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

**CWP No.22271 of 2019(O&M)
Date of Decision: 27.04.2022**

Surjit Banquet Hall

.....Petitioner

Vs

PSPCL and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. R.S. Athwal, Advocate
for the petitioner.

Mr. Parminder Singh-I, Advocate
for PSPCL.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 20.06.2018 passed by the Sub Divisional Magistrate, Amloh, vide which the petition filed by the petitioner was dismissed and notice memo No.1511 dated 12.08.2010 in respect of demand of Rs.6,60,836/- issued by respondent No.3 was upheld.

Earlier a speaking order was passed by the Sub Divisional Magistrate, Amloh in favour of the petitioner, against which, CWP No.18351 of 2013 was filed by the respondent- PSPCL. The High Court passed an order dated 08.03.2017 in

CWP No.18351 of 2013. The operative part of the order reads as as under:-

“I have heard learned counsel for the parties, appraised the paper book and of the view that the photographs are attached to, prima facie, establish the theft of electric energy. I do not want to delve upon the same, much less, give any opinion whether the photographs clicked are of the same time and place or clicked subsequently at some other place. The Electricity Board has to establish the theft of electricity by leading direct and cogent evidence.

In my view, the authorities were not wary, much less, alert in proving the alleged demand. The matter is remitted back to the authority i.e. one indicated in the impugned order (Annexure P-6) and liberty is granted to both the parties to lead fresh evidence in support of alleged demand or otherwise, in order to enable the authority to arrive at a conclusion in accordance with law.

The parties shall appear before the authority through their counsel on 05.04.2017.

Writ petition stands disposed of.

**(AMIT RAWAL)
JUDGE”**

March 08, 2017
Pankaj*

Evidently, the photographs in respect of alleged theft of electric energy were considered by the High Court and the High Court did not want to delve upon the same without there being any corroborative piece of evidence. It was upto the respondent-

Corporation to establish the theft of electricity by leading cogent evidence. The case was remanded back to the authority with a liberty to both the parties to lead fresh evidence in respect of alleged demand or otherwise and the authority was to arrive at a just conclusion in accordance with law. Thereafter, the impugned order has been passed.

The grievance of the petitioner is that the impugned order is totally silent with regard to the evidence led by the parties.

Perusal of the impugned order would show that though the respondent-Corporation/Department has adduced evidence in the form of statement of Akshay Kumar Garg, Additional S.E, but the authority has not discussed any document while passing the impugned order. The relevant part of the impugned order reads as under:-

“Counsel for Electricity Department Sh. Rajesh Jalu told this Hon'ble Court in his arguments that on dated 19.08.2008 S.D.O Electricity Department conducted the checking of Surjit Banquet Hall and during checking it was found that petitioner was making pilferage of electricity in above mentioned condition. According to the report dated 19.08.2008 the petitioner had connected direct wire with the fuse of outer transformer was utilizing the electricity, as a proof thereof he produced the photographs before this Court. As a result of which Provisional Notice Assessment of

Rs.29,52,969/- was sent. Against which the petitioner had filed an application before S.E. Khanna and S.E. Khanna had decreased this amount to the extent of Rs.6,60,838/-. According to which the electricity department sent the notice to the petitioner on dated 12.08.2010 to deposit this amount. The petitioner was caught red handed while making pilferage of electricity, as a result of which he is not entitled to get any kind of relief. The respondent has sent final notice to the petitioner for deposit of amount, same is absolutely correct and is based upon the facts.”

The Court further recorded that the evidence has come on record in respect of theft of electricity and the Court while agreeing with the proofs, witnesses and averments made by the learned counsel for the Corporation, dismissed the appeal. Except the aforesaid observations on merits, there is no discussion of material produced by the parties on record.

Sub Divisional Magistrate, Amloh was required to discuss incriminating material produced by the parties, particularly in the light of the fact that on earlier occasion, the same authority has found nothing incriminating against the petitioner while deciding the case on 12.11.2011.

The impugned order appears to be totally non-speaking for want of necessary discussion in respect of evidence brought on record by the parties.

In view of aforesaid facts, it would be just and

appropriate to again remand this case to the Sub Divisional Magistrate, Amloh with a direction to pass a speaking order with reference to evidence led by both the parties. It is expected that the authority shall evaluate the evidence in accordance with law with reasons.

Disposed of.

27.04.2022

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No