

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

**CWP NO. 813 OF 2014
DATE OF DECISION : 11.04.2019**

Fateh Singh @ Faita Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : None for the petitioner.

Mr. Sunil K. Vashisth, DAG, Haryana.

Mr. P. S. Poonia, Advocate,
for respondents No.2 and 3.

ARUN MONGA, J. (ORAL)

1. The petitioner, *inter-alia*, seeks quashing of order of an assessment order dated 25.09.2013 (Annexure P-4) qua an alleged offence of theft under Section 135 of the Electricity Act, 2003 (hereinafter referred to as "the Electricity Act") and also notice for compounding of offence dated 25.09.2013 (Annexure P-5) whereby, the petitioner was directed to pay ₹4,07,096/- (₹1,67,096/- for theft of electricity and ₹2,40,000/- for compounding of offence). He has further prayed for issuance of mandamus directing the respondent to restore his electricity connection.

2. It is stated that the notice of assessment and notice for compounding the offence are in violation of the applicable

Rules and sale circulars of the respondent Nigam and also are in contravention with the provisions of the Electricity Act. The petitioner states that electricity was illegally disconnected by the respondent department for non-payment of unjustified penalty and arbitrary compounding of the amount. Especially, when the petitioner was ready to deposit 50% of the penalty amount (as security) which was imposed on him as per notice dated 25.09.2013 (Annexure P-4).

3. No one has put in appearance on behalf of the petitioner to argue the matter.

4. Conceded position is that the premises in question was inspected on 11.02.2012 and pursuant thereto, the old metre was removed and sent for forensic examination on 24.09.2013, as reflected from Meter Checking Report (Annexure R3/2) . Vide forensic report dated 24.09.2013, it was found that there was tampering of meter and case of presumed theft of electricity was made out. Therefore, impugned order of assessment dated 25.09.2013 qua offence of theft under Section 135 of the Electricity Act was passed. Admittedly, there is, thus, a delay of 19 months in sending the metre to M & T Laboratory for analysis.

5. A co-ordinate Bench of this Court, vide judgment rendered in "*M/s JTG Alloys Private Limited v. Punjab State Power Corporation Limited and others*" 2014 (5) Law Herald (Punjab and Haryana) 4186, has held as under :-

"15. It would be noticed that the tampered meter was to be forwarded to the ME lab immediately and the officer in

charge would send a report within one month in respect of certain categories of consumers referred to above. The compliance of this provision is imperative, for the action results in detection of a criminal offence liable for prosecution and the procedure shall be taken to be so serious that even the Regulations contemplate a disciplinary action taken against the officials who have not carried out the work properly or when they are guilty of laches.

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17. It is obvious that there has been a tampering at the time when the meter was taken to the Lab but the issue is whether such a tampering could be stated to be done by the petitioner and further action could be initiated against the petitioner. If the Regulations stipulate a time line and requires the meter that is seized from the premises to be immediately forwarded to the lab, it is inexplicable how the Corporation could have taken 14 months to dispatch it."

6. I am in agreement with the observations made in the judgment, *ibid*. In the present case, there is delay of 19 months in sending the electricity metre for forensic analysis. There is no explanation given by the respondents for the delay. In light of this, the action of the respondents cannot be condoned. The case of theft, thus cannot be made out on a mere presumption in the light of unexplained delay in sending the meter for forensic test.

7. In this view of the matter, the present writ petition is allowed. The impugned order dated 25.09.2013 (Annexure P-4) and notice dated 25.09.2013 (Annexure P-5) are set-aside. It is stated that petitioner had already deposited the assessed amount of ₹1,67,096/- pursuant to this Court order dated 17.01.2014,

therefore, the respondents are directed to adjust the excess amount paid by the petitioner, towards future bills to be raised.

(ARUN MONGA)
JUDGE

APRIL 11, 2019

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No