

Sr. No.201

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

**CWP No.4713 of 2013 (O&M)
Date of Decision: 18.12.2018**

Parmod Kumar

... Petitioner

Versus

Punjab State Power Corporation Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. C.M.Munjal, Advocate,
for the petitioner.

Mr. H.S.Thiara, Advocate,
for the respondents-Board.

ARUN MONGA, J.(ORAL)

1. The present writ petition has been filed seeking issuance of a writ in the nature of certiorari for quashing the demand notice/provisional assessment dated 20.07.2010 (Annexure P-2) and also seeking to quash checking report dated 20.07.2010 (Annexure P-1).

2. The checking was carried out on 20.07.2010 wherein it was found that even though the petitioner/consumer took the connection for fish farm, yet, there was no such fish farm existing on the site. It was found that water of the motor being used was actually meant for agriculture purpose and there was no meter installed qua the same. The checking report further stated that the Urban Feeder LT line was tampered and petitioner had taken a direct connection by using 20 meters of cable and was running a

7.5 BHP motor and, therefore, it was found to be a case of direct theft of electricity and pursuant thereto an FIR was registered which resulted in the criminal proceedings. However, during pendency of the criminal proceedings, petitioner at the time of securing the anticipatory bail deposited 50% of the amount of demand notice and the balance 50% was deposited under the orders of this Court while issuing notice of motion in the present proceedings where the demand notice is under challenge.

3. Learned counsel for the petitioner places strong vehemence on the acquittal order/judgment dated 14.09.2015 passed by the Special Court, Ferozepur constituted under the Electricity Act whereby *inter alia* clear finding has been rendered that the power given for fish farm can be used for agricultural purpose.

4. The Special Court further found that there was no criminality/theft involved. In view thereof, the petitioner was discharged from all the criminal liabilities.

5. Learned counsel for the petitioner points out that in view of the clear finding that no criminal case of theft was made out, the assessment order 20.07.2010 dated (Annexure P-2) is erroneous to the extent that the penal formula of theft has been applied while raising the demand on the petitioner. He points out that in case of theft, the formula is Units X tariff X 2 times the amount X 12 months. Accordingly, in the case of petitioner double the amount has been charged pursuant to the said assessment order.

6. On a specific query posed by Court, learned counsel

for the respondents-Board states that the said acquittal order has not been challenged and the same has since attained finality.

7. Keeping in view the contentions of the learned counsel for the petitioner as noted above and the averments made in the petition, the impugned demand notice/provisional assessment dated 20.07.2010 (Annexure P-2) vide which the penalty has been imposed on account of theft is set aside. The respondent No.3 is directed to pass a fresh assessment order in accordance with law and as per applicable tariff at the relevant point of time, keeping in mind the finding of the criminal court that there was no criminality/theft involved. Needful be done within a period of 03 months.

8. It is made clear, that the amount already deposited by the petitioner shall be adjusted towards the demand that would be raised based on the fresh orders to be passed.

9. Disposed of.

(ARUN MONGA)
JUDGE

18.12.2018
vandana

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No