2023:PHHC:105795

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203

CWP-21355-2015
Date of decision: 09.08.2023

PUNJAB STATE POWER CORPORATION LIMITED, PATIALA AND OTHERS

......Petitioners

VERSUS

SUB DIVISIONAL MAGISTRATE-CUM-APPELLATE AUTHORITY, BATALA AND ANOTHER

.......Respondents

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

*****

Present: - Ms. Promila Nain, Advocate
for the petitioners.

Mr. Gagandeep Singh Sirphiki, Advocate
for respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 27.04.2015 (Annexure P-1) passed by the Sub Divisional Magistrate, Appellate Authority, Batala whereby the appeal of the respondent has been accepted and it has been held that the penalty of Rs. 1,37,356/- levied by the petitioner-PSPCL is not appropriate and the demand vide letter No. 84 dated 20.01.2015 was without any valid basis.

2. It has been submitted by the petitioner that an electricity connection bearing Account No. G-18HF750847A was running in the name of one Harvinder Singh who was consumer of the petitioner-department and sole proprietor of the filling station. The said Harvinder Singh passed away on 21.01.2015, however, no intimation was given to the petitioner-PSPCL about the date of his death. The electricity connection was checked by the Sub Divisional Officer alongwith other staff members vide LCR No. 1048/22552 dated 09.09.2013 and it was detected at the spot that both the ME Lab seals of the meter were broken alongwith both the edges/clamps of the meter. The meter was checked at heater load and it was found to be running slow by 75%. Since it was a case of theft of electricity, a report was prepared by the officials of the petitioner. The Manager of the Filling Station was present during the inspection, however, he refused to sign the said report despite being asked.

3. On the next day, the connection was changed vide MCO No. 075/29466 dated 09.09.2013 and the disconnected meter was packed immediately in a cardboard box at the spot. The consumer was asked to sign the box and the documents, however, he refused to do so and requested that meter be checked in the ME Lab. Memo No. 1720 dated 23.04.2014, Memo No. 1783 dated 16.12.2014, Memo No. 1837 dated 30.05.2014, Memo No. 1996 dated 23.07.2014 and Memo No. 8 dated 02.01.2015 were sent to the Consumer and he was to be present in the ME Lab at the time of inspection of the meter, however, he chose not to appear despite receipt of the said notices.

4. Having been left with no alternative, the meter was produced in the ME Lab after preparing the challan, by the Junior Engineer Harbhajan

Singh on 16.01.2015, where it was inspected by a Committee including SDO, ME Laboratory Engineer, Additional SE City Division and other officials. During the external inspection of the meter it was detected that the seals of meter and side screw was found missing. The ultrasonic welding of meter was found to be broken. During the internal inspection of the meter, it was found that the wire leading from CT to Circuit was intercepted and the meter was found permanently slowed by the consumer by fiddling with the same and hindering the meter from recording the actual reading. It was thus concluded to be a case of theft of electricity under Section 135 of the Electricity Act, 2003. After inspection, the meter was repacked by the ME Lab and handed over to Junior Engineer, Harbhajan Singh. A penalty notice bearing Memo No. 84 dated 19.01.2015 for a sum of Rs. 1,37,356/- was issued to the consumer. However, the same was not paid whereupon another notice vide Memo No. 84 dated 19.01.2015 was sent to the SHO Anti Power Theft, Police Station Verka for registration of the FIR for commission of theft of electricity and Case FIR No. 131 dated 13.02.2015 under Section 135 of the Electricity Act, 2003 was registered against the respondent-consumer. The said proceedings are stated to be still pending. It is informed that the consumer died in the meanwhile, however, the amount as assessed under Section 135 (1A) of the Electricity Act, 2003 has not yet been deposited.

5. The respondent No.2 preferred an appeal before the Sub Divisional Magistrate, Batala against the above assessment to which a reply was filed by the petitioners on 20.04.2015 raising various objections including maintainability of the appeal before the said Appellate Authority. However, notwithstanding the objections taken by the petitioner-PSPCL and

ignoring the meter investigation report dated 16.01.2015 as well as the notices issued to the respondent No.2, the appeal was allowed by the Appellate Authority on the ground that it was necessary for the appellant to be present at the time of inspection by the Laboratory and that effective opportunity had not been granted to the respondent. The fine of Rs. 1,37,356/- imposed on the respondent was held to be not legal and the letter No.84 dated 19.01.2015 was held to be unenforceable. The petitioner-PSPCL was directed to restore the electricity connection of the respondent immediately. Aggrieved thereof, the present petition had been filed.

6. Reply on behalf of the contesting respondent No.2 had been filed wherein it was averred that the metering equipment was installed outside the premises and at a distance of more than 1100 ft. from the same. In case the metering equipment is installed outside the premises of a consumer, Clause 56 of the Electricity Supply Instructions Manual protects the consumer from any liability on account of damage caused to the meter. Clause 56 of the Electricity Supply Instructions Manual is extracted as under:-

> "***56. CONSUMER'S RESPONSIBILTY FOR LOSS OR DAMAGE OF METER:***
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> *The consumer will be responsible for any loss or damage to the meter installed in his premises whether caused maliciously or through culpable negligence or default on the part of the consumer or any of its employees, and shall be responsible for paying the cost of the meter without prejudice to any prosecution/fine under Section 138(d) of the Act or any statutory modifications thereof. However in case where the meter/metering equipment is installed outside the premises of a consumer, the*

> *consumer will not be responsible for the protection of the meter from the theft or damage. Consumer shall be responsible for safety of real time display units if installed inside the consumer premises."*

7. It was also averred that the memo was wrongly issued and that there was no theft of electricity committed by the respondent and that false report was prepared against him due to factionalism in the village .

8. Counsel for the petitioner has argued that case FIR No. 131 dated 13.02.2015 had been registered against the consumer at Police Station Verka. The petitioner preferred an appeal before the Sub Divisional Magistrate, exercising the powers of Appellate Authority under Section 127 of the Electricity Act, 2003. The said appellate powers have been conferred upon the authority only in case of an assessment under Section 126 of the Electricity Act, 2003. The demand made in the present case being one under Section 135 (1A) of the Electricity Act, 2003, the appellate remedy was not prescribed before the Appellate Authority notified under Section 127 of the Electricity Act, 2003. Hence, the exercise of jurisdiction, being without any powers, vitiates the award/order. She further contends that the power of determination of civil liabilities is on the Special Court and that the challan already having been filed, final assessment is required to be determined by the said Special Court in exercise of the powers under Section 154 (5) of the Electricity Act, 2003 . She contends that the demand in a case of theft of energy in terms of Section 135 (1A) is technically not an assessment of a civil liability and is rather in the nature of a demand for restoration of the electricity supply. The mandate against the distribution licensee, in the event of the amount being deposited, is to restore the electricity supply to the premises within a period of 48 hours of such deposit having been made.

9. Per contra, counsel for the respondent No.2 has vehemently argued that the consumer cannot be left remediless and that he had specifically preferred an appeal before the Sub Divisional Magistrate-cum-Appellate Authority and the demand was found to be unjustified. Reiteration of the averments noticed above was made and reliance was placed on Clause 56 of the Electricity Supply Instructions Manual to contend that the electricity meter having been installed outside the premises, hence, the petitioner cannot be held liable for the damage caused to it. Reliance was also placed on the judgment of single Bench of this Court in the matter of ***"Punjab State Power Corporation Limited versus Ms/ Akal Foods Pvt. Ltd. and another"*** bearing ***CWP No. 389 of 2016 decided on 12.01.2017***. While referring to the above said judgment, it is contended that the said case was found to be a case of theft of energy and a provisional order of assessment under Section 135 of the Electricity Act, 2003 was issued whereupon the demand was raised. A compounding fee under Section 152 (2) of the Act was also required to be deposited. An appeal was thereafter filed by the consumer therein against the final order of assessment before the Sub Divisional Magistrate-cum-Additional Deputy Commissioner, Sangrur which was accepted vide order dated 15.06.2015. The writ petition filed against the said order of the Appellate Authority was dismissed by this Court and the order of the Appellate Authority was affirmed. Consequently, the remedy cannot be said to be beyond the statue. It is submitted that the aforesaid judgment was subject matter of challenge in LPA No. 951 of 2017 and the judgment of the Hon'ble Single Judge was affirmed by the Division Bench vide its judgment dated 10.08.2017 in ***LPA No. 951 of 2017*** reported as ***2017 (4) Law Herald 2916.***

10. He further refers to Section 135 (1A) second proviso to contend that the Officer of the licensee or the supplier was under an obligation to submit a complaint in writing relating to commission of such offence in Police Station having jurisdiction within a 24 hours from the time of such disconnect and that the incident in question having taken place on 09.09.2013, however, the FIR in question was got registered only on 13.02.2015. Hence, the proceedings are vitiated.

11. While rebutting the aforesaid arguments, counsel for the petitioner has contended that the registration of the FIR was delayed on account of the fact that the meter in question had to be tested with the ME Lab. Various notices were issued to the respondent No.2, however, he chose not to appear and that it was only thereafter that the inspection was conducted. Upon receipt of the report from the ME Lab, the intimation for registration of the FIR was sent promptly on 19.01.2015 and the FIR was thereafter registered by the Police on 13.02.2015. The delay was thus not attributable to the petitioner Corporation. She further contends that the argument is even otherwise fallacious inasmuch as the question of validity of registration of the FIR is distinct and separate from the question of jurisdiction and authority conferred upon the Appellate Authority and both of them have to be examined in an independent domain. Assuming for the sake of the arguments and without conceding to the same, even if the said contention is to be accepted, the same itself would not confer any authority or power on the Appellate Authority to pass orders in appeals in cases relating to Section 135 of the Electricity Act, 2003. She further contends that insofar as reference to the Single Bench Judgment in the matter of ***"Punjab State Power Corporation Limited versus Ms/ Akal Foods Pvt. Ltd. and***

another" reported as ***AIR 2017 (Punjab) 82*** as upheld by the Division Bench in ***LPA No. 951 of 2017*** (supra) is concerned, the same is not applicable to the facts of the present case, since the Division Bench had specifically recorded the finding that it was a case of unauthorized of use of electricity and that Section 135 of the Electricity Act had been wrongly mentioned therein. Since, the finding recorded by the Division Bench, was that the proceedings had been initiated under Section 126 of the Electricity Act, 2003, and mentioning of Section 135 in the said order of Assessment was an irregularity, hence, the Sub Divisional Magistrate would be entitled to hear the appeal under Section 127 of the Electricity Act, 2003.

12. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition and have also perused the judgments relied upon by the counsel for the respondent No.2 with their able assistance.

13. For the facility of reference, it would be appropriate to make a reference to provisions of Section 126, 127, 135, 152 and 154 of the Electricity Act, 2003. The same 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.*
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> *(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 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).
Explanation.- *For the purposes of this section,-*

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized."

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.

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Section 135. (Theft of Electricity): --- 1[(1) Whoever, dishonestly, --

(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:

<u>*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.*</u>

(2) 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.

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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. Agriculture 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.

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Section 154. (Procedure and power of Special Court): *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under [2sections 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) 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.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the 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."*
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> *(Emphasis Supplied)*

14. The scheme of the electricity Act lays down an elaborate procedure for dealing with the issues relating to unauthorized use of energy as well as the matters relating to theft of energy. Insofar as the proceedings for unauthorized use of electricity under Section 126 of the Electricity Act, 2003 are concerned, the appellate remedy has been prescribed Per contra, in the proceedings relating to Section 135 of the Act is concerned, the demand raised in terms of Section 135 (1A) third proviso is a charge which is collected by the distribution licensee which creates an obligation for restoration of electricity supply to the premises within a period of 48 hours of such a deposit. The same *ipso fact* is not an assessment equating to Section 126 of the Electricity Act, 2003. Section 154 (5) of the Electricity Act mandates that the civil liability is to be determined by the Special Court and in the event the deposit made by the consumer is more than the assessment of civil liability done by the Special Court, the consumer is entitled under Section 154 (5) and 154 (6) of the Electricity Act, 2003 to refund of the aforesaid amount alongwith interest. Further, the explanation clarifies "Civil Liability" in relation to proceedings before the Special Court. Hence, the power of determination of civil liability cannot be misinterpreted or misconstrued at par with determination of liability under Section 126 of the Electricity Act.

15. Scope of both the provisions is different and distinct and the Appellate power exercises a power conferred by a statute. It cannot usurp

powers of being an Appellate Authority when the statutory scheme does not confer any such appellate power in matters relating to theft of electricity.

16. Counsel for the respondent has failed to refer to any provision under the Electricity Act, 2003 or the Rules and Regulations framed thereunder, in exercise whereof, the Sub Divisional Magistrate has notified as an appellate authority for a demand assessed under Section 135 (1A) of the Electricity Act, 2003. Power of appeal being a statutory power, it must flow from the statute failing which, the exercise of power would be akin to an abuse and being a fundamental defect, would render the award/order illegal and liable to be set aside.

17. Further, insofar as the judgment relied by the counsel for respondent No.2 are concerned, it is evident that the finding recorded by the Division Bench was to the effect that it was not a case of theft of energy and was rather a case of unauthorized use of energy. That being so, the judgment of the Single Bench merges with the order of the Division Bench in LPA and it cannot be construed to be a case of theft of energy. The Appellate Authority would thus be deemed to be exercising powers as conferred under Section 127 of the Electricity Act, 2003

18. Insofar as reliance on Clause 56 of the Electricity Supply Instructions Manual is concerned, the argument of the respondent No.2 is fallacious. The said clauses is applicable only with respect to the damage caused to the meter and not in relation to granting a protection/immunity against the events of theft of energy. The language of Clause 56 is very specific and is clear in this regard. It is specifically stated therein that a consumer will be responsible for any loss or damage to the meter installed in his premises and is held liable for paying the cost of meter without prejudice

to any prosecution/fine under Section 138 of the Act. However, where the meter equipment is installed outside the premises of a consumer, the indemnity is that the consumer would not be responsible for the protection of the meter from theft or damage. The expression "theft or damage" used under Clause 56 of the Electricity Supply Instructions Manual relates to the 'instrument of meter' and 'not to the theft of energy' that may be committed by the consumer from the said equipment. Hence, the contention of the petitioner in this regard is not based on correct interpretation of the clause.

19. Further referring to the contentions advanced on behalf of the petitioner that a consumer would be left remediless against a demand that is raised under Section 135 (1-A) of the Electricity Act, 2003, I find that such an argument is misconceived. Ex facie Section 42 (5) of the Electricity Act, 2003 contemplates constitution of Consumer Grievances Redressal Forum to look into any dispute/consumer grievance. Assessment as made under Section 135 (1-A) for the restoration, would not *ex facie* fall in the nature of a demand under Section 126 of the Electricity Act, 2003. The submission that a person aggrieved is entitled to a remedy of appeal cannot be interpreted to confer the powers on an authority which has restricted powers as on appellate authority.

20. It has been held by the ***Hon'ble Supreme Court in the matter of "Rafique Bibi by LRs versus Sayed Waliuddin by LRs and others",*** that no authority can exercise a power not conferred upon it and that in the event any such power is exercised, the same would go to the root of the matter. The lapse being fundamental, it would vitiate all consequential proceedings. The same are extracted as under:

"*6. What is "void" has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.*

7. Two things must be clearly borne in mind. Firstly, "the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be 'a nullity' and 'void' but these terms have no absolute sense: their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results." (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. "The order of a superior court such as the High 9 Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit." (ibid.,P.312).

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court *which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.*

9. In Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman' it has been held: (SCC pp. 672-73, para 7)

When the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. But where the objection as to jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

(Emphasis Supplied)

21. In view of the above position in law and failure to establish that the Sub Divisional Magistrate exercised an appellate authority conferred on it, the order cannot be protected, the High Court cannot violate exercise of a jurisdiction not vested. The order thus is illegal, no nest, without authority and unenforceable and the same is accordingly set aside.

22. Accordingly, the present petition is hereby allowed, the respondent, may if so advised, take recourse to the appropriate remedies

available to him in accordance with law. The period during which the present petition remained pending shall be duly taken into consideration by such authority for computing limitation.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 09, 2023
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No