
HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-136-2021 (O&M)
Reserved on: 02.08.2021
Date of decision: 03.09.2021

Uttar Haryana Bijli Vitran Nigam Ltd. & others ...Petitioners

Versus

Kartar Singh @ Kartara ... Respondent

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

Present: Mr.R.S.Longia, Advocates for the appellants.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J.

The appellants-defendants are in Regular Second Appeal against the concurrent findings of the Civil Court at Kaithal dated 14.10.2019 whereby the suit of the plaintiff-respondent was decreed and against the decision of the Lower Appellate Court dated 19.02.2020 vide which the appeal was also dismissed.

Counsel for the appellants has vehemently submitted that the Courts below were in error in decreeing the suit as the jurisdiction of the Civil Court was barred and the proceedings under Section 135 of the Electricity Act, 2003 (for short, the 'Act') had been initiated against the respondent-consumer.

On a perusal of the record, this Court is of the opinion that no substantial question of law arises for consideration in the present Regular
Second Appeal.

The facts would go on to show that for checking done on 25.07.2018, the notice had been issued as electricity assessment charges for Rs.26,282/- and Rs.8000/- as compounding fees on the compounding of the alleged theft. Same were challenged by the plaintiff on the ground that no opportunity of hearing was given to him and the meter was installed outside the premises of the plaintiff and he had already installed solar energy equipment in his premises and he was using solar energy.

The defence of the present appellants was that on checking, it was found that the load shown at 'A' was running through the meter and load shown at 'B' was connected directly bypassing the meter and thus, the total connected load of 'A' and 'B' was 3.898 KW against the sanctioned load of 0.500 KW. The plaintiff had refused to put his signatures upon the checking report (LL-1) and resultantly, both demands were issued and letter had also been written to the SHO, I&P, Jind for lodging the FIR against the plaintiff for using the electricity dishonestly by committing direct theft.

On the framing of the issues, the Trial Court very succinctly examined the provisions of the Act to come to the conclusion that Section 126 on one hand and the provisions of Section 135 are distinct and different and operate in different fields and have no common premise in law. Reliance was rightly placed upon the judgment of the Apex Court in **The Executive Engineer & another Vs. M/s Sri Seetaram Rice Mills 2012 (3) CCC 68**. The relevant portions of the judgment read as under:

“15. Upon their plain reading, the mark differences in the contents of [Sections 126](#) and [135](#) of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed

that [Sections 126](#) and [127](#) of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under [Section 135](#) of the 2003 Act. [Section 135](#) of the 2003 Act falls under Part XIV relating to 'offences and penalties' and title of the Section is 'theft of electricity'. The Section opens with the words 'whoever, dishonestly' does any or all of the acts specified under clauses (a) to (e) of Sub-section (1) of [Section 135](#) of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Sub-section (1A) of [Section 135](#) of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under Sub-sections (2) to (4) of the said Section. The fine which may be imposed under [Section 135](#) of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted. In contradistinction to these provisions, [Section 126](#) of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'authorized use of electricity'. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of [Section 126\(2\)](#) of the 2003 Act. The officer is also under obligation to serve a notice in terms of [Section 126\(3\)](#) of the 2003 Act upon any such consumer requiring

him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under [Section 127](#) of the 2003 Act. The order of assessment under [Section 126](#) and the period for which such order would be passed has to be in terms of Sub-sections (5) and (6) of [Section 126](#) of the 2003 Act. The Explanation to [Section 126](#) is of some significance, which we shall deal with shortly hereinafter. [Section 126](#) of the 2003 Act falls under Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

16. [Section 135](#) of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of Criminal Jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, [Section 126](#) of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

17. Thus, it would be clear that the expression 'unauthorized use of electricity' under [Section 126](#) of the 2003 Act deals with cases of unauthorized use, even in absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under [Section 135](#) of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under [Section 126](#) of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under [Sections 135\(a\) to 135\(e\)](#) of the 2003 Act, has abstracted energy with dishonest intention and

without authorization, like providing for a direct connection bypassing the installed meter. Therefore, there is a clear distinction between the cases that would fall under [Section 126](#) of the 2003 Act on the one hand and [Section 135](#) of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of [Section 135](#) of the 2003 Act.

18. [Section 135](#) of the 2003 Act significantly uses the words 'whoever, dishonestly' does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. 'Dishonesty' is a state of mind which has to be shown to exist before a person can be punished under the provisions of that Section."

Keeping in view the principle of law settled by the Apex Court, the Trial Court has come to the conclusion that on one hand, the appellants were prosecuting the consumer for theft of electricity and on the other hand, were also assessing for the unauthorized use of electricity. Once theft had been alleged by the Department, the Assessing/Authorized Officer was not competent to pass any order demanding any specific amount as the liability of the consumer, which could have only been determined by the Special Court. It was also noticed that the signatures of the plaintiff were not on the impugned notice and there was no report as to whether the said notices were served upon the plaintiff. It was also noticed that the officials of the appellants, as per the sale circular, were supposed to affix copy of the

checking report outside the premises of the respondent and take a picture. Accordingly, keeping in view the fact that they did not resort to the procedure prescribed, the demands as raised vide Exs.D2 & D3 to the total tune of Rs.34,282/- had been declared illegal, null and void.

The District Judge, while upholding the said reasoning, also noticed that on the basis of the request sent to the appellants, nothing was brought on record that the FIR was registered against the respondent. The officials had failed to point out as to what subsequently transpired post the letter/request to the police to initiate criminal proceedings. It was also noticed that videography could have been done which would have helped the police in investigation and the provisions of Section 126 of the Act had also not been followed as there was no provisional order of assessment served upon the consumer and therefore, passing of the final order of assessment as provided under Section 126 was not sustainable. Resultantly, a finding was recorded that the appellants had acted illegally and issued memos de hors the statutory provisions of the Act and therefore, the jurisdiction of the Civil Court was rightly invoked and the objection that the Civil Court had no jurisdiction, could not be sustained. Resultantly, the appeal was dismissed by placing reliance upon the judgment of this Court in **Dakshin Haryana Bijli Vitran Nigam Ltd. & others Vs. Jaswant @ Jaibir 2017 (2) LAR 465.**

A perusal of the record would also go on to show that on the checking report, the endorsement was there that the consumer had refused to sign but no signatures of the witness had been taken regarding the said refusal. Similarly, the notice dated 25.07.2018 would go on to show that the order of assessment of the licensee of theft of electricity under Section 135

had assessed the amount payable as Rs.26,282. But, it was also mentioned that a complaint had been filed by the Authorized Officer to the police for taking cognizance of the theft of electricity. A similar notice of even date was also issued for compounding the offences under Sections 135 and 152 of the Act whereby the compounding amount was mentioned as Rs.8000/-. The appellants had made no effort to prosecute the consumer before the Special Court regarding the theft but have started trying to recover the amount, which has led to the filing of the Civil Suit.

Section 135 provides the procedure regarding the offences and penalties which are in the cloak of criminal proceedings. The electricity connection was to be disconnected as per the provisions and even a complaint was to be lodged to the Police Station having jurisdiction within 24 hours from the time of such disconnection. It is apparent that no such disconnection was done but assessment of the amount due was done, without taking any resort to the provisions of Section 126. From the tenor of the suit which was filed on 30.08.2018, after a month, it would be clear that the plaintiff had sought that the defendants be restrained from recovering the amount and not to disconnect the electricity supply. Neither it was the stand of the appellants that the electricity connection had been disconnected as per the provisions of Section 135. Rather the stand in the written statement is that the plaintiff was avoiding payment of the assessed amount and the compounding amount. It is, thus, apparent that the Courts below were correct to the extent that by resorting to the procedure prescribed for criminal proceedings, the assessment was being done, for which a separate procedure had to be followed in as much as a provisional assessment was to be done

under Section 126(2) of the Act and under Sub-clause (3), the right of filing objections had to be given after affording reasonable opportunity of hearing before passing of the final order. The said order would also be appealable under Section 127 and therefore, the Courts below have rightly come to the conclusion that the procedure followed by the appellants are alien to the one prescribed in the statute.

In Jaswant @ Jaibir (supra), which was also a case of theft of electricity whereby the consumer had been acquitted by the Criminal Court, the said issue was debated upon and eventually, conclusion was arrived at that once proceedings under Section 135 were initiated, the Assessing Officer had no authority to pass any order regarding the liability and penalty. In case it is so done, it was held that the consumer cannot be left remediless and he can invoke the jurisdiction of the Civil Court. Relevant portion of the judgment reads as under:

“(1) in case the departments/officers/licensee/supplier is of the opinion that a consumer has committed theft as defined under the Act, and they/he initiate proceedings for theft under Section 135 of the Act, then the assessing officer has no authority to pass any order regarding assessment of liability and penalty against a consumer. If any such order of assessment/penalty is passed and purported to be enforced against a consumer by the department/licensee/supplier then the consumer has every right to avail the remedy of civil suit by challenging such order/demand raised by the department/licensee/supplier. In such a situation, the jurisdiction of the civil court shall not be barred by virtue of Section 145 of the Act.

(2) If an unauthorised order of assessment/penalty is passed by the department/licensee/supplier, despite having alleged and initiated proceedings of theft; then the consumer cannot be said to have

alternative remedies under Section 127 of the Act. Therefore, he cannot be denied the right of filing the civil suit against such an illegal assessment/demand/penalty notice on the ground that he can avail an alternative remedy of appeal under Section 127 of the Act.

(3) Since the Special Court cannot be initiated at the instance of the consumer and the civil liability as determined by the Special Courts has been restricted to be determined only against the consumer and only for the loss/damages caused to the department and even without following the procedure of a civil court, therefore, mere existence of the Special Court does not, by implication, exclude the jurisdiction of the civil court, in a case where the assessing officer/licensee/supplier has passed an illegal or unauthorised order of demand despite having referred the matter to the police or the Special Court for determination of the same.”

Keeping in view the above, this Court is of the opinion that there is no illegality or infirmity in the orders passed by the Courts below which would warrant interference by this Court in a Regular Second Appeal. Resultantly, the present appeal is dismissed in limine.

September 03, 2021
sailesh

(G.S.Sandhawalia)
Judge

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No