

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.6676 of 2017

Date of Decision: April 22, 2019.

Punjab State Power Corporation Limited and othersPetitioners

versus

The Appellate Authority (Sub Divisional Magistrate), Fazilka and others
.....Respondents

CORAM: HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr.J.P.S.Sandhu, Advocate, for the petitioners.

Mr.Luvinder Sofat, AAG, Punjab.

Mr.Sandeep Jasuja, Advocate, Advocate, for respondent No.2.

..-

Tejinder Singh Dhindsa, J. (Oral)

The instant writ petition is at the hands of Punjab State Power Corporation Limited.

The brief facts that would require notice are that respondent No.2 was found indulging in unauthorized use of electricity and accordingly proceedings under Section 126 of the Electricity Act, 2003 were initiated against him. An assessment order was passed against respondent No.2 for a sum of Rs.1,32,560/-. Against such assessment, respondent No.2 preferred CWP No.1878 of 2014 (Madan Lal versus Punjab State Power Corporation Limited and others). The said writ petition was disposed of on 19.11.2015 by relegating respondent No.2 to the remedy of appeal that was available under Section 127 of the Electricity Act, 2003. The order dated 19.11.2015 while disposing of CWP No.1878 of 2014 (Madan Lal versus Punjab State Power Corporation Limited and others) reads in the following terms:-

“Madan Lal

...Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

*Present: Mr. Sandeep Jasuja, Advocate for the petitioner.
Mr. J.P.S. Sandhu, Advocate for the respondents.*

Paramjeet Singh, J.(Oral)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari thereby quashing the checking reports dated 04.12.2009 (Annexure P-1), dated 29.10.2010 (Annexure P-2) and assessment letters dated 09.04.2012 and dated 13.03.2013 (Annexures P-3 and P-5) respectively and issuance of a writ of mandamus directing the respondents to adjust the excess amount wrongly charged from the petitioner under Bill No. 102 dated 07.10.2013.

Brief facts of the case are that electricity connection of the petitioner was allegedly checked on 04.12.2009. The meter was of three phases but only two phases were coming in the connection. It is the case of the petitioner that at that point of time, no three-phases connection was even released by the department. They have wrongly assessed the amount.

At this stage, learned counsel for the respondents raised objection that remedy of appeal is available to the petitioner against the orders passed by the authorities under Section 127 of the Electricity Act, 2003.

Be that as it may, the fact remains that an alternative remedy is available to the petitioner. It is submitted by the learned counsel for the respondents that if the appeal is filed within stipulated period as directed by this Court then they will not raise the objection of limitation. The appeal can be decided on merit.

In view of the concession given, this Court relegates the petitioner to remedy of appeal. If the appeal is filed within one month from today, the same shall be heard and decided on merit in view of the statement of the respondent that they will not raise the objection of limitation as the

petitioner continued to prosecute this petition under writ jurisdiction under wrong impression, preferably within a period of one month from the date of filing of the appeal. The recovery of amount from the petitioner shall remain stayed till the final disposal of appeal.

If the petitioner has already paid the amount and ultimately the appellate authority comes to a conclusion that the assessment is wrongly calculated, the same shall be adjusted against future bills.

Disposed of in above terms.

November 19, 2015

*(PARAMJEET SINGH)
JUDGE”*

The admitted factual premise is that respondent No.2, in terms of the assessment order, had deposited the impugned assessed amount of Rs.1,32,560/-.

Respondent No.2 having been relegated to the alternative remedy under Section 127 of the Electricity Act, 2003, an order dated 21.06.2016 (Annexure P-3) has been passed by the Sub Divisional Magistrate (Appellate Authority)/Special Court, Fazilka and in terms of which the assessed/demanded amount of Rs.1,32,560/- has been found to be bad in law.

The instant writ petition is directed against the order dated 21.06.2016 (Annexure P-3), only to the extent that the amount in question has been directed to be returned to respondent No.2.

Learned counsel representing the petitioner-Corporation would advert to the order passed by the Writ Court in CWP No.1878 of 2014 to contend that the directions have already been issued that in case the Appellate Authority comes to the conclusion that the assessment was wrongly made, then such amount, which stood already deposited, would be

adjusted against the future bills.

Learned counsel representing respondent No.2 concedes that the order dated 19.11.2015 passed by the Co-ordinate Bench while disposing of CWP No.1878 of 2014, has already attained finality inasmuch as no application has been filed seeking recalling/modification of the order.

In the considered view of this Court, the assessed/demanded amount having been found to be bad in law by the Appellate Authority, it would be bound by the directions issued by this Court and as contained in the order dated 19.11.2015 (Annexure P-1). The direction issued by the Appellate Authority regarding refund of the amount in question to respondent No.2 runs counter to the directions issued by the Writ Court and as such cannot sustain.

Accordingly, the writ petition is allowed to the extent that the impugned order dated 21.06.2016 (Annexure P-3) is modified and it is clarified that the amount in question, i.e., Rs.1,32,560/-, instead of being refunded to respondent No.2, would be open to be adjusted against the future bills that the Corporation would raise qua electricity consumption.

The writ petition is accordingly disposed of.

April 22, 2019 <i>mohinder</i>		(TEJINDER SINGH DHINDSA) JUDGE
Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No