

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

212

CWP-26505-2016

Date of decision: 01.05.2024

PUNJAB STATE POWER CORPORATION LIMITED & OTHERS

.....Petitioners

VERSUS

GURMUKH SINGH AND ANOTHER

.....Respondents

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

Present: - Mrs. Anupam Bhanot, Advocate
for the petitioner.

Mr. Umesh Aggarwal, Advocate
for respondent No.1.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 26.08.2015 and 14.01.2016 (Annexure P-2 and P-2a) passed by respondent No.2-Sub Divisional Magistrate Amritsar-2 in an appeal under Section 127 of the Electricity Act, 2003 whereby the Sub Divisional Magistrate has set aside the order of final assessment and directed refund of the amount deposited by the respondent-applicant vide receipt No. 187 dated 29.06.2011. The order dated 26.08.2015 was eventually modified vide impugned order dated 14.01.2016

2. Learned counsel appearing on behalf of the petitioner contends that the checking report shows that the respondent-applicant was carrying out the construction activity on LT line by direct wiring for tubewell connection. She thus submits that it was a case of theft of electricity and that the assessment has been made under Section 135 (1A) of the Electricity Act, 2003 although the same may not have been specifically mentioned. It is contended that the issue with respect to the assessment done comes within the purview of Section 135 of the Electricity Act, 2003 and cannot be decided in an appeal under Section 127 of the Electricity Act, 2003 by the Sub Divisional Magistrate vide notification dated 03.12.2008, such power has been vested only with the Special Court as notified. She thus contends that the impugned order is without jurisdiction and that such issue is already been decided by this Court vide order dated 05.04.2024 passed in ***CWP-5818 of 2017*** titled as ***“Punjab State Power Corporation Limited and others versus Gurinderjit Singh and another”***.

3. Learned Counsel appearing on behalf of the respondent, however, submits that the order of assessment does not refer to the same having been made in exercise of powers under Section 135 of the Electricity Act, 2003 and that in the absence of any such mention of the enabling provision, an appeal had been preferred under Section 127 of the Electricity Act, 2003 before the Appellate Authority.

4. I have heard learned counsel appearing on behalf of the parties and have gone through the documents appended alongwith the present writ petition.

5. The entire case of the respondent is on account of absence of mention of the provision under which the demand was being raised in the order of final assessment. However, it is not in dispute that the assessment had been carried out on the basis of re-enquiry report dated 21.06.2011 which specifically mentions that it was a case of theft of electricity. Hence, the order of assessment has to be seen in the context of the report on the basis whereof the same has been passed. The petitioner having proceeded against the respondent by treating it as a case under Section 135 of the Electricity Act, 2003 on account of theft, the presumption of the same being a case of unauthorized use of electricity under Section 126 of the Electricity Act, 2003 and amenable to the Appellate jurisdiction under Section 127 of the Electricity Act, 2003 is not applicable in the present writ petition.

6. Counsel is not in a position to dispute that the issue as regards the orders passed by the Appellate Authority under Section 127 of the Electricity Act, 2003 in matters relating to Section 135 of the Electricity Act, 2003 has been dealt with in the matter of ***“Punjab State Power Corporation Limited and others versus Gurinderjit Singh and another”*** (Supra).

7. I find that the present case is covered by the aforesaid order dated 05.04.2024 in the matter of ***“Punjab State Power Corporation Limited and others versus Gurinderjit Singh and another”*** (Supra). The writ petition is accordingly allowed and the order dated 26.08.2015 and 14.01.2016 (Annexure P-2 and P-2a) passed by respondent No.2-Sub Divisional Magistrate Amritsar-2 in an

appeal under Section 127 of the Electricity Act, 2003 are accordingly set aside.

8. Since the present writ petition is being decided only on the issue of non-maintainability of the appeal, the merits are not being commented upon. The parties shall, however, be at liberty to take all pleas before appropriate forum while taking recourse to the alternative remedy in accordance with law.

(VINOD S. BHARDWAJ)
JUDGE

MAY 01, 2024
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No