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

**CM-17119-CWP-2018 in/and
CWP-1194-2016
Date of decision-05.04.2019**

Prabhjit Singh

...Petitioner

Vs.

Punjab State Power Corporation Pvt. Ltd. and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Jaidka, Advocate
for the petitioner(s).

Mr. Piyush Khanna, Advocate
for the respondents.

JITENDRA CHAUHAN, J.

CM-17119-CWP-2018

Application is allowed as prayed for and action taken report (Annexure R-2) and checking report (Annexure R-3) are taken on record subject to all just exceptions.

CWP-1194-2016

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ in the nature of certiorari for quashing of final order of assessment for theft of electricity issued to the petitioner vide memo No.1622 dated 17.10.2014 (Annexure P-1) and for quashing the order dated 04.01.2016 (Annexure P-2) passed by the Court of Special Judge, Ludhiana vide which the above mentioned final order of assessment has been upheld.

Learned counsel for the petitioner submits that the assessment has been made on the basis of an alleged theft of electricity without following the mandatory provisions of the Electricity Supply Code and Related Matters Regulation, 2007 (for short, the Regulation) in which Regulation 37(1) lays down the procedure. He further submits that admittedly, there is no checking report prepared by the inspecting staff and no photography/videography done.

On the other hand, learned counsel for the respondents states that electric connection bearing Account No.PH-20/0672 of Domestic Category having load of 3.640KW was checked on 15.07.2014 and as per the checking report there was a joint in PVC electric cable passing over the roof of the petitioner from where the petitioner used to steal energy by affixing Kundi connection. He further submits that a provisional notice and penalty notice were demanded as per Section 135 Electricity Act and on receiving the notice, a personal hearing was requested which was duly accorded after which commercial and domestic load was counted separately and penalty was charged accordingly. From the checking report a case of theft against the petitioner is clearly made out.

Heard.

On 17.10.2018, this Court passed the following order:-

“Learned counsel for the respondents states that during inspection, a report was prepared by the then J.E. That the premises are being used for commercial purposes. However, the same is not part of the reply.

Post again on 12.11.2018.

The action taken report in pursuance to regulation No.37 along with the report that the premises is being used for commercial purposes be placed on record within 10 days

from today, with an advance copy to the learned counsel for the petitioner.”

In compliance of order dated 17.10.2018, the respondents have placed on record action taken report (Annexure R-2) which reads as under:-

“Action taken report in pursuance of Hon'ble High Court order dated 17.10.2018 in CWP-1194-2016 as per Reg No.37 of supply code.

Procedure followed in case of theft of electricity is as per clause 37 of the Supply Code. The relevant clause is annexed as Annexure R/4. Premise was being checked by an authorized officer designated as Assistant Executive Engineer U-1 Model Town Ludhiana and Foreman by LCR No.96/224 dated 15.07.2014 as per clause 37.1.1 of supply code.

Each and every officer was carrying an Identity card with them during inspection as per Clause 37.1.2.

In the case in reference, inspection report was prepared by an authorized officer with complete details concerning connected load, status of meters & condition of seals and other required remarks as per clause 37.1.3.

As far as compliance of 37.1.4 is concerned, the terminology used is wherever possible , photograph/video-graph the means of theft of electricity. The same being not a mandatory requisite, in the case in reference, no video-graph/photograph had been done.

The authorized officer i.e. AEE U-1 prepared site checking report vide LCR No.96/224 dated 15.07.2014 and checked the load of premises which indicates that the checking was done in the presence of the occupant. The authorized officer signed the report.

There is no signature of consumer, but according to ESIM clause 106.2.2,.... If the checking is being done by one agency, the report may be signed by two officials..... In the case in reference, the LCR stand signed by two officials i.e. Sh. Jagtar Singh Foreman and Er. Gurdial Singh AEE Technical U-1 which is in partial compliance of clause 37.1.6. Even FIR was lodged by AEE Commercial having FIR

No.523 dated 28.10.2014 as per clause 37.2.1. After the same, notice of provisional assessment was sent to consumer vide letter No.998 dated 18.07.2014 for Rs.2,68,810/-. Subsequent to the same, the consumer approached the Appellant Authority for review of case. After considering his submissions in a personal hearing, the final notice was issued as per the decision given by appellate authority vide Memo No.1622 dated 17.10.2014 for Rs.1,84,333/- (Annexure P-1) and compounding fees ₹45000/- as per clause 37.2.2 of supply code.

Report regarding premises usage for commercial purpose

The authorized officer i.e. AEE U-1 and foreman prepared site checking report vide LCR No.96/224 dated 15.07.2014 (Annexure R-3) which clearly shows that premises was being used for commercial purpose at time of checking”.

The checking report (Annexure R-3) is to the following effect:

“PUNJAB STATE POWER CORPORATION LIMITED

LCR No.96/224 dated 15.07.2014

Name of Consumer:- Sh. Prabhjeet Singh,

Address of Consumer:- H No.10-C basant city

Account No.PH20/0672

Name of office :- U-1 Model Town Division

Type of Supply:- DS to NRS

Meter particulars	Remarks
Single phase electronics	Notel. There is joint in PVC service wire crossing over the roof of consumer house from which he is convincing theft of electricity.
Make-Avon	2. There is real estate shop in the house.
Capacity-10-60A	Connected load:-
Sr. No.4443178	Lamp-43 No.
Reading – 002754	CF – 8 No.
Seals intact, MCB not opened	Plug – 19 No.
Meter pulse blinks on load	Geyser – 3 No.(2 Kw each)
	Split AC -1.5 ton 3 no.

Signature

-Sd-
AEE Technical
Model Town Unit-1”

In view of the above, the Court feels the impugned final order of assessment (Annexure P-1) and order dated 04.01.2016 (Annexure P-2) are perfectly legal and valid.

Consequently, the present petition sans merit and is hereby dismissed.

05.04.2019

ps-I

(JITENDRA CHAUHAN)
JUDGE

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