

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

211

CWP-14245-2016
Date of Decision: 06.01.2023

BABU SINGH

... Petitioner

VERSUS

**PUNJAB STATE POWER CORPORATION LTD.,
PATIALA AND OTHERS**

... Respondents

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

Present: Mr. R.V.S. Chugh, Advocate
for the petitioner.

Mr. B.S. Mittal, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, 1950 for seeking issuance of a writ in the nature of Certiorari for quashing the impugned order/memo No.3314/FS dated 08.12.2008 (Annexure P-1), order/memo No.3429/FS-600 dated 22.12.2008 (Annexure P-2) and order dated 27.08.2014 (Annexure P-5), passed by the respondent No.2 and order dated 31.08.2015 (Annexure P-7) passed by respondent No.4, whereby the appeal of the petitioner against the provisional orders of assessment for Unauthorized Use of Electricity (hereinafter referred to as 'UUE') has been rejected by the Appellate Authority.

Briefly summarized, the case of the petitioner is that he was having an electricity connection in his name bearing Account No.SP 57/05, through which the petitioner used to run his flour mill to earn his livelihood. A provisional order of assessment for UUE under Section 126 of Electricity Act,

2003 was issued to the petitioner by respondent No.3 on 08.12.2008 as per which it was pointed out that during the inspection of the premises held on 06.12.2008, the M.E. seals of the electricity meter were found to be tampered with, thus resulting in the meter being slowed down to an extent of 56%. A provisional assessment of Rs.1,51,700/- was conveyed to the petitioner. Objections against the aforesaid provisional assessment was submitted by the petitioner, whereafter the petitioner was informed that the amount has been reduced to Rs.1,07,187/- and was to be deposited by him.

Aggrieved of the said final assessment of Rs.1,07,187/-, the petitioner preferred a consumer complaint before the District Consumer Disputes Redressal Forum, Mansa, which was subsequently dismissed by the Forum vide order dated 15.06.2009.

Aggrieved of the said decision, first appeal was filed before the State Consumer Disputes Redressal Commission, Punjab bearing First Appeal No.1113 of 2009. The said appeal was also dismissed vide order dated 23.11.2013 after observing that the Consumer Forum does not have the jurisdiction to entertain the dispute. The complaint was ordered to be returned to the petitioner-complainant to take recourse to an appropriate remedy before the appropriate Authority. The petitioner thereafter preferred an appeal before the Sub Divisional Magistrate, Mansa. The said appeal was dismissed vide order dated 31.08.2015 by holding that it was a case of theft of energy and that the jurisdiction to assess the liability in case of theft is that of the Special Court and that the Sub Divisional Magistrate does not have any jurisdiction to examine the same.

Learned counsel for the petitioner contends that the dismissal of the appeal by the Sub Divisional Magistrate, Mansa is erroneous and abdication of power inasmuch as it was a case of assessment under Section 126 of the

Electricity Act, 2003 for UUE. The Appellate Authority viz. the Sub Divisional Magistrate, Mansa was authorized and empowered to decide the said appeal under Section 127 of the Electricity Act, 2003 and it has proceeded on a wrong and erroneous assumption that it was a case of theft of energy under Section 135 of the Electricity Act, 2003. Hence, the appeal preferred by the petitioner-complainant has not been examined on merits. He contends that he has already deposited the entire assessed amount, however, as the issue has not been rightly adjudicated and examined on merits, the present petition has been preferred.

Counsel for the respondent-PSPCL was asked a specific query as to whether the case pertained to the theft of energy or it was a case of UUE. He has not been able to controvert that the argument fact that it was not a case of theft of energy under Section 135 of the Electricity Act, 2003 and that the provisional and final assessments in the present case had been done under Section 126 of the Electricity Act, 2003, hence, an appeal under Section 127 of the Electricity Act, 2003 was maintainable before the Appellate Authority notified under the Electricity Supply Code and the Regulations framed thereunder by the appropriate Commission.

I have heard the learned counsel for the respective parties and have gone through the record with their able assistance.

Perusal of the order of Assessment shows that the said assessment has been done under Section 126 of the Electricity Act, 2003. Further, the specific stand of the respondent-PSPCL in its reply is as under:

“1. That the present writ petition is not maintainable as the Flour Mill of the petitioner was duly checked on 06.12.2008 by the team of official of the answering respondents headed by Er. R. K. Goyal, Sr. XEN, Enforcement-1, Bathinda, and JE Narinder Kumar and the petitioner was also present on the spot and the checking was done in his presence and the petitioner signed the

checking report and also received the copy of checking report. During the course of checking, it was found that 4 No. ME seals of the meter were found to be tempered with and the efficiency of the meter was checked through EBS meter on 14 K.W. running load and it was found that the meter was running slow by 56% and hence it was the suspected case of theft of electricity and accordingly, the notice under Section 126 of the Electricity Act, 2003 was issued to the petitioner for unauthorized use of electricity and a sum of Rs.1,51,700/- was demanded from the petitioner. In response, the petitioner requested to reconsider his case and thereafter on his request, the case of the petitioner was reconsidered and a notice of revised amount of Rs.1,07,187/- was issued to the petitioner on 22.12.2008. The petitioner deposited the above mentioned amount and thereafter, filed a case to challenge the penalty order. On this ground alone, the preset writ petition is liable to be dismissed.

2. That it is pertinent to mention here that the petitioner was indulged in unauthorized use of electricity through a tempered meter and therefore, penalty amount was rightly imposed on the petitioner by the Enforcement Wing by following the proper procedure prescribed under the Electricity Act, 2003.”

It thus leaves no doubt that the case was one of UAE under Section 126 of the Electricity Act, 2003 for which a remedy of Appeal has been provided under Section 127 of the Electricity Act. The relevant statutory provisions are extracted as under:

“Section 126: (Assessment): -

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person

benefited by such use. (2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

Section 127. (Appeal to Appellate Authority): -

(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to 3[half of the assessed amount] is deposited in cash or by way of bank

draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.”

The Appellate Authority has dismissed the appeal on following aspects:

“The arguments of the counsel for the parties were heard. Counsel for the appellant during the course of his arguments while chiefly emphasising the paras of the appeal stated that the letter notice/issued against the appellant be consigned to the record room and the amount of Rs.1,07,187/- recovered from the appellant be refunded to him alongwith interest @ 18% per annum. The counsel for the respondents in his arguments stated that the hearing of notice of electricity theft issued to the appellant is not correct in this court. He produced the copies of the order passed by this court on 04.09.2012 and requested that there is no weight in the appeal and the same be dismissed.

After hearing the arguments of the counsel for the parties and by minutely perusing the record on the file this court has arrived at the conclusion that the hearing of notice issued regarding theft of electricity can be continued in the Civil Court.

So as this court has got no jurisdiction, the appeal is hereby dismissed.

Order has been pronounced. The file after completion be consigned to record room.”

It is evident that Appellate Authority has not examined the appeal on merits and has rather proceeded on an assumption that it was a case of theft of energy instead of unauthorized use of electricity. Evidently, the foundation of the order passed by the Sub Divisional Magistrate, Mansa is incorrect and the Appellate Authority was fully competent under Section 127 of the Electricity Act, 2003 to examine the appeal filed by the petitioner and to return a finding thereupon. Having not been examined the issue on merits on an erroneous premise that it was not a case of UUE and instead was a case of theft of energy, which it was not, I have no hesitation to hold that the order having been founded on a wrong presumption is bad and liable to be set aside. The statutory remedy of appeal has been wrongly denied to the petitioner.

Accordingly, the order dated 31.08.2015 passed by the Appellate Authority in file No.01/Peshi instituted on 05.11.2014 titled as ‘Babu Singh Vs. Punjab State Power Corporation Ltd. and others’ by the Sub Divisional Magistrate, Mansa is set aside. The parties are relegated to the Appellate Authority where they shall appear on 16.02.2023 whereafter, the Appellate Authority shall proceed to decide the appeal on merits and pass a speaking and reasoned order after granting an effective opportunity of hearing to the respective parties.

The present petition is accordingly disposed of.

(VINOD S. BHARDWAJ)
JUDGE

06.01.2023
rajender

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