2023:PHHC:101193

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

224 **CWP-6048-2019**
Date of Decision: 27.07.2023

GURMEET SINGH

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. P.S. Dhaliwal, Advocate
for the petitioner.

Ms. Lavanya Pal, DAG, Punjab.

Mr. Parminder Singh, Advocate
for respondents No.2 to 5.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the notice No.101 dated 16.01.2008 (Annexure P-1), vide which the petitioner was directed to deposit Rs.83,222/- within 15 days; and for seeking quashing of the Bill dated 26.10.2018 (Annexure P-2) amounting to Rs.2,39,617/-.

Briefly summarized, the facts of the present case are that the petitioner, who is a consumer of the respondent-Department, had been granted electricity connection of 15-KW for his shop i.e. a flour mill, where an electricity meter had been installed. However, the said electricity meter developed certain defects in the month of August 2006 which were informed to the respondents by moving an application and the meter change fee was also deposited by the petitioner on 07.09.2006. The electricity supply was, however, not restored. The officials of the respondent-Department came to the petitioner's shop on 09.09.2006 and checked the transformer installed near the flour mill. The old defective meter installed outside the premises of the petitioner was removed by the officials by breaking open the seal applied to the box as well as the meter in question and a note in this regard was given in the MCO. The petitioner was, however, thereafter summoned to reach M.E. lab on 06.03.2007, however, the seals and the meter were not checked in the presence of the petitioner. The officials, thereafter, informed the petitioner that the Lab has reported that there is suspicion regarding fake meter seals and panel of the meter being burnt.

A notice was thereafter received by the petitioner for an amount of Rs.15,000/-. An application was submitted by the petitioner to the respondents to withdraw the said notice, but on the advice of the respondents, the petitioner agreed to deposit the said amount in two installments of Rs.7,500/- each. First installment was deposited by the petitioner vide receipt dated 24. 04.2007. The petitioner was, however, again taken by shock when the respondent-Department issued another notice No.101 dated 16.01.2008 thereby demanding Rs.83,222/- on account of an allegation of theft of energy. It is mentioned that both the seals of the meter were found tampered by the ME lab and the internal Audit Party had assessed the amount to Rs.83,222/-. The balance amount of Rs.75,722/- was thus demanded.

Aggrieved thereof, the petitioner filed a complaint under Section 12 of the Consumer Protection Act, 1986 against the respondent-Department. The said complaint was allowed vide order dated 24.09.2008 and the respondent-Department was directed to withdraw the abovesaid demand notice. Aggrieved thereof, an appeal was preferred by the respondent-Department before the State Consumer Disputes Redressal Commission. The said appeal was allowed vide order dated 17.09.2013 for the reason that the petitioner was not a consumer under the Consumer Protection Act, 1986. The petitioner, thereafter, filed an appeal under Section 127 of the Electricity Act, 2003 for seeking quashing of the aforesaid notice dated 16.01.2008, which was returned with a liberty to the petitioner to present the same before the competent Forum vide order dated 23.09.2014. The same was thereafter, filed before the Addl. Deputy Commissioner, who was the Appellate Authority for hearing appeals against the assessment conveyed under Section 127 of Electricity Act, 2003. The said appeal was dismissed by the Addl. Deputy Commissioner, Barnala on the ground that the assessment notice was only a provisional assessment and that the final assessment was yet to be done by the respondent-Department. Aggrieved thereof, the present writ petition has been filed.

Written statement on behalf of the respondent-Department has been filed through Preet Mohinder Singh, Addl. S.E., Rural Divisional, PSPCL, Barnala, wherein the aforesaid factual matrix has not been disputed. It has been averred that the Addl. Deputy Commission was competent to decide an appeal against the final order of assessment. It is, however, submitted that notice dated 16.01.2008 was in the nature of a provisional notice of assessment and the Bill dated 26.10.2018 was issued to the petitioner after taking into consideration the said notice.

A further averment has been made that the petitioner was served with the initial demand notice on 07.03.2007 for a sum of Rs.15,000/- on account of theft of energy, whereupon the petitioner conceded that he was not in a position to deposit the total amount and could deposit the same in two equal installments. The said request was accepted and he was allowed to deposit the same. The first installment was deposited on 24.04.2007, however, the Audit Party overhauled the amount with the petitioner as per Sales Circular No.53 of 2006 and vide letter dated 19.09.2007, the Audit Party directed to raise a fresh demand of Rs.83,222/-. On the basis of the said Audit Party report, the additional demand was raised from the petitioner to deposit the disputed amount in two installments, which he has failed to do. Since the petitioner had accepted the earlier assessment of Rs.15,000/- hence, even though the notice dated 16.01.2008 may be in the nature of provisional assessment, his earlier conduct establishes that there was no dispute qua the assessment made. A mere revision in the said assessment does not give rise to any fresh cause of action to the petitioner to impugn the same and he is bound to pay the amount so assessed.

A pointed query was raised to the counsel for the respondent-Department as to the provision of law under which such assessment had been made by them for recovery of Civil damages and as to whether any compounding charges under Section 152 of Electricity Act, 2003 had been claimed or not. He pleads ignorance qua the same. It is, however, submitted that the assessment in question was done under Section 126 of Electricity Act, 2003 and that the Addl. Deputy Commissioner was the Appellate Authority for any such assessment done.

Taking into consideration the conflicting stands taken by the respondent-Department, wherein, even though they have treated the case to be that of theft of energy, however, for assessment of the amount, they have relied on the procedure under Section 126 of Electricity Act, 2003 and have also not disputed the Appellate Power having been conferred upon the Addl. Deputy Commissioner for hearing appeal under Section 127 of Electricity Act, 2003. Considering the fact that there is no detail forthcoming as to whether any compounding charges had been deposited by the petitioner and as to whether in the absence of payment of any compounding charges, why the proceedings under Section 135 of Electricity Act, 2003 have not been put in place by the respondent-Department, there is no occasion for this Court to come to a conclusion that it was infact a case sought to be prosecuted by the respondent-Department under Section 135 Electricity Act, 2003.

The power of determination of civil liability in a case of Section 135 of Electricity Act, 2003 is vested in the Special Court under Section 154 (5) of Electricity Act, 2003 and an assessment/ charges can be demanded by the respondent-Department in exercise of the powers conferred by the 3rd Proviso to Section 135(1-A) of Electricity Act, 2003.

Without going much into the said controversy, since the case of the respondent-Department is that the Appellate Authority was vested with power to examine the issue and that it was merely on account of the fact that the petitioner had agreed to deposit the amount of Rs.15,000/-, hence, there was no occasion for granting any fresh opportunity of hearing or conveying any other separate final order of assessment after the Audit Party objection.

The aforesaid submission, in my view, is untenable. Merely because the petitioner agreed to deposit the sum of Rs.15,000/-, it cannot lead to a presumption that the petitioner would have also agreed to any other demand that may have been so revised by the respondent-Department at their own will. Any such revision in the demand made is likely to give rise to a fresh cause of action. The assessment would, in such circumstances, be in the nature of provisional assessment under Section 126 of Electricity Act, 2003 and the final order of assessment would be required to be passed in the manner known to law.

The impugned demand raised by the respondent-Department is accordingly set aside, without commenting on the merits of the case as regards legitimacy of the demand and competence of the respondent Authorities to determine the same. The respondents, if so advised, may pass final order of assessment after granting an opportunity of hearing to the petitioner.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

27.07.2023.
rajender

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