

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

CWP No.2992 of 2018

Date of Decision: 09.02.2018

Punjab State Power Corporation LimitedPetitioner

Versus

Sub-Divisional Magistrate and anotherRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. M.K. Dogra, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed for quashing of impugned order dated 29.08.2016 (Annexure P-3) passed by respondent No.1, whereby, the order passed by the designated authority imposing penalty upon respondent No.2 has been set aside.

Briefly, the facts of the case, as made out in the present petition are that the contract for installation of Sewerage Treatment Plant (STP) at Moranwali, Tehsil Malerkotla, District Sangrur was with respondent No.2 and the connection was issued in the name of Chairman, Sewerage Plant, Moranwali. Respondent No.2 committed theft by installing direct kundi connection. A checking was undertaken by Sub Divisional Officer of the petitioner-Corporation on 29.09.2014 and it was detected at the spot that respondent No.2 was indulging in theft of electricity by way of installing direct kundi connection from the transformer with the load to the extent of

3.746 K.W. The checking report was prepared by the officer and thereafter, bill-cum-assessment order was issued and respondent No.2 was directed to pay a total sum of Rs.2,04,160/- vide order dated 29.09.2014.

Aggrieved by said action, the respondent No.2 filed an appeal before the designated authority i.e Superintending Engineer, Barnala Circle and the same was rejected vide order dated 14.10.2014 with a direction to pay the penalty amount for a period of six months besides taking action under Section 135 read with Section 126(6) and Section 154(5) of the Indian Electricity Act, 2003

Being not satisfied, the respondent No.2 preferred an appeal before the Sub-Divisional Magistrate-cum-Appellate Authority under Section 127 of the Electricity Act, 2003. The Appellate Authority-cum-Sub Divisional Magistrate decided the appeal and held that the amount of penalty could not be charged beyond the date the electricity connection was installed/sanctioned and the order passed by the designated authority was reversed.

The impugned order dated 29.08.2016 (Annexure P-3) has been challenged in the present petition by the petitioner-Punjab State Power Corporation Limited by raising various grounds.

Learned counsel for the petitioner submits that the impugned order is illegal, un-just, arbitrary and has been passed without any application of mind as the Appellate Authority has not taken into consideration the fact that the penalty was imposed in accordance with Regulations 36 and 37 which deals with assessment of electricity charges in case of unauthorized use and the penalty was rightly imposed and action was taken against respondent No.2. As per said provisions, respondent No.2

was liable to be charged for a period of twelve months. Nowhere, in the said provisions, it has been provided that the penalty is to be imposed from the date of checking. At the end, learned counsel for the petitioner submits that a wrong finding has been given by the Appellate Authority while deciding the appeal of respondent No.2 under Section 127 of the Electricity Act that the theft of energy has been committed only after installation of electricity connection, whereas, the work had already been started at the site as a tullu pump was also lying there.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents on the file.

The facts are not disputed. The present petition has been filed to challenge the impugned order passed by the Appellate Authority only on the ground that the line of electricity was laid on 12.06.2014 and prior to that, no fine could be charged from respondent No.2, whereas, the fine was imposed for whole of the year. The relevant part of Regulations 36 and 37 is reproduced as under :-

“(1) Assessment of electricity charges in the case of unauthorized use of electricity u/s 126 of the Act (a) Where it is concluded that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use has been continued. If, however, in a case where the period of unauthorized use cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.”

Admittedly, the power connection was issued in the name of Gram Panchayat Moranwali and the work was started on 12.06.2014. As per

report, the electricity was stolen at the spot only on the basis that Tullu Pump and Welding machine were lying there. As per observations of the Designated Authority, the work of sewerage scheme was allotted and the same was to be started by the contractor on 19.09.2014. Prior to that, no welding work was performed on the spot. The contractor also disclosed to the Committee that his T&P material was lying there. One Tullu Pump was lying there but the same was not used. The Designated Authority ordered for penalty amount from respondent No.2 under Section 135 of the Electricity Rules 2003 to be recovered for six months. The Appellate Authority set aside the order and a direction was issued that fine from respondent No.2 be charged from the date of providing electricity till the finalization of enquiry i.e 29.09.2014 and the remaining amount was ordered to be refunded. When electricity was not used and no work was started, there was no reason to impose penalty and as such, the impugned order has rightly been passed.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

09.02.2018

gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No