

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203

CWP-1692-2016 (O&M)
Date of decision: 18.04.2024

Amjad Khan ...Petitioner
VERSUS
Uttar Haryana Bijli Vitran Nigam Ltd. and others ...Respondents

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

Present :- Mr. Anjum Ahmed, Advocate for the petitioner.
Mr. R.S. Longia, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order of assessment bearing Memo No.Y42/2016/20 dated 20.01.2016 issued by respondent No.4-Sub Divisional Officer, Operation, Industrial Area, U.H.B.V.N., Yamuna Nagar, vide which an amount of Rs.16,44,844/- had been demanded towards civil liability as well as to the notice for compounding bearing Memo No.Y42/2016/21 dated 20.01.2016 vide which an amount of Rs.3,00,000/- was demanded as compounding fee, from the petitioner on account of theft of electricity under Section 135 of the Electricity Act, 2003 (hereinafter referred to as 'the Act of 2003') against electricity connection bearing account No.RM-281.
2. Learned counsel for the petitioner contends that the petitioner is a subscriber and user against electricity connection No.RM-281 issued under The MS Category with a sanctioned load of 29.900 K.W. by the respondent-department for his premises i.e. Ajmer Saw Mills, situated at Village Baddi

Majra, Yamuna Nagar. He submits that the electricity meter was installed outside the boundary of the premises of the petitioner on the poles, by the officials of the respondent and the meter used to be regularly checked by the officer/staff of department. He states that on 06.01.2016, some officials of the respondent-department came to the premises of the petitioner and carried out some checking of the aforesaid electric meter as well as the wires fitted in the premises but no fault or illegality of any kind was noticed, however, the officials still removed the electric meter and prepared a checking report on LL-1 Form alleging that the seals on MCB & CTC were found tempered and lace wire was found cut and re-fixed with some adhesive. It is further alleged that upon checking, the accuracy of the electric meter was found to be working slow by 67.49%. It being a case of theft of energy, electricity supply was disconnected.

3. Learned counsel for the petitioner contends that the petitioner was called in M&T Lab., Yamuna Nagar, and upon checking nothing wrong or illegal of any kind was found to show tampering with the meter. A letter dated 12.01.2016 was thereafter received by the petitioner to remain present at Yamuna Nagar Laboratory on 13.01.2016 for internal examination of the meter. The petitioner visited the laboratory on the said date and the meter was checked again. He contends that the petitioner was apprised that there was nothing abnormal in the testing of the meter and that the report shall be sent soon. However, the petitioner was served with an order of assessment on 20.01.2016 for offence of theft under Section 135 of the Act of 2003 and a demand of Rs.16,44,844/- was raised. Another notice of even date for seeking compounding of offence was also served upon the petitioner. He

contends that the demand made by the respondents is unsustainable and illegal. It is vehemently argued that it being a case of slowness of the meter, the same cannot be labeled as theft of electricity and the case has been wrongly dealt with under the said category. It was also argued that the respondents had thereafter provided various schemes as per which the assessment was being enacted in the cases pertaining to slowness of the meter and that the petitioner is entitled to the benefit of such schemes floated by the respondents from time to time.

4. Learned counsel for the respondent-Distribution Licensee on the other hand submitted that the premises of the petitioner was checked on 06.01.2016 and it was found that 4 number of the seals on the MCB (2 nos.) and CTC (2 nos.) were tampered with by cutting of lace wire and re-fixing of the same with some adhesive material. On checking of the accuracy of the electricity meter and verifying the seals record, the meter was found running slow by 67.49% as the meter recorded only 1200 watts against 3692 watts recorded by the LT Acqua check installed at the fuse unit at the consumer end vide MTI report No.42893 of the M&P Wing. The MCB was opened by M&P Wing to check the accuracy of the meter by removing two MCB tampered seals. Further to check any foul play inside the CT Chamber, the same was also opened after removing CTC tampered seals and it was found that all the secondary wires and PT wires of the CTC's were inter changed i.e. not connected in order to the terminal block of the meter, which resulted in slow running of the meter and the seals were found tampered on MCB and CTC which had been done intentionally to effect the working of the meter. Hence, the complete MCB Box was removed by

cutting incoming and outgoing side of the cables being a suspected theft case. Notice was accordingly given to the petitioner about the testing of the meter the same was initially fixed for 07.01.2016 in the presence of the petitioner and representative of M/s Gensus Power Infrastructure, however, on that date no one came from the side of the Company-M/s Gensus Power Infrastructure whereupon the meter was not checked. Thereafter, on 13.01.2016, the representative of M/s Gensus Power Infrastructure came in the M&T Lab., Yamuna Nagar and the testing of the meter was undertaken in the presence of petitioner and representative of the supplier-M/s Gensus Power Infrastructure.

5. The consumption of electricity by the petitioner for the last 12 months was also analysed and it recorded 17628 units whereas the units assessed in view of the guidelines contained in the sale circular No.15/2014 issued by the Distribution Licensee to deal with and count in such cases were computed as 114816 units. After deducting 17628 units, the balance units were 86112 for which the assessed amount came to Rs.16,44,844/-.

6. Letter was sent to the competent authority/designated officer for taking further action about the suspected theft in view of LL1 No.17, 18/3338 dated 06.01.2016. An order of assessment under Section 135 of the Act of 2003 was issued to the petitioner to deposit amount along with the notice under Section 135 read with Section 152 of the Act 2003 for seeking compounding of the said offence. As the amount was initially not deposited, a letter was sent to the SHO, Police Station Ambala, District Ambala for lodging an FIR against the petitioner. However, the petitioner thereafter deposited the assessed compounding amount on 02.02.2016 and filed the

present writ petition thereafter. He submits that the petitioner has already deposited the compounding charges, he cannot at this juncture dispute the case to be not that of theft of electricity. In the event he had any objection to the conclusion recorded by the respondent-Distribution Licensee as regards the case being that of a suspected theft of electricity, he was under no compulsion to seek compounding whereupon the said aspects could be determined before the Special Court/Special Judge, under Section 154 of the Act of 2003. Having opted not to dispute the finding recorded and having deposited the assessed amount and compounding charges, it is no more open to the petitioner to dispute the finding recorded/conclusions drawn by the Distribution Licensee about the case being that of a theft of electricity. He further submits insofar as the contention of the petitioner that the respondent-department has notified the settlements schemes with regard to the slowness of the meter is concerned, there is no reference to any such circular/scheme in the present petition.

7. In any case, the claim of the petitioner, if any, had to be considered under an applicable scheme and in the absence of any pleading or evidence it cannot be to ascertain that the petitioner ever applied under any applicable scheme and therefore, the contention of the petitioner is nothing more than the conjecture.

8. I have heard the learned counsel for the respective parties and have gone through the documents available on record.

9. Taking into consideration that the assessed amount along with the compounding charges have already been deposited by the petitioner on 02.01.2016, I find myself in agreement with the learned counsel for the

respondent-Distribution Licensee that it would no more be available to the petitioner to dispute the findings recorded by the respondents as regards the case being that of theft of electricity. There was no compulsion on the petitioner to seek compounding of the offence and by having opted for seeking compounding, the accused-petitioner herein would not be entitled thereafter to dispute the finding recorded or conclusions drawn by the Distribution Licensee.

10. Further, insofar as the question of assessment of demand of Rs.16,44,844/- is concerned, there is nothing on record on the basis whereof it can be said that the aforesaid assessment has 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. Hence, the determination of the demanded amount cannot be faulted with in the absence of any reference to violation of any of the approved structured formula for assessment of the said amount. There is also nothing on record that the deposit of the above-said assessed amount was made by the petitioner without prejudice to his rights. He having accepted the liability as assessed and having deposited the amount without prejudice his rights, would not now be entitled to raise a challenge, by way of present petition, to the proceedings undertaken by the respondent authorities.

11. **Finding no merits, the present writ petition is dismissed.**

(VINOD S. BHARDWAJ)
JUDGE

18.04.2024

Mangal Singh

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