IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

203

Date of decision: 15.03.2023

CWP-1744-2015 (O &M)

VIVEK KUMAR … Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ....Respondents

CWP-2697-2015 (O &M)

DINESH KUMAR … Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ....Respondents

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

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Present: Mr. Jaideep Verma, Advocate
for the petitioner(s).

Mr. Deepanjay Sharma, DAG, Punjab.

Ms. Promila Nain, Advocate alongwith
Ms. Harleen Ahluwalia, Advocate
for the respondent-PSPCL.

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VINOD S. BHARDWAJ, J. (Oral)

This order shall dispose of two writ petitions bearing ***CWP-1744-2015 (O&M)*** titled *"Vivek Kumar versus State of Punjab and Others"* and ***CWP-2697-2015 (O&M)*** titled *"Dinesh Kumar versus State of Punjab & Others"* by a common judgment as identical issue is involved in both cases.

2. For the facility of reference, facts are extracted from CWP-1744 of 2015.

3. The present petition has been filed for seeking quashing of notice dated 09.05.2013 (Annexure P-5) served by AEE, Estate Division, Final Order of Assessment dated 04.07.2013 (Annexure P-9) as well as order dated 17.12.2013 (Annexure P-10) passed by the S.D.M. (West) cum Appellate Authority.

4 . Briefly summarized the case of the petitioner is that 03 electricity accounts bearing Account No. SP 38/0848, SP-38/0793 and SP-38/911 had been installed on the outer wall of the Industrial unit of the petitioner situated at Dabba Road, Ludhiana.

5. The meter numbers of the electric meters installed against the respective accounts are tabulated as under:

SP-38/911	**SP-38/848**	**SP-38/793**
Dinesh Kumar	Vivek Kumar	Vivek Kumar
Meter Serial No. 822323	Meter Serial No. 6345513	Meter Serial No. 06345379
Ledger Meter No. 848216	Ledger Meter No. 6345379	Ledger Meter No. 06445510

6. The petitioner claims that he had been regularly paying the electricity bills raised by the respondent-PSPCL against the consumption of the electricity. On 26.04.2013, a Vigilance Enforcement Staff seized the meters installed at the outer wall/premises of the industrial unit of the petitioner. He contends that no external defect of any nature whatsoever was

noticed at the time of removal of the aforesaid electricity meters. The same was, thereafter, sent to Meter Testing Laboratory for internal checking. It was reported by the PSPCL officials that meter numbers of the above said electric meters did not tally with the record maintained in the ledger/accounts of the respondents. There was, however, no defect noticed otherwise on the internal checking of the aforesaid meters. There was also no damage/tampering of the same and the seal of the meter was also found to be intact alongwith the ultrasonic welding. He claims that both the meters belonged to PSPCL and were not duplicate meters. The respondent-PSPCL, however, submitted an assessment order vide memo No. 3248 dated 17.07.2013 registered under Section 135 read with Section 154 (5)/ Section 126(6) of the Electricity Act, 2003 for an amount of Rs. 7,65,592/-. Similarly, an assessment order dated 09.05.2013 was also received for amount of Rs. 18,87,276/- qua the second meter. A FIR bearing No. 233 dated 15.05.2013 was got registered against the petitioner for theft of electricity under Section 135 of the Electricity Act, 2003 at Police Station Anti Power Theft, Ludhiana. No FIR was, however, got lodged against other meter bearing No. SP-38/0793. Both the assessment orders were challenged by the petitioner before the Deputy Chief Engineer, West Division, Ludhina vide a detailed representation dated 14.05.2015. Qua the meter bearing No. SP-38/0793, the Deputy Chief Engineer accepted the contentions raised by the petitioner and held that a wrong meter number was entered in the ledger by the Clerk thus giving rise to an error. The petitioner was thus held not liable to pay the demanded amount. The Deputy Chief Engineer also recommended disciplinary proceedings against the departmental officials regarding the above said discrepancies. However, the relief to the petitioner was declined while examining the issues pertaining to the meter No.SP-38/0848. The representation was dismissed vide order dated 04.07.2013 and a final order of assessment was issued on 17.07.2013 for a sum of Rs.7,05,592/- and compounding charges of Rs. 2 lakhs were also demanded.

7. Aggrieved thereof, an appeal under Section 127 of the Electricity Act, 2003 was preferred before respondent No.2, however, the same was declined on the ground that the petitioner had not made a pre-deposit of 50% of the amount mentioned in the final order of assessment. Writ petition No. 1744 of 2015 was thus filed against the said orders.

8. Similarly in Civil writ petition No. 2697 of 2015 the issue pertain to electricity meter No. SP-38/911 and qua which a separate FIR No. 232 dated 15.05.2013 had been registered against the petitioner herein. The assessment made against the petitioner therein was Rs. 7,71,636/-.

9. Aggrieved of the aforesaid order passed by the assessing authority as well as Appellate Authority, the above-said writ petition has been filed.

10. Pursuant to the notice issued, written statement was filed on behalf by respondent-PSPCL in CWP-1744 of 2015. No separate reply was filed in CWP-2697 of 2015 and the above said reply was adopted. It has been averred that the Enforcement/Vigilance department of the PSPCL conducts raids on the premises of the consumers to detect theft of electricity through unauthorized means. Enforcement staff of one circle to avoid any inter-mingling of consumers & staff & also to ensure fair and impartial raid. The raid was accordingly conducted in the presence of the Consumer & signature

of the authorized representative were also obtained on the inspection report. The order of assessment was passed by the Assessing Officer, as per aprovision of Section 126 of the Electricity Act, 2003. Objections of the petitioner were duly considered by the competent authority i.e. Deputy Chief Engineer, Ludhiana and finding no merit therein, the same was dismissed.

11. Appeal was thereafter preferred under Section 127 of the Electricity Act, 2003 and it was further dismissed by the Sub Divisional Magistrate. It has also been averred that there are two meters i.e. meter No.853763 and 0634539 installed in the premises of the Consumer (in relation to the petitioners herein) having different sanctioned load. The meter numbers issued to the consumers as per the ledger book maintained by the office did not tally with the meters removed from the premises during inspection. As such, a case of theft of energy was detected through fake/unauthorized meters. The criminal proceedings were thus instituted against the petitioner. Additionally, the consumption of the electricity recorded in the meter shows lesser reading than the meter reading recorded in the original meter on the previous occasions.

12. Learned counsel for the petitioner(s) submits that the respondent-department chose to prosecute the petitioner on a charge of theft of energy alleging that the petitioner had committed theft by a change of the metering equipment and removal of the meter installed by respondent-Department. He contends that the FIR registered against the petitioner resulted in acquittal vide judgment dated 08.08.2017 passed by the Additional Sessions Judge, Ludhiana after specifically noticing that the meter did not tally with the meter installed and recording a finding that there was

no evidence to suggest that the petitioner had removed the meter installed by the respondents. It is further argued that Section 135 of the Electricity Act, 2003 deals with theft of electricity. As per Section 135 (1)(A) of the Act, the Distribution licensee is obligated to disconnect the electricity supply to the premises upon detection of theft of energy. The restoration of such electric supply is to be made on deposit of the assessed amount. The procedure for prosecution has been stipulated under Section 154 of the Electricity Act, 2003. As per the powers conferred under the Electricity Act, 2003, the Special Court is obligated to also determine the civil liability against the consumer for theft of energy. The determination of civil liability and the criteria/formula to be applied is also stipulated therein. In an event where a consumer does not wish to challenge the prosecution, he may seek compounding of the offence on payment on the compounding charges alongwith the assessed amount as per Section 152 of the Electricity Act, 2003. He submits that since the criminal proceedings against the petitioner resulted in his discharge, which such order has become final, the assessment made by the respondents is not sustainable. Determination of the civil liability being within the exclusive domain of the Special Court and the Special Court having not found the petitioner liable for theft of energy or determined holding any civil liability against him, no such demand can be raised by the respondent-distribution licensee.

13. Counsel for the respondent-PSPCL reiterates the averments noticed above and contends that there was a change of the metering equipment and that the assessment has rightly been done after noticing that the meter number maintained as per the ledger account did not tally with the

meter removed from the premises of the petitioners. She, however, could not dispute the fact that the petitioners already stand discharged by the Special Court-Additional Sessions Judge, Ludhiana in the criminal proceedings that were registered against them. She also submits that no appeal/revision against the aforesaid order of discharge has been preferred by the PSPCL and that the said order has thus attained finality.

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

15. Before proceeding to examine the merits of the claim raised by the petitioner, it would be appropriate to refer to the statutory provisions that are necessary for appreciation of the present controversy. The same reads as thus:

> ***Section 135. (Theft of Electricity): ---*** *1[(1) Whoever, dishonestly, --*
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> *(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or*
>
> *(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or*
>
> *(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,*

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use –

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.]

(2) 1[Any officer of the licensee or supplier as the case may be,] authorized in this behalf by the State Government may –

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity 2[has been or is being,] used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Xx xxx xxx xxx xxx xxx xxx xxx xx

Section 152. (Compounding of offences): ---

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is

reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Nature of Service	*Rate at which the sum of money for Compounding to be collected per Kilowatt(KW)/Horse Power(HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)*
(1)	*(2)*
1.Industrial Service	*twenty thousand rupees;*
2.Commercial	*Service ten thousand rupees;*
3.Agricultural Service	*two thousand rupees;*
4. Other Services	*four thousand rupees:*

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4)The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

Xx xx xxx xxx xxx xxx xxx xxx xxx

Section 154. (Procedure and power of Special Court): ---

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sections 135 to 140 and section 150] shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act : Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court :

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, crossexamination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial :

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure,1973, be deemed to have been tendered under section 307 thereof.

(5) <u>The [Special Court shall] determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.</u>

(6) <u>In case the civil liability so determined finally by the Special Court is less than the amount deposited by the</u>

> *consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.*
>
> *Explanation. - For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139."*

(Emphasis supplied)

16. A perusal of the scheme of the Electricity Act, 2003 shows that in the case of unauthorized use of energy, the assessment can be done by the Department as per the approved formula which order of assessment is appealable before the Appellate Authority in terms of Section 127 of the Electricity Act, 2003. The cases of theft of energy are dealt with under a separate procedure. The determination of civil liability in terms of Section 154 can only be done by Special Court. An assessment of civil liability can be done and an amount demanded by the respondent-Distribution licensee under Section 135(1)(A) of the Electricity Act, 2003 only for the purposes of restoration of the electricity supply. It is further stipulated under Section 154 (6) of the Electricity Act, 2003 that in the event of the assessment of the civil liability by the Special Court if amount being less than the assessed amount demanded by the respondents under Section 135 (1)(A), the distribution

licensee is liable to refund that excess amount so collected alongwith interest. Hence, the demand/deposit of an amount under Section 135 (1)(A) of the Electricity Act, 2003 is only a tentative deposit for enabling restoration of supply and is not akin to assessment of any compensation for loss sustained by the distribution licensee. Determination of any such loss as a compensatory measure is to be determined by the Special Court alone. Since the Special Court has discharged the petitioners and has not returned any finding qua determination of a civil liability against the petitioner, the demand raised by the petitioners cannot be said to be valid.

17. Even though the respondents had issued the assessment order under Section 135 of Electricity Act, 2003 however, in its import and application, the said assessment & demand cannot be read beyond 135 (1)(A) of the Electricity Act, 2003. The power of assessment in a theft case being only under Section 135 (1A) of the Electricity Act, 2003-the same is not a demand of civil liability at par under Section 126 of the Electricity Act, 2003. The recovery of said amount was only an interim measure and subject to assessment by Special Court. It is not a source of conferring an independent power for conclusively claiming an assessment towards loss. Procedure under the statutory scheme has to be followed for attaching statutory validity to such an act. The remedy of filing an appeal before the Appellate Authority under Section 127 by the petitioners was ill advisable and was not available to him in law. The order of the appellate authority thus has no bearing on the rights of the petitioners & order can’t be read to his prejudice.

18. The case of the petitioners is further fortified from the fact that in relation to SP-38/0793 the respondents have already acknowledged the fact

that the lapse occurred on the part of the Clerk of the respondent-Department in maintaining the ledger. Hence, even on the said principle the benefit accrues in favour of the petitioners.

19. The present petitions are thus allowed. The demand raised vide impugned assessment orders is set aside. Amount if any, deposited by the petitioner for seeking restoration of the electricity connection in terms of Section 135(1)(A) of the Electricity Act, 2003 is liable to be refunded/adjusted by the respondents alongwith an interest @ 6 % per annum.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 15, 2023
Vishal sharma

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No