

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-26007-2014
Date of decision: 19.09.2018

Punjab State Power Corporation Limited

...Petitioner

V/s.

The Collector/Appellate Authority and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Ms. Promila Nain, Advocate for the petitioner.

Mr. K.S. Kang, Advocate for respondent No. 2.

RITU BAHRI, J. (Oral).

The Punjab State Power Corporation is seeking quashing of the order dated 11.12.2013 (Annexure P-5) whereby keeping in view the guidelines presented by electricity department dated 26.07.2013 under Section 127 of the Electricity Act, 2003, the matter was remanded back to the assessing authority as per new letter. As per the notification dated 21.06.2013 (Annexure P-6) an amendment was made to Regulation 36 with regard to unauthorized use of electricity. It was provided that the provisional assessment order is to be made within 72 hours of inspection and served upon the consumer/person in a manner as prescribed by the State Government. These instructions came up for consideration before this Court in ***CWP-19662-2014 Punjab State Power Corporation Limited V/s. The Collector/Appellate Authority and others, decided on 30.11.2016*** and it was held that these instructions had to be applied prospectively being procedural in nature and based on these instructions, the matter could not be

remanded back to the Assessing Authority. The petition was accepted and the impugned order was set aside. The outcome of the petition was that the Appellate Authority was to decide the appeal on merits ignoring the notification dated 21.06.2013. In the present case, even though the impugned order has been passed keeping in view the notification dated 21.06.2013 (Annexure P-6), however a perusal of the order passed by Assessing Authority shows that while exercising provisions under Section 126 of the Electricity Act, 2003 Assessing Officer had to assess unauthorized use of electricity for the entire period during which unauthorized use of electricity had taken place and if such an unauthorized period could not ascertained then a period had to be limited to 12 months immediately preceding the date of inspection.

The case pleaded by respondent No. 2 was that he had applied for new connection on 11.03.2011 and had deposited Rs.45,000/- with the department and in July the meter was installed which started working in August, 2011. Hence from March, 2011 till August, 2011, the total period would come to 5 months and while passing the final assessment order (Annexure P-3), neither the time is reflected nor unauthorized use of electricity has been reflected. Provisions of Section 126(5) of the Electricity Act, 2003 reads as under:-

“If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be

ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.”

Learned counsel for respondent No. 2 further states that the assessment amount in the present case is Rs.9,23,203/-. It has not been clarified that how this amount has been calculated whether it is for 5 months or one year.

Writ petition is allowed. Impugned order dated 11.12.2013 (Annexure P-5) is set aside but the matter is being remanded back to the Assessing Authority i.e. Sunder Nagar Division (Spl.), Kakowal Road, P.S.P.C.L, Ludhiana to pass a fresh order keeping in view the provisions of Section 126(5) of Electricity Act within a period of six months.

(RITU BAHRI)
JUDGE

19.09. 2018
Divyanshi

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