

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

1.

CWP No. 1961 of 2014

Date of Decision: 17.07.2018

Ram Phal

.....Petitioner

Vs.

Punjab State Power Corporation Limited and another

.....Respondents

2.

CWP No. 1967 of 2014

Date of Decision: 17.07.2018

Harchand Singh

.....Petitioner

Vs.

Punjab State Power Corporation Limited and another

.....Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Vikas Singh, Advocate,
for the petitioner.

Mr. Vishal Chaudhri, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J. (Oral)

This order shall dispose of two writ petitions bearing CWPs No. 1961 of 2014 titled as. Ram Phal Vs. Punjab State Power Corporation Limited and another (1st petition) and CWP No. 1967 of 2014 titled as Harchand Singh Vs. Punjab State Power Corporation Limited and another (2nd petition) as the issue involved in both the petitions is common. However, for the sake of convenience, the facts are being extracted from the 1st petition.

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 30.07.2010 and order dated 08.10.2013 passed by the appellate authority by which his appeal has been dismissed.

Shorn of unnecessary details, the petitioner was having the electric connection for his tubewell bearing DF05/0481-AP. Thereafter, he was given new connection DF05/0141-AP after enhancing the sanctioned load of the aforesaid connection. The premises of the petitioner was checked on 21.07.2010 in which it was observed that *".....This person has connected a 3/C cable at point marked as B on the 63/100 KVA LT Line of Jang Singh of Village Langroi which goes to the motor of Surjant Singh/Joginder Singh. The length of the cable is about 140/150 meter and is illegally running his motor on his land"* It was also observed that there was theft in terms of Section 135 of the Electricity Act, 2003 (for short 'the Act').

Accordingly, respondents issued a notice under Section 135 of the Act, which was allegedly a provisional order of assessment, asking the petitioner to pay a sum of ₹1,24,690/-. Since, it was mentioned to be a provisional order of assessment, the petitioner filed the objection on 31.07.2010 followed by another objection on 23.09.2010. Thereafter, no final order was passed by the respondents but the petitioner, being threatened by the provisional assessment order, filed a complaint before the District Forum, Patiala (for short 'the District Forum') to challenge the provisional order of assessment on 30.07.2010 on the basis of which the demand of ₹1,54,650/- was raised. The said complaint was dismissed vide order dated 23.07.2013 on the ground of lack of jurisdiction. Thereafter, the petitioner approached the Superintending Engineer (Circle, PSPCL) on 04.10.2013 which was dismissed with the following observations: -

"The designated authority has considered this case. In the notice issued by Sub-Divisional Officer/OP Cantt. Patiala regarding provisional assessment vide No. 808 dated 30.07.2010 it has been clearly mentioned that if the provisional order of assessment is not acceptable to him then within a period of 15

days of the issuance of the notice, he can file objections before the Designated Authority (SE/DS). The competent authority shall after considering your representation and giving an opportunity of being heard shall pass a final order of assessment within a period of 7 days.

You did not file any request before the designated authority (SE/DS) within a period of 15 days"

Thereafter decision has been taken like this: -

"Sh. Ram Phal did not submit objections before the designated Authority (SE/DS) within the period stipulated in the notice and this case being time barred (Time Barred) cannot be considered."

The petitioner thereafter, filed an appeal against the order dated 08.10.2013, purported to have been passed by the aforesaid designated authority but the said appeal was dismissed by the Additional District Judge, Patiala on the ground that it is not maintainable.

At the threshold, learned counsel for the petitioner has submitted that there is no concept of issuing of provisional order of assessment in a case of theft of electricity under the Act. It is submitted that the petitioner was totally misguided by the respondents. When he received the notice for provisional order of assessment, he filed the objections on 31.07.2010 and 23.09.2010. The said objections were not considered by the designated authority vide his order dated 08.10.2012 on the ground that the objections were not filed within a specified period of 15 days. It is submitted that Part XII of the Act deals with "Investigation and Enforcement" and Part XIV with "Offences and Penalties". In Part XII, Section 126 deals with the assessment of the unauthorized use of electricity which is defined under Section 126 (6) (b) of the Act. As per the procedure provided for the unauthorized use of electricity, the assessing officer has to serve a provisional order of assessment, giving an opportunity to the consumer to file objections, if any, for the said

assessment and also an opportunity of hearing before taking a final decision. After the final order of assessment is passed, provision of appeal is there under Section 127 of the Act. It is further submitted that in a case of theft, defined under Section 135 of the Act, there is no stipulation of any provisional assessment rather there is a provision of assessment of the amount which is to be charged from the person who is found to have indulged in the theft of electricity.

Learned counsel for the respondents has fairly conceded that though it was the case under Section 135 of the Act but since the notice was given on a printed proforma, therefore, it has been mentioned as provisional order of assessment.

Be that as it may, the respondents, who have to impose penalty in terms of money upon the consumer on account of the alleged theft of electricity, have to give clear notice so that the said notice could be challenged in accordance with law but if the notice is vague, the fault does not lie on the part of the consumer to challenge the same. In the present case, consumer/petitioner was totally confused as to whether it is a case of unauthorized use of electricity or theft because the respondents have labelled the notice as "provisional order of assessment". Therefore, the petitioner has filed objections twice on 31.07.2010 and 23.09.2010 and those objections were not entertained only on the ground of being time barred. The petitioner is thus left high and dry in pursuing his remedies against the alleged imposition of fine.

Therefore, in view of the aforesaid facts and circumstances, I am of the considered opinion that the respondents are to be blamed in this case for issuing a faulty notice to the petitioner which has been impugned in the

present case. In case the respondents have to recover the alleged amount from the petitioner on account of theft of electricity, they are supposed to give a specific notice as provided under Section 135 of the Act to the petitioner and should have given an opportunity to defend. Consequently, present petitions are allowed and the impugned order(s) and subsequent proceedings are hereby set aside but liberty is granted to the respondents to issue correct notice to the petitioner on the basis of checking report, if it is a case of unauthorized use of electricity then under Section 126 and if it is a case of theft of electricity then under Section 135 of the Act so that the petitioner may defend the notice in accordance with law.

Photocopy of this order be placed on the file of the connected case.

July 17, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned :	✓ Yes / No
Whether Reportable :	Yes / No