

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

Sr. No.106

**RSA-201-2021 (O&M)
Date of decision : 09.04.2021**

Dakshin Haryana Bijli Vitran Nigam Limited through Executive Engineer
and another

..... Appellants

VERSUS

Nikka Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Madhur Singh, Advocate, for the applicants-appellants.

SUDHIR MITTAL, J.

The plaintiff-respondent filed a suit for declaration that demand made in the electricity bill payable on 13.10.2017, was illegal and thus, was not recoverable. Consequent relief of injunction was also sought. The suit was decreed by the learned trial Court and appeal was dismissed by the learned first appellate Court. A decree has been passed that the amount mentioned in the aforementioned bill, is not recoverable and that memos dated 10.8.2017, are illegal and no recovery can be effected on their basis.

On the basis of the respective pleadings, it can be deduced that the premises of the plaintiff-respondent was checked on 8.8.2017 and it was allegedly found that he was consuming more than the connected load. Thus, notices dated 10.8.2017 (Ex. D-4 and D-5) were issued under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for alleged theft of electricity. A provisional order of assessment

was drawn up, but the same was never communicated to the plaintiff-respondent and the amount so assessed was reflected in the bill payable on 13.10.2017, which led to the filing of the present suit.

Learned counsel for the appellants has argued that in view of Section 145 of the Act, the civil Court had no jurisdiction and thus, the impugned judgments are a nullity. He has also submitted that the issue regarding jurisdiction of the Civil Court is pending before a Division Bench of this Court pursuant to reference order dated 21.12.2016 passed in RSA-4181-2016 and RSA-4928-2016. Thus, this matter be also referred to the Division Bench as the Courts below have erroneously rejected the objection of the appellants that the Civil Court had no jurisdiction in this matter.

On the basis of the evidence on record, the Courts below have determined as a matter of fact that the inspection done on 8.8.2017 was illegal as the same was not done in the presence of the consumer or any member of his family. Even, no respectable person of the locality was associated. This finding has been reached on the basis of admission of DW-1. Although, the said witness has stated that the neighbor was called at the time of inspection, but the same has been dis-believed as no signature or thumb-impression of the neighbor was found on the checking report (Ex.P-2). It has also been found that the checking so done was violative of the sales circular No.D-43/2007 and consequently, illegal.

Learned counsel for the appellants has not been able to show that the aforementioned factual finding was erroneous.

It has also been held that provisions of Section 126 of the Act have been violated, which has also resulted in violation of the principles of natural justice. Applicability of the said provision has been found on the basis of judgments of the Hon'ble Supreme Court of India in The Executive Engineer and another Vs. M/s Sri Seetaram Rice Mill 2012 (3) Civil Court Cases 068 (SC), and Orissa State Electricity Board and another Vs. IPI Steel Limited and others, 1995 (4) SCC 328. In the said judgments, it has been held that the consumption of excess load is a mal-practice, which falls within the mischief of 'unauthorized use' as mentioned in Section 126 and Section 135 of the Act, is not applicable as the said provision pertains to theft of electricity. Section 126 of the Act is reproduced below for ready reference:-

‘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 judgment 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.’

The aforementioned provision makes it incumbent upon the Assessing Officer to pass an order of provisional assessment and to serve the same upon the persons in occupation or possession or in charge of the place or premises in the prescribed manner. Thereafter, the concerned person is entitled to file objections upon which, the Assessing Officer must afford a reasonable opportunity of hearing and pass a final order of assessment within 30 days from the date of service of the order of provisional assessment. Both the Courts below have concurrently found that the notices, Ex. D-4 and D-5, may be construed to be orders of provisional assessment, but there is no evidence on record to suggest that the same were ever served upon the consumer. Consequently, he was deprived of his statutory right of filing objections. He was also deprived of an opportunity of hearing as provided for in the statute and also dictated by the rules of natural justice. Consequently, no final order of assessment was passed. The plaintiff-respondent was thus, deprived of his statutory rights and the same also resulted in violation of the principles of natural justice. Appeal under Section 127 of the Act also could not be filed as the same is maintainable only against final assessment order.

Based on the aforementioned findings, the Courts below have held that not only has there been a violation of the statute, but there has also been violation of the principles of natural justice and thus, despite Section 145 of the Act, the jurisdiction of the civil Court is not barred. Reliance has been placed upon Radha Kishan Vs. Ludhiana Municipality reported in AIR 1963 SC 1547, wherein, it has been held that if, a Tribunal created by a statute, abuses its power or violates the provisions

of the Act, its order can be set aside by the civil Court. In Ram Swarup Vs. Shikar Chand AIR 1966 SC 893, again it has been held that orders passed under a special act are amenable to the jurisdiction of the civil Court, if they have been passed in violation of mandatory provisions of the statute or in violation of the principles of natural justice. Similar is the ratio of Daulabhai and others Vs. State of Madhya Pradesh and another AIR 1969 SC 78.

Let us now examine Section 145 of the Act, wherein, civil Court jurisdiction has been barred.

‘Section 145. (Civil courts not to have jurisdiction):

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.’

The aforementioned provision provides that the Civil Court will have no jurisdiction in respect of matters, which are within the jurisdiction of an Assessing Officer under Section 126 of the Act or an appellate authority under Section 127 of the Act or an Adjudicating Officer appointed under the Act. Thus, what is barred by the aforesaid provision is a challenge to an order passed by the Assessing Officer after complying with the safeguards provided therein. If, the statutory safeguards are violated, which also results in violation of the principles of natural justice, the same can always be challenged before the Civil Court

as has been held by the Hon'ble Supreme Court of India in the judgments cited hereinabove. Thus, the Courts below were correct in holding that jurisdiction of Civil Court was not barred under the circumstances.

The stress of learned counsel for the appellants upon reference made to a Division Bench of this Court also does not sway this Court. The question referred is as below:-

‘As to whether the bar contained in Section 145 of the Act, on the jurisdiction of the civil Court, would be restricted only to proceedings arising from an order passed by the Assessing Officer under Section 126 and an appellate authority under Section 127, or, in view of the language contained in Sections 154 and 155, (read with Section 145 of the Act), such bar would extend to matters falling under Sections 135 to 140 and Section 150 of the Act also ?’

Thus, the reference is with respect to matters falling under Sections 135 to 140 and Section 150 of the Act. The present case is not under any of these provisions and thus, referring this case to the Division Bench would serve no useful purpose.

For the aforementioned reasons, the appeal has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

09.04.2021

Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No