IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 09.12.2019

CWP No.1038 of 2014

Punjab State Power Corporation Limited & others ...Petitioners

Vs.

Mahesh Goyal & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Chatrath and Ms. Jasleen Kaur, Advocates, for the petitioners.

Mr. Rajesh Hooda, Advocate, for respondent No.1.

Ms. Simran Grewal, AAG, Punjab, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

1. This misconceived petition has been filed by PSPCL in routine against a remand order. I have heard counsel at some length and I am convinced that the petition deserves to be dismissed for the reasons that follow.

2. The procedure adopted by the Assistant Executive Engineer (Commercial), PSPCL, Ludhiana in passing the final order of assessment for unauthorized use of electricity under Section 126 of the Electricity Act, 2003 by order dated 19.10.2012 has for good reasons been set aside by the Appellate Authority -cum- Sub Divisional Magistrate, Ludhiana (West) by his order dated 30.08.2013 for being non-speaking. The order has been passed in the shape of a letter addressed to respondent No.1, namely, Mahesh Goyal and deserves reproduction to remain on record for posterity. It reads as follows:

"PUNJAB STATE POWER CORPORATION LIMITED

NOTICE OF FINAL ORDER OF ASSESSMENT FOR UNAUTHORIZED USE OF ELECTRICITY IN EXERCISE OF POWER UNDER SECTION 126 OF ELECTRICITY ACT, 2003

Memo No.2669

Dated: 19.10.2012

From

Assistant Executive Engineer (Commercial),
Punjab State Power Corporation Limited,
Aggar Nagar Division, Ludhiana

(Designation of the Assessing Officer)

Telephone No._____Mobile No.______Fax No.______

To

Mr. Mahesh Goyal,
Janpath Colony, Ludhiana.

Subject: FINAL ORDER OF ASSESSMENT FOR UNAUTHORIZED USE OF ELECTRICITY UNDER SECTION 126 OF EA-2003.

Dear Sir,

1. Kindly refer to this office memo No.2572 dated 12.09.2012 vide which a notice of provisional order of assessment was sent to you.
2. You were given opportunity to file objections and or were afforded reasonable opportunity of personal hearing.
3. After considering the objections and/or submissions made during hearing given to you on 05.10.2012 & 11.10.2012 (date) at O/o AEE/Comml (Place), the assessing officer has reached to the conclusion that unauthorized use of electricity has taken place.
4. Therefore, you are requested to deposit the finally assessed charges of Rs.6813175/- within seven days of the service of this notice in the office of AEE Commercial Sub Division Aggar Nagar, Ludhiana.
5. It may be intimated that if you are not satisfied by this final order made under section 126 of E.A., 2003, you may prefer an appeal within 30 days of this order to the Appellate Authority notified by the Government of Punjab i.e. SDM (indicate here the appellate authority such as DC, ADC, SDM etc.) by depositing one half of the finally assessed amount in cash or by way of bank draft with PSPCL and documentary evidence of the same be enclosed with the appeal.

The appeal shall be filed on the prescribed form alongwith fee of 0.5% of the assessed amount subject to minimum of Rs.100/-.

Sd/-
Assessing Officer,
Assistant Executive Engineer (Commercial),
Punjab State Power Corporation Limited,
Aggar Nagar Division, Ludhiana."

3. In the considered view of this Court, the final order of assessment does not qualify as the handiwork of an authority exercising quasi judicial powers determining the rights and liabilities of parties and that too by a final determination pen to further statutory appeal. There is no discussion at all on the points raised by respondent No.1 in his objections at Annex P-5 & P-6 and on this short ground the order of the SDM deserves to be upheld and the case remanded to the Assessing Authority for passing a fresh order strictly in accordance with law.

4. What is ever more peculiar in this case is that a week before the final order was passed the same Officer has made a record of Minutes of the Personal Hearing of the case on 11.10.2012 by the Designated Officer/Assistant Executive Engineer Commercial, Aggar Nagar Division (Special), Ludhiana. It is not clear from the order as to who is the "Designated Officer" because Mr. Hooda points out a major flaw in the proceedings which is that the Act requires an inspection at site to be carried out by the Assessing Authority himself under harness of Rule 36 of the Electricity Supply Code & Related Matters Regulations, 2007. While in this case, the author of the final order did not visit the site at the time of inspection and that job was abdicated to be performed by the Sr. Executive Engineer (Tech), City, West Circle.

5. Without making any further comment, the Assessing Authority will devote himself assiduously to this issue and record his findings in the fresh order to be passed on remand. He would also opine as to what is the effect of his failure to perform statutory duty by avoiding personal inquiry on spot and how can that fatal defect in procedure be cured at this distance of time to make it easier for the Appellate Authority to understand and return findings, in the event of appeal.

6. It may be pointed out that on 11.10.2012, the Minutes of Personal Hearing of the respondent were recorded long before the final order was passed and has, therefore, to be ignored because the assessing authority is supposed to pass an order after hearing the affected party, after considering his submissions and returning findings of fact on each of them.

7. Consequently, the so called Minutes recorded on 11.10.2012 cannot be read or be introduced in the flawed final order dated 19.10.2012, which has to meet the standards of judicial scrutiny independently. Hearing and decision-making must co-exist intertwined in the assessment order along with reasons for the conclusions.

8. The Chairman-cum-Managing Director, PSPCL may take a look at the Minutes of personal hearing (Annex P-7) and the final order (Annex P-8) to frame guidelines on how final orders are required to be passed and for the assessing authority to desist from making a final order in the shape of a letter communicated to the consumer. Conveying the final order should be by a separate forwarding letter by enclosing the order as it is appealable.

9. The PSPCL may also consider creating a cadre of dedicated assessing authorities well versed with the law and judgments of the superior

courts on all aspects of contentious issues under the Indian Electricity Act, 2003 and the provisions of the Electricity Supply Code & Related Matters Regulations, 2007 etc. to equip them in making final assessment orders, so that they have sufficient time to devote themselves to their quasi judicial work free from all other work and assignments of the post by dual charge. Refresher courses should be introduced for them conducted periodically through modules of what is expected of them in discharge of quasi judicial duties. This will improve the quality of assessment orders and help PSPCL from the vice of escape of revenue and in prevention of theft and unauthorized use of electricity. Revitalizing the system would avoid slipshod work of assessing authorities found in petitions, of which they are a large number pending in this Court and give a fair opportunity to the consumer to have a reasoned order to deal with in appeal and thereafter in this Court, in case the need arises.

10. As a result of the discussion, the petition is dismissed being devoid of merit. The order dated 13.08.2013 (Annex P-1) is upheld as one which is perfectly justified and proper when it remands the case to the assessing authority for a fresh decision on merits. The order dated 19.10.2012 is written off as illegal and void and is quashed. In remand proceedings, the assessing authority (other than the one that passed the order) will ignore Annex P-7 and would independently and impartially decide the issues raised by the respondent consumer in his objections and return findings on each of the issues raised by him by assigning cogent reasons for arriving at the conclusions. This Court expects that a well reasoned order is passed in remand.

11. Respondent No.1 Mahesh Goyal will appear before the assessing authority on a date to be fixed by it for further proceedings.

09.12.2019 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*