IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No. 1178 of 2016
Date of Decision: 23.1.2018

Dakshin Haryana Bijli Vitran Nigam ....Petitioner

v.

M/s Vipul Motors Pvt. Ltd. and another ....Respondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Padamkant Dwivedi, Advocate, for the petitioner

Mr. M.K. Sood, Advocate, for respondent No. 1

RAKESH KUMAR JAIN, J (Oral) :

The petitioner has challenged the order dated 18.9.2015 (Annexure P-7), passed under Section 127 of the Electricity Act, 2003 (in short 'the Act') by the Appellate Authority.

Learned counsel for the petitioner has submitted that respondent No.1 was found indulging in un-authorised use of electricity and was served with a provisional assessment order asking to pay Rs.26,50,897/-. The respondent No.1 challenged the provisional assessment order by resorting to Section 127 of the Act in which the impugned order has been passed against the petitioner.

Learned counsel for the petitioner has, inter alia, submitted that appeal against the provisional assessment order is not maintainable and has referred to Section 127 of the Act which read as under :-

"Section 127. (Appeal to Appellate Authority): ---

(1) Any person aggrieved by a final order made under section 126

may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months."

However, Learned counsel for the respondents has submitted that the final assessment order was not supplied by the petitioner and was given the threat of disconnection of electricity forcing it to challenge the provisional assessment order only.

It is further submitted that in the reply filed by the petitioner before the Appellate Authority, they have appended the final assessment order dated 9.7.2014, which was not given to them before they had filed the appeal. It is also submitted that the Appellate Authority has set aside the final order of assessment as well.

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

Though it may be sound to be technical but the fact remains that Section 127 of the Act can only be invoked for filing of appeal against the final assessment order. The language of Section 127(1) strictly provides that if a person is aggrieved by final order then he can challenge the same within 30 days of the said order but in the present case, the respondent No.1 did not ask the petitioner for the final assessment order and perhaps, as stated, under the threat of disconnection of electricity, deposited the amount claimed under the provisional assessment order and filed the appeal against the provisional assessment order.

There is nothing on record in writing to show that the petitioner has threatened the respondent No.1 with the order of disconnection of the electricity on account of non-payment of amount claimed by them. Therefore, the Court cannot consider of this argument raised on behalf of respondent No.1, who had filed the appeal against the provisional assessment order, which was otherwise not maintainable and as such, the Appellate Authority had no jurisdiction.

Since it is a matter of jurisdiction which goes to the root of the case much less the powers vested with the Appellate Authority. Therefore, if the impugned order is totally without jurisdiction as the cognizance has been taken by the Appellate Authority against the provisional assessment order though it had the jurisdiction to take cognizance of an appeal filed against the final order. Thus, in order to set law at the right place, this Court is of the view that the order dated 18.9.2015, passed by the Appellate authority, entertaining the appeal at the behest of respondent No.1 against the provisional assessment order, is against the law as provided under Section 127 of the Act. Therefore, on this ground, the impugned order is set aside and liberty is granted to respondent No.1 to challenge the final assessment order dated 9.7.2014, by filing the appeal under Section 127 of the Act. In case, such an appeal is filed within one month from the date of receipt of certified copy of this order, the Appellate Authority shall not raise the issue of limitation and shall decide the appeal in accordance with law after hearing both the parties and by passing a speaking order.

Disposed of.

(RAKESH KUMAR JAIN)
JUDGE

23.1.2018
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No