IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

207

CWP-23412-2018 (O&M)
Date of decision: 01.10.2024

Rajesh Beniwal

...Petitioner

VERSUS

Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and others

...Respondents

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

Present :- Mr. Manjeet Singh, Advocate for the petitioner.

Mr. S.K. Mahajan, Advocate for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 08.06.2017 dismissing the appeal preferred by the petitioner under Section 127 of the Electricity Act, 2003 on the ground of maintainability. A further prayer had been made seeking quashing of memo dated 21.09.2011 (Annexure P-6) whereby a penalty of Rs.1,56,113.34 had been levied on the petitioner (which is claimed to have been levied towards unauthorised use of electricity).

2. Learned counsel appearing on behalf of the petitioner contends that an electricity connection bearing account no.A27PS413631W was released to him and the electricity meter was installed in the compound of the residential society. It is averred that the said electricity meter was purchased from Hanuman Electric Spare and Fire Service, Panipat on 04.03.2010 against bill no.2359. The same was handed over to the electricity

department for its checking, inspection and installation thereafter upon obtaining a report from the laboratory, as per rules. It is averred that ever since the installation of the electricity meter, the respondent-Distribution Licensee had been issuing bills for the said electricity connection, one under account No.A27PS413631W and another against account No. A27PS373631L for the same premises and consumption of electricity. Additionally, excessive and disproportionate electricity consumption charges, on a higher side, were being claimed against the petitioner. An application was submitted by him to the respondents for rectifying the bills whereupon the same were rectified and revised as per the actual consumption. Reference was also made to three subsequent different electricity bills dated 22.02.2011, 21.04.2011 and 22.06.2011 that were also initially billed on a higher side but were later revised on representation. He contends that on account of the exaggerated and double bills being raised, the petitioner moved an application for closing of the electricity account no. A27PS373631L. He also made a number of telephonic calls apart from repeated personal visits to the office of respondent No.2. Despite making multiple requests and efforts, the officials did not take any steps to redress the grievance of the petitioner. Left with no other option, the petitioner submitted a complaint to the higher officials of respondent No.1-Department. Accordingly, an inspection was conducted on 09.06.2011 whereupon it was reported that the electricity meter was running slow by about 19.4%. There was no mention in the report Annexure P-2 about either the unauthorised use or theft of electricity.

3. On the basis of the aforesaid inspection report dated 09.06.2011, a notice dated 03.08.2011 was served upon the petitioner and the petitioner was directed to purchase another electric meter within a period of 07 days since the same was not available with the distribution licensee.

4. In compliance of the notice issued by the respondent Department, the petitioner deposited an amount of Rs.1382/- and also purchased a new electricity meter on 20.8.2011 and deposited the same with the distribution licensee for inspection and installation.

5. The respondent again got the electricity meter of the petitioner checked on 20.09.2011, without summoning or intimating any person from the house of the petitioner and a false report dated 20.09.2011 for theft of electricity was prepared in their absence.

6. It is further submitted that even though it has been mentioned in the checking report (Annexure P-5) that a copy was received by the wife of the petitioner however no such copy of the checking report or any other notice regarding theft of electricity was ever served upon the petitioner in any manner despite the same being mandatory as per Rules. The bogus documents were prepared as a counter measure against the complaint given by the petitioner. A notice dated 21.09.2011 regarding provisional assessment and for compounding of offences of theft of electricity alongwith a complaint dated 10.10.2011 for registration of FIR against the petitioner was sent to pressurize the petitioner.

7. It was averred that the notice of provisional assessment dated 21.09.2011 was claimed to be sent to the petitioner by certified that the same

was returned as the gateman did not permit the official to enter into the society and also refused to accept the said notice. A notice for compounding of offences of theft of electricity under Section 135 and 152 of the Electricity Act, 2003 bearing memo No.1331 dated 21.09.2011 was also sent. He contends that both the notices were sent under the same memo number which is impermissible and do not appear to be probable. Subsequently, the petitioner was served a bill dated 02.10.2011 wherein the status report of the meter was stated to be "**OK**" and the meter reading reflected as 5099 whereas the checking report of the meter reading undertaken on 20.09.2011 shows the reading as 5160.3. Other documents were also allegedly forged by the respondents including the complaint made to the Station House Officer (SHO), Police Station Sector-20, Panchkula vide memo No.1403 dated 10.10.2011 (Annexure P-9) requesting for registration of a case against the petitioner.

8. It is contended that no criminal case was however registered against the petitioner. An electricity bill was later issued by the respondent-Distribution Licensee on 03.12.2011 wherein an amount of Rs.1,56,113/- was reflected as arrears/security interest. The meter reading dates had been shown 21.09.2011 (old) and 20.11.2011 (new). The petitioner accordingly submitted a request on 15.12.2011 to respondent-Distribution Licensee to rectify the bill and to issue a new bill. As no action was being taken, the petitioner moved a complaint before District Consumer Disputes Redressal Forum, Panchkula by impleading respondents No.1 and 2. The Consumer Forum issued notice and stayed disconnection of the electricity supply of the

petitioner.

9. The respondent-Distribution Licensee entered appearance and raised dispute with respect to the jurisdiction of the Consumer Fora to examine the issues and an assessment made under Section 126 of the Electricity Act, 2003 and action taken by them under the Electricity Act, 2003.

10. In view of the above said objection, the complaint was dismissed by the District Consumer Disputes Redressal Forum vide order dated 18.07.2013 being held as not maintainable before it.

11. The petitioner thereafter filed a civil suit on 27.07.2013 before the Civil Court, Panchkula praying for decree of permanent injunction restraining the defendants from disconnecting the electricity with a further prayer for grant of decree of mandatory injunction to rectify the electricity bill dated 03.12.2011. The Civil Court vide its order dated 30.07.2013 was pleased to partly allow the interim injunction application directing the petitioner to deposit 50% of the disputed amount. The respondents were also directed to restore the electricity connection if the petitioner deposits 50% of the disputed bill amount. An objection with respect to the maintainability of the Civil Suit was again raised by the respondents on the ground that the penalty had been assessed under Sections 126 and 135 the Electricity Act, 2003 for which the jurisdiction of the Civil Court is barred under Section 145 of the Electricity Act, 2003.

12. The Civil Court however proceeded to record evidence of both the parties and on completion of the trial proceedings, the Civil Suit was

dismissed vide order dated 27.05.2015 on the ground of lack of jurisdiction to entertain any Suit in relation of proceedings under Section 126 or 127/135 of the Electricity Act, 2003 where an Assessing Officer or an Appellate Authority is empowered to take action.

13. The petitioner preferred an appeal against the aforesaid judgment and decree dated 27.05.2015 passed by the Civil Court dismissing the suit filed by him, before the Appellate Court. The case was remanded to the Civil Court with a direction to decide the matter afresh by taking into consideration the evidence available on record pertaining to the jurisdiction and in case it comes to a conclusion that its jurisdiction is lacking then it should return the plaint to the plaintiff (petitioner herein) to be presented before the appropriate Court/forum vide judgment dated 09.07.2015.

14. Thereafter, the petitioner preferred an application under Order 7 Rule 10 of Code of Civil Procedure for return of the plaint for its presentation to the Appellate Authority as prescribed under Section 127 of the Electricity Act, 2003 against the assessment order passed by the respondent-Distribution Licensee under Section 126 of the Electricity Act, 2003. The aforesaid application was allowed by the Civil Court and the plaint was returned to present the same before the competent authority, vide order dated 05.03.2016.

15. On return of the plaint, the petitioner presented all the documents before the Executive Engineer, Transmission and Supply Division, HVPNL, Madanpur, Panchkula with a request to adjudicate upon the matter in terms of Section 127 of the Electricity Act, 2003. The

requisite fee was also deposited. On receipt of the same, the petitioner was directed to appear before the Superintending Engineer, Transmission and Supply Circle, HVPNL, Panchkula for dates fixed.

16. While deciding the appeal, the respondent No.3 considered the sales circular No.U-55/2013 dated 30.10.2013 and dismissed the appeal holding that the present appeal has been preferred against the order of assessment passed under Section 135 of the Electricity Act, 2003 imposing the penalty on account of theft of electricity and it was not an order or assessment passed under Section 126 of the Electricity Act, 2003 and only the Special Court constituted under the Electricity Act, 2003 would be competent to adjudicate upon the civil liability, in matters pertaining to theft of electricity under Section 135 of the Electricity Act, 2003. Hence, the present writ petition has been filed now.

17. In the reply filed by the respondents, while the factual aspects with respect to the various proceedings initiated by the petitioner were not disputed, it was averred that the writ petition is not maintainable since the jurisdiction to adjudicate on the issue of theft of electricity lies only with the Special Court under the Electricity Act, 2003. It is also averred that the assessment of civil liability was done on detection of a theft under Section 135 of the Electricity Act, 2003 by invoking the enabling provisions of Section 135-1 A of the Electricity Act, 2003. A demand for charges along with the compounding fees under Section 152 of the Electricity Act, 2003 was also raised. On facts, it is averred that the meter in question pertaining to the petitioner was checked in the presence of a lady who introduced

herself as Mrs. Pooja, wife of the petitioner and during replacement of the meter in question it was found that Blue phase (incoming) looped with outgoing, thus it is detected as a case of theft of electricity. The meter in question was accordingly packed at the spot, in a cardboard box, in the presence of the wife of the petitioner. A copy of LL-1 checking report was received by the wife of the petitioner but she refused to sign on the acknowledgement thereof. A site plan of the actual status of the wires along with metal was also drawn upon the LL-1 checking report.

18. Noticing an act of theft of electricity, the provisional assessment was made for Rs.1,16,113/- vide memo No.1331 dated 21.09.2011 and it was to be served upon the petitioner. By virtue of the aforesaid provisional assessment notice, the objection was also invited, if any, against the same, which could be filed within 7 days of service of the said notice. The gateman of the society of the petitioner did not allow the official of the respondent-Distribution Licensee to enter the premises and did not even receive the notice. Since it was a case of theft of electricity, therefore, a notice under Section 135 read with Section 152 of the Electricity Act, 2003, for providing opportunity to compound the offence vide memo No.1331 dated 21.09.2011, were sent and a complaint was also sent to the SHO, Police Station Sector-20, Panchkula. The petitioner however challenged the bill before different Fora which are not being reiterated since the same already find mentioned in the contentions of the petitioner noticed above. It was averred that two different instances are now being clubbed together to portray a different picture. It is stated and clarified that meter

account No. PC-41/3631 pertaining to the petitioner was checked by M/s YMPL (an authorised agency) to check the electricity meter on behalf of the respondent-Distribution Licensee through Accu-check meter on 09.06.2011. The meter was found slow by 19.36% and as per Rules, a meter, if is found running slow, a notice to charge the differential amount of Rs.1382/- was served upon the petitioner-consumer vide memo No.1008 dated 08.08.2011 with a request to the petitioner to submit a new meter. The premises of the petitioner was checked again by the authorised official of the respondent-Distribution Licensee along with the checking party on 20.09.2011 and the same was done in the presence of a lady who introduced herself as Mrs. Pooja, wife of the petitioner. On checking of the electricity meter of the petitioner, the theft of energy was detected. It being a clear cut case of theft of electricity and not of motivated false implication of the petitioner in a criminal case, procedure as per law was followed.

19. Learned counsel for the petitioner has argued that the notices were never served upon the petitioner as per their own note and no opportunity of hearing was granted to the petitioner to put forth his case against the provisional assessment undertaken by the respondent-authorities under Section 126 of the Electricity Act, 2003. Section 135 of the Electricity Act, 2003 was nowhere mentioned in the said notice despite claiming it as a case of theft of electricity. Had it been a case of theft, then the respondent-Distribution Licensee would have issued notice for compounding of offence as provided under Section 135 and 152 of the Electricity Act, 2003 and since the needful had not been done, the appellate

authority was in error in declining to entertain the appeal for want of jurisdiction. He also argued that in the reply filed by the respondent-Distribution Licensee before the Civil Court, they raised an objection to the jurisdiction alleging that it was a case of theft of energy, however, no document in support thereof had been appended by the respondents before the Civil Court as well. He contends that the penalty imposed by the respondent-Distribution Licensee is exaggerated and is not correctly assessed.

20. Learned counsel for the petitioner contends that on the checking of electricity meter on 09.06.2011 by M/s YMPL, Gurugram no theft of electricity was detected and only at a later point in time on 20.09.2011, the officials of respondent-Distribution Licensee alleged that it was a case of theft of energy. Further objection was raised regarding both the memos bearing the same number i.e. 1331 dated 21.09.2011, which is not possible and as such, there is a fabrication of record.

21. Learned counsel for the respondent-Distribution Licensee on the other hand has alleged that the format of Annexure P-6 dated 21.09.2011 was that of a notice under Section 126 of the Electricity Act, 2003, however, the subject of the said memo specifically stated that the provisional order of assessment for an unauthorised use of electricity has been made under Section 126 of the Electricity Act, 2003 read with Section 135 of the Electricity Act, 2003. The said memo also noticed that on checking of the electricity meter of the petitioner on 09.06.2011, the meter was found running slow by 19.36% and a meter replacement order was issued. It was

during replacement of the meter that it was found that the Blue phase (incoming) was looped to an outgoing phase, thus making it a clear cut case of theft of energy.

22. It is further argued by the learned counsel for the respondent that a second memo, of the same date was hence issued under Section 135 read with Section 152 of the Electricity Act, 2003, whereby the compounding charges to the tune of Rs.40,000/- were levied on the petitioner. It was clearly a case of theft of electricity and a mere erroneous mentioning of Section 126 of the Electricity Act, 2003 on a printed proforma would not make it a case of unauthorised use of energy when all content of the same stated about theft. It is contended that the entire calculation of the assessment had also been supplied by the respondents along with the memos No.1331 dated 21.09.2011 served upon the petitioner and that notwithstanding the same, the petitioner chose not to approach the appropriate Fora. It is submitted that the compounding charges have already been deposited by the petitioner as such on deposit of such compounding charges, he cannot dispute the fact of theft of energy.

23. In rebuttal, learned counsel for the petitioner contends that the compounding charges had been deposited under coercive circumstances and to avoid any undue hardship against the petitioner. He places reliance on the judgment passed by this Court in the matter of '**Suraj Bhan** Vs. **Uttar Haryana Bijli Vitran Nigam Ltd. and another**' reported as **2015(1) RCR (Civil) 894**, to contend that the petitioner never had the option to approach the Special Court for seeking determination of the civil liability.

24. I have heard the learned counsel for the respective parties and have gone through the documents appended along with the present petition as well as the judgment cited above and the rival contentions advanced by the learned counsel for the respective parties.

25. The controversy in the present case, as emphasised by the counsel for the petitioner, is that since the initial notice served upon him was a notice under Section 126 of the Electricity Act, 2003, hence, the appeal was maintainable. It is also argued that no fair opportunity of filing a reply against the order of assessment (which was never served upon him) was granted to the petitioner. A further argument has been raised that since the initial provisional order of assessment was followed by a final order of assessment, it would be deemed to have been passed under Section 126 of the Electricity Act, 2003, hence, it was appealable under Section 127 of the Electricity Act, 2003. The appellate authority, in dismissing the appeal on the ground the same being not maintainable, has abdicated its responsibility. Thus, the appellate order is rendered liable to be set aside.

26. On the other hand, the specific case of the respondents is that it was case under Section 135 of the Electricity Act, 2003 pertaining to theft of electricity right from the inception of the proceedings and that there is no provision for grant of any opportunity of hearing in proceedings under Section 135 of the Electricity Act, 2003 except before the Special Court. Nonetheless, a provisional order of assessment, which specifically mentioned about the proceedings under Section 135 of the Electricity Act, 2003 in the subject thereof, was attempted to be served upon him but the

gateman did not allow the representative of the respondents to enter in the premises of the society and also refused to accept the same. He would thus be deemed to have refused acceptance of the notice. The compounding charges were also deposited by the petitioner during the pendency of the proceedings before the Civil Court. The petitioner also never raised a challenge against the demand of compounding charges and instead of contesting the demand, he opted to seek compounding of the offence. Having deposited the same, the petitioner would be precluded from disputing the charge levelled against him pertaining to theft of electricity and an argument to the contrary cannot be raised.

27. So far as the scheme of Sections 126 and 135 of the Electricity Act, 2003 are concerned, while Section 126 pertains to an unauthorised use of electricity and a provisional order of assessment is to be conveyed along with supply of a copy thereof to the consumer so as to seek a response from him before a final order of assessment is passed, however, the demands raised in proceedings under Section 135 of the Electricity Act, 2003 typically pertain to the deposit amounts for electricity to be restored. The enabling provision in Section 135(1A) of the Electricity Act, 2003 allows for the demand of a deposit, as per norms approved by the appropriate Commission and on deposit of the said demand, a right which accrues in favour of the consumer is only to seek restoration of the electricity supply within a period of 48 hours of deposit of the said amount. The same is technically not in the nature of an assessment of civil liability (despite its layman understanding) but only an amount which is required to be deposited

by a consumer, against whom a theft of electricity charges is alleged, for seeking restoration of the electricity supply. The determination of the civil liability is eventually undertaken by the Special Court in exercise of powers under Section 154(5) and 154(6) of the Electricity Act, 2003. The provisions of the Electricity Act, 2003 further stipulates that in the event, the assessed civil liability by the Special Court is found to be lower than the amount as demanded by the respondents under Section 135 (1A) the Electricity Act, 2003, the excess amount has to be refunded along with interest. Thus, even though an identical formula/criteria is followed for assessment of the demand in both the cases i.e. of Section 126 of the Electricity Act, 2003 as well as under Section 135 (1A) of the Electricity Act, 2003, however, the essential nature, rights and obligations, that accrue as a result of such an assessment, are on a different footing. The petitioner was at a liberty to dispute the factum of theft of energy as alleged by the respondents, but he opted to deposit the compounding charges at the first juncture. Once a compounding charge is deposited, the dispute cannot be sought to be re-agitated or opened. By his own conduct, a consumer is precluded from seeking to dispute commission of the offence and charge demanded thereunder, once he seeks compounding. At no point of time, either in proceedings before Civil Court or Appellate Court, any plea of fraud has been raised.

28. The plea raised by the petitioner is that the said deposit was under coercive circumstances that in case such a deposit is not made, an FIR would be registered cannot be accepted as coercion. It is a statutory

procedure which has to be followed and rests on the option exercised by a consumer. It cannot be perceived that a person would deposit the compounding charges and yet dispute the demand so raised, on the pretext that the Special Court was never afforded an opportunity to determine the civil liability. The petitioner could have always sought restoration of the electricity connection by depositing the amount, as demanded, and sought determination of the civil liability by the Special Court itself. Having not taken the said recourse and having voluntarily exercised an option to deposit the compounding charges, it is impermissible for a consumer thereafter to contend that notwithstanding the deposit of the compounding charges, he would nonetheless be entitled to still raise a dispute with respect to the legality and validity of the case made out by the respondents under Section 135 of the Electricity Act, 2003.

29. No other error of any nature whatsoever, in the assessment charges, that have been appended along with the present petition, is pointed out. Moreover, it is also not pointed out by the petitioner as to how the said assessment is contrary to the approved mode of calculation prescribed by Haryana Electricity Regulatory Commission and the provisions as contained in the Electricity Supply Code and Electricity Supply Instructions Manual.

30. In so far as the argument of the petitioner that in the earlier checking undertaken on 09.06.2011, no theft of electricity was detected and as such, the period could not be calculated beyond that from the detection of theft on 20.09.2011 is concerned, I do not find myself in agreement with the counsel for the petitioner. The checking on 09.06.2011 was only an Accu-

check, which was undertaken wherein the meter was found slow by 19.36%. It was only after removal of the earlier meter installed in the premises of the petitioner that a wrong loop in Blue phase was detected. Thus, the case of theft of electricity was detected for the first time only after the meter was changed and the said changed meter was got checked in the M.E. Lab. Thus, it cannot be said that the meter in question was showing a correct reading as on 09.06.2011 or that it was not a case of theft of electricity as on 09.06.2011 when the Accu-check of the meter was undertaken by the M/s YMPL, Gurugram. The argument is thus misplaced and does not make out any plea of defect in the demand period, at this stage.

31. Moreover, the judgment cited by the learned counsel for the petitioner is not applicable to the facts of the present case. The remedy to dispute the charge and demand was available to the petitioner, in the event of him not depositing the compounding charges. A consumer cannot be permitted to contend that the factum of depositing of compounding charges should be construed as absolving him of all other liabilities. Acceptance of such a plea would amount to disputing a case of theft, despite admitting the allegation and seeking compounding. Thus, the plea itself is inherently flawed.

32. The plea of the petitioner that it being a case under Section 126 of the Electricity Act, 2003 and hence appeal under Section 127 of the Electricity Act, 2003 was maintainable does not appear to have any merit. The said notice specified about it being a case of theft of electricity followed by deposit of compounding charges leaves no scope for doubting the nature

of the proceedings. The subject as well as the body of the notice of assessed demand clearly stated it to be a case of theft. A mere wrong mentioning of Section in the printed proforma would not change the nature and character of demand. The notice is required to be read as a whole to ascertain the true nature of the proceedings. The same being under Section 135 of the Electricity Act, 2003, appeal under Section 127 of the Electricity Act, 2003 was not maintainable and has thus been rightly held not maintainable.

33. **The instant petition is accordingly dismissed**.

(VINOD S. BHARDWAJ)
JUDGE

01.10.2024
Mangal Singh

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