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IN THE HIGH COURT OF PUNJAN AND HARYANA AT CHANDIGARH

CWP No.23967 of 2013
Date of decision: 18.05.2022

Harnek Singh Matharoo

..... Petitioner

versus

The Punjab State Power Corporation Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.P.S. Sandhu, Advocate
for the petitioner.

<u>RAJ MOHAN SINGH J. (ORAL)</u>

The petitioner has preferred this writ petition for the issuance of an appropriate writ especially in the nature of certiorari, seeking quashing the impugned assessment order dated 01.11.2012 passed by respondent No.3 (Annexure P-4), order dated 20.06.2013 passed by respondent No.2 (Annexure P-7) and order dated 25.09.2013 passed by respondent No.3 (Annexure P-8) thereupon raising demand of ₹1,41,712/-.

Notice of motion was issued on 30.10.2013 subject to payment of ₹50,000/- by the petitioner with the respondent authorities, within a prescribed period. Subject to the aforesaid deposit, disconnection of the electric supply was ordered to be stayed. The deposit of the aforesaid amount of ₹50,000/- was however, without prejudice to the rights of the petitioner in the present writ petition.

This case was twice dismissed for non-prosecution on 21.07.2017 and 22.07.2019. However, the same was restored on 16.04.2018 and 06.01.2020, respectively. Thereafter, notice was issued to Mr. A.P.S. Sandhu, Advocate, who had appeared on behalf of the respondents, for 10.08.2020. As per office noting, notice issued to Mr. A.P.S. Sandhu, Advocate has been duly served.

Perusal of the record would show that on 27.08.2012, the premises of the petitioner was checked and sanctioned load of the petitioner was 50.00 KW. During checking, it was found that 4.300 KW load was being used for commercial purposes. On account of the same, it was found that there was a case of un-authorized use of electricity. An amount of ₹1,87,035/- was assessed by the assessing officer. A bifurcation of the same is in two parts i.e. SDP-155439/- and XX-21596/-. The petitioner was directed to deposit the aforesaid charges within seven days of service of the notice in the office of AAE Commercial, Sub-Division, PSPCL, Mohali to avoid further action.

The grievance of the petitioner is that the aforesaid provisional order of assessment was never served upon the petitioner in time so as to enable him to file objections. The order was served only after 25.10.2012 i.e. after two months of the alleged checking and by that time, the prescribed period of seven days had already expired and the petitioner could not file any objections against the provisional assessment. The respondent-corporation has assessed an amount of ₹1,87,035/- as against the entire load of 54 KW. Final order of assessment was passed on 01.11.2012 in the absence of any such objections filed by the petitioner. The petitioner filed an appeal under Section 127 of the Electricity Act before the Appellate Authority, i.e. Additional Deputy Commissioner, SAS Nagar, Mohali-respondent No.2. Para No.4 of the grounds of appeal reads as under:-

> *"4. That the industrial premises was inspected by the Enforcement Officer respondents on 27.8.2012.* ***A Provisional Order of Assessment was issued vide Memo No.7447 dated 26.9.2012 (Annexure A-6) and Final Order of Assessment was issued vide Memo No.8460 was passed on 1.11.2012 (Annexure A-7)*** *under the seal and signature of SDO Tech-II, PSPCL, Mohali. (The Provisional Order which was issued following the checking on 26.09.2012, was not properly delivered on time to the customer until 25.10.2012 (almost two*

months after the checking), by which time, the allotted time frame for any action had already expired thus causing the customer to default without giving any opportunity. And also Final Order was collected from Electricity Office, as it had also not been delivered."

The Appellate Authority without adverting to the aforesaid ground taken in the appeal, proceeded to pass an order dated 20.06.2013 solely on the premise that during the checking by the enforcement team, the present case was found as a case of non-industrial/commercial business and the energy was siphoned off for the purpose for which it was not connected. Final order of assessment was upheld along with the penalty amount. Further, the grievance of the petitioner is that after passing of final order of assessment, respondent No.3 still proceeded with the case thereby calculating additional amount of ₹47,110/- from September, 2012 to November, 2012 in addition of previous outstanding amount of ₹94,592/-. It was calculated after the deduction of 50% of the amount deposited by the petitioner in order to maintain the appeal that is how this order dated 25.09.2013 is also being assailed in the present writ petition.

In the present writ petition, the petitioner has specifically pleaded in para No.5 that the order of provisional assessment was never served upon the petitioner and no opportunity of hearing was afforded to the petitioner at the time of passing of final order of assessment.

In the written statement filed by the respondent-corporation, the aforesaid plea was negated in para no.5 of the written statement. Para No.5 of the written statement reads as under:-

> *"That the contents of the corresponding para are wrong to the extent that no opportunity was given to the petitioner. The bare perusal of the assessment order shows that the petitioner was given seven days time to file objections to the provisional order, which was passed on 26.09.2012. However, the objections of the petitioner were awaited for over a month. The final order had to be passed and it is not expected to wait for the petitioner to file the objections till eternity."*

Perusal of the aforesaid stand of the Corporation would show that the objections were awaited for over a month and thereafter, final order of assessment was passed. The respondent-Corporation has not alleged anything in respect of service of provisional order of assessment nor any manner of serving the petitioner in respect of provisional assessment.

In the replication filed by the petitioner, the petitioner has reiterated the stand taken in para No.5 of the writ petition.

In view of the aforesaid facts, particularly, in the light of the specific ground taken in the grounds of appeal before the Appellate Authority, it would be appropriate to direct the Appellate Authority to re-visit the order with reference to available record of the Corporation. Since 50% of the amount in question has already been deposited by the petitioner at the time of maintaining the appeal under Section 127 of the Electricity Act and ₹50,000/- has been deposited at the time of issuance of notice of motion by this Court, therefore, no prejudice will be caused to the respondent-Corporation in case the stand of the petitioner is properly ventilated by way of passing a speaking order after perusal of entire record of the Corporation.

In view of the above, this writ petition is partly allowed only to the extent of setting aside the order dated 20.06.2013 passed by respondent No.2 (Annexure P-7). Respondent No.2 is directed to re-visit the issue on proper appreciation of record and pass a speaking order preferably within a period of two months from the date of receipt of certified copy of this order. It would be appropriate to keep the order dated 25.09.2013 (Annexure P-8) in abeyance till final decision given by the Appellate Authority.

(RAJ MOHAN SINGH)
JUDGE

18.05.2022
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No