2023:PHHC:164342

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

204 **CWP-12502-2016 (O&M)**
Date of Decision: 19.12.2023

RAMESH KUMAR

... Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION LTD AND ANR

... Respondents

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

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Present: Mr. D.R. Punia, Advocate
for the petitioner.

Ms. Jarnail Kaur Dhaliwal, Advocate
for the respondents-Distribution Licensee.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the orders dated 30.07.2015 whereby the assessing authority has passed an order of assessment for Unauthorized Use of Energy under Section 126 of The Electricity Act, 2003 and the subsequent dismissal of his appeal by the Appellate Authority vide order dated 27.04.2016 (Annexure P-2).

Learned counsel for the petitioner contends that petitioner is a consumer of the respondent-Distribution Licensee against electricity account No.MS-04/0750-K installed in his premises. The electricity bills for usage of electricity against the above account were being paid regularly. However, on account of a slump in the business, the petitioner’s unit suffered losses and he had to rent out two portions of the above premises. One portion was leased to one Subhash Singh on 10.04.2015 and the second portion was leased to Rakesh Kumar on 09.05.2015 by installation of two separate sub-meters. The premises of the petitioner was checked on 09.07.2015 and upon noticing an Unauthorized Use of Energy, a provisional notice of assessment was served upon the petitioner and thereafter a final order was passed on 30.07.2015. Aggrieved of the said order, an appeal was preferred before the Appellate Authority. The said appeal was also dismissed vide order dated 27.04.2016. Hence the present petition was filed against the illegal orders.

Learned counsel for the petitioner refers to the contentions of the petitioner noticed by this Court in its order dated 10.09.2019 which is extracted as under:

> *"Ex facie CC No.44-93 issued vide memo dated 11.08.1993 does not apply to a commercial consumer as it deals with the subject of release of one domestic connection in one premises and permits the consumers having tenants or members of the same family living separately in the same premises, only one connection should be given and they can install their own sub-meter(s) and share the electricity bill.*
>
> *In the present case, the petitioner does business in the same commercial premises in which he has two tenants to do their own commercial activities and obviously, if the petitioner is protected then he has to be covered by Commercial Circular (CC).*
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> *Counsel for the petitioner prays for time to produce circular and/or judgments to support his case that there has been no unauthorized use of electricity. The respondents in their written statement have relied on Section 126 (6) (b) (iv) of the Electricity Act, 2003 to contend that there has been unauthorized use of electricity.*

It is submitted that the reliance of the respondent-Distribution Licensee was only on the Commercial Circular No.44 dated 11.08.1993 for claiming of charges for Unauthorized Use of Energy, however, the said

Commercial Circular does not apply to the commercial/ industrial premises and was only in respect of residential premises. Hence, the mandate of the said Commercial Circular would not be attracted for imposing penalty under the Unauthorized Use of Energy on the petitioner.

Counsel for the respondent-Distribution Licensee, on the other hand, refers to the plea taken by them in the written statement, wherein reference has been made to Section 126 (6) (b) (iv) of The Electricity Act, 2003 to contend that whenever the usage of electricity is for the purpose other than for which the same was authorised, the same shall make out a case of Unauthorized Use of Energy under Section 126 of The Electricity Act, 2003 and the assessment has been rightly done.

Counsel for the respondent-Distribution Licensee was confronted with the aforesaid contention noticed by this Court in its order dated 10.09.2019 and was requested to respond to the same. She could not refer to any circular to the contrary. The relevant part of the Commercial Circular No.44 dated 11.08.1993, as made by the counsel for the petitioner, is extracted hereinafter below:

> ***"Sub: Release of one Domestic connection in one premises***.
>
> *As per existing instructions, in one premises occupied by the same family, only one domestic connection is required to be released except in case where additional connection is required for sub-letting a portion of the premises. It has, however, been observed that these instruct ions are not being complied with meticulously and some of the consumers take more than one connection in the same premises either in the name of tenant 'or his spouse or children. Thus the number of connections is increasing at a high rate every year, resulting in more revenue expenditure*

2. In order to arrest the revenue expenditure and also reduce the work load, it has been decided that *in future only* *one domestic connection shall be released in one premises and for implementation of these instruction, following guidelines are laid:-*

i) Only one domestic connection shall be given in one premises. For this purpose the word premises shall be taken as dwelling or household, where separate house number has been allotted by the Municipal Corporation, Municipal Committee, Gram Panchayat or by Deptt./Govt. in respect of their colonies etc.

ii) For consumers having tenants or members of the same family living separately in the same premises, only one connection should be given and they can install their own sub meter(s) and share the electricity bill.

iii) Applicants asking additional new connection in the same premises shall be asked to apply for the extension in load and not a new connection.

iv) Where portion of the household is to be used regularly for the conduct of business the consumption in that portion of the house will be separately metered under separate connection and billed under the NRS tariff schedule. Thus in such cases, two connections in a single house-hold shall be permissible at appropriate different tariffs as per Clause-6 of Schedule Domestic Supply."

It remains undisputed that the said Commercial Circular No.44 dated 11.08.1993 is on the subject of release of one domestic connection in one premises and prohibits further sub-meters to be installed in a domestic connection and does not by its language and/or contents thereof relate to industrial or commercial connections.

The counsel for the respondent-Distribution Licensee, however, could not refer to any other circular that empowers the respondent-Distribution Licensee to bring the case under Section 126 of The Electricity Act, 2003 in the event of installation of a sub-meter in commercial/industrial connections and only relies upon Section 126 (6) (b) (iv) of The Electricity Act, 2003.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

So far as the Commercial Circular No.44 dated 11.08.1993 is concerned, the same is undisputedly in relation to one connection in one residential premises and the language thereof does not suggests that the same is applicable to commercial/industrial connections.

Insofar as reliance on Section 126 (6) (b) (iv) of The Electricity Act, 2003 is concerned, the same pertains to an Unauthorized Use of Energy, which includes the usage of electricity for the purpose other than for which the usage of electricity is authorised. It is not the case of the respondent-Distribution Licensee that the electricity was being used for a purpose other than for which the same had been authorized and the case of the respondent-Distribution Licensee is only to the extent that there were sub-meters that had been installed in the said premises by leasing out the same to two different persons. The aspect of usage by different persons is separate from the purpose for which the said usage has been assigned. In the event the respondent-Distribution Licensee intended to bring its case within Section 126 (6) (b) (iv) of The Electricity Act, 2003, it was imperative upon the respondent-Distribution Licensee to establish that the electricity was being used for a purpose other than for which the same had been released. To illustrate, if the electricity connection has been released for domestic connection and the same is used for commercial or industrial purpose etc., it is only under said circumstances that the usage of the electricity can be termed to be for a purpose other than for which it has been authorized. Similarly, wherein the connection is used for industrial or commercial purpose, if the diversion of the same is towards the usage for residential purpose, the same may then be termed as a usage other than for which the same has been authorized. The authorization in the present case being for industrial purpose and there being no evidence on record to suggest that the electricity was being used for any purpose other than the purpose for which the same was released, it cannot be construed that mere use of sub-meter would attract Section 126 (6) (b) (iv) of The Electricity Act, 2003 empowering the respondent-Distribution Licensee to treat the same as a case of Unauthorized Use of Energy and entitling them to impose penalty upon the petitioner for the alleged usage.

Since the counsel for the respondent-Distribution Licensee has failed to refer to any provision under which such sub-metering in a commercial/ industrial institution was prohibited and the reference being only on the Commercial Circular No.44 dated 11.08.1993, which is not applicable in the facts of the present case, I find that the impugned orders passed by the Assessing Authority as well as Appellate Authority suffer from non-appreciation of the applicability of the abovesaid Commercial Circular as well as the statutory provisions rendering the said orders liable to be set aside. The petition thus deserves to be allowed.

As a parting argument, learned counsel for respondent-Distribution Licensee contends that the petitioner is in default of payment of the dues/ electricity charges that have accrued and that as on today the outstanding amount is more than Rs.22 lacs.

With regard to above, this Court opines that the pendency and/or outcome of the present case does not in any manner impede the rights of the respondents-Distribution Licensee to effect recovery of the pending dues in accordance with law.

Petition stands allowed accordingly.

Resultantly, the impugned order of assessment dated 30.07.2015 (Annexure P-1) as well as the order dated 27.04.2016 (Annexure P-2) dismissing the appeal preferred by the petitioner are hereby set aside without prejudice to any other right of the Distribution Licensee.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 19, 2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No