

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

206

CWP-24074-2016

Date of decision: 25.07.2023

PUNJAB STATE POWER CORPORATION LTD & ANR

.....Petitioners

VERSUS

SUBHASH SINGH & ANR

.....Respondents

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

Present:- Ms. Meena Bansal, Advocate
for the petitioner.

Mr. Sushil Bhardwaj, Advocate for
Mr. Satbir Rathore, Advocate
for respondent No.1.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the impugned order dated 29.03.2016 (Annexure P-11) whereby the Sub Divisional Magistrate, Mukerian, exercising the powers of Appellate Authority, has proceeded to decide an appeal against assessment for restoration of electricity supply in a case relating to theft of energy and the DCO dated 11.08.2015 for recovery of an amount of Rs. 31,541/- has been set aside and the petitioner has been restrained from disconnecting the electricity supply.

2. The case of the petitioner-Corporation is that Meter of the respondent was reported dead whereupon vide meter change order dated 10.07.2016, the same was replaced. The old meter was sealed and was tested at ME Lab where it was reported that seal of the meter was tempered & cover of meter was pulled out. Actual consumption was

controlled by fixing an extra diode in the supply circuit, slowing down the meter by 65%. An assessment on account of theft of energy was computed for a sum of Rs. 31,541/- and was demanded vide notice dated 11.08.2016 under Section 135 read with Section 126 (6) & 154 (5) of the Electricity Act, 2003. An application for registration of a criminal case was also sent vide Memo No. 1317 dated 11.08.2015. A temporary disconnection was also ordered on the same day. Respondent No.1 thereafter filed an appeal under Section 127 of the Electricity Act, 2003 which was allowed vide order dated 29.03.2016. Aggrieved whereof the writ petition was filed.

3. Written statement was filed by the respondent No.1 wherein the order of SDM was defended. Factual aspects noticed above were however not disputed.

4. Parties have been heard at length and documents have been perused.

5. It is argued by the counsel that the case in hand falls under Section 135 of the Electricity Act, 2003 and not under Section 126 relating to unauthorized use of electricity. The respondent No.2 acted beyond the jurisdiction conferred vide notification No. G.S.R. 265 (E) dated 16.04.2014 which is confined to appeals under Section 127 arising out of orders under Section 126 of the Electricity Act, 2003.

6. Counsel for the petitioner as well as the respondent were called upon to refer to the provision under the Electricity Act, 2003 under which determination of civil liability can be done by Assessing Officer in a case of theft of energy under Section 135 of the Electricity Act, 2003. Further, they were also asked to refer to Regulation under

which assessment under Section 154 (5) of the Electricity Act, 2003, could be done by the department especially when power has been vested with Special Court. They were also asked to refer to a provision under which authority under Section 127 of the Electricity Act, 2003 could also be the Appellate Authority under Section 135 of the Electricity Act.

7. They have failed to refer to any provision of the regulation under which the power exercised by the Sub Divisional Magistrate, Mukerian could be justified.

8. Ex facie, the Sub Divisional Magistrate, Mukerian did not have any power to entertain an appeal in relation to the proceedings arising out of proceedings under Section 135 read with Section 154 (5) of the Electricity Act, 2003 and any such power that has been vested, is only under Section 127 of the Electricity Act, 2003 against assessment under Section 126 of the Electricity Act, 2003.

9. The impugned order thus prima facie suffers from lack of authority given the specific case of the petitioner against the respondent-consumer is that under Section 135 of the Electricity Act, 2003 for theft of energy.

10. Counsel for the petitioner fairly concedes that the power to determine the civil liability under Section 154 (5) of the Electricity Act, 2003 is vested in a Special Court and is not conferred with the Assessing Officer of the PSPCL. She also could not refer to any provision of the regulations relating to proceedings under Section 135 of the Electricity Act, 2003 whereunder the procedure for assessment under Section 126 could be applied to the above.

11. The power vested in the petitioner is to demand re-connection charges under Section 135 (1A) of the Electricity Act, 2003 and not for determination of civil liability. Use of distinct expression in such assessment has to be appreciated as a marked distinction which legislature intended to create. Court cannot validate exercise of power by an authority that has not been vested in it merely because the petitioner Distribution company used the expression Section 126/135/154 (5) in the order of assessment. Such mis-description can not be the basis to ignore the actual nature of assessment.

12. Hence, not only in the order of the Sub Divisional Magistrate, Mukerian bad for want of authority, even the order of assessment does not appear to have been passed in accordance with law. Counsel for the petitioner is also ignorant about the proceeding, if any, relating to criminal case registered against the respondents (if any).

13. Accordingly, the present writ petition is allowed and the order dated 29.03.2016 (Annexure P-11) passed by the Sub Divisional Magistrate, Mukerian as well as the DCO dated 11.08.2015 served by the petitioner on the respondent-consumer are set aside being illegal, improper and without authority. The petitioners may, however, carry a determination in accordance with law to raise the demand.

The present petition is accordingly disposed of.

(VINOD S. BHARDWAJ)
JUDGE

JULY 25, 2023

Vishal sharma

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