

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-32094-2018
Date of Decision: 11.10.2023

TARA CHAND

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

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

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. R.S. Longia, Advocate
for respondents No.2 to 4.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the office order dated 25.08.2017 issued under Section 135 of Electricity Act, 2003 and the notice of even date for compounding of the offence, whereby the petitioner has been directed to pay a sum of Rs.2,26,626/-.

Counsel for the petitioner contends that the premises of the petitioner- consumer were raided on 13.08.2017 at 05.00 A.M. and the officials of the respondents had allegedly found that there was theft of energy, with a load of 5.59 KW, through some motor attached directly in some open fields. A notice dated 25.08.2017 was served upon the petitioner-consumer alleging that theft of energy being committed by him. A penalty of Rs.1,66,626/- was accordingly assessed against the petitioner. A notice under Section 135 of Electricity Act, 2003 dated 25.08.2017 was also served pursuant to the

checking/raid conducted on 13.08.2017, for running of electric motor directly in another open field. A compounding fee of Rs.60,000/- under Section 142 of Electricity Act, 2003 was also alleged. The total recovery assessed was thus Rs.2,26,626/-.

On receipt of the aforesaid notice, the petitioner- consumer raised his objection that the petitioner- consumer was having no concern with the other land qua which assessment has been done and demand claimed against the petitioner- consumer. The quashing of the aforesaid order of assessment is being sought, relying on instructions issued by the respondents-Department as well as the provisions of The Electricity Act, 2003, on the ground that the notice of assessment was issued after a period of nearly 12 days i.e. on 25.08.2017. Hence, the same would vitiate the demand and render it liable to be set aside.

Counsel for the respondents on the other hand has argued that the petitioner-consumer has not approached this Court with clean hands and infact the premises of the petitioner were inspected on 13.08.2017 at 1.05 A.M. by the checking party comprising of 07 officials of the Electricity Department and in the presence of the petitioner. During checking, it was found that the petitioner was using direct supply of electricity from LT fuse system of 100 KVAT/FLD system SOP to Faggu Ram-II village Amin by connecting 3/c aluminum wire approximately 60 meter long to the Monoblock motor pump in the pond of village being used for draining out water. Hence, it was a case of direct theft of energy. At the time of checking, a direct load of 5.59 KW was found running. Videography of the entire incident was done for evidence and 3/c aluminum wire of black colour was removed and taken in custody. Site plan was prepared

and checking report was also prepared. The petitioner, however, refused to sign the same.

On the basis of the aforesaid checking report, notice dated 25.08.2017 was issued for theft of energy under Section 135 of Electricity Act, 2003 for an amount of Rs.1,66,626/-. The notice No.861 dated 25.08.2017 for a sum of Rs.60,000/- was also issued towards compounding of offence under Section 142 of The Electricity Act, 2003. Intimation was also sent to the SHO on 25.08.2017 for registration of the FIR. The present petition has been filed after a period of more than 01 year and 03 months of the issuance of the said memo.

No replication/rejoinder has been filed by the petitioner to the written statement.

The contention of the petitioner is that he was not committing theft of electricity and that the alleged motor had been installed in the village pond and there is nothing to connect the petitioner with the alleged theft of energy whereas the specific case of the respondent-Distribution Licensee is that the said motor belonged to the petitioner and that a seven member team of the respondent-Distribution Licensee had seized the said motor and it was the petitioner who was found committing theft of energy by directly attaching the load of 5.59 KW. The FIR having been registered, the said aspect is yet to be investigated by the Investigating Agency. As such, the disputed questions of fact would arise which cannot be adjudicated by this Court in a writ petition as to whether it was the petitioner or any other entity which was committing theft of energy.

Counsel for the respondents argues that the question as to whether theft of electricity was taking place or not and as to whether it was petitioner

who was drawing electricity for running of motor to draw water from the village pond is a disputed question of fact and cannot be gone into by this Court at this stage. An FIR No.8626 dated 30.08.2017 qua the abovesaid incident was registered at Police Station I&P Karnal for the offence under Section 135 and 151 of the Electricity Act, 2003. The said issue is to be thus determined by the Special Court. Further, the determination of the Civil liability under Section 154 (5) of the Electricity Act, 2003 is also to be done by the Special Court and the said issue cannot be gone into by this Court. He further submits that insofar as determination of the civil liability and/or the demand raised is concerned, the same can be agitated by the petitioner, if so advised, before the Appellate Authority as notified by the Government in its decision dated 10.08.2017. A Sales Circular No.U-33-2017 was also notified by the UHBVNL designating the Appellate Authority in the cases relating to the theft of electricity.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Insofar as the issue of dispute qua the assessment and/or the demand communicated vide memo dated 25.08.2017 is concerned, the final determination of the civil liability is to be done by the Special Court under Section 154 of the Electricity Act, 2003. However, in the event the petitioner has a grievance as regards the factors wrongly being applied while computing the abovesaid amount, the remedy of appeal has been prescribed under Sales Circular U-33-2017. The petitioner may, if so advised, take recourse to the said remedy by approaching the above said Authority espousing his grievance. The issue as regards whether theft took place in the manner alleged and as to whether the electric motor belonged to him, is a disputed question of fact and

cannot be gone into by a Writ Court. The counsel for the petitioner has, however, failed to refer to any *prima-facie* illegality in the computation of demand or to any judgment to prove that a demand would be vitiated only on account of delay in conveying the same. Nonetheless, even if, there is some miscalculation, the petitioner has an alternative, efficacious remedy available to him. There is thus no reason why this writ be entertained in the wake of an efficacious alternative remedy.

The present petition stands disposed of, accordingly, with liberty to pursue alternative remedies.

Needless to mention that the period during which the present petition has remained pending before this Court shall be taken into consideration while computing the limitation.

OCTOBER 11, 2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No