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

CWP-23042-2013

Date of Decision: April 10, 2019

Raj Singh

... Petitioner

vs.

UHBVNL and anr.

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jai Bhagwan Sharma, Advocate
for the petitioner.

Mr. P.S.Poonia, Advocate
for the respondents.

ARUN MONGA, J (ORAL)

The petitioner has impugned the assessment order dated 03.03.2011 (Annexure P-2) passed under Section 135 of the Electricity Act, 2003, by respondent(s)-Uttar Haryana Bijli Vitran Nigam Limited, whereby, penalty of Rs. 85,433/- has been imposed and has also challenged another memo No. 7783 dated 03.03.2011, whereby, notice for compounding of offence of theft of electricity under Sections 135 and 152 of the Act, *ibid*, was initiated. The said two orders have been passed on the basis of impugned Inspection Report dated 05.01.2011 (Annexure P1) conducted by the respondent-Nigam.

2. Learned counsel for the petitioner, at the very outset, has drawn my attention to the Inspection Report, wherein, the inspection team recorded that the seal of the meter 'seems to be re-fixed with a glue type of substance'. He further submits that assuming the opinion of the inspection team to be correct, the same was not conclusive as they themselves felt

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that it seems to be re-fixed and in the circumstances, they ought to have sent the meter for forensic test to an appropriate laboratory.

3. Learned counsel for the petitioner further contends that merely on the basis of conjectures and opinion of the inspection team, the impugned assessment order was passed on the presumption of theft under Section 135 of the Act, *ibid*. He relies on a judgment rendered by this Court in case titled as **M/s JTG Alloys Private Limited vs. Punjab State Power Corporation Ltd. and others,** reported as **2014 (5) Law Herald (P&H).**

4. By placing reliance on a judgment, *ibid*, learned counsel for the petitioner argues that in the said case, there was a delay of 14 months in sending the meter for forensic test and this Court held that owing to the delay, report cannot be relied on for the purposes of fastening the guilt of theft on the consumer. He further submits that the petitioner is in much better position in the present case, as there is no forensic test report at all and, therefore, there could not have been a presumption of guilt fasten from the petitioner in the absence of report from the forensic laboratory.

5. Per contra, learned counsel for the respondent(s)-Nigam submits that the meter was sent for forensic test to the Laboratory. However, before the same could be tested, it got stolen from the Laboratory and, therefore, forensic report could not be furnished qua the same.

6. Be that as it may, it is an admitted case of the respondent(s) that no forensic test report was obtained qua the meter in question. The fact that the same was stolen from the Laboratory cannot be used to the detriment of the petitioner, as he is in no manner responsible for the theft

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of the meter from the forensic laboratory. Impugned orders proceed on the premise of theft of electricity.

7. I am in agreement with the arguments advanced by the learned counsel for the petitioner that conclusion of theft drawn in the case on mere conjectures and surmises is not legally tenable.

8. In the premise, the impugned assessment order dated 03.03.2011 (Annexure P-2) as also the consequential penalty imposed upon the petitioner are set aside.

8. The respondent(s)-Nigam is directed to adjust the amount recovered from the petitioner, qua the impugned orders, towards future bills.

April 10, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No