

2023:PHHC:149022

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

211

**CWP-21672-2017
Date of Decision: 22.11.2023**

MAM CHAND SAINI

... Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD & ORS.

... Respondents

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

Present: Mr. Rajesh Bansal, Mr. Naveen Nandal and
Ms. Jasmeet Singh, Advocates for the petitioner.

Mr. R.S. Longia, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 08.08.2017 passed by Superintending Engineer/Planning-cum-Appellate Authority-respondent No.2 (Annexure P-8) vide which appeal dated 20.07.2017 (Annexure P-6) has been dismissed on the ground of limitation and without considering that the appeal is maintainable and delay can be condoned.

Learned counsel for the petitioner contends that the petitioner is a consumer of the respondent-Distribution Licensee and had been regularly paying the electricity bills. He had taken some agricultural land near Sector 25, HUDA, Panipat and was residing in the said agricultural land after constructing a house. A tubewell connection for watering and irrigating the fields had also been released in the name of the petitioner. The petitioner had to construct an iron shed for the cattle and for storing fodder etc. and the welding work of iron

angles and iron sheets was being conducted on 11.05.2017 at the spot by drawing electricity from the tubewell connection. The official of the electricity department inspected the premises in question and alleged that there was a theft of energy for a purpose other than for which the electricity connection had been released. Accordingly, an order of assessment under Section 135 of The Electricity Act, 2003 was served upon the petitioner on 13.05.2017 alongwith a notice of even date for compounding the offence of theft of electricity. The petitioner deposited the said amount of Rs.2,05,926/- towards the civil liability assessed by the respondents alongwith Rs.30,000/- as compounding fee, under protest and without prejudice to his rights. An application was thereafter submitted by the applicant to the Assessing Officer on 17.05.2017 for seeking rehearing on the assessment conveyed to him. The said objection of the petitioner was, however, not decided by the Assessing Authority. Hence, the petitioner preferred an appeal before the Superintending Engineer/Planning-cum-Appellate Authority, HVPNL, Shakti Bhawan on 20.07.2017. The matter was taken up by the Appellate Authority and vide order dated 08.08.2017, the appeal was dismissed by the Appellate Authority on the ground that a period of 30 days has been prescribed under Section 127(1) of The Electricity Act, 2003 for preferring an appeal against an assessment. As the appeal had been preferred after the abovesaid period, hence the same was barred by limitation. The appeal was thus dismissed. Hence, the present petition.

Counsel for the petitioner has also argued that the respondent Superintending Engineer/Planning-cum-Appellate Authority has committed an error in observing that the appeal in question was barred by limitation as he has failed to appreciate that only a notice of assessment and compounding dated

13.05.2017 had been supplied to the petitioner. The final order of assessment had not been served upon the petitioner and that he had approached the Appellate Authority since no order conveying the final assessment had been passed. Hence, the limitation could not have been construed unless any order had been duly passed by the Competent Authority. The amount demanded, being in the nature of notice, could not have been construed as a date of passing of the order. Hence the computation of period of limitation was based upon misreading of the statutory provisions and without appreciating that an order on assessment was needed to be passed.

A written statement has been filed by the respondent-Distribution Licensee, wherein they have supported their stand that the proceedings were initiated in accordance with law and after duly noticing that the petitioner was committing theft of energy. Consequently, notices under Section 135 and 152 of The Electricity Act, 2003 were served upon the petitioner. It has been mentioned that the appeal against the said order was not maintainable.

However, during the course of hearing, counsel for the respondent-Distribution Licensee fairly submits that the Government of Haryana had already issued a notification on 10.08.2017 in exercise of the powers conferred under Section 176 (2) (u) of The Electricity Act, 2003, as per which the Appellate Authority notified under Section 127 of The Electricity Act, 2003 was also notified to be the Appellate Authority under Section 135 of The Electricity Act, 2003 qua determining the correctness of the assessment of the civil liability. It is also informed by the counsel appearing on behalf of the respondent-Distribution Licensee that the appeals against the assessment made

under Section 135 of The Electricity Act, 2003 were being entertained on the strength of executive instructions issued by the Power Utilities.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

Undisputedly, the appeal was preferred by the petitioner before the Appellate Authority and the same had been dismissed on the ground of the same having being preferred after the period of limitation prescribed under Section 127 of The Electricity Act, 2003 which mandates that an appeal must be filed before the Appellate Authority within a period of 30 days of the final order of assessment passed under Section 126 of The Electricity Act, 2003.

The nomenclature expressed by the respondent-Distribution Licensee, while serving notices of civil liability/assessment under Section 135 of The Electricity Act, 2003 and the compounding fee, would not be in the nature of a final order of assessment and was only a notice. It is also not in dispute that the petitioner herein preferred an objection against the notice of assessment after depositing the amount as conveyed to him alongwith the compounding fee under protest and without prejudice to his rights. Thus there was a grey area as to whether the demand conveyed to him while terming the same as a notice for deposit, could be termed as a final order or not. Even otherwise, Section 127 of The Electricity Act, 2003 does not prohibit entertaining an appeal even after expiry of 30 days. Hence, it was open to the Appellate Authority to consider even an appeal that may have been preferred even after the period of 30 days and to condone the delay, if any. However, as the period of delay itself is a subject of dispute in the present petition, since the

final order of assessment had not been conveyed/served upon the petitioner, hence, without commenting any further on the nature of the communication sent under Section 135 of The Electricity Act, 2003 and the terminology expressed, it is sufficient for this Court to conclude that the said term did give rise to some confusion in the mind of a consumer and that benefit of such confusion or expression ought to be extended in favour of the litigant.

In view of the above, the present petition is allowed. The order dated 08.08.2017 passed by the Superintending Engineer/Planning-cum-Appellate Authority - respondent No.2 is hereby set aside and the matter is remanded to the Appellate Authority for fresh adjudication. The parties shall appear before the Appellate Authority-respondent No.2 on 20.12.2023, whereupon a final order shall be passed by the Appellate Authority in accordance with law and after granting an opportunity of hearing to the respective parties.

Petition stands allowed accordingly.

NOVEMBER 22, 2023

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**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No