Neutral Citation No. 2023:PHHC:159649

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201 **CWP-25096-2013** (O&M)
Date of decision:- 12.12.2023

SANDEEP GULATI

... PETITIONER

VS.

PUNJAB STATE POWER CORPORATION LTD. AND OTHERS

...RESPONDENTS

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

Present: Mr. Aayush Gupta, Advocate for the petitioner.

Mr. Y.P. Khullar, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 05.08.2013 (Annexure P-6), passed by Additional Deputy Commissioner, Ludhiana in exercise of the powers under Section 127 of the Electricity Act, 2003 (for short 'the Act') as well as to the order dated 14/15.06.2012 (Annexures P-1 and P-2) provisional and final assessment passed by the Additional Superintending Engineer (Operation) PSPCL exercising the powers under Section 126 of the Act.

Counsel for the petitioner has argued that the petitioner has an MS connection bearing account No. E-12/MS-36/109 and is running a textile industry in the Industrial Area A-1, Ludhiana City. The premises of the petitioner were checked on 27.04.2012 in the absence of the petitioner, and the provisional notice of assessment requiring appearance of the petitioner on 12.06.2012 was served. It is submitted that without affording any opportunity of hearing, the respondents served an illegal order for a sum of Rs.3,18,467/-. The petitioner was held liable for irregularities and penalty for UUE under 2 heads i.e. unauthorized load and against using a sub-meter within his premises for further distribution of electricity. Under the head of unauthorized load surcharge, the assessment made was Rs.19,817/- whereas for the unauthorized use by way of distribution of electricity via sub-meter, the assessment was held under Section 126 of the Electricity Act, 2003 for Rs.2,98,650/-. The petitioner preferred an appeal against the said order under Section 127 of the Electricity Act, 2003 with respondent No.3. The said appeal was also dismissed by the Appellate Authority vide order dated 05.08.2013. Hence the present writ petition.

Learned counsel appearing on behalf of the petitioner has argued that the respondents have chosen to assess the unauthorized use of energy for a period of 12 months preceding the date of inspection whereas the petitioner specifically placed on record a lease deed that had been executed on 03.04.2012 with the tenant. Hence, the assessment ought to have been done for a defined period w.e.f. 03.04.2012 till 27.04.2012 when the inspection was done and the same could not relate back to the period of 12 months from the date of inspection. So far as the issue of further distribution of electricity via sub-meter to other premises is concerned, the petitioner does not dispute that such further supply via sub-meter was impermissible. No other argument has been addressed or judgment cited.

Counsel for the respondent-PSPCL does not dispute the facts insofar as it relates to the release of the electricity connection to the premises of the petitioner and the inspection thereof is concerned. It is however submitted that upon checking of the premises of the petitioner, a checking report was prepared and it was signed by one Umesh Kumar, an employee of the petitioner, in the factory premises. Thereafter, an order of provisional assessment dated 22.05.2012 was conveyed to the petitioner on which objections of the petitioner were invited. The same were duly filed by the petitioner, whereupon an opportunity of personal hearing was granted on 05.06.2012 and a subsequent detailed order of final assessment was passed by the respondents. The order had been passed in accordance with the provisions of the Electricity Act and there is no illegality, impropriety or perversity in the said order. Appeal against the said order was also dismissed and the order of assessment was upheld.

Even though, a written statement dated 04.09.2015 had been filed in this case with a copy to the counsel for the petitioner on 10.09.2015, however, no replication to the averments contained therein was filed.

I have heard learned counsel appearing on behalf of the parties.

The sole contention which thus remain for consideration of this court is as to whether the assessment in terms of Section 126 of the Act undertaken by the authorities has to be reckoned w.e.f. 03.04.2012, which is claimed by the petitioner to be the date on which the premises in question were given on lease, or the same has to be computed for a period of 12 months preceding the date of inspection of the premises treating that the period of such unauthorized use of electricity could not be ascertained.

A perusal of the lease deed appended along with the present petition shows that the same was executed between the petitioner as well as the lessee on 03.04.2012. The petitioner contends that the aforesaid lease deed should be construed as the date on which the sub-meter was installed and the date from which the electricity was supplied to the lessee via sub-meter. I am afraid that the said contention cannot be interpreted in the manner in which the petitioner claims it to be. The execution of the said lease deed is at best a proof of handing over possession or the proof of a legal relationship between the lessor and the lessee. The same does not establish the date of unauthorized use of energy. Hence, even though the lessee in the lease deed dated 03.04.2012, may have come into possession w.e.f. such date as may be stipulated thereunder, however, the same would not *ipso facto* rule out that the property in question may have remained in possession of somebody else under any other lease/licence agreement. Hence, the lease deed which is relied upon by the petitioner cannot be construed as a *per se* admissible document on the basis whereof unauthorized use of energy ought to be computed. The period would thus be unascertainable under Section 126(5) of the Act and by way of a statutory import, a period of 12 months has to be applied for carrying out the assessment of unauthorized use of energy with effect from the date of inspection.

Since the above said sole arguments advanced by the petitioner does not find favour and there is no other ground of challenge to the order passed by the respondent authorities in computing the assessment, the orders passed concurrently by the authorities below cannot be faulted.

The present writ petition is accordingly dismissed. The order dated 05.08.2013 (Annexure P-6), passed by Additional Deputy Commissioner, Ludhiana as well as order dated 14/15.06.2012 (Annexures P-1 and P-2) passed by the Additional Superintending Engineer (Operation) PSPCL imposing penalty for UUE are upheld.

(VINOD S. BHARDWAJ)
JUDGE

12.12.2023
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No