

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

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**CWP-15832-2021 (O&M).
Date of Decision: 09.01.2024.**

GAGANDEEP SINGH

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Kamaldeep Singh Sidhu, Advocate, for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

Mr. Dhruv Walia, Advocate,
for respondents No.2 to 4.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the Memo dated 17.06.2021 passed by the Appellate Authority in exercise of the power under Section 127 of the Electricity Act, 2003 whereby the appeal against the final order of assessment has been dismissed on ground of limitation averring that since the appeal has not been preferred within a period of 30 days of the passing of the final order, hence, the same was liable to be dismissed on the above said ground.

Learned counsel for the petitioner contends that the petitioner was served with a notice of provisional assessment by the respondents/PSPCL on 03.09.2019 to which a reply was submitted. The final order of assessment was, however, not conveyed to the petitioner. He

contends that the petitioner submitted a representation to the respondent authorities on 27.12.2019 wherein it was specifically averred that no final order of assessment has been served upon him and that no intimation was sent to him but the electricity supply has been disconnected and that the same may be restored. The reply thereto was sent by the respondents/PSPCL on 06.01.2020. In the said response, there was no mention as regards passing of any final order of assessment even though such grievance had been espoused by the petitioner in the application submitted by him. Thereafter, a legal notice dated 31.01.2020 was also sent by the petitioner. In para No.11 thereof, it was specifically averred by the petitioner that no final order of assessment has been passed consequent to the provisional assessment on 03.09.2019 and if any such order has been passed, the same ought to be supplied to him. It was only in response to the above said legal notice that the respondents informed on 15.03.2020 that a final order of assessment had been passed by the respondent authorities on 22.09.2019.

Learned counsel contends that after receipt of such communication, the petitioner submitted an application with the respondents under the Right to Information Act, 2005 for supply of the final order of assessment on May 29, 2020. The delay in submission of application for supply of copy of final order of assessment since Nationwide Lockdown was imposed w.e.f. 24.03.2020 and there was no other way in which such information could be sought. The appeal in question under Section 127 of the Electricity Act, 2003, could be filed only after copy of order was received and the period of limitation has to be construed

therefrom. It is further submitted that on account of the Covid-19 protocols and the order passed by the Hon'ble Supreme Court of India, in the matter of Suo Motu Writ Petition (C) No. 3 of 2020 in Re Cognizance for Extension of Limitation, the period of limitation would stand extended. Thus, when the appeal in question was filed by the petitioner with the respondent authorities on 09.06.2021, the same has to be construed as having been filed within the period of limitation as extended by the Hon'ble Supreme Court in the above said suo moto writ petition.

Learned counsel for the respondents/PSPCL, on the other hand, contends that the perusal of the final order of assessment clearly shows that the copy of the final order of assessment had been duly handed over to an employee of the petitioner and that it is wrong on the part of the petitioner to contend that copy thereof had not been supplied to him. He further submits that in the dispatch number, it is also specifically mentioned that the copy of the final order of assessment has been sent. A period of 30 days is prescribed for preferring an appeal under Section 127 of the Electricity Act, 2003 against the final order of assessment under Section 126 of the Electricity Act, 2003. Having chosen not to file any petition for raising a challenge to the final order of assessment, the petitioner cannot now, at this juncture, avail benefit of lapse on his part since the Covid -19 protocols came in force only w.e.f. 25.03.2020. Thus the period of limitation had come to an end much prior to the intimation.

Controverting the aforesaid submission, learned counsel appearing for the petitioner makes a reference to the documents relied upon

by the respondent establishes service of final order of assessment bearing No.83 dated 20.09.2019 to the petitioner which reads as under:-

“handed over to a worker of the factory”

Sd/-

It is contended that the above said receipt of final order of assessment was not done by any employee of the petitioner. No description of the employee or acknowledgement/signature countersigning the receipt of the final order of assessment, appear on the said order. Accordingly, it is at best a report of the employee of the respondent Corporation. Controverting the reliance placed on the dispatch register, counsel for the petitioner contends that even though it is submitted that the order in question was sent by post, however, there is no proof of sending the dispatch order through post. Hence, the information of final order has to be construed w.e.f. from the date when the same was supplied under the Right to Information Act, 2005 and read with the limitation as directed by the Hon'ble Supreme Court in the matter of SUO MOTU WRIT PETITION (C) No.3 of 2020.

I have heard the learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition.

Prima facie, it appears that the contention of the petitioner that the copy of the final order of assessment had not been furnished to him carries some weight inasmuch as the document of delivery of the final order is only a report by an officer of the Department and does not give details or description of any person who had received the final order of assessment for

and on behalf of the petitioner. Further, once the issue of dispatch/delivery of final order of assessment was being raised by the petitioner, the burden lay on the respondents/PSPCL to establish the mode and manner for supply of the final order. There is insufficient material placed on record by the respondents/PSPCL to prove the service of the final order of assessment under Section 126 of the Electricity Act, 2003. The limitation of 30 days for preferring an appeal against an order of assessment under the unauthorized use of electricity in exercise of the powers under Section 126 of the Electricity Act, 2003 is to be construed from the date of supply of the copy of the order. Since the said aspect is disputed and prima facie documents available on record suggest that the final order of assessment had not been effectively supplied to the petitioner, hence, the benefit accrues in favour of the petitioner.

The order dated 17.06.2021 passed by the appellate authority under Section 127 of the Electricity Act, 2003 (Annexure P-1) is accordingly set aside. The matter is remanded to the Appellate Authority to pass a fresh order after granting an opportunity of hearing to the respective parties.

The parties shall appear before the Appellate Authority on 19.02.2024, whereupon further proceedings as per law shall be undertaken. The petition is accordingly allowed in terms aforesaid.

January 09, 2024

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(VINOD S. BHARDWAJ

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No