

CWP No.19628 of 2015 (O&M)

[1]

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

**CWP No.19628 of 2015 (O&M)
Date of decision:17.04.2018**

Devki Devi Jain Memorial College for Women ...Petitioner
Versus
Punjab State Power Corporation Limited and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Jindal, Senior Advocate, with
Ms. Shreya Mahajan, Advocate, for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

Mr. Shubham Kaushik, Advocate, for
Mr. Naveen K. Bhardwaj, Advocate, for respondents no.1 to 5.

Mr. Sakesh Kumar, Advocate, and
Mr. Deepak Girotra, Advocate, for respondent no.6.

Rakesh Kumar Jain, J.

The petitioner has prayed for a writ in the nature of *certiorari* for quashing the final assessment order dated 08.08.2015 passed under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the "Act") for the alleged unauthorized use of electricity.

One of the issues involved in this petition is as to whether the writ petition would be maintainable to challenge the order passed under Section 126 of the Act in the presence of the statutory remedy of appeal provided under Section 127 of the Act?

In order to appreciate the issue involved, it would be relevant to

refer to Section 127 of the Act, which reads as under:-

“Section 127. (Appeal to Appellate Authority):-- (1) Any person aggrieved by the 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.”

The petitioner has assailed the validity of the impugned order passed under Section 126 of the Act, *inter alia*, on the ground that it is based upon the inspection by a person having no jurisdiction/authority. The petitioner has categorically mentioned in para 22 of the writ petition that the alternate remedy of appeal is available to him under Section 127 of the Act but the writ petition is filed because the authority who had inspected the premises of the petitioner was not having jurisdiction. Thus, the case of the petitioner is that

the writ petition can be filed for the enforcement of any fundamental rights or there is a violation of principle of natural justice or the proceedings are wholly without jurisdiction or against the vires of the Act.

There is no doubt about the aforesaid proposition of law but there is an interesting averment made by the petitioner in para 22 of the writ petition, which reads as under:-

“...the petitioner-college is in no financial position to pay for 50% of the abnormally high statutory deposit required for the purposes of availing the remedy of appeal”.

However, at the time of preliminary hearing on 16.09.2015, the following order was passed by this Court:-

“Learned senior counsel for the petitioner contends that inspection has not been carried out by the competent authority. Superintending Engineer and Deputy Chief Engineer are the only competent officers to inspect the premises. In fact, it has been inspected by Senior Executive Engineer, Enforcement. As such, the inspection is bad in law and without jurisdiction. Learned senior counsel further contends that assessment order has been incorrectly passed.

Notice of motion for 16.11.2015, subject to deposit of 50% of amount as demanded vide Annexure P/8.

If the said amount is deposited, it will be subject to decision of the instant writ petition and dis-connection shall not be carried out.”

Since the issuance of notice in the writ petition was made subject to deposit of 50% of amount as demanded vide Annexure P/8 and interim order was also granted of staying dis-connection, therefore, the petitioner deposited the 50% of the demanded amount.

Thus, the averments made in para 22 of the present petition filed on 11.09.2015 that the petitioner is not in a financial position to deposit 50% of

the demanded amount to avail the remedy of appeal is proved to be wrong on 16.09.2015, i.e. just after 5 days when the stay was granted by this Court subject to deposit of 50% of the demanded amount.

Part 12 of the Act deals with the unauthorized use of electricity in which Section 126 provides the method for assessment and Section 127 provides the process to be adopted for challenging the assessment order by way of an appeal. Section 127(1) of the Act lays down the period of 30 days for filing the appeal and Section 127(2) of the Act lays down the complete bar from entertaining such an appeal 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 is enclosed along with the appeal. Section 127(4) of the Act further provides that the order passed by the Appellate Authority shall be final.

The statute has provided right of appeal in the matter of assessment in case of unauthorized use of electricity before the Appellate Authority to deal with all issues involved whether on merit or of jurisdiction which have to be considered/interpreted by the Appellate Authority in terms of various regulations/circulars issued from time to time.

Thus, in the given facts and circumstances, this Court is totally unimpressed with the argument of the petitioner that it had challenged the impugned order, i.e. assessment order, passed under Section 126 of the Act in the writ petition because it is *per se* without jurisdiction, without resorting to the remedy of appeal, because it appears that the petitioner, in order to avoid the deposit of 50% of the assessed amount in terms of Section 127(2) of the Act, has filed the present petition because it is categorically mentioned in para

22 of the writ petition that the petitioner does not have 50% of the demanded amount, required for statutory deposit for the purpose of availing the remedy of appeal but immediately after 5 days thereof, when the writ petition was heard at the preliminary stage and the issuance of notice was made subject to deposit of 50% of the demanded amount and it was further made imperative that if such amount is deposited, only then dis-connection of the electricity connection would not be carried out, the petitioner is stated to have deposited 50% of the demanded amount.

In such circumstances, the petitioner cannot be allowed to blow hot and cold in the same breath in order to avoid the statutory remedy of appeal by referring to the law laid down by the Supreme Court that the writ petition can be entertained if the impugned order is allegedly passed without jurisdiction as every case has to be decided on its own facts and the Court has to lift the veil to find out the real difficulty being faced by the petitioner/litigant.

Thus, in view of the facts and circumstances narrated here-in-above, I am of the considered opinion that the writ petition is not maintainable in view of the availability of statutory remedy of appeal provided under Section 127 of the Act. Since the petitioner has already deposited 50% of the assessed amount in terms of the order passed by this Court on 16.09.2015, therefore, in case the petitioner decides to take the remedy of appeal in terms of Section 127(1) of the Act, the Appellate Authority shall not ask the petitioner to comply with the provisions of Section 127(2) of the Act because the amount has already been deposited, and entertain the appeal on merits. Further in case the appeal is filed by the petitioner within one month from the date of receipt

of certified copy of this order, the Appellate Authority shall also not raise the issue of limitation, which is so provided in Section 127(1) of the Act and shall proceed to decide the appeal on merits of the case, in accordance with law.

April 17, 2018
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(Rakesh Kumar Jain)
Judge

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