

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.1318 of 2017 (O&M)

Date of Decision: 10.07.2019

PSPCL

... Appellant

VS.

Gursewak Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Ms. Promila Nain, Advocate for the appellant

Mr. Sangeet Pal Singh Baaghi, Advocate for the respondent

G.S. SANDHAWALIA, J. (Oral)

(1) The present appeal has been filed against the judgment passed by Special Judge Ludhiana dated 18.11.2015 whereby the suit for declaration, mandatory injunction and permanent injunction has been partly decreed. The demand for Rs.3,16,677/- raised by the appellants vide notice dated 11.07.2012 with regard to the electric connection was held to be wrong, illegal and null and void and the same has been set aside. The plaintiff has been held entitled to mandatory injunction to the extent that adjustment of future bills be made by making calculation on average basis of 1500 units and 2729 units which are on the higher side as done in Ex.D6. The calculation was accordingly ordered to be done again by considering 1500 units. However, suit of the plaintiff for permanent injunction has been dismissed.

(2) As per the stand of the appellants, the premises of the plaintiff/respondent had been checked on 03.05.2012 on the written consent submitted by the consumer. The seals affixed on the meter body was found to be fake and the impression of the seals did not match with the original impression of the ME lab. The ultrasonic welding of the electric meter of

the plaintiff was found tampered with. The electronic circuit of the electric meter was also found mishandled and electronic circuit plate was also found re-soldered. The plaintiff was thus found committing theft/unauthorized use of electricity. The maintainability of suit was challenged before the Special Court especially on the ground that on receipt of the final assessment order the consumer may prefer an appeal under the provisions of the Indian Electricity Act, 2003 before SDM/ADC concerned.

(3) It is the case of the respondent/appellant that the provisional assessment dated 11.07.2012 had been objected and opportunity had been given to the plaintiff by the competent officer and final assessment order was then passed on 29.08.2012 (Ex.D10). If the plaintiff did not agree with the same, he could prefer an appeal within 30 days. The plaintiff had appeared before the competent officer along with Rachpal Singh and an opportunity of hearing was also granted. Similarly, the plea taken was that the meter was checked was packed in his presence and checked in the ME lab. The plaintiff had been asked and given his consent that the electric meter could be checked in his absence. The report of the ME lab was also as such against the plaintiff on the basis of which provisional assessment had been made.

(4) Counsel for the appellants had thus raised the objection that in view of the provisions of Sections 126 & 127, the remedy to approach the Special Judge would not lie especially once the notice had been served under sub-section (2) of Section 126 and thereafter the assessment had been made by the Assessing Officer. Sections 126 & 127 are reproduced as under:-

Section 126: (Assessment): ---

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found

connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”

Section 127. (Appeal to Appellate Authority): ---

(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of

assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

(5) It is submitted that the suit thus filed in October, 2012 was not maintainable. It is submitted that reliance as such placed upon the judgment of this Court in **Kapoor Singh vs. Punjab State Power Corporation Limited & Ors. 2015 (2) RCR (Civil) 891** was not justified. The said case pertains to the theft of electricity through electric connection sanctioned for tubewell and agricultural purposes whereas the present case is a case of unauthorised load case, and no FIR was lodged herein which would be clear from the statement of the consumer himself.

(6) Admittedly, in the present case no criminal proceedings as such have been initiated by the appellant. The appellant has raised the specific plea as such regarding the fact that the meter was checked in ME lab and the plaintiff was given an opportunity as such to be present in the checking which he opted not to and therefore the finding which has been recorded that no opportunity of being heard was provided to the plaintiff prior to raising of the demand and the calculation which had been done were made without any basis. It is accordingly submitted that there is no such challenge to the final assessment dated 29.08.2012 and the challenge was only to notice dated 11.07.2012 which could not have been done without having specific challenge or amending the suit and therefore the setting aside of the provisional assessment is without any basis once the final assessment had been framed.

(7) A perusal of Ex.D10 dated 29.08.2012 which is the final order of assessment for unauthorized use of electricity after considering the objections and the hearing given which was never challenged would go on to

show that an appeal could be filed before the ADC/SDM and the objections had been dismissed by the Assessing Officer and a finding of unauthorized used had been recorded. The relevant part reads as under:-

“Kindly refer to this office memo No.2010 dated 11.7.12 vide which a notice of provisional order of assessment was sent to you.

2. You were given opportunity to file objections and or were afforded reasonable opportunity to personal hearing.

3. After considering the objections and/or submissions made during the hearing given to you on 16.8.12 (date) at City East (place), the Assessing Officer has reached to the conclusion that the unauthorized use of electricity has taken place.

4. Therefore, you are requested to deposit the finally assessed charges of Rs.316677 within seven days of the service of this notice in the office of AE/AEE/Distribution Sub-Division Sunder Nagar Divn.

5. It may be intimated that if you are not satisfied by this final order made under Section 135 of the E.A.2003 you may prefer an appeal within 30 days of this order to the Appellate Authority notified by the Govt. of Punjab i.e. SDM (indicate here the appellate authority such as DC,ADC,SDM etc.) by depositing one half of the finally assessed amount in cash or by way of bank draft with PSPCL and documentary evidence of the same be enclosed with the appeal. The appeal shall be filed on the prescribed form along with fee of 0.5% of the assessed amount subject to the minimum of Rs.100/-.”

(8) The provisions as such of Section 126 to 127 of the Indian Electricity Act which have been reproduced above, were not even referred to while setting aside the demand and the Civil Court has thus taken over the role of experts. The judgment which has thus been passed does not conform

to the speaking order and as such a sketchy order has been passed while allowing the suit to a limited extent without opining on the issue in a proper perspective which had been framed and disposing of them on account of the issue No.1 being decided in favour of the plaintiffs. The said issue pertained to the decree of declaration qua notice dated 11.07.2012.

(9) Resultantly, this Court is of the opinion that the judgment is not sustainable and the Special Court should re-examine the issue. Accordingly the appeal is allowed and the matter is remanded to the Special Court, Ludhiana for afresh decision in accordance with law on all issues.

10.07.2019

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(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No