

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

206

CWP-7864-2016

Date of Decision: 09.05.2023

Ankit

..... Petitioner

Versus

Dakshin Haryana Bijli Vigtran Nigam and others

..... Respondents

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

Present: Mr. Sanchit Punia, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
for the respondents.

VINOD S. BHARDWAJ, J.(ORAL)

1. The present writ petition seeks quashing of the checking report bearing LL-I no. 000023 dated 05.03.2016 (Annexure P-4) along with the order of assessment bearing memo no. H21/2016/176 dated 10.03.2016 (Annexure P-5) vide which penalty of Rs. 65,141/- had been imposed by respondent No.3-Distribution Licensee as well as the memo no. H21/2016/177 dated 10.03.2016 (Annexure P-6) vide which notice for compounding the offence of theft of electricity under Sections 135 and 152 of Electricity Act, 2003 had been initiated against the petitioner.

2. Learned counsel for the petitioner contends that the petitioner is having a plot in the Amardeep Co-operative House Building Society Ltd.

Hisar bearing Plot No. 108-A. Electricity Connection bearing account No. KRID-4138 under the DS category had been released in favour of the petitioner. It is claimed that the petitioner had been duly paying all his electricity charges regularly without any default till 05.03.2016. However, on the said date, the premises of the petitioner were checked by the Electricity Department and thereafter proceedings under Section 135 of the Electricity Act, 2003 were initiated. The checking report has been appended as Annexure P-4. An order of assessment dated 10.03.2016 vide which a penalty of Rs. 65,141/- had been imposed was also served upon the petitioner along with the notice for compounding of the offence.

3. Learned counsel appearing on behalf of the petitioner contends that the respondent authorities had instituted a complaint under Section 135 of the Electricity Act, 2003 for commission of theft against the petitioner. The said case was tried by the Special Court as Electricity Act Case No.04 of 2017 arising out of FIR No. 2289 dated 22.07.2016 registered under Section 135 of Electricity Act at Police Station Irrigation and Power, Hisar. Vide judgment dated 17.08.2019, the petitioner was acquitted of the charges framed against him. The said judgment has already attained finality. He contends that in view of the fact that the petitioner has faced criminal trial and has been acquitted by the Special Court and such judgment has already attained finality, the demand of any civil liability by the respondents cannot be sustained. The assessment order as well as the compounding charges demanded by the respondents, thus, are not sustainable and are liable to be set aside. He further places reliance on the judgment dated **05.04.2017** passed by the this Court in the matter of **CWP No. 7493 of 2016 titled**

“Anita vs. Uttar Haryana Bijli Vitran Nigam and Others”.

4. Learned counsel appearing on behalf of the respondents does not dispute the fact that the petitioner stands acquitted by the Special Court i.e. the Addl. Sessions Judge, Hisar in case Electricity Act Case No.04 of 2017 arising out of FIR No. 2289 dated 22.07.2016 registered under Section 135 of Electricity Act, 2003 at Police Station Irrigation and Power, Hisar and that the said judgment has not been challenged before any Appellate Forum. He, however, contends that a civil liability, nonetheless, cannot be ascertained by the department and recoveries for such loss be effected from the consumer in default.

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

6. This Court has also dealt with the said issue in the matter of ***“Mukhtiyar Singh Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & Ors.”*** bearing ***CWP-28737-2013*** decided on ***27.10.2022***, wherein it was held that the power of determination of civil liability has been vested with the Special Courts itself under the Scheme of the Electricity Act and that once the respondent department fails to establish its charges of theft of energy, the legal fiction which flows from the same is that the event triggering the prosecution had also never taken place. There can, thus, be no presumption that there was any loss occasioned.

7. The Special Court, being the competent Court under the Electricity Act, 2003, to also determine the civil liability, has not granted any liberty to the department to determine the civil liability or hold it to be in fact a case of Unauthorized Use of Electricity and not theft of energy. In

the absence of any of the said events, the respondent may not be entitled to stake a claim for civil damages, the reference being that since no theft took place, there was no event of civil loss and entitlement of consequential damages.

8. Since the legal issue has already been determined by this Court in favour of the consumer vide judgment dated 27.10.2022 in ***Mukhtiyar Singh's*** case (supra), I find that the present writ petition deserves to be allowed in view of the law laid down by this Court in the matter of ***Mukhtiyar Singh's*** case (supra).

9. The impugned assessment, checking report as well as the penalty proposed to be imposed by the respondent are accordingly set aside, at this stage, without prejudice to any other inter-se rights of the respective parties, if any.

10. Petition stands allowed.

(VINOD S. BHARDWAJ)
JUDGE

09.05.2023
Satyawar

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No