IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-22862-2018 (O&M)
Date of decision: 12.03.2024

Mohinder Pal Kaur

...Petitioner

VERSUS

The Punjab State Power Corporation Limited and others

...Respondents

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

Present :- Mr. J.S. Jaidka, Advocate with
Mr. Lovepreet Singh, Advocate for the petitioner.

Mr. Nishant, Advocate and
Mr. Nikhil Singh, Advocate for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

1. The present petition has been filed for directing the respondents-authorities to accept the compounding charges as have been levied by them on the petitioner vide notice dated 09.08.2018.

2. Learned counsel for the petitioner contends that the petitioner is a consumer of an electricity connection at her house situated at village Ramgarh Bhullar, Tehsil Jagraon, District Ludhiana. A notice under Section 135 of The Electricity Act, 2003 (hereinafter referred to as 'the Act of 2003') was served upon the petitioner by the respondent-Distribution Licensee alleging direct theft of electricity and a demand of Rs. 2,90,698/- was also raised. Along with the above said notice, an additional demand of Rs.23,000/- had also been raised as compounding charges to escape the

criminal liability regarding theft of electricity. He contends that the petitioner approached the respondent-authorities on numerous occasions for accepting the compounding charges, however, the same was not being accepted forcing the petitioner to approach this Court.

3. On notice, reply by way of a short affidavit of Sh. Gurpreet Singh, XEN, PSPCL, has been filed, wherein it has been stated that the petitioner approached this Court by suppressing the material facts and by mis-stating the facts in the writ petition. It is averred the inspection of the premises of the petitioner was carried out by the Additional Superintending Engineer (Enforcement), Ludhiana on 08.08.2018 and a clear cut case of theft of electricity was detected. During the inspection, it was noticed that illegal direct supply was going to *Kariana* Shop and to the house of the petitioner from Ramgarh Bhullar LT Feeder Unit through a 4 meter PVC size 10 mm square. A letter No.839 dated 09.08.2018 in the nature of a bill-cum-Show Cause Notice, as per the provisions of Electricity Supply Code, 2014 and Section 135 of the Act of 2003, was thereafter served upon the petitioner. A separate demand of Rs.2,90,698/-, as per Regulation 37 of the Electricity Supply Code, 2014, along with the compounding charges of Rs.23,000/- was raised upon the petitioner. The Distribution Licensee has given a detailed reference of the calculation and the mode as per the LDHF Formula approved by the appropriate Commission for assessing the demand. It is submitted that the compounding charges can only be accepted if the consumer/person accused of having committed theft of energy deposits the assessed amount of civil liability. He submits that since the petitioner has not deposited the civil liability, the compounding charges cannot be

accepted.

4. Learned counsel for the petitioner contends that the stand of the respondents is misconceived and has no conformity with the statutory provisions. He has placed reliance on the judgment dated **07.02.2017** passed in **RSA-4703-2014** titled as '**Dakshin Haryana Bijli Vitran Nigam and others Vs. Mohd. Qayum Khan and another**', wherein this Court noticed the distinction between the compounding charge and civil liability. It was held by this Court that the non-acceptance of compounding charges would cause serious miscarriage of justice. He also placed reliance on the order dated **15.09.2015** passed by this Court in **CRA-S-534-SB of 2015** titled as '**Dr. Karamjit Singh Vs. State of Punjab**', wherein direction was issued to the respondent to accept the compounding fee.

5. Learned counsel for the respondent-Distribution Licensee on the other hand has placed reliance on Clause of 37 the Electricity Supply Instruction Manual-2018 which deals with compounding. He contends that the compounding fee is in addition to the assessed amount/civil liability which accrues under Clause 37.2.2 or 37.4 and as such, the Distribution Licensee is justified in non-acceptance of the compounding charges in the absence of the consumer depositing the civil liability.

6. No other point has been argued or judgment has been relied upon by either of the sides.

7. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

8. Before proceedings further it is essential to refer to the relevant statutory provisions relied upon the parties:

"***<u>Section 135. (Theft of Electricity): ---</u>***

<u>[(1) Whoever, dishonestly</u>, --

(a) ***taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or***

(b) ***tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or***

(c) ***damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, or***

d) ***uses electricity through a tampered meter; or***

(e) ***uses electricity for the purpose other than for which the usage of electricity was authorised,***

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use –

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or

supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) <u>Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity</u>:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

<u>Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of</u>

such deposit or payment.]

(2) [Any officer of the licensee or supplier as the case may be, authorized] in this behalf by the State Government may –

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity [has been or is being,] used for unauthorized use of electricity;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which [has been, or is being,] used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out

between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Section 152. (Compounding of offences): ---

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE	
Nature of Service	***Rate at which the sum of money for Compounding to be collected per Kilowatt(KW)/Horse Power(HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)***
(1)	***(2)***
1. Industrial Service	***twenty thousand rupees;***

2. Commercial Service	*ten thousand rupees;*
3. Agricultural Service	*two thousand rupees;*
4. Other Services	*four thousand rupees;*

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

Section 154. (Procedure and power of Special Court): ---

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under [2sections 135 to 140 and section 150] shall be triable only by the Special Court within whose jurisdiction such offence has

been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act:

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court :

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code

and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial :

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure,1973, be deemed to have been tendered under section 307 thereof.

(5) <u>The 1[Special Court shall] determine the civil liability against a consumer or a person in terms of money for theft of</u>

energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation. - For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139."

9. Reference is also required to be made to the Clause 102 of the Electricity Supply Instruction Manual-2018:-

"***As per Clause 102 Theft of Electricity under Section***

135 of the Act:

<u>102.1</u> The cases covered under Section 135 of the Act shall dealt with in accordance to the provisions of Regulation-37 of the Supply Code-2014.

<u>Electricity Supply Code</u>

*37. **<u>Theft Of Electricity</u>:***

xxxx.

37.2 Consequences of Theft of Electricity

37.2.1 Disconnection of Premises:

<u>In case theft of electricity by a consumer/person is prima facie established as per Section 135 of the Act, then the supply to such premises shall be immediately disconnected by the order of an officer of the distribution licensee as authorized for the purpose by the Commission (Annexure-11)</u> or any other officer of the distribution licensee of the rank higher than the rank of an officer so authorized by the Commission. In such a case, an officer authorized to order disconnection of the supply shall lodge a complaint in writing relating to commission of such offence, with the police station having jurisdiction of the area within twenty four hours from the time of such disconnection.

37.2.2 Assessment of Charges

(a) ***<u>Where theft of electricity in a premises is prima facie established as per section 135 of the Act, the Authorized Officer without prejudice to the criminal proceedings which may be initiated under Section 135 of the Act shall assess the electricity charges payable by such consumer/person as per procedure specified in Annexure-8</u>. The assessment order shall be speaking order clearly stating the basis on which theft of electricity has been established. The Authorized Officer may, after recording reasons in writing, suitably reduce the presumptive period of theft of electricity as specified in Annexure-8 in case he is satisfied that such theft had actually occurred for a lesser period. Such an order of assessment shall be delivered to the concerned consumer/person within 24 hours of theft of electricity having been established.***

(b) The Authorized Officer under Regulation 37.2.2 shall furnish a copy of the assessment order to the consumer/person and the distribution licensee. The distribution licensee shall submit a copy of the assessment order in the Special Court

immediately after submission of the challan by the Police.

37.2.3 Payment of Assessed Amount

(a) ***A consumer/person shall deposit with the distribution licensee the assessed amount under Regulation 37.2.2 within fifteen (15) days of the assessment.***

(b) The distribution licensee may extend the last date of payment of the assessed amount or allow the consumer to make payment in installments subject to payment of interest for the unpaid amount for the extended period beyond fifteen (15) days at SBI's Base Rate prevalent on first of April of the relevant year plus 2%.

(c) After the assessed amount is deposited by the consumer in full, the distribution licensee shall restore supply of electricity to the premises within forty eight (48) hours of such deposit.

37.2.4 After the assessed amount is deposited by a person who is not an existing consumer, the connection to his premises may be released treating it as a case of release of a new connection. ".

10. It is evident from a perusal of the Scheme of the Act of 2003 that it stipulates the assessment of civil liability in a matter pertaining to an

unauthorized use of energy under Section 126 of the Act of 2003, while cases in relation to the theft of electricity are dealt with under Section 135 of the Act of 2003. Further, the compounding of an offence under Section 135 of the Act of 2003 is stipulated under Section 152 of the Act of 2003 and upon deposit of the fee prescribed therein, a criminal offence is liable to be compounded. As per the Act of 2003, in the event of detection of theft of energy, the officials are bound to disconnect the electricity supply to the premises in question without any further delay. The respondent-Distribution Licensee is required to make an assessment of an amount to be deposited and in the event of same being deposited by the consumer, the electricity supply to the premises of the consumer is required to be restored within a period of 48 hours of such deposit. Hence, the scope of assessment of the civil liability under Section 135 (1A) of the Act of 2003 has to be read in the context of the enabling power under which such assessment can be done. Hence, the only right which accrues in favour of a consumer, on deposit of the civil liability as determined under Section 135 (1A) of the Act of 2003, is to seek restoration of the electricity supply to the premises and nothing more. The provisions of the Act of 2003 do not make it mandatory that an offence be compounded unless the civil liability as assessed under Section 135 (1A) of the Act 2003 is deposited.

11. I am further fortified in my aforesaid conclusion by relying on effect of Section 154 of the Act of 2003 which lays down procedure in the event of occurrence of an offence under Section 135 of the Act of 2003. Section 154 (5) of the Act of 2003 empowers the Special Court to determine the civil liability and it also stipulates that in the event, the amount deposited

by a consumer under Section 135 (1A) of the Act of 2003 is found to be in excess of the amount of civil liability ascertained by the Special Judge, the same is liable to be returned to the consumer along with interest as prescribed therein. Hence, the determination of the civil liability in a case under Section 135 of the Act of 2003 is cast upon the Special Judge. Merely because the formula approved for determination of civil liability under Section 126 of the Act of 2003 has also been approved as a formula of assessment of demand under Section 135 (1A) of the Act of 2003, it cannot be the basis to assume that the same is a compensatory provision which intends to indemnify the department for the loss sustained by it due to the theft of energy. The only right which accrues on deposit of the said amount by the consumer is to seek restoration of the connection and it is not compensatory/indemnificatory by nature or by statutory interpretation. The determination of civil liability being exclusively within the scope of Special Judge, hence, the respondents cannot demand the pre-deposit of the said amount before compounding of the offence.

12. Still further, insofar as the reference to Clause 37 of the Electricity Code-2014 read with Regulation 102 of the Electricity Supply Instruction Manual-2018 is concerned, I am of the opinion that the above said objection raised by the Distribution Licensee is based on the mis-reading of the provisions. Clause 37 of the Electricity Code-2014 deals with the theft of electricity and 37.2 thereof deals with the consequences of theft of electricity. The assessment of charges as prescribed under Clause 37.2.2 is that an assessment is required to be done as per the parameters prescribed therein and laid down in Annexure 8 of the schedule. The restorative

obligation of the Distribution Licensee of the electricity connection is dealt with under Regulation 37.2.3. The matter of compounding is however dealt with under Regulation 37.3.2 which clearly recognizes the distinction between the compounding charges as well as the liability of a consumer to pay the assessed amount/civil liability. Even the said Clause i.e. 37.3.2 does not in any manner suggest or mandate that both the amounts i.e. compounding charges as well as assessed civil liability ought to be deposited rather, the said Regulation itself clarifies the demand towards the assessed amount/civil liability is distinct from the compounding charges as demanded under Section 152 of the Act of 2003. The said aspect is also further supported from the Electricity Supply Instructions Manual-2018 and Clause 102.2 deals with the assessment of amount stipulated under Section 135 (1A) of the Act of 2003, while Clause 102.4 deals with the compounding charges. Thus, the distinction has been kept alive by the legislation in the principle statute as well as in the Electricity Code and Electricity Supply Instructions Manual as well.

13. The statutory scheme has provided for a different mechanism for determination of a civil liability in cases relating to theft of electricity. The right to seek compounding of a criminal liability is independent of meeting a civil liability to the Distribution Licensee. The Distribution Licensee cannot be claim itself to be entitled to deny receipt of compounding charges till its dues are paid since the same would amount to adding a proviso to Section 152 of the Act of 2003 and prescribing an eligibility condition to the compounding. Since compounding charges are payable to the Government and law recognizes a separate and independent

right of the State to compound, the Distribution Licensee may not be exercising its power currently when it uses the leverage it has Section 152 of the Act of 2003, as a measure to seek recovery of dues, which it feels entitled to. Since pre-deposit is a condition for restoration of electricity connection, hence, the department is entitled to not restore supply till deposit.

14. The present writ petition is accordingly **allowed**. The respondents are directed to accept the compounding charges without prejudice to their right to seek recovery of the amount due, if any, at an appropriate stage and in a manner known to law.

(VINOD S. BHARDWAJ)
JUDGE

12.03.2024
Mangal Singh

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