2024:PHHC:103248

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

220 **CWP-7147-2019**
Date of Decision: 08.08.2024

UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED AND ANOTHER

... Petitioners

VERSUS

BIJENDER AND ANOTHER

... Respondents

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

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Present: Mr. R.S. Longia, Advocate
for the petitioners.

Mr. Amit Kumar Goyal, Advocate
for respondent No.1.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the impugned order dated 10.07.2018 (Annexure P-5) passed by respondent No.2-Appellate Authority under Section 127 and 135 of The Electricity Act, 2003.

The petitioner-Distribution Licensee has approached this Court averring that the respondent No.1-consumer had established its business under the name and style of Vishwakarma Body Words at Murthal Road, Sonepat. An electricity connection bearing No.MV-17-1796 with a sanctioned load of 3 KW had been released for the aforesaid premises. The actual user of the same is one Sh. Sandeep Jangra son of Jagdish Chander c/o Vishwakarma Body Works at Murthal Road, Sonepat. The premises of respondent No.1-consumer were checked by the team of the petitioner-Distribution Licensee on 26.02.2018 during which the respondent No.1-consumer alongwith his alleged tenant Sandeep Jangra son of Jagdish Chander was found committing direct theft of electricity by using the electricity supply by directly tapping the energy from main supply line. The connected load at the spot was found to be 15.412 KW, hence, making out a case of theft of electricity under Section 135 Proviso (ii) of The Electricity Act, 2003. A spot Checking Report Form LL-1 was prepared on the same day and a copy thereof was also supplied to the user/consumer Sandeep Jangra, which was duly signed by him acknowledging the receipt of the same.

An assessment order dated 28.02.2018 was thereafter passed by the Assessing Officer against which an appeal was preferred before the Appellate Authority through Jagdish Chander, father of Sandeep Jangra- the alleged tenant. Reply to the abovesaid appeal was filed by the petitioner-Distribution Licensee. The said appeal was, however, allowed without taking into consideration that the order passed by the Assessing Authority was reasoned and based upon the correct reading and interpretation of the provisions of The Electricity Act, 2003. The Appellate Authority reduced the assessed amount of loss caused to the Nigam drastically from Rs.5,77,500/- to Rs.26,898/-. The compounding charges of Rs.1,60,000/- were, however, upheld. He contends that Appellate Authority wrongly relied upon the Sale Circular No.U-23/2017 even though the same is not applicable in the cases of direct theft of electricity coming before the Appellate Authority. Only the Authorized Officer under Section 135, SDO/Op., as prescribed under paragraph No.21 of the Sales Circular, is competent to record his satisfaction that theft of electricity has actually taken place for a lesser period and it is not for the Appellate Authority to examine the said aspect. He has vehemently argued that notwithstanding a case of direct theft of electricity on the basis of admission made by the respondent No.1-consumer in his appeal itself, the Appellate Authority still proceeded to reduce the assessed amount of loss caused to the Nigam with statutory penalty. He contends that the case being squarely covered under the statutory provisions of Section 135 of The Electricity Act, 2003, there was no scope for reduction of final penal charges on the said account.

Counsel for the respondent No.1-consumer has, on the other hand, places reliance on the order passed by the Appellate Authority and contends that the assessed amount for theft of electricity has been calculated on the actual load of 15.412 KW for a period of one year. He contends that the duly attested and notarized rent agreement, machinery invoices in support of his statement had been placed before the Authorities, which established that the work had started since 15.02.2018. The site survey was also conducted by Narender- the Lineman of the petitioner-Distribution Licensee on 10.02.2018 before release of a new connection and as such, there could have been no theft of electricity on the site on 10.02.2018 as no machinery existed at the site of respondent No.1-consumer.

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.

It is not disputed by the counsel for the petitioner-Distribution Licensee that a period of one year is to be taken into consideration for assessing the loss/damages in the event the actual duration period of theft of electricity cannot be determined. Where the period can be determined and is less than one year, the loss has to be assessed on the basis of actual period which is determinable. The Appellate Authority specifically relied upon the statement of the Lineman of the petitioner-Distribution Licensee itself, who had conducted the site survey on 10.02.2018 and no machinery was available on the spot at that point of time. The electricity connection was released only thereafter. As such, it cannot *prima facie* be held that even though the proceedings for release of electricity connection were initiated in February 2018, after conducting the site inspection and noticing that there was no machinery installed in the said premises, yet, the respondent No.1-consumer is liable to pay the assessed charges for the entire duration of 12 months preceding the date of detection of theft of electricity.

The Appellate Authority merely does not have the powers to determine whether it is a case of theft of energy or not but does have the power to examine the assessment. The period for which theft is being alleged is one of the factors for determination of assessment. Hence, if documentary evidence establishes that the period is less than what has been determined by the assessing Authority, and that too from the reports of the officials of the department, the same can be duly taken into account for computing penalty. The Authorities exercising appellate functions are required to be guided by the spirit of being the keepers of the interest of the consumers and do not just sit as agencies for approving all acts of the Distribution Licensee. The Assessing Officer or the Distribution Licensee has failed to assign any valid reason why the reports of its officers and invoices of purchase of machinery and equiptment be completely disregarded.

Adverting to the arguments advanced by the petitioner-Distribution Licensee that the Appellate Authority is not competent to record a satisfaction with respect to the period of theft of electricity and only the Assessing Officer is competent to do so, I find myself in disagreement with the argument so advanced. The Appellate Authority seized of a matter, cannot be said to have lesser power than the Assessing Officer. It would defeat the very object behind the Provision of an Appellate Authority if the suggestion/argument raised made on behalf of the petitioner-Distribution Licensee is accepted. While hearing an appeal against an order passed by the Assessing Officer under Section 135 of The Electricity Act, 2003, the Appellate Authority would be within its rights to ascertain whether the assessment so conveyed to a consumer has been done in accordance with the parameters and as to whether the undisputed facts available on file, would substantiate the cause of the respondent No.1-consumer or not. The arguments by the petitioner are based upon a very restrictive reading of Section 135 of The Electricity Act, 2003. It needs to be taken into consideration that under the scheme of The Electricity Act, 2003, there was no initial provision or remedy of preferring an appeal before the Appellate Authority in the matters relating to assessment under Section 135 of The Electricity Act, 2003 and the only provision was before the Special Judge under Section 154 of The Electricity Act, 2003. The said provision has been made by the Appropriate Commission for providing a remedy of appeal to the consumers in the State. Hence, the power by the Appellate

Authority is not drawn from the provisions of The Electricity Act, 2003, but from the Rules and Regulations notified by the Appropriate Commission provisioning for an appeal against assessment under Section 135 of The Electricity Act, 2003.

Providing of the remedy of appeal through a State notification dated 10.08.2017, the argument would defeat the very object behind providing such a remedy in case the hands of the Appellate Authority are tied and to hold that the Appellate Authority cannot examine the reasoning given by the Assessing Officer for carrying out the said assessment.

Under the given circumstances, I do not find that the conclusion drawn by the Appellate Authority is illegal, perverse or not based upon meaningful interpretation of the documents/evidence available on record. There is no illegality or perversity in the impugned order and in the absence of any such factors, the discretion exercised by the Appellate Authority would not ordinarily be interfered with by this Court in exercise of its power of judicial review.

The present writ petition is accordingly dismissed.

The impugned order dated 10.07.2018 (Annexure P-5) passed by the Appellate Authority is accordingly upheld.

(VINOD S. BHARDWAJ)
AUGUST 08, 2024 **JUDGE**
rajender

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