

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

205

CWP-8029-2016

Date of decision: 23.11.2022

PUNJAB STATE POWER CORPORATION LTD AND ANOTHER

.....Petitioner

VERSUS

HOSHIAR SINGH AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Ms. Meena Bansal, Advocate
for the petitioners.

Mr. Ashok Paul Batra, Advocate
for respondent No.1.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for setting aside the impugned order dated 17.04.2015 (Annexure P-4) passed by respondent No.2-Sub Divisional Magistrate, Amritsar-2, District Amritsar.

2. Briefly summarized the facts of the present case are that on 17.01.2009, the premises of respondent No.1 was inspected by the official of petitioner No.1-PSPCL where electricity connection bearing Account No. GC-21/388 was installed. During the course of inspection it transpired that the petitioner had extended supply from the above premises to adjacent premises from the above electricity account. The adjacent premises was being used as a liquor shop. The checking report was duly signed by a representative of respondent No.1 in token of its

correctness. Accordingly, a provisional assessment under Section 126 of the Excise Act, 2003 was made on 30.04.2009 (Annexure P-2) and a demand notice was served upon the respondent No.1 for the period commencing from January 2008 to March 2009.

3. Aggrieved of the aforesaid assessment, the respondent No.1 preferred a complaint before the Consumer Disputes Redressal Forum, Amrtisar bearing complaint No. 438 of 2010 titled “Hoshiar Singh versus PSPCL” which was allowed vide order dated 20.05.2011. The demand was set aside and the petitioner-PSPCL was directed to pass a fresh order after affording an opportunity of hearing to respondent No.1.

4. A notice was thereafter served upon the respondent No.1 on 18.10.2011 and he was called for personal hearing on 20.10.2011. He was heard on the said date and the Assessing Officer passed an order bearing No. 930 dated 20.10.2011 upholding the demand of Rs.2,29,018. The aforesaid final order was also communicated to the respondent No.1 vide memo No.1766/1777 dated 04.11.2011 (Annexure P-3).

5. During the course of personal hearing before the Assessing Officer, the respondent No.1 had admitted the fact that he had extended the electricity supply to another premises.

6. The aforesaid order was challenged by the petitioner by filing a complaint before the District Consumer Disputes Redressal Forum, Amritsar. However, the same was returned with liberty to the respondent No.1 to avail remedy in accordance with law. Appeal before the respondent No.2 was then preferred which was allowed by the Sub

Divisional Magistrate vide order dated 17.04.2015. Hence the present

writ petition.

7. Written statement on behalf of respondent No.1 has been filed wherein it has been stated that the Appellate Authority has rightly allowed the appeal as the Assessing Officer was not designated by the State Government. It has been submitted that the checking had also not been done by a competent authority. It is further submitted that the name of the person, who had conducted the checking is not discernible and as such it cannot be known as to whether the checking was done by the person who is authorized to conduct the checking or not.

8. While advancing arguments, learned counsel for the petitioner has argued that the Appellate Authority has miserably failed to appreciate the statutory provisions and has in fact proceeded to adjudicate the appeal against the petitioner PSPCL solely on the ground that it was not a case of theft of energy. It is contended that the Sub Divisional Magistrate was seemingly not conscious of the fact that proceedings for theft of energy are instituted under Section 135 of the Electricity Act and the cases of unauthorized use of energy is dealt with under the provisions of Section 126 & 127 of the Electricity Act, 2003. The Sub Divisional Magistrate is not the authority-Special Court for determining civil liability under Section 135 of the Electricity Act, 2003. It is further averred that the foundation of the order of the Appellate Authority was misconceived and he had set aside the case of the PSPCL by reference to the fact that there was another electricity connection for the said premises where the supply is claimed to have been made. She submits that the said electricity connection was not energized and no electricity supply has been made from the said

connection which was installed in the said adjacent premises and respondent No.1 himself admitted of making supply of electricity from his shop to the said shop. There was no occasion for the Sub Divisional Magistrate to have returned a finding to the contrary. She further submits that there was no bill placed on record by the respondent No.1 to demonstrate that energy was drawn from any separate electricity connection purportedly released to the said premises (Liquor shop). She has also referred to the relevant part of the order passed by the Sub Divisional Magistrate which reads thus:

“The verification of documents on file and also after hearing both sides, it has been found that sudden checking was done on 17.01.2009 by electricity department and no discrepancy of any kind was found on that time and also a bill of Rs.2,12,295/- which was sent to appellant, was deposited by the appellant under fear of that his electricity connection will be disconnected. On appeal by appellant before D.C.L.R, then a bill of Rs.24/- was asked to deposit by the electricity department a balance amount of Rs. 1,43,618/- was transferred in the account of appellant. The respondent in his reply dated 21.10.2011 has admitted that the applicant has not made any electricity theft. He unauthorisedly used it. They have also admitted department has taken back notice No.1760 dated 04.11.2011. The respondent in Para No.8 has admitted that applicant has not done any electricity theft . It is also clear from file that applicant has a connection No.C-66/157 for another shop. The JE in his report dated 14.10.2011 has admitted it in his report. Therefore it is not established that applicant has supplied electricity to another location. Therefore the plea of applicant is admitted and it is directed that a refund of Rs. 2,12,295/- be made to applicant. But no interest or refund will be

made to the appellant. File after order be kept in record room.

9. While controverting the argument raised by the respondent No.1, she has contended that the respondent No.1 has failed to refer to any provision of the Electricity Act; Electricity Supply Code; Electricity Supply Instructions Manual and for the Regulations framed thereunder that the Assistant Executive Engineer was not competent to carry out inspection of the premises or that the Assessing Officer was not authorised to carry out the assessment. No reference to any of the regulations have been made showing absence of the jurisdiction with the authority who had carried out inspection. She further contends that the said argument has also not been raised before the Appellate Authority nor it was part of the ground raised. Consequently, the submission of the respondent No.1 is afterthought. She has further referred to Annexure P-5 which is a report of inspection dated 14.10.2009 (as is evident on page 40) wherein the factum of the electricity meter-connection bearing No.GC-06/157 is referred to and this fact has been specifically reported that there is no electric connection to the aforesaid premises. The relevant extract of the aforesaid report is reproduced hereinafter below

“Consumer is having GC-21/388 and is having a shop of Departmental Store, which is on rent and the electricity is connected to this account. Inside there is only one shop. No shop is one rent and 4th shop is of liquor, photograph is enclosed and which is having old separate meter whose A/c No.CC-06/157. Besides this, no wire of electricity is being used inside the building.

10. The said document and/or the report mentioned therein is

not a subject matter of dispute.

11. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith instant petition.

12. Upon consideration the submission advanced and the reasoning given by the Sub Divisional Magistrate, I find myself in agreement with the petitioner. The order passed by the Sub Divisional Judicial Magistrate as an Appellate Authority is cryptic, non-speaking and fails to take into consideration the relevant statutory provisions of the Electricity Act, 2003. The stark difference between the proceedings under Section 126/127 of the Electricity Act, viz-a-viz. the proceedings under Section 135 of the Electricity Act has been completely lost and not taken into account. The Appellate Authority has not reflected any consciousness of the statutory provision and the differential procedural requirement and has proceeded under a misconception. There is nothing on record to impugn either the report prepared by the Inspecting Staff or the fact that the respondent No.1 himself acknowledging during arguments that the electricity was being supplied from the above electricity connection. Absence of theft of energy does not mean absence of UUE.

13. A perusal of the record also shows that the rank, name and status of the officer who conducted the inspection and carried out the assessment are discernible. Besides, the respondent himself acknowledged the unauthorized use of electricity. The provisions of the Electricity Act, 2003 & the Regulations framed thereunder do not permit transmission & supply of energy to any other premises under

Clause 101.1 (a)(v) of the Electricity Supply Instructions Manual. Hence, when supply to the other premises is accepted, the assessment is done as per the procedure approved. It is not the case of the respondent that the assessment was not as per the Regulations. The Appellate Authority completely failed to make a reference to the statutory provision and as to whether the necessary ingredients are satisfied or not.

14. In totality of circumstances referred to above and taking into consideration the arguments advanced today in Court, the impugned order dated 17.04.2015 is set aside. The matter is remanded to the Appellate Authority (as may be so notified now) to pass a reasoned and speaking order afresh after taking into consideration all the facts and statutory regulations.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 23, 2022

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No