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

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CWP No.3872 of 2018
Date of Decision: 17.04.2018

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M/s Libra Auto Car Limited

. . . . . Petitioner

Vs.

Punjab State Power Corporation Limited, CMC, Division, Ludhiana and another

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.S.S. Chatrath, Advocate,
for the petitioner.

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RAKESH KUMAR JAIN, J.

The issue involved in this petition is as to whether the final order of assessment regarding unauthorized use of electricity passed under Section 126 of the Electricity Act, 2003 [for short 'the Act'] and Clause 36.2(c) of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters), Regulations, 2007 [for short 'the Regulations'] would be illegal and nonest if it is passed beyond a period of 30 days?

The brief facts of the case are that the petitioner has the electricity connection bearing A/c No.RK56/808. Its premises was inspected on 18.3.2011, during which it has been found that the petitioner has been indulging in unauthorized use of electricity. The petitioner was served with a provisional order of assessment in terms of Section 126(1) of the Act asking it to pay ₹2,80,093/- in the office of Addl. XEN, MC Sub Division, PSPCL, Ludhiana. The petitioner was also informed that it may file objections to the order of the provisional assessment within a period of 7 days from the date of receipt of notice, who would provide him personal hearing within 15 days of the submission of its reply and the final order of assessment would be passed only after personal hearing of the petitioner by the assessing officer.

It transpires from the pleadings of the petition that the petitioner did not file any objection to the order of provisional assessment. The final order of assessment was thus passed on 9.6.2011 asking the petitioner to pay the same amount within a period of 7 days of the said order but now in the office of AE/AEE/Distribution Sub-Division, SDO(C), CMC, Ludhiana. The petitioner was also informed that if it is not satisfied with the final order then it may prefer an appeal within a period of 15 days to the appellate authority after depositing 1/2 of the final assessed amount in cash or by way of bank draft with PSPCL including documentary evidence with the appeal. The petitioner filed the appeal before the SDM.

The Punjab State Power Corporation Limited (respondent No.1) filed CR No.4275 of 2013 before this Court alleging that the appeal before the SDM was not maintainable. In the said proceedings, the petitioner submitted that the revision be allowed and it may be permitted to approach the Electricity Deputy Commissioner (General) by way of appeal against the final assessment order. The said revision was allowed. The impugned order therein dated 27.3.2012 was set aside and the petitioner was permitted to approach concerned Additional Deputy Commissioner (General) by way of an appeal within a period of 30 days from the date of passing of the order i.e. 7.8.2015. Thereafter the petitioner filed the appeal in terms of Section 127 of the Act against the order dated 9.6.2011. In the appeal, the petitioner had also raised an issue that the department had not sent the provisional and final order within the prescribed time, therefore, the respondents had violated the instructions. The appeal filed by the petitioner was dismissed vide order dated 26.7.2017 in which the appellate authority has observed that the non receipt of the notices, within the stipulated time, would not render the order of unauthorized use of electricity as nugatory.

Learned counsel for the petitioner has submitted that passing of the order of final assessment within a period of 30 days from the date of service of the order of provisional assessment is provided in Section 126(3) and Clause 36.2(c) of the Regulations whereas in the present case the order of provisional assessment has been passed on 1.4.2011 and the final order of assessment has been passed on 9.6.2011. He has also relied upon a decision of this Court rendered in the case of ***"Ram Singh** Vs. **Punjab State Power Corporation and others"*** *2014(2) RCR (Civil) 246* in which it has been held that the provisions of Section 126(3) of the Act are mandatory in nature.

I have heard learned counsel for the petitioner and perused the available record with his able assistance.

In order to appreciate the arguments raised by learned counsel for the petitioner in regard to Section 126(3) of the Act and Clause 36.2(c) of the Regulations, it would be relevant to refer to the provisions of Section 126(3) of the Act and Clause 36.2(c) of the Regulations, which read as under: -

> *"**126(3)** The person, on whom an order has been served under sub-section (2) shall be*

entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]"

"36.2 (c) If the Assessing Officer is still of the view that unauthorized use of electricity has taken place, he shall after providing an opportunity of personal hearing to the consumer/person pass a final order of assessment specifying the amount payable within thirty days of the date of service of order of provisional assessment. In such a case the Assessing Officer will assess the electricity consumption and electricity charges as per the procedure given in Annexure-8."

Section 181 of the Act deals with the powers of the State Commissions to make regulations. It appears that the Regulations have been notified by the Punjab State Electricity Regulatory Commission in terms of Section 181 of the Act in which it is specifically provided that the regulations have to be consistent with the provisions of the Act and the Rules and are framed to carry out the provisions of the Act.

Section 126 of the Act deals with the assessment of the unauthorized use of electricity. Section 126(1) of the Act deals with the provisional assessment which is to be made to the best of the judgement of the assessing officer in respect of the electricity charges payable by such person or by any other person benefited by such use/unauthorized use of electricity. Section 126(2) of the Act provides that the order of provisional assessment is required to be served upon the person who is in occupation or possession or in charge of the place or premises. Section 126(3) of the Act provides that (i) the person, on whom an order has been served under sub-section (2), shall be entitled for filing objections against the provisional assessment before the assessing officer (ii) the assessing officer shall afford a reasonable opportunity of hearing to such person and (iii) the assessing officer shall pass a final order of assessment within 30 days from the date of service of such provisional assessment of the electricity charges payable by such person.

Similarly, Regulation 36.2(C) of the Regulations provides that (i) if the assessing officer is still of the view that unauthorized use of electricity has taken place, he shall, after providing an opportunity of personal hearing to the consumer/person, pass a final order of assessment (ii) assessing officer shall specify the amount payable by the consumer/person within thirty days of the date of service of order of provisional assessment and (iii) in such a case the assessing officer shall assess the electricity consumption and electricity charges as per the procedure given in Annexure-8.

Since, it is categorically provided in Section 181 of the Act that the State Commissions have to make regulations in the Act and the Rules, therefore, Clause 36.2(c) of the Regulations is almost similar to Section 126(3) of the Act. The spirit of Section 126(3) of the Act is that before passing of the final assessment order, the effected party should have a right to file objections against the provisional assessment and would also have a right of opportunity of hearing and the assessing officer shall pass the final order of assessment within 30 days from the date of service of the order of provisional assessment.

In the present case, the date of the order of the provisional assessment is 1.4.2011. It is no where mentioned in the petition that on which day the order of provisional assessment was received or served upon the petitioner. The petitioner also did not mention anything about the filing of objections, therefore, it is presumed that the objections were not filed. The final order of assessment was passed on 9.6.2011 which apparently has been passed after a period of 30 days from the provisional assessment order.

The question that has been posed in the beginning shall now be decided.

There is no dispute that in the decision, rendered by this Court, in the case of ***Ram Singh (Supra)*** the provisions of Section 126(3) of the Act are held mandatory in nature but in the said case the order of final assessment was made by the assessing officer without affording an opportunity of hearing and it did not deal with the issue involved in the present petition.

It appears from the bare perusal of Section 126(3) of the Act that the legislature did not fix any time period for the effected party i.e. the consumer to file objection i.e. within how much time objections have to be filed, no time is also fixed by the legislature for the assessing officer within which the reasonable opportunity of hearing is to be granted but time has been fixed for passing the final order of assessment within 30 days from the date of service of the order of the provisional assessment.

Thus it can be presumed that the entire proceedings were to be carried out by the assessing authority dealing with the final assessment order within a period of 30 days from the date of service of the provisional assessment order.

A bare perusal of the provisional order of assessment dated 1.4.2011 would show that the assessing officer had given 7 days time to file objections and also informed that after analyzing its reply, the petitioner would be given personal hearing, if required, within 15 days of the submission of its reply and thereafter the final order of assessment would be passed, is the exact language used in the provisional order, which is reproduced as under: -

> *"You may submit objections, if any, within seven days of the receipt of the notice. After analyzing your reply by the assessing officer i.e. xxx(designation) you will be provided a personal hearing, if required, within 15 days*

> *of the submission of your reply. Final order of assessment will be passed only after your personal hearing by the assessing officer."*

From the above, it is clear that the assessing officer was conscious about the importance of the time period provided under Section 126(3) of the Act.

In the final assessment order, there is no reference of any objection having been filed but the same had been passed on 9.6.2011 after the expiry of 30 days. No doubt that there is an error on the part of the assessing officer in not passing the final order of assessment within 30 days from the date of service of the order of the provisional assessment as provided under Section 126(3) of the Act and also Clause 36.2(c) of the Regulations but it would not make the order of final assessment redundant, infructuous or nullify for the purpose of taking action against the petitioner, who has otherwise been found indulging in the unauthorized use of electricity especially when it did not file any objection to the provisional order of assessment and as a matter of fact accepted his fault.

The electricity department, in the present case, which is Punjab State Power Corporation Limited, cannot be put to financial loss by setting aside the order of the appellate authority for this reason alone that it had passed the final order of assessment after the expiry of 30 days especially when the consumer/petitioner had not raised any objection to the order of provisional assessment and is relying upon the technical aspect of the provision of Section 126(3) of the Act and Regulation 36.2(c) of the Regulations.

To my mind, the period of 30 days provided in the Act and also in the Regulations is for the purpose of expediting the procedure of passing the order of provisional assessment and final assessment of the unauthorized use of electricity and to avoid red tapism in the office of the Punjab State Power Corporation Limited but it would not, in any case, render the order of final assessment as illegal.

Thus the question posed in the beginning is answered accordingly.

At this stage, I would like to add that the assessing officers dealing with the cases of unauthorized use of electricity should work within the time frame provided not only in Section 126(3) of the Act but also under Regulation 36.2(c) of the Regulations so as to avoid this kind of litigation in future.

I would also like to add here that the Punjab State Power Corporation Limited may, if so advised, take appropriate departmental action against such assessing officers, who are passing the orders of final assessment after the period of 30 days, for dereliction of their statutory duty.

With these observations, the present petition is found to be without any merit and hence the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

17.04.2018
Vivek

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