

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

244

CWP-12537-2022
Date of Decision: 16.10.2023

MAHENDER SHARMA

... Petitioner

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM AND ORS.

... Respondents

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

Present: Mr. Rajesh Arora, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition has been made to the impugned order of assessment dated 02.07.2019 (Annexure P-4) whereby the petitioner has been directed to deposit an amount of Rs.5,94,718/-; and also for seeking quashing of checking report dated 01.07.2019 (Annexure P-3) being in violation of the Sales Circular No.D-43 of 2007.

The dispute raised before this Court is two-fold, firstly against the assessment as made by the respondents and secondly that the case of theft is not sustainable on merits in the eyes of law.

Written statement has been filed on behalf of the respondents wherein the following stand has been taken:

"2. That it is submitted that the supply of the petitioner was not got erratic in the months of November and December 2018 and that no complaint dated 07.12.2018 was submitted with the request to change the meter apparatus at premises since meter was not functioning properly. It is submitted that as per the policy of the

respondents, the mechanical meters/electro mechanical meters of the petitioner was to be replaced by the electronic meter. That the electricity meter no. PR-31/0021, under L.T. Industrial Category with 20 KW sanctioned load installed in the name of Sanjay was replaced with new meter as per the Government policy and the survey, through Shri Aman J.E. of the respondents. That the old meter was removed on 09.12.2018 alongwith other removed meters were sent to M&T Lab, Faridabad vide Challan No. 3156 dated 08.05.2019 for the checking of genuineness of the seals, healthiness and accuracy of the meters. The said meter was checked in the M&T Lab on 08.05.2019. During checking of the meter which was removed from the premises of the petitioner, Hole in the body, "Accuracy of the meter checked and found 33.33% slow due to B phase dead condition. Data taken through CMRI. Meter opened in the presence of the consumer & OP wing and found B Phase CT wire cut through the hole found near terminal block to manipulate the recording of the energy consumption of energy. Data analysed and found B phase CT open on 30.04.2014 at reading 891 kwh and CT open is not restored till date." was found prima-facie. Checking report bearing no. 691 dated 08.05.2019 was prepared by SDO, M&T Lab, Faridabad and was sent to answering respondents alongwith the meter of the petitioner for further necessary action i.e. for checking the meter in presence of the consumer. The observation regarding the meter in question has been mentioned at serial no. 1 of checking report no. 691 dated 08.05.2019.

3. That the petitioner was informed to come present in the M&T lab Faridabad to get checked his meter in his presence and accordingly the meter was checked on 01.07.2019 in the presence of petitioner vide M&T Lab Report No. 968 dated 01.07.2019. During checking of meter in M&T Lab, it was found-

(1) Both firm seals & M&T seals found intact but a small hole near the terminal block found.

- (2) *Accuracy of the meter checked and found 33.33% slow due to B phase dead condition. Data taken through CMRI.*
- (3) *Meter opened in the presence of the consumer & OP wing and found B phase CT wire cut through the hole found near terminal block to manipulate the recording of the energy consumption of energy. Data analysed and found B phase CT open on 30.04,2014 at reading 891 kwh and CT open is not restored till date. Hence it is a case of theft of energy with the load of 20 kwh for LT industrial purpose.*
4. *That on the basis of M&T Lab Report No. 691 dated 08.05.2019 & 968 dated 01.07.2019 and relevant Sales Circulars, the penalty to the tune of 5,94,718 was imposed upon the petitioner as assessment of loss of energy vide assessment order bearing no. 184 dated 02.07.2019 and notice for compounding the offence on payment of 200000/ for compounding the offence was also given to petitioner vide memo no. 184 dated 02.07.2019 issued by the assessing office under section 135 &152 of Indian Electricity Act. Due to non-payment of theft of energy and compounding fee the answering defendants have added the above said amount. That FIR no. 754 dated 22.01.2021 under section 135, 151, 138, has also been registered."*

It has further been averred that a case bearing FIR No.754 dated 22.01.2021 had been registered under Sections 135, 151 and 138 of the Electricity Act, 2003 and that the alleged violation, if any, of the Sales Circular No.D-43 of 2007 and its impact on the merits of the case of theft of energy is to be seen by the Special Court where the matter would be put up for trial. It is further submitted by the counsel for the respondents that insofar as the question of assessment of the civil liability as demanded by the respondent-Distribution Licensee is concerned, the Government of Haryana has already issued a notification date 10.08.2017 whereby an Appellate Authority has been notified

for hearing appeals against the assessment done in cases relating to Section 135 of the Electricity Act, 2003.

Learned counsel for the petitioner contends that the petitioner had earlier raised a challenge to the assessment demanded from him by filing a Civil Suit under the provisions of Section 154 (5) of the Electricity Act, 2003 before the Special Court. The said suit was decreed. The respondent-Distribution Licensee had preferred an RSA before this Court, which was allowed and the decree was set aside on the ground of jurisdiction. The present petition was filed thereafter and that while issuing notice of motion, an interim order was passed in the following terms:

"Learned counsel for the petitioner contends that vide letter dated 14.05.2019 issued to Sanjay (previous owner), he was advised to be present at M&T Lab on 17.05.2019 at 10:00 AM as the meter in his name was required to be checked at M&T Lab in his presence. The meter was inspected in the M&T Lab and the checking report to this effect was prepared on 01.07.2019. The assessment order was passed on 02.07.2019. In pursuance of order dated 09.12.2018, the meter was replaced on 17.12.2018. Learned counsel further submits that the petitioner has already deposited 50% of the assessed amount vide Annexure P-7. Learned counsel also submits that as against the impugned action, petition under Section 154 of the Electricity Act filed by the petitioner was allowed/decreed vide judgment dated 01.09.2021 passed by the Additional District Judge-cum-Judge, Special Court (Electricity Act), Faridabad, however, the same was reversed by the High Court in RFA No.24 of 2022 on the ground of jurisdiction. As of now, the petitioner has no remedy except to file the present writ petition.

Notice of motion 13.10.2022.

Till the next date of hearing, there shall be status quo regarding electricity connection of the petitioner."

Learned counsel for the petitioner contends that he has no objection in approaching the Appellate Authority against the abovesaid impugned order of assessment and that the interim protection already granted vide order dated 01.06.2022 may be extended in his favour so as to enable him to take recourse to the remedies prescribed as per law.

Having heard the learned counsel for the parties and noticing that so far as the culpability of the criminal act is concerned, the same is yet to be adjudicated by the Special Court and that it would not be appropriate for this Court to substitute its opinion and to assume upon itself the powers of the Special Court and to determine the existence of any criminal liability. Further, insofar as grievance against the assessment and the demand raised by the respondent-Distribution Licensee are concerned, the remedy of appeal has already been prescribed subject to the final adjudication of civil liability by the Special Court. The petitioner may, if so advised, approach the Appellate Authority within a period of six weeks of the receipt of certified copy of this order raising a challenge to the assessment and the demand made by the respondent-Distribution Licensee. The interim protection granted in favour of the petitioner by this Court vide order dated 01.06.2022 shall remain operative till such period. In the event of the petitioner approaching the Appellate Authority, the Appellate Authority shall thereafter pass a reasoned and speaking order after granting opportunity of hearing to the respective parties.

Petition stands disposed of in the terms aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

16.10.2023.

rajender

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