J.P.Sharma, Advocate,
for the petitioner.

Mr.Surinder K. Mahajan, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Present revision is directed against the impugned judgment dated 29.4.2017 (Annexure P-1), whereby the Special Court, exercising the powers under Section 154 of the Electricity Act, 2003 (for short “the Act”) while entertaining the suit for declaration and permanent injunction with regard to the Bill dated 5.2.2009 amounting to ₹1,89,881/-, rejected the plaint on the premise that the jurisdiction would vest with the Civil Court.

Mr.J.P.Sharma, learned counsel representing the petitioner submitted that in pursuance to the aforementioned demand raised by the Electricity Board, the petitioner approached the District Consumer Disputes Redressal Forum, Narnaul and the matter reached upto the National Consumer Disputes Redressal Commission, New Delhi, wherein the operative part of the order is in the following terms:-

“5. Consequently, revision petition filed by the petitioner is dismissed and petitioner is at liberty to approach appropriate authority under Indian Electricity Act for redressal of his

grievance with no order as to costs.”

It is in lieu of the aforementioned observations, the petitioner availed the remedy vide Annexure P-5 by filing the claim in the Special Court, Narnaul. When the case reached at final stage, the Special Court rejected the plaint while directing the petitioner to avail the remedy in the Civil Court. He submitted that it is not a case of proceedings initiated under Section 126 of the Act, whereby the Electricity Board is obliged to pass the provisional and final assessment order, so that the petitioner can avail the remedy under Section 127 of the Act by filing an appeal before the Appellate Authority.

Per contra, Mr.Surinder K. Mahajan, learned counsel for the respondents submitted that the matter is squarely covered by the decision rendered by this Court in **Civil Revision No.4272 of 2016 (Lakha Singh Versus Punjab State Power Corporation Ltd.Patiala & another)**, decided on 6.12.2016, for, the provisions of clause (iv) of Explanation (b) of sub-section (6) of Section 126 of the Act leave no manner of doubt that unauthorised use of the electricity would also fall for the purpose for which the use of the electricity was authorised. In the instant case, the consumer was found to be using the electricity for commercial purposes having domestic connection.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the order relating to incompetency of the Special Court to decide the plaint is the correct view, but later part relegating the petitioner to approach the Civil Court is not correct interpretation. The entire exercise had already been noticed by this Court in the judgment rendered in **Lakha Singh's case (supra)**. The operative part

of the same reads thus:-

“It also subscribes the unauthorised use of electricity through artificial means, therefore the Civil Court, though the memo has been issued under Section 135 of 2003 Act, would have the jurisdiction to try the matter as per the provisions of Section 145 of 2003 Act.

*I am in agreement with the ratio decidendi culled out by this Court in **Mahipal Singh's case (supra)**. The relevant paragraph of the same reads thus:-*

“On reading of provisions of Section 126 Explanation (b) (iii) of 2003 Act, unauthorized use of electricity also means the usage of electricity through a tampered meter. The allegation in the present case is that the appellant had tampered the meter. In my view, the Civil Court did not have the jurisdiction, in view of the provisions of Section 145 of 2003 Act.

No doubt, certain provisions of Section 126 of 2003 Act would be different from the cases where dishonest abstraction of electricity by means of artificial methods enlisted under Section 135 of 2003 Act and would be applicable to the cases where there is no theft of energy but energy consumed in violation of terms and conditions of supply would lead to authorised use of energy. Provisions of aforementioned sections should be read in whole and not in isolation. I have already given a judgment on this point in RSA No.2092 of 2015 titled as M/s Gill Rice Mills vs. Punjab State Electricity Board and another decided on 21.08.2015.

*Thus, I am of the view that the judgments referred (supra)** would not be applicable to the facts and circumstances of the present case as per the provision of Section 126 Explanation (b)(iii) of 2003 Act, which though have been extracted but not brought to the notice of the Court in cited judgment minutely. Had it been so, perhaps there would not have been a finding to entertain*

such type of dispute at this stage. I am of the view that the appellant should be granted a liberty to approach the Special Court.”

For the foregoing reasons, the order under challenge is set aside. Revision petition is allowed. The matter is restored to its original number. Additional District Judge is directed to decide the appeal in accordance with law.”

In view of the aforementioned findings, the remedy for the petitioner is to file an appeal before the competent authority under Section 127 of the Act. Since there is time line fixed for filing the appeal, the petitioner can take the benefit of Section 14 of the Limitation Act for the purpose of condonation of delay in case he decides to approach the competent authority within a period of two months.

Revision petition, by upholding the impugned order in part, is disposed of.

May 29, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No