

Sr. No. 211

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

**CWP No.16756 of 2015 (O&M)
Date of Decision: 24.01.2019**

Punjab State Power Corporation Limited

... Petitioner

Versus

Sub Divisional Magistrate, Derabassi and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Mukul Aggarwal, Advocate,
for the petitioner-PSPCL.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. Harkirat Singh Sandhu, Advocate,
for respondent No.2.

ARUN MONGA, J.

The present petition has been filed seeking issuance of a writ in the nature of certiorari to quash the impugned order dated 22.05.2014 (Annexure P-7) passed by respondent No.1/Sub Divisional Magistrate, under Section 127 of the Electricity Act, 2003 whereby the assessment order dated 23.08.2013 (Annexure P-5) was set aside.

2. Succinctly, the factual background as stated in the petition is that respondent No.2/consumer had an electric connection in his premise provided by the petitioner (Punjab State Power Corporation Limited in short "Power Corporation"). A load of 4.96 KW was sanctioned against the meter installed for the connection, which got burnt. Pursuant thereto, the consumer

deposited Rs.520/- as a cost of the burnt meter and requested for installation of a new meter.

3. In order to install the new meter, when the officials of the Power Corporation inspected the premises of the consumer, they discovered that a wood cutter machine i.e. Saw Mill was running directly through the main electric line bypassing the metered line. It is the case of the officials of the Power Corporation that the consumer was using the Saw Mill by connecting it directly to the main electric line and was using a total of 14.901 KW as against the sanctioned load of 4.96 KW. It is stated that the consumer had put the burnt meter in his premises by dismantling it from the pole where it was originally installed. Thus, states the petitioner, that it was obvious that cause of burning of meter was usage of excess load of 14.901 KW against the sanctioned load of 4.96 KW. A checking report dated 11.06.2013 (Annexure P-1) was, accordingly, made on the spot on which the consumer refused to put his signatures. The same was duly signed by Assistant Executive Engineer and the Foreman.

4. In the circumstances, notice dated 17.06.2013 (Annexure P-2) was issued by the Power Corporation on account of unauthorized use of electricity in exercise of powers under Section 126 of the Electricity Act, 2003. Reply thereof was filed by the consumer vide his objections dated 24.06.2013 (Annexure P-3). Thereafter, an opportunity of personal hearing was also granted by the Power Corporation to the consumer. The same led to passing of the impugned assessment order dated 23.08.2013

whereby the consumer was directed to make a payment of Rs.2,85,118/- against unauthorized use of electricity.

5. Respondent No.2/consumer preferred an appeal under Section 127 of the Act, *ibid* and the SDM/Appellate Authority vide impugned order dated 22.05.2014 (Annexure P-7) set aside the assessment order dated 23.08.2013 and hence the present writ petition by the Power Corporation.

6. Having gone through the pleadings of the respective parties as also the record appended thereto and after hearing rival contentions of the learned counsels, I am of the view that the impugned order passed by the Appellate Authority dated 22.05.2014 (Annexure P-7) does not call for any interference.

7. The stand of the consumer as stated in his objections dated 24.06.2013 (Annexure P-3) para 2 thereof, is that he had never used the excess load of 14.901 KW as he was yet to start his business with the newly purchased Saw Mill. It is stated that necessary permissions were required from the concerned departments for using the Saw Mill, which had been applied after purchase of the Saw Mill, vide bill dated 14.05.2013, copy whereof was appended. It was further stated that for the trial of the newly purchased machinery/Saw Mill, the consumer had purchased an old generator set of 15 K.V.A. and bill thereof was also attached. The functioning of the machinery was yet to be started after its installation.

8. The impugned Appellate Order records that the licence for use of Saw Mill was issued by the Forest Department on

21.07.2013 and the consumer also performed certain religious ceremonies for starting his machinery on 21.07.2013. Photographs of the function were also appended thereto. It has also been observed that the consumer never indulged in any theft of power. It has further been observed in the Appellate Order that the Power Corporation did not submit any document which would show that the appellant was using supply after putting the wires on the main supply lines i.e. he was using "*Kundi Connection*" in the premises. The Appellate Authority held that there cannot be any presumption of unauthorized use of power in the absence of any cogent evidence adduced to the effect.

9. As far as the checking report is concerned, the Appellate Authority has observed that the same did not bear the signatures of any independent witness to prove testimony of the Power Corporation. It is further observed that the machinery having been purchased on 14.05.2013, could not have been installed in such a short span of 15 days when the inspection was carried out on 11.06.2013. Therefore, the allegations regarding theft of power by the consumer did not inspire any confidence with the Appellate Authority. Accordingly, the assessment order passed on the basis of unauthorized use of electricity (theft) was set aside.

10. I am in agreement with the reasons assigned for setting aside the assessment order by the Appellate Authority. Assuming, that the Power Corporation discovered that the consumer was found indulging in theft/unauthorized use of power, by putting a

'Kundi Connection', it is rather intriguing as to why no steps were taken to proceed against the consumer for committing theft. Mere bald allegations have been made while passing the assessment order without any supporting material thereof. On the other hand, the consumer has produced a bill of purchase of his machinery as also the licence dated 21.07.2013 issued by the Forest Department permitting him to use the machinery and the photographs of the religious ceremony conducted by him to install the machinery.

11. Another aspect of the matter, to the credit of the consumer/respondent No.2 is that he on his own volition had applied for the new meter vide deposit receipt dated 03.06.2013. It was pursuant to his initiative/invitation that the officials of the Power Corporation went to conduct the inspection for installing the new meter as was requested by the consumer.

12. In the absence of any cogent evidence to show that the consumer/respondent No.2 was using power supply after putting the wires to the main supply lines, coupled with the above observations, I do not find any ground to interfere with the impugned Appellate Order passed by the Sub Divisional Magistrate, under Section 127 of the Electricity Act.

13. Present petition is, accordingly, dismissed with no order as to costs.

(ARUN MONGA)
JUDGE

24.01.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No