

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 13654 of 2020 (O&M)

Date of Decision: 01.02.2021

Paramjeet Kaur

... Petitioner(s)

Versus

Uttar Haryana Bijli Vitran Nigam Limited and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Manu K. Bhandari, Advocate
for the petitioner(s).

Mr. Sanjay Mittal, Additional Advocate
General, Haryana, for respondent No.1 to 3.

Mr. Ashwani Nagra, Advocate
for respondent No.4.

Anil Kshetarpal, J.

The petitioner, who is proprietor of M/s Paramjeet Ice factory, calls in question the calculation of electricity dues, for a period of one year, prepared by the respondent-power supply company.

Since this Court is of the view that she is required to be relegated to the alternative remedy, therefore, it would not be appropriate to dilate in detail on the various contentions of the learned counsel for the parties. She got installed an electricity connection with a sanctioned load of 100 KV and contracted demand of 100 KVA. The respondent suspected pilferage of electricity and therefore, her premises were checked. The report prepared by the search party, after inspecting the site, is extracted as under:-

“At 10.00 PM dt. 19.06.2020 visited the site of consumer premises and found that consumer is stealing energy by

connecting all 3 phases (RYB) with S/C cable Black in colour about 3 mete length each from R-D fuse unit of 11 KV H-Pole structure of Nigam of 11 KV group of industry feeder to distribution transformer 315 KVA capacity installed inside the consumer premises being LS connection. It is also found that the 11 KV H-Pole structure of consumer inside the premises whose GO switch found in open position for effecting/making the meter dead stop intentionally. It is a case of direct theft of energy. M & P wing is called at site and they prepared the checking report MTI-68347 dated 20.06.2020. Videography of the site carried out for evidence. Supply of consumer disconnected”.

Thereafter, another Joint Checking Report MTI-68347 was prepared which reads as under:

“Visit the site as per telephonic message from XEN “OP” Division Ambala Cantt. XEN “OP” M & P Div. Ambala & SDO “OP” Kesri, Open the MCB for checking the accuracy of meter & found current in all the three phases zero and also the load in the meter display is zero. The same is checked on LT side of Transformer with LT accucheck & found 11 = 109A, 13-117A & Load = 77.1 KW. The current & load in the meter display is zero due to bypassing the meter for stealing the energy. The meter along with metering equipment is handed over to SDO “OP” for n/action as per instruction”.

Pursuant thereto, an FIR was registered on 22.06.2020. Thereafter, the

officials of the respondents proceeded to assess the charges for the alleged pilferage of electricity for a period of one year amounting to ₹1,38,87,539/-.

This amount includes ₹ 16,00,000/- as compounding fee.

She filed a civil suit before the Civil Court at Ambala, with the following prayer:-

“It is, therefore, respectfully prayed that the suit of the plaintiff may kindly be decreed and a decree for declaration to the effect that the checking report i.e. LL-1 bearing No. 5/625, dated 19.06.2020 and the order of assessment bearing memo No. A13/2020/44 dated 20.06.2020, whereby the plaintiff is arbitrarily and illegally called upon by the defendants to pay a sum of Rs.1,22,87,539/- on account of penalty for theft of energy is illegal, null and void and not binding on the rights of the plaintiff and is set aside along with the decree of Mandatory injunction directing the defendants to restore the electricity connection of the plaintiff bearing account No. 5165211000/LS-131 wrongly and illegally disconnected by the defendants for not meeting the illegal and unjustified demand of Rs.1,22,87,539/- and decree of Permanent injunction restraining the defendants from recovering from the plaintiff the above mentioned illegal, unjustified and arbitrary amount of Rs.1,22,87,539/- through any coercive means may please be passed in favour of the plaintiff and against the defendants.

AND

Any other relief which this learned Court may deem fit

under the facts and circumstances of the present case may please be granted to the plaintiff in the interest of justice, law and equity”.

Along with the suit, an application was filed for restoration of the electricity connection. On notice of the suit, respondent filed its written statement. The Civil Judge (Senior Division), while issuing a temporary mandatory injunction, directed her to deposit 100% amount of the compounding fee and 50% amount of the penalty within a period of two days. She filed an appeal before the Additional District Judge, which was dismissed on 15.07.2020. She also filed a Civil Revision No. 2137 of 2020, in this Court.

However, she, rather than pursuing the remedy already chosen, filed an application for withdrawal of the suit with permission to avail the appropriate/alternative remedy. The suit was dismissed as withdrawn vide order dated 24.08.2020. The operative part of the order reads as under:-

“The plaintiff duly identify by her newly appointed counsel has got recorded her statement before the Court that the present suit titled Paramjeet Kaur v. UHBVN was filed by her and is listed for 3.11.2020. As per the legal advice of her counsel, she wants to withdraw the present suit and wants to exhaust other appropriate/alternative remedy to challenge the impugned notices issued by the defendants. In this regard a separate application has been moved by her today in the Court. She further prayed that the case file may be taken up for today and she may be permitted to withdraw the present suit in the interest of justice.

Learned counsel for the defendants stated that they have no objection if the prayer of the plaintiff is allowed.

In view of the aforesaid statement of the plaintiff, the present suit is dismissed as withdrawn. File be consigned to records after due compliance”.

It would be noted here that the petitioner also filed an application for grant of anticipatory bail in the criminal case, which was dismissed by the Additional Sessions Judge, Ambala, however, High Court, in Criminal Misc. No. M- 21434 of 2020, granted pre-arrest bail to the petitioner subject to joining investigation as and when called upon.

She has now filed the writ petition under Article 226 of the Constitution of India challenging the order of assessment/calculation sheet as noticed above. A detailed reply has been filed. She has also filed replication.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the paper-book.

Learned counsel for the petitioner contends that the meter was previously checked on 14.10.2019, 25.11.2019 and 05.06.2020 and nothing adverse was found, therefore, the respondent could have made an assessment of the amount for a period of 14 days. He further submits that the electricity supply meter was replaced on 05.06.2020. He further submitted that no opportunity of hearing was given before making the calculation.

On the other hand, learned counsel for the respondents has submitted that she is indulging in forum shopping. He submitted that admittedly, the petitioner did file a civil suit and a conditional interim order

was granted. Even after having failed in the appeal, she has chosen to withdraw the suit. He further pointed that no permission was granted by the Civil Court to avail an alternative remedy. He further submitted that she was found stealing the electricity directly from the supply line, while bypassing the electricity meter. She was found stealing the energy by connecting all three phases with a S/C cable of about 3 meter length. He further pointed out that videography of the entire incident was recorded and it was found that she is indulging in direct theft of energy. He, hence, submitted that she does not deserve any indulgence by this Court.

After having heard learned counsel for the parties, this court, as noticed above, is of the opinion that she is required to be relegated to the alternative remedy for the following reasons:

1. She has already availed the remedy of civil suit, but the same was later on withdrawn as the interim order granted was subject to certain conditions, which apparently were not found convenient. In other words, the petitioner is indulging in forum shopping.
2. The writ petition involves disputed questions of fact, which can appropriately be adjudicated after permitting the parties to lead the evidence.
3. Learned counsel for the petitioner does not dispute that the civil court has the jurisdiction. Learned counsel has himself relied upon the judgment passed in ***Dakshin Haryana Bijli Vitran Nigam Limited and Others v. Jaswant alias Jaibir (Regular Second Appeal No. 3393***

of 2017, decided on 30.08.2017) [Annexure P-25]. In the aforesaid judgment, after noticing the difference between the proceedings under Section 125 and 135 of the Electricity Act, 2003, the following conclusion was arrived at:

“In view of the above, the answers to the questions posed in the beginning in this case have to be as follows:-

(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 aforesaid facts, the writ petition is disposed of with liberty to the petitioner to move an application for revival of the civil suit, if so advised. If such an application is filed, the trial Court will consider the same sympathetically.

The miscellaneous application(s), if any, shall also stand disposed of.

February 01, 2021

“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No