

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

203

CWP-9860-2014

Date of decision: 13.03.2024

MOHAN LAL

.....Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION LTD. AND OTHERS

.....Respondents

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

Present: - Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. A.S. Chadha, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order of assessment dated 10.09.2010 passed by the respondent-PSPCL and the subsequent dismissal of the appeal by the Dispute Settlement Committee.
2. Learned Counsel for the petitioner contends that the respondents had carried out checking of the premises of the petitioner on 21.05.2008 and thereafter, it was conveyed that it was a case of theft of electricity under Section 135 of the Electricity Act, 2003 and a demand of

Rs. 19,867/- was conveyed to the petitioner on 30.05.2008. The said amount was deposited by the petitioner on 05.06.2008. However, after a lapse more than two years, a revised amount of Rs. 48,373/- was served upon the petitioner on 10.08.2010. He contends that the said assessment had been carried out by Senior Executive Engineer of the PSPCL. He further informs that against the above said demand the petitioner initially approached the District Consumer Disputes Redressal Forum, Kapurthala which dismissed the petition against which an appeal was filed before the State Consumer Disputes Redressal Commission. It was held by the State Consumer Disputes Redressal Commission that the proceedings before the Consumer Court were not maintainable in the said case and that the petitioner out to have taken recourse to the remedies in accordance with the provisions of the Electricity Act, 2003. He thus preferred an appeal before the Disputes Settlement Committee which also dismissed the said appeal vide order dated 26.09.2013. Hence, the present writ petition has been filed.

3. Learned counsel appearing on behalf of the petitioner raises the following twin arguments:-

- i) That the order of assessment in a case of theft of energy has been passed by the Senior Executive Engineer whereas as per the notification issued by the respondent-authorities, where the assessed amount was beyond Rs. 25,000/-, assessment was required to be undertaken jointly by ASC/Senior Xen. (Operations) and Senior Xen. Enforcement and that no other officer could have undertaken the assessment. He submits that notwithstanding the said instructions of the respondent-Distribution licensee, only a Senior Executive Engineer has

carried out the calculations. He thus submits that assessment is in violation of the regulations and has not been done by the competent authority.

ii) It is secondly argued that the respondent-PSPCL has raised this demand after a lapse of more than 02 years from the date of communication of the initial demand on 30.05.2008. Hence, the demand would be barred under Section 56 (2) of the Electricity Act, 2003.

4. Controverting the arguments advanced by the petitioner, counsel for the respondent-distribution licensee argues that the factual aspect is not a subject matter of dispute and that once a theft of electricity has been detected, the determination was required to be done as per the applicable law. However, the competent authority fail to take into consideration that the regulations stipulated, the assessment for a duration of one year and instead the calculation was done for a lesser period. Once the said mistake was noticed, the revised demand was raised on 10.08.2010. He further submits that since this amount was not shown due as on 30.05.2008, hence, Section 56 (2) of the Electricity Act, 2003 would not come to the aid of the petitioner. While responding to the objection as regards the assessment having been undertaken by the competent authority, counsel for the respondent distribution licensee has no satisfactory explanation. He contends that the said objection had not been raised initially, however, the same is denied by the learned counsel for the petitioner.

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

6. The issue as regards the maintainability of the demand would require adjudication, however, since the primary issue pertains to the competence of the assessing authority to convey the demand, hence, the said issue on merits is not being gone into at this stage. Since the regulations have notified that the assessment for an amount of more than Rs. 25,000/- in the category of ES,NRS, SP and tubewell connection are required to be undertaken jointly by the ASE/Sr. Xen (Operations) and Senior Xen. (Enforcement), the assessment which has been undertaken by only one officer i.e. Senior Executive Engineer, cannot be said to be an assessment in terms of the regulations. Hence, the assessment is apparently by an Officer who is not competent to do such assessment.

7. Since the present writ petition has been allowed on a content ground of the competence of the authority, hence, the remaining merits are not to be commented upon. The parties are remanded to the Assessing Authority for raising their objections with respect to the assessment undertaken and also the remaining merits. They shall appear on **22.04.2024** whereupon a further order shall be passed by the Assessing Authority in accordance with law.

Allowed in terms as aforesaid.

(VINOD S. BHARDWAJ)

JUDGE

MARCH 13, 2024

Vishal Sharma

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