

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

211

**CWP-17119-2017
Date of decision: 19.01.2023**

PUNJAB STATE POWER CORPORATION LTD & ORS

.....Petitioner

VERSUS

DARSHAN SINGH

.....Respondent

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

Present:- Mr. Sehajbir Singh, Advocate for the petitioner.

Ms. Rupinder Kaur Thind, Advocate for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing of the the impugned order dated 15.12.2016 passed by the Appellate Authority-Sub Divisional Magistrate, Amritsar-2 (Annexure P-3) in case No.Reader/S.D.M.2/10 whereby the appeal preferred by the respondent under Section 127 of the Electricity Act, 2003 has been allowed and the order of assessment dated 18.03.2015 passed by the Assessing Authority has been set aside.

2. Counsel for the petitioner submits that the Punjab State Power Corporation Limited had released a tubewell connection under the “Drip Irrigation Micro Sprinkler Irrigation Scheme” to be used for Horticulture

and vegetable purposes only. An inspection of the premises of the respondent-consumer was undertaken on 09.03.2015 and as per the said inspection, it was revealed that the drip irrigation system had been removed by the consumer and instead of using the electricity supply and the system for Horticulture/vegetables, the consumer was using the same for crops of wheat and Barsing. There was only one main pipe installed and other drip & pipes had been removed. It was thus reported that there was a misuse of the electricity connection and the energy was not used for the purpose for which the same had been released. He submits that aggrieved of the said order, a civil suit had initially been filed by the petitioner before the Civil Judge (Junior Division), Amritsar bearing bearing Civil Suit No. 319 dated 01.04.2015 which was dismissed on 26.02.2016 as being not maintainable. A statutory appeal under Section 127 of the Electricity Act was thereafter preferred before the Sub Divisional Magistrate, Amritsar-II. It is contended that the Sub Divisional Magistrate, Amritsar-II set aside the order without referring to any evidence available on record.

3. Counsel for the respondent, however, contends that the evidence was duly brought on record before the Appellate Authority and that the findings recorded by the Sub Divisional Magistrate-Appellate are based upon appreciation of such evidence.

4. I have heard learned counsel appearing on behalf of the respective parties. It is essential to extract the finding recorded by the Appellate Authority-Sub Divisional Magistrate Amritsar-II. The same reads thus:

“After perusing the documents produced on the record and hearing the arguments, this fact has come forward that the electricity connection of the appellant is running under

the Drip Tubewell System and the vegetables can only be sowing under this connection. At the side, wheat and stalla were sown, but the wheat and barseen were not found to have been irrigated at the side. As per the evidence produced by the respondents, it has been mentioned that during the checking the appliances for the drip system like fountain and pipes were kept in the room after having been removed. From this, it is not established that appellant was irrigating the wheat and stalla through this connection. Besides this, no other evidence was produced by the respondents for proving that wheat and stalla were irrigated through this drip tubewell being system, whereas the appellant has contended that the waster present in the crop is raining water. Therefore, keeping in view the above mentioned facts, the appeal of the appellant is being accepted and the order of the respondents dated 10.03.2015 and 18.03.2015 are being set-aside. It is being ordered to refund the amount of Rs. 1,25,909/- deposited by the appellant. File has been consigned to the record room, Amritsar.”

5. A perusal of the order and the extract reproduced above shows that the Appellate Authority has not referred to any evidence or contentions of the respective parties and has failed to discuss any of the arguments advanced.

6. Counsel for the respondent has not been able to controvert that the order does not refer to the evidence that was adduced by the respondent-Consumer and as a result thereof, the impugned order cannot be safely stated to be reasoned and a speaking order.

7. Accordingly, the present petition is allowed and the order passed by the Appellate Authority- Sub Divisional Magistrate, Amritsar-II is set aside. The matter is remanded to the Appellate Authority to pass a fresh order in the case after re-appreciation of the evidence and to pass a speaking

order after affording an opportunity of hearing to the respective parties. The parties shall appear before the Appellate Authority on 20.02.2023. The Appellate Authority shall thereafter proceed with the main case and pass a fresh order in accordance with law.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 19, 2023
Vishal Sharma

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