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

CR-2174-2020(O&M)
Date of decision : 17.12.2024

M/s Omaxe Ltd. ...... Petitioner

versus

Dakshin Haryana Bijli Vitran Nigam & ors. ..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

***

Present :- Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Samir Malik, Advocate and
Mr. Tushar Mathur, Advocate
for respondent No.1.

***

PANKAJ JAIN, J. (ORAL)

1 Challenge is to order dated 21.08.2020 (Annexure P-14) passed by Special Judge under the Electricity Act, 2003 (for short 'the 2003 Act') Faridabad to the limited extent whereby respondents have been restrained from disconnecting the electricity but subject to the petitioner depositing 40% of the total penalty amount assessed vide assessment notice dated 16.07.2020.

2 Petitioner is a real estate developer. A Single Point Bulk Domestic Supply Electricity Connection stands sanctioned in favour of the petitioner. Initially the same was sanctioned for a load of 2183 KW. From the said single point connection the petitioner is further supplying energy to the respondents/allottees. A checking was carried out on 01.06.2018. The

POOJA SHARMA
2025.03.19 17:24
I attest to the accuracy and
integrity of this document

officials found that the power was not only being supplied to the residential towers but was also being supplied to allottees other than residential towers. Penalty of Rs.42,81,933/- was imposed under the 2003 Act. The imposition of penalty was assailed by the petitioner by way of statutory appeal under Section 127 of the 2003 Act. On 14.07.2020 an inspection was carried out by Vigilance Wing of respondents. As per the respondents petitioner was found involved in sale of energy. Another notice under Section 126 of the 2003 Act was issued. Penalty of Rs.2,61,46,128/- was imposed. Final assessment order dated 11.08.2020 was passed. Petitioner was further issued notice under Section 135 read with Section 152 of the 2003 Act. Petitioner filed petition under Section 154 read with Section 135 of the 2003 Act before the Special Judge impugning Checking Report, Final Order of assessment order and notice issued under Section 135 read with Section 152 of the 2003 Act. Learned Special Judge while granting interim protection to the petitioner passed a conditional order asking the petitioner to deposit 40% of the assessed amount within a period of 7 days from the passing of the order. It is the aforesaid order which is being assailed by the counsel representing the petitioner. It is being claimed that the Special Court erred in holding that it was the second incident of the petitioner indulging in the theft of the electricity. The earlier case being a case of unauthorized use of electricity cannot be clubbed with the present case to hold against the petitioner.

3 I have heard learned counsel for the parties and have gone through records of the case.

POOJA SHARMA
2025.03.19 17:24
I attest to the accuracy and
integrity of this document

4 The argument raised is misconceived. The findings recorded by the Special Court read as under :-

> *7. At this stage, department has levelled allegations against the petitioner, which are as follows :-*
>
> *"1.Premises i.e. Omaxe Ltd. Hills in which BLDS Connection bearing A/C No. 9940450000 was found installed in presence of Sh. Gautam S/o Hardev (Admin Officer) MB-8222822210 & Sh. Rakesh S/o Babu Ram (Dy. Manager) Omaxe Hills Mob. No. 9785632657.*
>
> *2. Accuracy position of seals: Accuracy of meter checked by M&P Staff vide MT-1 No. 33/1220 and found within limits and all seals found intact.*
>
> *3. The details of number of flats in Omaxe Hills-1 is as 2BHK= 39 flats, 3BHK = 186 flats, Total = 225 flats.*
>
> *4. 59 Nos. Flats was vacant on Hills-1 as per detail given by staff.*
>
> *5. Subject cited connection meter installed at Hills-1 Gate. As per bills the connection has been released for 266 flats.*
>
> *6. Supply was also found being used in Hills-2 (4 Nos. Towers = 216 flats) & Forest (6 Nos. Towers = 252 flats) from Hills-1 SF-6 Circuit Breaker by suing 300mm2 Black color Cable U/G. So, it is a case of Sale of Power (SOP). The same was got verified by disconnecting the supply of Hills-2 & Forest Spa from Hills-1 SF-6 Circuit breaker.*
>
> *The memorandum of inspection and seizure was duly handed over to you/Sh. Rahul Dy. Manager (Forest), Gautam son of Sh.Hardev (Admin Officer) M.No. 8222822210 & Sh. Rakesh son of Sh. Babu Ram, Dy. Manager (Hills-1) M.No. 9785632657 being present at the time of such inspection.*
>
> *Provisional Notice under Section 126 of Electricity Act-2003 for unauthorized used of electricity issued by this office vide memo No. 1189 dated 16.07.2020 for assessment of Rs. 26146128/-vide Sale Circular No. D-61/2013.*

POOJA SHARMA
2025.03.19 17:24
I attest to the accuracy and
integrity of this document

On scrutiny of the office record it is found that your premises as also got checked vide LL-1 No. 01-02-03/3686 on dated 01.06.2018 and found using unauthorised use of electricity (sale of power) for which provisional Notice vide memo No. 267/269 dated 06.06.2018 & subsequent Final Notice vide memo No. 314/316 dated 27.06.2018 issued under Section 126 of Electricity Act-2003 by Executive Engineer (Op) Division, DHBVN Old Faridabad, it is also mentioned here that the appeal case is still pending/ under proceedings with the SE/TS, HVPNL Faridabad (Appellate Authority).

In view of the above, it is evident that you are indulged in dishonest use of electricity during second & subsequent checking and not compliance of the Nigam Instructions. As such Clause No. 5 of Sale Circular No. D-61/2013, (Point No. 5), the penalty shall be charged under Section 135(e) of Electricity Act-2003.

The above facts indicate that you have been indulging in theft of electricity under Section 135(e) of the Electricity Act-2003. Accordingly, for the act of theft of electricity, you have caused loss to the Nigam the details of assessed amount are given here under:-

Sr. No.	*Description of charges*	*Amount (In Rs.)*
1	*Assessment by Licensee for theft of electricity*	*31595277.00*
2	*Any other relevant applicable charges relating to schedule of charges*	*0.00*
3	*Total amount payable*	*31595277.00*

8. In the present case, admittedly a notice under section 126 of Electricity Act has been issued to the petitioner on two occasions. Firstly on 6.6.2018 and then on 14.7.2020. The contention of the petitioner is that the notices under section 126 have been wrongly issued to the petitioner on both the occasions but at this stage the veracity and validity of issuance of notices cannot be gone into

POOJA SHARMA
2025.03.19 17:24
I attest to the accuracy and integrity of this document

without appreciation of evidence as to whether the said notices were rightly issued or wrongly issued. It would be relevant to mention here that department has invoked the provisions of Sales Circular D-61/2013.

9. At this stage, it is a conceded fact that connection was got released initially for towers comprised in Hill-I. The petitioner alleges that the load has been sanctioned for all the towers by competent authority at Hissar but the conspicuous stand of the respondents is that although the load has been sanctioned but said load has not been energized at the site. Meaning thereby that the procedural compliance of the sanction does not exist at the site and the required overt act has not been done by the department. Whether the compliance has been made or not made or was not required to be made by the department and was only required to be done by the petitioner is also subject matter of evidentiary appreciation. At this stage, department has relied upon Clause no.5 of Sales Circular D-61/2013 which is reproduced here as under :-

> *"Clause No.5: In case the load found running under unauthorised category is not removed and/ or compliance of the notice served by the Nigam is not made by the consumer within the stipulated period of where after making the compliance of notice, during the second and subsequent checking the load is again found running in an unauthorized category having a tariff higher than the one in which it is being currently booked, the penalty shall be charged under Section 135(e) of the Electricity Act, 2003 considering it as a dishonest use of electricity in an unauthorized category."*

10. The case of the department cannot be thrown out at the very inception, rather it would be in the interest of justice in case department is allowed to file detailed reply and written statement to the averments. Prima facie it is a case wherein petitioner has been issued notice twice under section 126 of the Electricity Act and the subsequent notice has been converted into Section 135 of Electricity Act.

POOJA SHARMA
2025.03.19 17:24
I attest to the accuracy and
integrity of this document

11. The admitted fact is that there was a checking carried out on 6.6.2018 and notice of provisional assessment for unauthorized use of electricity under section 126 of the Electricity Act, 2003 was issued to the petitioner and again the same notice has been issued to the petitioner on 14.7.2020 and based upon clause no.5 of the Sales Circular D-61/2013, said offence has been converted to Section 135 of Electricity Act. Prima facie the petitioner has been indulged in supplying electricity and selling the same meant for tower Hill-I to tower of Hill-II and forest for which allegedly it was not competent. Although petitioner alleges competence but the same has been disputed by the department. The case of the department is substantiated with a report which cannot be adjudicated without evidentiary appreciation. Therefore, the act of department at this stage cannot be actuated with any malice.

12.Accordingly, in view of the aforesaid discussion and in the interest of justice, department is restrained from disconnecting the electricity supply subject to deposit of 40% of assessment amount by the petitioner within a period of seven days from today. Further, the department is directed to file detailed written statement and reply to the petition and the interim application on next date of hearing, i.e., 17.9.2020. Adjourned to the said date for the same and for hearing of arguments in the stay application."

5 Bare perusal of the findings would reveal that the Lower Court in order to balance equities, rightly granted interim in favour of the petitioner, the energy being essential commodity. However, keeping in view the fact that the petitioner is accused of having indulged in the sale of power which amounts to theft of electricity under Section 135 of the 2003 Act, it rightly imposed condition on the petitioner to deposit 40% of the assessed amount within 7 days.

POOJA SHARMA
2025.03.19 17:24
I attest to the accuracy and
integrity of this document

6 The Lower Court rightly balanced the equities and put petitioner to the condition of deposit of 40%, so that the interest of both the parties can be taken care of and their respective convenience can be balanced.

7 Finding no irregularity in the order passed by the Special Court, the present revision petition is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

17.12.2024
Pooja Sharma-I

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

POOJA SHARMA
2025.03.19 17:24
I attest to the accuracy and
integrity of this document