

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

CWP No.2391 of 2015
Date of Decision: 07.03.2018

Subhash Chand Mittal

. . . . Petitioner

Vs.

The Punjab State Power Corporation Ltd. and others

. . . .Respondents

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

Present: Mr.Tejender K. Joshi, Advocate,
for the petitioner.

Mr.Meena Bansal, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has an electric connection bearing A/c No.CR/17/2089 for domestic purpose with sanctioned load of 10.90 KW. On 24.3.2008, the premises of the petitioner was inspected by the official of respondent No.1 and in that inspection, it was found that the petitioner has been unauthorisedly using the electricity. Accordingly, a provisional order of assessment of ₹2,21,769/- was served upon the petitioner in terms of Section 126 of the Electricity Act, 2003 [for short 'the Act']. The petitioner filed objections to the provisional assessment on 3.4.2008 specifically alleging that the assessment made on 27.3.2008 is totally illegal and the petitioner is not liable to pay any charges as assessed by the respondents. However, the objection of the petitioner was decided against him on 24.4.2008 and he was asked to deposit the amount within a period of 7 days with a threat that otherwise his electric connection would be disconnected. The petitioner had deposited the amount claimed by the respondents and at

the same time filed the appeal under Section 127 of the Act before the appellate authority. The appeal of the petitioner has also been dismissed vide order dated 16.4.2009. The petitioner has thus challenged both the orders of the assessment and the appeal by way of this petition. The primary argument raised by counsel for the petitioner is that the respondents have violated the provisions of Section 126(3) of the Act as while considering his objection, opportunity of hearing was not granted which is though specifically provided under Section 126(3) of the Act.

Learned counsel for the respondents could not deny this fact that opportunity of hearing was not given rather she has vehemently argued that the opportunity of hearing depends upon the facts of the case and in this case the respondents had found that the objection filed by the petitioner were frivolous.

I have heard learned counsel for the parties and after taking into consideration the facts and circumstances, am of the considered opinion that there is an error in the approach of the respondents in not providing a reasonable opportunity of hearing to the petitioner at the time of passing of final order of assessment as it is a statutory requirement in terms of Section 126(3) of the Act. It is not a case where the opportunity of hearing is not given while following the principle of natural justice rather it is a case where the legislature itself has provided a mechanism for affording a reasonable opportunity of hearing to the person, who is objecting to the provisional assessment made by the respondents and has filed his objections to challenge the said assessment. It is incumbent upon the respondents to have granted a reasonable opportunity of hearing to the petitioner/consumer before a

decision is taken finally to ask the petitioner to pay the amount/charges for unauthorized use of electricity.

Thus, keeping in view the aforesaid facts much less the mandate of law as provided under Section 126(3) of the Act coupled with the fact that no opportunity of hearing was given before the final assessment order was passed, the order dated 24.4.2008 i.e the order passed regarding the final assessment and the order of the appellate authority are hereby set aside. The matter is remanded back to the assessing authority to give an opportunity of hearing to the petitioner in support of his objections, before taking a final decision, in regard to the amount to be charged from the petitioner for unauthorized use of the electricity provided by the licensee.

Petitioner is directed to appear before the assessing officer on 2.4.2018.

The assessing officer is further directed to complete the procedure of final assessment within a period of 15 days as the petitioner had already deposited ₹2,21,769/- which has been claimed from him on account of unauthorized use of electricity to which there is a empathetic denial on the part of the petitioner.

With these observations, the present petition is hereby disposed of.

07.03.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No