

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

**RFA No.244 of 2019 (O&M)
Decided on: 30.04.2019**

Dharamveer

... Appellant

Versus

Dakshin Haryana Bijili Vitran Nigam and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Madan Sandhu, Advocate, for the appellant.

G.S. Sandhawalia, J. (Oral)

Challenge in the present appeal is to the order dated 22.11.2018, passed by the Additional District Judge-cum-Special Judge, Faridabad, dismissing the petition filed under Sections 154 & 155 of the Electricity Act, 2003. Resultantly, the order of assessment demand for Rs.3,45,100/- + Rs.1,00,000/-, has been upheld.

The reasoning given for dismissal of the petition is on account of the fact that it was found that the appellant, at the time of checking held on 07.06.2016, was no longer an authorized consumer since the electricity connection had already been disconnected on 28.09.2014 on account of non-payment of outstanding amount of Rs.24,909/-. Reliance has been placed upon Ex.R1 wherein appellant's name has been mentioned at Sr.No.101.

The case of the appellant is that he had got sanctioned AP Tubewell connection at a flat rate billing and had been regularly paying the charges for electricity consumption and a false checking report had been prepared in his absence on 07.06.2016.

The stand of the respondents was that once the electricity

connection already stood disconnected on 28.09.2014 vide PDCO No.11/237 and the checking team had found that the electricity connection was being used for supply of water purpose and resultantly, the Assessing Officer had imposed penalty of Rs.3,45,100/- + Rs.1,00,000/- as compounding fees.

The following issues were framed:

“1. Whether impugned checking report dated 7.6.2016, impugned order of assessment of demand for ₹3,45,100/- and compounding fee notice dated 4.7.2016 demanding an amount of ₹1,00,000/ are illegal, null and void, not binding upon the petitioner and same are liable to be set-aside, as prayed for: OPP

2. Whether respondents are liable to be restrained from demanding and recovering the impugned penalty amount and compounding fee from the petitioner, as prayed for? OPP

3. Whether petitioner is liable to refund the amount along with interest, if any amount deposited during pendency of present petition towards impugned penalty and compounding fee, as prayed for? OPP

4. Whether petition is not maintainable? OPR

5. Whether petitioner has no locus standi and cause of action to file the present petition? OPR

6. Whether petitioner has concealed the material facts from the Court? OPR

7. Whether this Court has no jurisdiction to try the present petition? OPR

8. Relief.”

Keeping in view the stand of the appellant and Jogender Singh and the evidence of the two official witnesses, it was found that there was no documentary evidence that on the date of the checking,

petitioner was still a consumer. It was noticed that no bill had been produced which had been raised by the respondents for the intervening period after the disconnection. It was also noticed that as per Ex.R3, which was the checking report, the column next to the consumer number was blank. Accordingly, it was held that it was apparently a case of theft as the electricity connection had been disconnected.

The Trial Court had also viewed the compact disc (Ex.R3/2) whereby water was being supplied to the water tank and a person was standing next to the same who was stated to be the son of the appellant. The said CD was verified under Section 65(B) of the Indian Evidence Act, by giving the necessary certificate of Mr.Rohtash Kumar, Junior Engineer who had appeared as RW2. In cross-examination, the appellant admitted that the person standing in the CD was his son, Jogender who also appeared as PW2.

Resultantly, it is apparent that sufficient reasoning has been recorded for coming to the conclusion that on a disconnected power connection, the appellant, as such, was extracting electricity unauthorizedly and illegally, resulting in the demand being raised. It is in such circumstances that issues No.1 to 3 that the demand was not illegal, null and void and that there could be no restraint from recovering the amount and the amount deposited during the present appeal could not be refunded, was decided against the appellant.

Similarly, the petition was held not maintainable as the appellant was not a consumer and therefore, he had no cause of action

and there was no relationship of consumer and service provider between them. Issue No.6 was decided in favour of the Electricity Department since the appellant had concealed material fact that the electricity connection had already been disconnected and resultantly, it was held that the Court had jurisdiction, under issue No.7.

A perusal of the checking report (Ex.R3) from the record which was summoned would go on to show that the following facts were recorded:

Name of consumer & A/c No.	Cate-gory	No. & Make	Meter Reading	Connected load checked	Remarks
Dharmveer s/o Sh. Hukam Singh (M.B.-9911175000) A/c- ? A/c No., Name, SL be verified from office Add: Sec.70, Near BPL, HBC, Faridabad	AP + LT		No meter at site	Submersible pump 1x12.5 HP= 12.5 HP	1) Premises checked in presence of Sh.Jogender Singh s/o Sh. Dharmveer and total connected load was found= 12.5 HP. 2) Supply was found being used in AP + Supply of water purpose (water tanker). 3) Authenticity of this connection be verified from office record. 4) No bill available at site. 5) Action is to be taken as per NIGAM Instructions.

The above report would go on to show that submersible tubewell was being used for supply of water for a commercial purpose and there was no bill available at site and neither any bill had been produced before the Special Court.

Resultantly, the findings which have been recorded by the Court below of theft and the illegal extraction of electricity, while upholding the demand, cannot be said to be suffering from any lack of jurisdiction or illegality which would warrant interference by this Court.

Accordingly, in view of the above discussion, the present appeal is dismissed in limine.

APRIL 30, 2019
SAILESH/NAVEEN

(G.S. SANDHAWALIA)
JUDGE

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