

CWP No.7127 of 2016

[1]

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

**CWP No.7127 of 2016
Date of decision:11.01.2018**

Kulwinder Singh

...Petitioner

Versus

The Sub Divisional Magistrate, Patiala and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. Pankaj Bhardwaj, Advocate,
for respondents no.2 and 3.

Rakesh Kumar Jain, J. (Oral)

The petitioner has challenged the order dated 27.08.2014, allegedly passed under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the "Act") and order dated 07.07.2015, by which appeal filed by the petitioner under Section 127 of the Act has been dismissed.

The brief facts of this case are that brother of the petitioner, namely, Harpal Singh was provided domestic connection bearing A/c No.AF-19/425. The petitioner was found using it unauthorizedly, by making a *kundi* connection in the inspection held on 13.08.2008. The provisional assessment was made on 14.08.2008 under Section 126 of the Act to the tune of ₹4,84,116/- and opportunity was given to the petitioner to file objection(s) within a period of 7 days. Accordingly, the petitioner had allegedly filed the objections on 20.08.2008. Thereafter, the final order of assessment was passed by the respondents under Section 126 of the Act on

08.09.2008, asking the petitioner to deposit ₹4,84,116/-. Similar order was passed against the consumer, namely, Harpal Singh, asking him to pay ₹1,11,650/-. Harpal Singh filed a complaint before the District Consumer Disputes Redressal Forum, Patiala (hereinafter referred to as the "Forum") against the order by which he was asked to pay the aforesaid amount. The said complaint was allowed on 02.04.2009. Similarly, the petitioner also filed a complaint before the Forum, which was also allowed on 05.05.2009. However, the respondents had filed first appeal before the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the "Commission"), which was allowed on 18.07.2013 on the ground that the remedy available to the petitioner was to file appeal under Section 127 of the Act and not by way of a complaint to challenge the final order of assessment passed under Section 126 of the Act. Thereafter, the petitioner was asked by the respondents on 27.08.2014 to pay a sum of ₹4,84,116/- + ₹2,64,638/- (interest from 9/2008 to 31.07.2013/4 years 7 months @ 12%)=₹7,45,754/-. The petitioner thereafter filed the appeal under Section 127 of the Act before the Appellate Authority. The said appeal has been dismissed by the impugned order dated 07.07.2015, *inter alia*, on the grounds that the appeal is time barred because it had to be filed within a period of 30 days from the date of the final order of assessment and as per Section 127(2) of the Act, the appellant-petitioner had to deposit equal to half of the amount which is claimed in the final assessment order.

Counsel for the petitioner submits that the petitioner does not have the electricity connection and had only asked his brother to provide him electricity from his account. It is further submitted that the order passed in

favour of his brother Harpal Singh by the Forum has become final because it was not challenged by the respondents and, therefore, the petitioner cannot be saddled with the liability of alleged unauthorized use of electricity. It is further submitted that the limitation of 30 days has to be counted from the last notice dated 27.08.2014, by which the petitioner has been asked to pay a total sum of ₹7,45,754/-. It is further submitted that though Section 127(2) of the Act provides that the appellant has to deposit equal to half of the amount claimed under the final assessment order in order to maintain the appeal, yet the petitioner, who had allegedly deposited some amount, may be given a chance to deposit equal to half of the amount to maintain the appeal if the matter is remanded back by this Court.

On the other hand, counsel for respondents no.2 and 3 submits that the limitation to file the appeal would start from the date of passing of the final order of assessment, which was passed in this case on 08.09.2008. The petitioner had wrongly approached the Forum against the final order of assessment, which has been so held at least in his case by the Commission that the remedy available to the petitioner was to file an appeal under Section 127 of the Act. It is further submitted that the petitioner has cleverly avoided to file the appeal under Section 127 of the Act because he had to deposit equal to half of the amount determined in the final assessment order and had filed the complaint before the Forum, which was *per-se* not maintainable in view of the remedy available under the Act. Thus, it is also submitted that it is the case of unauthorized use of electricity as the petitioner is not the consumer and was using the electricity from the account of his brother, who is equally responsible for that.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no merit in the present petition. Section 126 of the Act deals with the unauthorized use of electricity and Section 135 with the theft of electricity. The procedure is separately provided for the purpose of imposition of penalty and the remedies in both the cases are also separate. For example, in the case of unauthorized use of electricity, the procedure has to be followed as provided under Sections 126 and 127 of the Act and in case of theft of electricity, the procedure is provided under Sections 135 and 154 of the Act. In case of unauthorized use of electricity, the respondents had to serve order of provisional assessment to the consumer or the person who has been found using the electricity unauthorizedly. Thereafter, taking into consideration the reply/objection to be filed by the said person or consumer, the final order of assessment is to be passed under Section 126 of the Act. This procedure is not provided under Section 135 of the Act, in which the order is to be passed for imposition of penalty for theft of electricity but an opportunity is granted to the person who is found indulging in theft, either to compound the offence by making the payment of the amount, which is so determined, or to face the criminal prosecution which is to be initiated by registration of FIR. The remedy in both the cases are also altogether different. In the case of unauthorized use of electricity, the statute has provided a right of appeal under Section 127 of the Act, which can be availed within a period of 30 days and that too after depositing equal to half of the amount claimed in the final assessment order but in the case of theft, the person who has allegedly committed the theft has been given a remedy to approach the Special Court, which is constituted under

Section 153 of the Act, and procedure and power of the Special Court are provided under Section 154 of the Act.

The petitioner in this case has been found in unauthorized use of electricity and due procedure has been followed by the respondents as he was served with a provisional order of assessment and after taking his reply/objections, final order of assessment was made and served upon the petitioner on 08.09.2008. Since he did not pay the amount claimed in the final order of assessment, therefore, he was further levied with the interest and, thus, there was nothing wrong in the approach of the respondents. The petitioner had allegedly, in order to avoid the payment equal to half of the amount claimed in the final order of assessment, had gone to the Forum instead of filing statutory appeal and obtained a favourable order, which has been set aside by the Commission, specifically by observing that the remedy of appeal once provided under the statute cannot be circumvented by filing a complaint before the Forum, which was not maintainable.

Consequently, there is no error found in the impugned order(s) as the limitation to file the appeal would start from the date when the final order was passed and since there is no compliance under Section 127(2) of the Act, therefore, the appeal has rightly been not entertained by the Court below.

In view of the above, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

January 11, 2018
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(Rakesh Kumar Jain)
Judge

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