

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

**CWP NO. 8395 of 2010(O&M)
Date of Decision: 25.03.2019**

Punjab State Power Corporation Limited

... Petitioner

versus

M/s Auto Mist Fuels GT Road, Sirhind & Anr.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vinod S. Bhardwaj, Advocate,
for the petitioner.

None for respondent No.1.

ARUN MONGA, J. (ORAL)

1. The present petition has been filed, inter alia, impugning order dated 25.02.2008 (Annexure P-3) passed by respondent No.2, whereby, an amount of Rs.65,649/-, deposited by the consumer-respondent No.1 towards an alleged theft of electricity, has been adjusted in future bills.

2. The above said order has been assailed primarily on the ground that the consumer itself had consented to deposit penal amount, therefore, the appeal before respondent No.2 was not maintainable. According to learned counsel for the petitioner, this material aspect of the matter was not considered by respondent No.2 while passing impugned appellate order. Being a theft case, assessment of the electricity consumption was done on the basis of punitive formula, as fixed by the Punjab State Electricity Regulatory Commission, meant for the cases of theft. He further contends that appeal itself was beyond the jurisdiction of respondent No.2 and he could not have entertained the same.

3. The stand of respondent No.1 in the written statement is that no consent was given for levy of penal tariff. It is further averred that the remedy as provided under the Electricity Act was rightly availed by respondent No.1 which empowers the SDM to hear an appeal against assessment order.

4. I have gone through the paper-book and heard rival contentions raised by learned counsel for the petitioner. I find no ground for interference in the impugned order dated 25.02.2008 (Annexure P-3) passed by the Sub Divisional Magistrate in his capacity as Appellate Authority under the Electricity Act, 2003. In the impugned order, it has been held that no case of theft was made out. I am in agreement with the findings given by the Appellate Authority. Even otherwise, it is conceded case that no criminal proceedings were ever instituted qua alleged theft committed by the consumer/ respondent No.1. No fault thus can be found with the approach adopted by the Appellate Authority regarding adjustment of the amount deposited by respondent No.1 towards the future bills.

5. As regards the argument of learned counsel for the petitioner that Appellate Authority did not have jurisdiction to adjudicate on the assessment order passed by the Assessment Officer based on LDH Formula applicable to the theft cases, the said issue is kept open to be adjudicated in some other appropriate proceedings.

6. With the aforesaid observations, the writ petition is dismissed.

(ARUN MONGA)
JUDGE

March 25, 2019

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1. Whether speaking/ reasoned:

Yes/ No

2. Whether reportable:

Yes/ No