

2024.PHHC.139537-DB



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

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LPA-2052-2024 (O&M)

Decided on : 24.10.2024

Amjad Khan

.....Appellant(s)

Versus

Uttar Haryana Bijli Vitran Nigam & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE DEEPAK GUPTA**

Present: Mr.Rakesh Nagpal, Advocate, for the appellant.

Mr.Ankur Mittal, Addl.A.G., Haryana
Mr.Saurabh Mago, DAG, Haryana.

Mr.Ankur Mittal, Advocate
Ms.KushaldeepK.Manchanda, Mr.Siddhant Arora, Advocates, for
respondent-UHBVN.

G.S. Sandhawalia, J. (Oral)

CM-4870-LPA-2024

1. Application for condoning the delay of 28 days in re-filing the appeal is allowed in view of the averments made in the application duly supported by affidavit of the appellant. Delay of 28 days in re-filing the appeal is hereby condoned.

2. CM stands disposed of.

CM-4871-LPA-2024

3. Application for condoning the delay of 9 days in filing the appeal is allowed in view of the averments made in the application duly supported by affidavit of the appellant. Delay of 9 days in filing the appeal is hereby condoned.

4. CM stands disposed of.

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5. Consideration in the present appeal is to the judgment dated 18.04.2024 of the Learned Single Judge, passed in CWP-1692-2016 whereby the writ petition had been dismissed keeping in view the fact that compounding charges had been deposited by the appellant on 02.01.2016 and therefore, it was held that it would no longer be available to dispute the findings and it would be a case of theft of electricity.

6. Once the compounding fee of the offence of theft had been deposited without prejudice to his rights, the appellant would not be entitled to raise the challenge, was the reason which weighed with the Learned Single Judge while dismissing the writ petition, upholding the assessed demand of Rs.16,44,844/- and the additional amount of Rs.3 lakhs for compounding. It was also noticed that there was nothing to show that the assessment had not been done by the authorities as per the formula approved by the appropriate Commission under the Electricity Supply Code and the Electricity Supply Instructions Manual. Having accepted the liability as assessed and having deposited the amount without prejudice to his rights, the appellant, thus, was held not entitled to raise challenge to the demand raised.

7. Counsel for the appellant has referred to the letter dated 02.02.2016 (Annexure P-6) that the appellant had deposited the amount under protest.

8. A perusal of the said letter would go on to show that checking was done on 06.01.2016 and the meter was taken for testing in the M&P Lab and the same was duly done in the presence of the consumer, which would be clear from the report dated 13.01.2016 (Annexure R-7) which showed that all four seals on MCB and CT Chamber were found tampered i.e. lace wire found

cut and refixed (as declared by M&P team at site). Relevant portion of the report reads as under:

“Observation:-

1. In continuation to this office Endst No. Ch-76/M&T/CR dated 07/01/16 and LL-1 No.17,18/3338 dated 06/01/16 where it is mentioned that accuracy of meter has been checked at site and same is running slow by -67.49%. Also it is mentioned in LL-1 that all four seals on MCB and CT Chamber found tamper i.e. lace wire found cut and refixed (as declared by M&P team at site). Also it is mentioned in LL-1 that M&P team has opened the CT Chamber as well as MCB and found all secondary wire of external CT are interchanged. However, the genuineness of M&T lab seals provided on LT CT meter has been checked and same has been found in order internal examination is carried out in presence of firm representative and no any external circuit has been found in the meter.”

9. It is apparently, on that basis the demand was raised regarding the theft of electricity. Respondents also wrote to the concerned Police Station on 20.01.2016 (Annexure R-12) regarding the lodging of the FIR keeping in view the fact that loss has been caused by committing theft and the consumer had also been put to notice on 20.01.2016 (Annexure R-11) for compounding of offence by paying a sum of Rs.3 lakhs. Resultantly, prayer was made to the police officials to lodge the FIR under Section 135 read with Section 151 under the Electricity Act, 2003. Section 152 provides for compounding of offence by the Appropriate Government or any officer authorized by it in this behalf, who may accept from any consumer or person who committed an offence of theft of electricity punishable under the Act. Acceptance of sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf is deemed to

amount to an acquittal within the meaning of Section 300 of Cr.P.C and the benefit shall be only allowed once to any person.

10. In such circumstances, having bought peace by deposit of the amount of Rs.3 lakhs, the appellant cannot be allowed to blow hot and cold. It was his option to face prosecution at one point of time and also contest the amount. Having not done so, now, he cannot find fault in the procedure adopted and challenge the same by way of writ petition to the demand of Rs.16,44,844/- which was on account of indulgence in theft and opting to accept the notice for compounding. In the absence of any challenge having been raised to the checking report which had been done in the present of the appellant, we are of the considered opinion that the Learned Single Judge was well justified in dismissing the writ petition, in the above facts and circumstances.

11. Resultantly, finding no ground to interfere in the same, the present appeal is hereby dismissed in limine. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(DEEPAK GUPTA)
JUDGE

24.10.2024
Sailesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No