

CWP No.11326 of 2014

[1]

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

CWP No.11326 of 2014

Date of decision: February 15, 2018

Bhola Devi

...Petitioner

Versus

DHBVN (P) Ltd. and others

...Respondent

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajesh Garg, Senior Advocate, with
Mr. Rakesh Dhiman, Advocate, for the petitioner.

Mr. Prateek Mahajan, Advocate,
for respondents no.1 to 3.

Rakesh Kumar Jain, J.

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the checking report LL-1 dated 05.02.2014 along with Memo No.718 dated 06.02.2014 by which a penalty of ₹57,24,674/- has been imposed upon the petitioner and Memo No.719 dated 06.02.2014 by which penalty of ₹8,50,000/- for compounding the offence of theft of electricity under Sections 135 and 152 of the Electricity Act, 2003 (hereinafter referred to as the "Act") has been imposed upon the petitioner.

In brief, the petitioner is stated to be the owner of the plot bearing no.42, Sector 7, IMT Manesar, District Gurgaon, in which son of the petitioner is running an industrial unit under the name and style of M/s S.M. Engineering for manufacturing plastic parts. The electricity connection bearing No.IMS-69 was released in the name of the petitioner having the Maximum Demand

Indicator (MDI) with sanctioned load of 49.5 kilowatt. On 05.02.2014, premises of the petitioner was inspected in the presence of one Munish Verma, user of the premises, by the joint team of the DHBVNL consisting of its Operation Wing, M&P Wing and Vigilance Wing. The connecting load running at the time of checking was 76.148 KW as against the sanctioned load of 49.5 KW. According to the respondents, after opening the MCB seals, since it was found that the firm seals and paper seals were tampered with and the lock of terminal cover was broken, therefore, the meter was referred to the M&T Lab, Gurgaon for inspection. The checking report LL-1 was prepared, duly signed by the said Munish Verma who was also asked to attend the lab on 06.02.2014 at 10:00 a.m. so that the meter could be checked in his presence. It is also the case of the respondents that as per the laboratory report dated 06.02.2014, both the firm seals were found tampered with; the M&T seals were found intact but did not tally with the lab record and therefore, were fake; the right sealing screw was tampered; on opening of the meter, an external circuit comprising of a RF Switch remotely controlled was found installed so as to manipulate the reading recorded by the meter; and a remote control was found with the meter. The Nigam found that it was a clear cut case of theft of electricity, therefore, a notice dated 06.02.2014 of a loss of ₹57,24,674/- was served upon the petitioner and a notice for compounding of the offence was also served, asking the petitioner, to deposit ₹8,50,000/-. The petitioner, however, did not deposit the penalty amount of ₹57,24,674/- as well as the compounding fee and as a result thereof, FIR No.55 dated 10.02.2014, under Sections 135 of the Act was registered against the petitioner. It is also mentioned in the reply that on 05.02.2014, son of the petitioner, namely,

Munish Verma, had admitted before the Joint Checking Team in regard to tempering of the meter having been done by one Lalit Kumar son of Rajinder Kumar. Accordingly, FIR No.54 dated 06.02.2014 for the commission of offences under Sections 135 and 138 of the Act was also registered.

During the pendency of the present petition, the trial in FIR No.55 dated 10.02.2014, registered against the petitioner, was conducted by the Court of Additional Sessions Judge, Gurgaon, in which the petitioner has been held guilty of the offence committed under Section 135 of the Act and was convicted vide order dated 29.04.2016 for a period of 1-½ years and to pay a fine of ₹10,000/- and in default of payment of fine to suffer a further simple imprisonment for a period of 3 months.

Since the petitioner has been convicted under Section 135 of the Act for having committed the theft of energy, the argument raised by the petitioner that the proceedings under Section 126 of the Act should have been carried out because tampering of meter is also related to the unauthorized use of electricity is of no consequence. It is sought to be argued that had the proceedings been carried out for the unauthorized use of electricity, then the procedure prescribed under Section 126 of the Act should have been followed, which provides for an opportunity of filing objection to the provisional assessment before the petitioner could have been asked to pay the huge amount of ₹57,24,674/-, which has been done straightway by applying to Section 135 of the Act, in which no such procedure is prescribed.

In reply, counsel for the respondents has submitted that Section 126 and Section 135 operate in different fields as Section 126 deals with unauthorized use of electricity and Section 135 with the theft of electricity. It

is submitted that after conviction of the petitioner by the competent Criminal Court in terms of Section 154 of the Act, it does not lie in the mouth of the petitioner to claim the application of procedure prescribed under Section 126 of the Act.

I have heard learned counsel for the parties and examined the available record with their able assistance.

In the case of **Raj Kumar vs. Uttar Haryana Bijli Vitran Nigam and others**, CWP No.26366 of 2013, this Court has already clarified about the operation of Sections 126 and 135 of the Act. Thus, it is not necessary to delve into it again especially when the petitioner has already been convicted by the competent Court of law for the offence having been committed under Section 135 of the Act.

If the petitioner was of the view that Section 126 of the Act was applicable, then she should have raised this issue before the criminal court even at the stage when the charge was framed under Section 135 of the Act but now she cannot be allowed to take the plea that the decision in the criminal case would not affect the civil rights of a person because the conviction of the petitioner under Section 135 of the Act is a *fait accompli*.

Thus, keeping in view 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.

February 15, 2018
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(Rakesh Kumar Jain)
Judge

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