

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-10081-2019 (O&M)
Date of decision: 15.01.2024

Jeet Singh ...Petitioner

VERSUS

State of Punjab and others ...Respondents

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

Present :- Mr. B.S. Jattana, Advocate for the petitioner.

Ms. Niharika Sharma, AAG Punjab.

Mr. Arav Gupta, Advocate for respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (Oral)

1. The present petition has been filed seeking setting aside of the provisional order of assessment dated 17.02.2017 issued by respondent No.3 whereby the petitioner has been directed to pay the assessment amount of Rs.29,459/- on account of theft of electricity and further directing the respondents to reinstate the electricity supply to the house of the petitioner.

2. Learned counsel contends that the petitioner is a consumer of the respondent-Distribution Licensee and that he was served with a provisional order of assessment dated 23.02.2017 under Section 135 of the Electricity Act, 2003 by respondent No.3 alleging that on 09.02.2017, when checking was conducted at the premises of the petitioner by the official of the respondent-department, he was found running a motor of 2 BHP load by abstracting electricity by way of a *kundi* connection through a PVC wire

from AP Transformer, which amounts to theft of energy under Section 135 of the Electricity Act, 2003. A provisional demand of Rs. 29,459/- was accordingly assessed as payable and to be deposited by the petitioner. It is argued that as a matter of fact no checking of the premises of the petitioner was conducted and that one Surjit Singh Lineman of the respondent-Department was trying to fetch power line over the premises of the petitioner to give power connection to one Bawa Singh son of Santokh Singh. When the petitioner stopped him from doing this, the above said notice of provisional assessment has been served upon by the petitioner.

3. The counsel for the petitioner further submitted that the provisional assessment under Section 135 of the Electricity Act, 2003 has been done by the respondent-authorities beyond the jurisdiction and that it had no power to make such an assessment. It is contended that the provisional assessment has been done as per the procedure of Section 126 of the Electricity Act, 2003, which is applicable with respect to an Unauthorized Use of Electricity and does not apply to a case relating to theft of electricity. It is contended that subsequent to the receipt of the above said notice under Section 135 of the Electricity Act, 2003, the petitioner challenged the same and preferred a civil suit before the Additional District Judge, Mansa, however, the said civil proceedings were dismissed by the Special Judge holding that the proceedings were not maintainable. Consequently, the present writ petition has been filed.

4. Learned counsel for the petitioner contends that the respondent-department has not passed any final order of assessment and no opportunity

of hearing has been extended to the petitioner. A communication was sent by the petitioner on 27.02.2017 through his Advocate asking the respondents to withdraw the provisional assessment, however, in response, a letter dated 29.03.2017 was issued whereby the respondents directed the petitioner to deposit the assessed amount in the office.

5. He further submits that there is no provision of preferring an appeal against the order of provisional assessment done by the respondents under Section 135 of the Electricity Act, 2003 and provision for appeal has only been prescribed for proceedings arising out of Un-authorised Use of Electricity under Section 126 of the Electricity Act, 2003. He further relies on the judgment of the Hon'ble Supreme Court in the matter of 'The Executive Engineer and another Vs. M/s. Sri Seetaram Rice Mill' reported as 2012 (2) SCC 108 to contend that where there is no remedy available to a person against an order of provisional assessment, writ petition would be maintainable. The paragraphs relied upon by the petitioner from the aforesaid judgment are extracted as under:

***“56. Applying these principles to the facts of the present case, it is obvious that no statutory appeal lay against a provisional order of assessment and the respondents herein were required to file objections as contemplated under Section 126 (3) of the 2003 Act. It was only when a final order of assessment was passed that the respondents could prefer a statutory appeal which admittedly was not done in the case in hand.*”**

57. *In the present case, the High Court did not fall in error of jurisdiction in entertaining the writ petition but certainly failed to finally exercise the jurisdiction within the prescribed limitations of law for exercise of such jurisdiction. Keeping in view the functions and expertise of the specialized body constituted under the Act including the assessing officer, it would have been proper exercise of jurisdiction, if the High Court, upon entertaining and deciding the writ petition on a jurisdictional issue, would have remanded the matter to the competent authority for its adjudication on merits and in accordance with law. In the facts of the present case, the High Court should have answered the question of law relating to lack of jurisdiction and exercise of jurisdiction in futility without travelling into and determining the validity of the demand which squarely fell within the domain of the specialized authority. The High Court should have remanded the case to the assessing officer with a direction to the respondent to file its objections including non-applicability of the tariff before the assessing authority and for determination in accordance with law.*

58. *Having dealt with and answered determinatively the questions framed in the judgment, we consider it necessary to precisely record the conclusions of our judgment which are as follows:-*

1. *Wherever the consumer commits the breach of the terms of the Agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and*

connected load, such consumer would be 'in blame –

2. *and under liability' within the ambit and scope of Section 126 of the 2003 Act.*
3. *The expression 'unauthorized use of electricity means' as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.*
4. *In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126(2) is not appealable.*
5. *Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing –*
6. *officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under [Article 226](#) of the Constitution of India.*
7. *The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment*

order dated 25th July, 2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the Assessing Officer relating to passing of an order of assessment and determining factual controversy of the case.

8. *The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the Assessing Authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the Authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law.”.*

6. Learned counsel for the petitioner contends that since there is no appellate remedy prescribed against an order of provisional assessment, hence, writ petition is the only remedy available as per law. No other argument has been urged or judgment has been cited.

7. A short reply on behalf of respondent No.2 and 3 i.e. Distribution Licensee has been filed wherein it has been submitted by the respondents that the petitioner had an electricity connection account No.B48RL630368K for domestic purposes. During the course of usual checking No.00/167 dated 09.02.2017, it was observed by the officials of the respondents that the petitioner had been running a single phase motor by using 20 meters white PVC from the AP Transformer and it was a clear cut

case of theft of electricity. Accordingly, a letter vide memo No.80 dated 17.02.2017 was sent to the petitioner to deposit the penalty of Rs. 29,459/- and compounding charges of Rs. 4,000/- as per Section 135 of the Electricity Act, 2003. The details of the amount were also mentioned. It was also prescribed that if he was aggrieved of the said direction, he could take recourse to his remedies as per law.

8. It was also advised that in the event of the petitioner not depositing the amount of compounding charges, the FIR in terms of Section 135 of the Electricity Act, 2003 for committing theft of electricity would be registered against him. The petitioner, however, instead of taking recourse to the remedies, came before this Court against the said provisional assessment. It is contended that the Electricity Supply Code and Related Matters Regulations, 2007 were notified by the PSERC on 05.11.2014 and Regulation 37 thereof deals with the Theft of Energy. Relevant provision of the same are extracted hereunder:-

“37. THEFT OF ELECTRICITY:

xxxx.

37.2 Consequences of Theft of Electricity

37.2.1 Disconnection of Premises:

In case theft of electricity by a consumer/person is prima facie established as per Section 135 of the Act, then the supply to such premises shall be immediately disconnected by the order of an officer of the distribution licensee as authorized

for the purpose by the Commission (Annexure-11) or any other officer of the distribution licensee of the rank higher than the rank of an officer so authorized by the Commission. In such a case, an officer authorized to order disconnection of the supply shall lodge a complaint in writing relating to commission of such offence, with the police station having jurisdiction of the area within twenty four hours from the time of such disconnection.

37.2.2 Assessment of Charges

- (a) *Where theft of electricity in a premises is prima facie established as per section 135 of the Act, the Authorized Officer without prejudice to the criminal proceedings which may be initiated under Section 135 of the Act shall assess the electricity charges payable by such consumer/person as per procedure specified in Annexure-8. The assessment order shall be speaking order clearly stating the basis on which theft of electricity has been established. The Authorized Officer may, after recording reasons in writing, suitably reduce the presumptive period of theft of electricity as specified in Annexure-8 in*

case he is satisfied that such theft had actually occurred for a lesser period. Such an order of assessment shall be delivered to the concerned consumer/person within 24 hours of theft of electricity having been established.

- (b) The Authorized Officer under Regulation 37.2.2 shall furnish a copy of the assessment order to the consumer/person and the distribution licensee. The distribution licensee shall submit a copy of the assessment order in the Special Court immediately after submission of the challan by the Police.*

37.2.3 Payment of Assessed Amount

- (a) A consumer/person shall deposit with the distribution licensee the assessed amount under Regulation 37.2.2 within fifteen (15) days of the assessment.*
- (b) The distribution licensee may extend the last date of payment of the assessed amount or allow the consumer to make payment in installments subject to payment of interest for the unpaid amount for the extended period beyond fifteen*

(15) days at SBI's Base Rate prevalent on first of April of the relevant year plus 2%.

(c) After the assessed amount is deposited by the consumer in full, the distribution licensee shall restore supply of electricity to the premises within forty eight (48) hours of such deposit.

37.2.4 After the assessed amount is deposited by a person who is not an existing consumer, the connection to his premises may be released treating it as a case of release of a new connection.

9. It is contended that the respondent-Distribution Licensee has passed the order of assessment in terms of Appendix-8 to the Regulations as have been notified by the Appropriate Commission and it does not suffer from any infirmity. The petitioner does not suggest that the assessment and the demand are not in accordance with the parameters approved by the Commission. The object of issuance of a provisional order of assessment is only to apprise a consumer and to afford him an opportunity to submit his objections to the proposed assessment. He contends that the present writ petition is thus, pre-mature and is liable to be dismissed.

10. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents on record.

11. It is undisputed by the parties that only a provisional assessment has been conveyed to the petitioner and that the final order of

assessment has not been passed. As per the provisions of Section 135 of the Electricity Act, 2003, in the event of detection of theft of energy, the electricity supply is required to be disconnected without any further delay. Section 135 (1) (A) of the Electricity Act, 2003 stipulates that the respondent-Distribution Licensee shall make an assessment of an amount required to be deposited and in the event of same being deposited by the consumer, the electricity supply to the premises of the consumer is required to be restored within a period of 48 hours of such deposit. Further, Section 154 of the Electricity Act, 2003 stipulates the power of the Special Court and as per Section 154 (5) and (6) of the Electricity Act, 2003, the Special Court is required to also determine the civil liability in respect of cases pertaining to theft of electricity, where no compounding has been done. In the event the amount assessed by the Special Court is found less than the amount demanded by the respondent-Distribution Licensee, in terms of the assessment under Section 135 (1-A) of the Electricity Act, 2003, the excess amount deposited by the consumer is required to be refunded alongwith the interest as prescribed. Thus, the assessment of an amount stipulated Section 135 (1-A) of the Electricity Act, 2003, in a case of theft of energy only gives rise to a right of seeking the restoration of connection and is not *per-se* a determination of civil liability under the scheme of Electricity Act which is required to be done by the Special Court only.

12. Further, Regulation 37 stipulates the procedure for assessment. The parameters prescribed for the determination of liability 135 (1-A) of the Electricity Act, 2003 is *pari materia* to the for assessment of civil liability in

a case of Unauthorized Use of Energy under Section 126 of the Electricity Act, 2003. However, the same by itself cannot be interpreted to construe that the determination of civil liability in exercise of powers 135 (1-A) of the Electricity Act, 2003 would de-facto be an assessment under Section 126 of the Electricity Act, 2003. A mere adoption of the same formula cannot inter-change the exercise of substantive power and such assessment has to be read in terms of and in conformity with the statutory provision empowering the respondent authorities to carry out such determination. The contention of the petitioner that the assessment being in accordance with principles of assessment under unauthorized use i.e. Section 126 of the Electricity Act, 2003, as such the present assessment ought to be construed under Section 135 is hence clearly based upon misconstrued and understanding of the Statutory Scheme and the provisions of the Electricity Act, 2003.

13. Further, so far as reliance of the petitioner on the judgment of Hon'ble Supreme Court in '**The Executive Engineer and another Vs. M/s. Sri Seetaram Rice Mill**' case (supra) is concerned, the said reliance is misconceived as much as the Hon'ble Supreme Court has itself concluded in the said judgment that the High Court may not have committed any error of jurisdiction in entertaining the writ petition against an order by raising a jurisdictional challenge to the notice/provisional assessment order, however, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the Assessing Officer relating to passing of an order of assessment and determining factual controversy of the case. The Hon'ble Supreme Court specifically held that in such matter, the appropriate course

of action would have been to remand the matter to the assessing authority by directing the consumer to file objections, if any, as per law and require the authority to pass a final order of assessment. Thus, the conclusion drawn by the Hon'ble Supreme Court in the aforesaid judgment itself defeats the arguments of the petitioner. Even otherwise, the said judgment pertain to an issue arising out in relation to Section 126 of the Electricity Act, 2003 and not in relation to Section 135 of the Electricity Act, 2003. Hence, the reliance on the above said judgment is misplaced as the said judgment marks a word of caution for the High Courts not to transgress into the said jurisdictional issues, which are in the domain of assessing authority, and it also upheld the order passed by the High Court by which a direction was issued that the concerned consumer ought to approach the assessing authority for final assessment and determination.

14. Further, the respondent-PSPCL has already issued memo No.801/LB-10(328)22 dated 13.04.2023 in relation to jurisdiction of Civil Court and Permanent Lok Adalat in Theft of Electricity Act unauthorized use of energy cases. In its above said memo, while drawing the reference to the issues pertaining to the theft of energy, an advisory has been issued by the respondent-PSPCL that in cases relating to theft of electricity, which are triable only by the Special Court constituted under the Electricity Act, 2003, where proceedings have been initiated under Section 135 of the Electricity Act and the assessing officer passes an order of determination of civil liability and seeks enforcement thereof, a consumer has every right to avail the remedy of Civil Suit by challenging such order/demand raised by the

department/supplier and the same would not be barred by virtue of Section 145 of the Electricity Act. The above said memo further states that a mere existence of a Special Court does not by implication bar the jurisdiction of the Civil Court in a case where the assessing officer/licensee has passed an illegal or unauthorized order of demand despite having referred the matter to the police or the Special Court for determination of the same. It is hence evident that the PSPCL itself recognises the jurisdiction of a Civil Court to examine issues pertaining to wrongful assessment.

15. Having examined the petition in hand from all above said perspectives, it is evident that the judgment relied upon by the petitioner would not be applicable to the facts of the present case and that even the said judgment issues an advisory to the High Courts not to transgress into the jurisdiction of the assessing authority and entertain the writ petitions against the order of provisional assessment.

16. Additionally, the determination of a civil liability can only be done by a Special Court and that an assessment demanded under Section 135 (1-A) of the Electricity Act, 2003 is not in the nature of determination of a civil liability, rather the same is only an enabling provision for seeking a reconnection of the electricity supply consequent upon deposit of amount. Besides, the PSPCL also recognises that if any such order is illegally sought to be enforced, by determination of a civil liability, the remedy of Civil Court would not be ousted. Further, the counsel for the respondent has himself argued that final order of assessment has not been passed so far and that the order of provisional assessment ought to be construed as a Show

Cause Notice and in the event of the petitioner approaching the concerned assessing officer with the requisite material, the final determination in terms of Section 135 (1-A) of the Electricity Act, 2003 be done thereafter.

17. In view of the above statement, the present writ petition would not be maintainable at this juncture as no cause of action has fructified in favour of the petitioner. The present writ petition is accordingly **dismissed as pre-mature**. The petitioner would be at liberty to pursue his remedies in accordance with law after finalization of the assessment.

18. It is to mention that in the event of the petitioner approaching the respondent authorities on or before 12.02.2024, the respondent authorities shall proceed further in the matter in accordance of law and pass a final order within a period of 08 weeks and after granting an opportunity of hearing to the petitioner.

(VINOD S. BHARDWAJ)
JUDGE

15.01.2024
Mangal Singh

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