

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

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CWP-21390-2018 (O&M)
Date of Decision: 14.03.2023

AMIT GARG

... Petitioner

VERSUS

**UTTAR HARYANA BIJLI VITRAN NIGAM
LIMITED AND ORS**

... Respondents

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

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Sunil K. Dhanda, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed for seeking quashing of demand/assessment order dated 13.11.2017 (Annexure P-8) as well as the order dated 21.03.2018 (Annexure P-12) passed by the Appellate Authority Yamuna Nagar, whereby the respondents have allegedly carried out the assessment notwithstanding the undisputed factual position and in utter disregard to the statutory provisions of Section 126 of The Electricity Act, 2003.

Briefly summarized, the facts of the present case are that the petitioner is a consumer to the respondent-Nigam and had been granted a DC category connection of 0.5 KW vide account No.JH19/0609 situated at village Ballachaur in the year 2006. The petitioner got his load extended to 5.6 KW in March 2010 and has been using the electricity connection since then and has also been paying the bills towards consumption of electricity and without any default. On account of voltage fluctuations in the area, the electricity meter of

the petitioner was burnt in the year 2013, whereupon the petitioner submitted an application for replacement of the electricity meter on 22.02.2013. The inspection of the meter was conducted by the Junior Engineer and no fault was found to be attributable to the petitioner. After verification of the same, the recommendation for change of electricity meter was made by the Junior Engineer. The petitioner deposited the requisite charges for replacement of the said meter. The new meter was accordingly installed on 26.02.2013.

On 28.02.2013, the Sub Divisional Officer, Sub-Division, Chhachhrauli inspected the premises of the petitioner and submitted a report alleging Unauthorized Use of Energy. A provisional assessment of Unauthorized Use of Energy to the tune of Rs.5,70,798/- was conveyed to the petitioner. Another demand of Rs.61.04 lacs approximately was also raised regarding another electricity connection in the same premises by showing diversion of property by a temporary partition.

Aggrieved thereof, the petitioner filed an application before Permanent Lok Adalat (Public Utility Services), SAS Nagar, Camp Court at Yamuna Nagar. After considering the material adduced by both sides, the Permanent Lok Adalat held that the aforesaid assessment was bad in law vide its Award dated 12.05.2015 (Annexure P-3). The assessment was thus set aside.

The respondent-Distribution Licensee challenged the above Award dated 12.05.2015 by filing CWP no.17586-2015 *inter-alia* on the ground of lack of jurisdiction. The said CWP was allowed by the Single Judge vide Judgment dated 04.03.2016 and it was held that the Permanent Lok Adalat had no jurisdiction to entertain the said dispute. LPA No.549 of 2016 against the same Judgment was also dismissed by the Division Bench.

The issue was thereafter raised before the respondent Authorities for a final assessment and also for deleting the defaulting amount of Rs.61.04 lakh from provisional assessment order Memo No.337 dated 05.03.2013 in lieu of change of category and re-sale or power. Requisite document in proof of different premises including sale deed were also submitted so as to seek cancellation of above assessment. An advice was eventually received from Chief Engineer, Commercial vide memo No.Ch-Z/LPA No.549/16/Amit Garg/CE/C-1 dated 11.10.2017 to pass final order only with regard to the matter pending to Unauthorized Use of Energy amount to Rs.5,70,798/-. Qua the other assessment of Rs.61.04 lacs, the Authorities were advised to pursue the matter before the Special Court. Thereafter, a final order of assessment was passed under Section 126 of The Electricity Act, 2003 vide office Memo No.4157 dated 13.11.2017.

An appeal against the above order of final assessment dated 13.11.2017 was filed before the Appellate Authority under Section 127 of The Electricity Act, 2003 raising various issues. The above said appeal was dismissed vide order dated 27.03.2018. It is contended that numerous factual and legal issues had been raised in the appeal, however, none had been dealt with by the respondent-Authorities.

Written statement had been filed by the respondent raising various objections and alleging concealment of facts. It was averred that inspection of the premises of the petitioner was carried out by the Authorized Officer and it was found that supply was being used for small power purposes. A defaulting amount was standing at premises B & C whereas D.S. connection was taken at premises 'A'. It being a case of sale of power, a case of Unauthorized Use of Energy was made out. The factual aspects as regards the meter being burnt and

changed are not disputed. The order of the Authorities was defended as having been legally and validly passed.

Learned counsel for the petitioner contends that his prayer is limited at this juncture to the extent that the order passed by the Appellate Authority, Yamuna Nagar may be set aside and the matter may be remanded to the Appellate Authority to pass a fresh order after taking into consideration the statutory provisions as well as the undisputed facts. He further contends that the Appellate Authority specifically noticed that as per the evidence produced, the meter was installed on 26.02.2013 vide MCO No.64-30. Further, as per the load survey submitted by the Appellate Authority, the installed meter was showing data reading from 22.02.2013 onwards. He submits that the respondents have carried out the assessment for a period of 12 months. He also contends that the aforesaid assessment carried by the respondents was contrary to the statutory provisions of Section 126(5) of the Electricity Act, 2003, which mandates that the assessment has to be done for the entire period during which such Unauthorized Use of Energy had taken place and that the period can be taken to be 12 months only in a case where an assessment of the duration of Unauthorized Use of Energy cannot be done. He contends that since the meter in question was installed on 26.02.2013, hence, there was a defined period of alleged Unauthorized Use of Energy and that it could not have been computed for the entire duration of 12 months.

Learned counsel for the respondents could not dispute the fact that the finding recorded by the Appellate Authority affirms that the meter change order was passed on 26.02.2013 and the installation as per the official record has also taken place on the said date. Hence, the period in question cannot be said to be unascertainable. Consequently, the general provision for assessing

the computing period of 12 months prior to detection of Unauthorized Use of Energy, which could be invoked only when the period of Unauthorized Use of Energy could not be ascertained, could not have been applied in the facts and circumstances of the present case. The appellate Authority, however, decided the appeal by recording as under:

“SDO (OP) UHBVNL. Chhachhrauli has submitted the detail of assessment for un-authorised use of electricity of account no. JH19-0609 calculated as per the sales circular U29/2011. The calculation sheet of assessment has been submitted by SDO (OP) UHBVNL Chhachhruali in which he has taken a base of 320 units per KW per month in accordance with the sales circular no. 29/2011 for LT industry up to 20 KW He has further intimated that the period of assessment has been taken as 12 months, for the calculation of penalty as per direction issued by UHBVNL vide sales circular U-60/2007, revised instructions for dealing the cases of un-authorised use of electricity under section 126 & 127 of Elecy Act 2003. The total KV is taken as 17 400 KW as per the MDI of the meter installed. As per the evidence produced by the appellant the meter was installed on dated 26.2 2013 vide MCO no. 64/30 dated 26.2.2013) As per the load survey submitted by the appellant the above installed meter war having us MD facility and the meter is showing an energy data reading from the date 22.02.2013 The consumption recorded from 22.2.2013 to 28.2.1013 as per load survey is tabulated as under:

<i>Date</i>	<i>Energy record</i>	<i>Maximum demand</i>
<i>22.02.2013</i>	<i>64.48</i>	<i>17.40</i>
<i>23.02.2013</i>	<i>160.35</i>	<i>13.20</i>
<i>24.02.2013</i>	<i>147.45</i>	<i>14.04</i>
<i>25.02.2013</i>	<i>89.87</i>	<i>14.34</i>
<i>26.02.2013</i>	<i>64.11</i>	<i>13.00</i>
<i>27.02.2013</i>	<i>91.29</i>	<i>10.96</i>
<i>28.02.2013</i>	<i>66.71</i>	<i>10.14</i>

As per the evidence submitted above, it is matter of question that where the above meter remained installed from 22 2 2013 to

25.2.2013. No reply to this question was given by the SDO (OP) UHBVNL Chhachhrauli.

Keeping in view the above, it has been observed that the assessment order given by the assessing officer ie. SDO (OP) UHBVNL Chhachhrauli is correct and is calculated as per the sales circular of UHBVNL Hence the appeal is hereby dismissed. Xen (OP) UHBVNL, Jagadhri is requested to get the matter investigated regarding the whereabouts of the above meter during the period from 22.2.2013 to 25.2.3013.”

It is evident from the perusal of the above that the appellate order is non-speaking and does not deal with core issues that arose for consideration.

Since the matter is being remanded to the appellate Court for passing a fresh order, I would refrain from commenting on merits of the case lest it prejudices the appellate Authority.

The present writ petition is accordingly allowed and the order dated 21.03.2018 passed by the Appellate Authority is set aside. The matter is remanded to the Appellate Authority to pass the order afresh in accordance with law after taking into consideration the relevant statutory provisions and after granting opportunity of hearing to the concerned parties. The parties shall appear before the Appellate Authority on 28.04.2023, whereupon the Appellate Authority shall proceed in the matter and pass a final order in accordance with law.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

14.03.2023.
rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No