

C.W.P. No. 22701 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 22701 of 2014

DATE OF DECISION:08.01.2018

Sangeet Kaur

.....Petitioner

Versus

UHBVNL and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order of assessment dated 17.10.2014 (Annexure P-5) as well as notice dated 17.10.2014 (Annexure P-6) for compounding the offence of theft of electricity to the petitioner under Sections 135 and 152 of the Electricity Act, 2003 (hereinafter referred to as 'the Act').

Briefly, the facts of the case as made out in the present petition are that the petitioner is widow of late Sh. Ranvir Singh Saran, in whose name an electricity connection bearing Account No. Y35JB120006A was issued by the respondents under NDS Tariff Type. The premises, for which the aforesaid electricity connection was issued, is a school building, which

presently is functioning under the control and supervision of the petitioner being its Principal. The husband of the petitioner died on 27.11.2010 but till date the above-mentioned electricity connection is in the name of husband of the petitioner. On 1.9.2014, the premises of the school was checked by the respondents-authorities and prepared a checking report dated 1.9.2014. The petitioner was issued a memo dated 1.9.2014 for asking her to attend the M&T Lab, Yamuna Nagar at 10.00 am on 2.9.2014. Similarly, another memo was issued to her on the same day i.e. 1.9.2014 calling her to file her response to the office of respondent No.3 to the show cause notice regarding registration of case of theft of electricity. Thereafter, respondent No.4 passed an impugned order of assessment dated 17.10.2014, whereby, the petitioner was informed to pay an amount of ₹306020/- on account of theft of electricity. A notice was also issued to the petitioner on the same day i.e. 17.10.2014 by respondent No.4 for compounding the offence of theft of electricity under Sections 135 and 152 of the Act by paying the compounding amount of ₹40,000/-.

The present petition has been filed to quash the impugned order of assessment and notice dated 17.10.2014 by raising various grounds.

Learned counsel for the petitioner submits that the impugned order as well as notice are not only illegal and arbitrary but violative of Articles 14 and 16 of the Constitution of India. It was not a case of dishonest abstraction or theft of the electricity but only on account of “suspect theft” of electricity the meter was removed. Learned counsel further contends that as per Clause 12(B) of the Circular dated 13.7.2007 in case of suspected theft of electrical energy, a notice is required to be given to the consumer within a period of two working days to show cause as to

why a case of theft of electrical energy should not be framed against the consumer. It also stipulates that the notice should clearly state the time, date and place at which the reply is to be submitted and the name of the designated officer to whom it should be addressed. Sub clause (b) of Clause 12 (B) further provides that the designated officer for this purpose shall be 'XEN OP' and thereafter personal hearing is to be given to the consumer within a period of four working days from the date of submission of the reply. After giving opportunity of personal hearing, a detailed order is required to be passed within a period of 15 days from the date of receipt of reply with regard to the fact as to whether the case of suspected theft of electricity is established against the consumer or not. Learned counsel also submits that order is required to contain the brief of inspection report, submissions made by the consumer in his/her written reply and personal hearing and also the reasons for acceptance or rejection of the same. Thereafter, an amount of assessment is to be mentioned as per clause (III). Learned counsel also submits that as per provisions of Sub Clause (d) of Clause 12 (B), in case suspected theft of electricity is established through tempering of meters/seals, then meter equipments are required to be taken out from the premises in a sealed box and the designated officer is to issue a letter to the consumer atleast one week in advance informing about the date of the meter testing and to make a request to attend the same. In the present case, the procedure as laid down in Clause 12 (B) has been violated as the petitioner was called by the officer, who was not competent to call her. It is also the argument of learned counsel that in case of suspected case of theft of electricity, the penalty cannot be imposed but in the present case the penalty has been imposed by considering the suspected case of theft of

electricity. At the end, learned counsel for the petitioner submits that not only the order has been passed by the officer who is not competent to pass order of assessment but proper procedure has also not been followed and as such both the orders are liable to be set aside.

In response to notice of motion, reply has been filed by respondents No.1 to 5, which is on record.

Learned counsel for the respondents submits that the school premises were checked by the Nigam officials in presence of the user of the electricity connection as well as her son. On checking, both side M&T seals of the meter were found to be refixed with some adhesive material. Thereafter working of the meter was also checked with applied load of 1.5 KE heater rod, which was found to be abnormal. The connected load was found at 5.066 KW against sanctioned load of 8 KW. Initially it was a case of suspected theft of electricity and accordingly the meter was removed. It was duly packed in cardboard box and was sent to M&T Lab, Yamuna Nagar for checking the authenticity of the meter. The electricity of the school premises was restored by installing a new meter and videography was also done. The petitioner was issued notice by asking her to remain present on a particular date and time for testing of the meter and it cannot be said that no notice/opportunity was given. Learned counsel further submits that both M&T seals were found to be tempered with and refixed and it was proved on record that it was a case of theft of energy. Thereafter the petitioner was directed to deposit a sum of ₹306020/- on account of theft of electricity. Similarly another notice was also issued to the petitioner to deposit an amount of ₹40,000/- for compounding of an offence under Section 135/152 of the Act. At the end, learned counsel for the respondents

submits that impugned order was passed and notice was issued as per procedure and requirement of the law and there is no violation of the provisions and regulations of the Act.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order/notice dated 17.10.2014.

The facts regarding installation of the electricity connection in the premises of the petitioner in the name of her husband, who had died earlier, are not disputed. It is also not disputed that the respondents visited the premises of the petitioner and prepared checking report dated 1.9.2014. Admittedly, it has been shown to be case of suspected theft of electrical energy in the checking report and notice was also issued to the petitioner on the same date i.e. 1.9.2014 vide which she was asked to attend the M&T Lab, Yamuna Nagar on the next day i.e. 2.9.2014. The petitioner was asked to file her response to show cause notice issued on 1.9.2014. On perusal of circular dated 13.7.2007 (Annexure P-7), it is clear that two types of cases are mentioned i.e. i) a clear cut case of theft of electricity, ii) case of suspected theft of energy. A perusal of Clause 12-B clearly shows that in cases of suspected theft of electrical energy, the competent officer is required to serve a notice to the consumer within a period of two working days as a why a case of theft of electrical energy should not be framed against him/her. It is also mentioned that the notice should clearly state the time, date and place at which the reply is to be submitted. The name of the designated officer to whom it is to be addressed is also necessary to be mentioned. Sub Clause (b) of Clause 12 (B) further states that the designated officer for this purpose shall be 'S.E. OP' for CT/PT meters and

'XEN OP' for whole current meter. The consumer is at liberty to represent the designated officer within a period of three days from the date of receipt of notice. The designated officer is also required to give a personal hearing to the consumer within a period of four working days from the date of submission of reply. Thereafter, the designated officer is required to pass a detailed order within a period of 15 days from the date of receipt of reply as whether the case of suspected theft of electricity is established against the consumer or not. It is also required to be mentioned in the order should the brief of inspection report, submissions made by the consumer in the written reply and personal hearing and also the reasons for acceptance or rejection of the same. Sub Clause (d) of Clause 12 (B) further provides that where a case of suspected theft of electricity is established against the consumer through tempering of the meters or seals then meter equipments are required to be taken out from the premises in a sealed box and the designated officer is supposed to issue a letter to the consumer at least one week in advance informing him/her about the date of meter testing with request to attend the same.

In the present case, the procedure as prescribed in clause 12 (B) has not been followed as the petitioner was called by the officer, who was not authorized/competent, to attend M&T Lab, Yamuna Nagar on 2.9.2014. Respondent No.4 is not the competent authority to pass the impugned order of assessment dated 17.10.2014 as well to issue notice to the petitioner for compounding of the offence for the theft of electricity. Not only the impugned order has been passed but the notice was issued by the incompetent officer and no procedure as laid down has been followed for converting the case of suspected theft of electricity into the case of theft of

electricity as such the petitioner cannot be burdened with penalty on account of theft of electricity. As per sub clause (e) of Clause 12 (B) of Sales circular dated 13.7.2007, if consumption pattern for the last one year/twelve months is reasonably uniform and is not less than 75% of the assessed consumption as per clause (III), no further proceedings can be undertaken and decision taken therein is required to be communicated to the consumer against proper receipt within a period of three working days and connection is required to be restored through original meter. Due to action of the respondents, the petitioner has been harassed and has also been made sufferer. The impugned order/notice dated 17.10.2014 are not only illegal, unlawful and violative of principles of natural justice and the same are liable to be set aside.

In view of the facts and law position as discussed above, the present petition is allowed and impugned order of assessment dated 17.10.2014 (Annexure P-5) and impugned notice dated 17.10.2014 (Annexure P-6) are hereby quashed.

However, the respondents are at liberty to proceed against the petitioner by following the proper procedure and by giving sufficient opportunity to her as per requirement of the law. It is also directed that amount already paid by the petitioner shall be adjusted against the outstanding amount, if any.

January 08, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes