IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 **CWP-20866-2016(O&M)**
Date of decision:14.08.2024

Punjab State Power Corporation Ltd. & anr. …Petitioners

Versus

M/s Padam and Company & anr. …Respondents

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

Present : Ms. Meena Bansal, Advocate,
for the petitioners.

Mr. A.K. Garg, Advocate,
for respondent No.1.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the order dated 21.09.2015 (Annexure P-19) passed by the appellate authority vide which appeal of respondent No.1 was allowed and the assessment order dated 30.09.2014 was set aside.

Learned counsel appearing for the petitioners-PSPCL contends that respondent No.1 is having an electric connection bearing A/c No.BM05/0050 of MS category having a sanctioned load of 49.200 KW which was sanctioned in the name and style of M/s Padam and Company. The above said connection was checked by Additional Superintending Engineer (Enforcement-3) on 21.05.2014 and the checking report was duly prepared on 22.05.2014. The said checking report was also signed by a representative of the respondent-consumer. In the checking report, it was stated that the display of the meter was held up and the meter reading was not being shown, meter pulse was stopped and accuracy of the meter could not be checked. It was also stated that the correctness of the seals as well as DDL and accuracy of the meter were to be checked at ME Lab. It was also reported that the meter has been sealed and a sub meter has been installed and the consumer himself be responsible for five tenants of the premises and the details of the said tenant has been specifically mentioned. She contends that a provisional order of assessment under Section 126 of the Electricity Act, 2003 for an amount of Rs.7,12,786/- was conveyed to respondent No.1 vide memo no.245, dated 22.05.2014. He was also directed to remove the excess load and to file a fresh test report and also supply NOC (to be taken from Public Pollution Control Board) to the petitioner within seven days. After receipt of the provisional assessment order, partner of respondent No.1 filed an application dated 29.05.2014 submitting therein that the excess load had been removed and no polluting industry was currently operating from the said premises. There was, thus, no denial in the specific communication as to running of the excess load and also of the tenants having been inducted into the said premises. The report was also received from the Assistant Executive Engineer (Technical) in this regard on 02.06.2014.

Respondent No.1 was informed vide letters dated 09.06.2014; 19.06.2014; 14.07.2014; 18.07.2014; 12.08.2014 and 08.12.2014. An objection was filed by respondent No.1 dated 03.06.2014 along with which he appended an unregistered rent deed dated 01.04.2014. On the second occasion, he sent a reply on 18.06.2014 stating that he could not appear for personal hearing on account of certain health issues. Eventually, vide Memo No.1175, dated 30.09.2014, the final order of assessment under Section 126 of the Electricity Act, 2003 was passed and conveyed to him. She contends that checking was done again on 16.07.2014 and it was noticed that five units were found running in the premises and to whom supply was given from the single meter. It is argued that an appeal was thereafter filed by respondent No.1 before respondent No.2-appellate authority, who has allowed the said appeal by recording as under:-

> *"I have gone through the file and the contentions of both the parties. The PSPCL took the objection that the appeal has been filed beyond the period of limitation. However, the same was condoned vide separate order dated 24.02.2015. So, this ground is not maintainable. The main ground was that of the appellant was selling the electricity to the tenants, whereas the appellant has stated that he has inducted the tenants only in April, 2014 and he is not liable to be penalized and further stated that all the inspections were done in his absence and even the final assessment order was passed without giving any opportunity of being heard to him. The PSPCL has not produced any document to show that the inspection was done in the presence of any authorized person or that the appellant was selling the electricity. On the other hand, the appellant has deposited the various rent deeds, which is a documentary evidence, which shows that the premises was given on rent only in April, 2014. So, from the above discussion, the appeal is maintainable and the case of unauthorized use of electricity or the category of U.U.E is not made out. Hence the appeal is allowed and the assessment order dated 03.09.2014 is set aside. The amount already deposited by the appellant shall be adjusted by the*

PSPCL."

It is argued by her that the order passed by the appellate authority suffers from failure to appreciate the following contentions:-

i. That respondent No.1 was afforded sufficient number of opportunities and despite acknowledging receipt of the said notices, respondent No.1 chose not to appear for personal hearing or to advance his arguments. It is not a case where steps for affording opportunity of hearing to the respondent had not been undertaken by the petitioner distribution licensee.

ii. Respondent No.1 submitted his letter to the petitioners on 29.05.2014 where he does not dispute the fact that the load was in excess and does not deny that the tenants were inducted into the premises. Hence, there is no defect in the order of assessment for unauthorized use of electricity since respondent No.1 was not only drawing a load of 71.871 kw as against the sanctioned load of 49.200 kw, but was also indulged in further distribution of electricity to other tenants for which he was not entitled.

iii. She also contends that the appellate authority has placed much reliance on the unregistered rent deed dated 01.04.2014 submitted by the respondent No.1 about induction of tenants. She contends that such an unregistered rent deed can at best be a document to identify a tenant w.e.f. the date of the rent deed but the same is not a conclusive proof that the property in question was never rented out to any person other than the person, who was inducted as a tenant as per the said rent deed for a period prior thereto. The reliance, thus, on the above-said rent deed as gospel truth to dispel the case of the petitioners and without appreciating the provisions of the Electricity Act was misplaced.

Learned counsel for respondent No.1, on the other hand, has raised an argument that the checking report was not signed by any of the representatives of the petitioners and that it was on account of certain health issues as well as personal/ business exigencies that respondent No.1 could not appear before the authorities when notices were served upon him. He further contends that the rent deed establishes that the premises was given on rent only in April, 2014 and as such, the charges for unauthorized use of electricity would be levied only from the date when the premises was leased out as per the documents so furnished. He also contends that the last notice was sent after the final order of assessment has been passed.

I have heard learned counsel for the respective parties and have gone through the documents appended along with the present petition with their able assistance.

It is not in dispute that various notices have been sent to respondent No.1, which was duly received by him. Merely because last notice was sent to him after passing of final order of assessment, would not vitiate the fact that the petitioner distribution licensee has been continuously informing respondent No.1 about the date of hearing and calling upon them to advance their arguments. The petitioner distribution licensee, thus, cannot be said in an error in not affording an opportunity of hearing to the respondent. Further, in so far as contention of the respondent that the checking was never conducted in the presence of respondent No.1 or any of his representative, the original of the document Annexure P-1 specifically shows that the same is duly signed by the representative of respondent No.1. In the given circumstances, the above-said contention is liable to be rejected.

Further, it is also noticed that induction of the tenancy is not disputed by respondent No.1 himself. The appellate authority has, however, proceeded to assume that the tenancy was inducted only in April, 2014 and has proceeded to assume that there were no tenant prior thereto. The burden lay upon respondent No.1 to establish that the premises in question were not under tenancy of any other person for the period for which the penalty is being levied and there can be no presumption against the Distribution Licensee since the mandate of Electricity Act restricts the period for such computation to be done in the absence of any definite proof of a lesser period than for what it has been determined. I find that order passed by the appellate authority is bereft of any objective consideration of the issue and has been passed mechanically by assuming facts, which could not have been so assumed.

The present petition is allowed. Order dated 21.09.2015 passed by the appellate authority in case No.12 instituted on 08.12.2014 is, accordingly, set aside. The matter is remanded to the appellate authority for fresh adjudication on merits. Parties shall appear before the appellate authority on **16.09.2024.**

14.08.2024 **(VINOD S. BHARDWAJ)**
monika **JUDGE**

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