

2024:PHHC:110155



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

214

**CWP-40676-2018 (O&M).
Date of Decision: 20.08.2024.**

RESHAM SINGH

... Petitioner

Versus

**PUNJAB STATE POWER CORPORATION LIMITED AND
OTHERS**

... Respondents

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

**Present: Mr. Joginder Pal Devgan, Advocate,
for the petitioner.**

**Mr. Arav Gupta, Advocate,
for the respondents.**

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the order of final assessment dated 16.08.2011 (Annexure P-2) passed under Section 126 of the Electricity Act, 2003 as well as to the order dated 21.08.2018 (Annexure P-5) passed by the appellate Authority i.e. Sub Divisional Magistrate-cum-Designated Authority, Amritsar. A further prayer has been made for directing the respondents to restore the electric connection No.SP-81/274 of the petitioner.

2024:PHHC:110155



2 Tersely, the facts of the present case are that the petitioner is running a business under the name and style of M/s Sher Singh Gurdit Singh at Amritsar and has obtained the electricity connection bearing No.SP-81/274. It is averred that on 27.04.2010, the older electricity meter installed in the premises of the petitioner was burnt and accordingly, a report was submitted with the respondent Distribution Licensee with a request to replace the same. The requisite charges were also deposited by the petitioner vide Receipt No.241 dated 27.04.2010. The said meter was however replaced only in the last week of May, 2010. Neither any irregularity was detected at the said point of time nor any allegation of theft of electricity was made. The said meter was got checked by the respondent Distribution Licensee from the M.E. Lab on 31.05.2010 where the officials of the respondent Distribution Licensee had apprised the petitioner that it requires re-examination by an expert. A notice dated 11.06.2010 was thereafter served upon the petitioner demanding a sum of Rs.1,82,209/- on the ground that the body of the meter was burnt badly and the gear and digits of the meter were also burnt and that it was a case of theft of energy. It is averred that the petitioner was never associated or given any opportunity at the time of inspection of the meter or its checking in the M.E. Lab by the expert. A request was thereafter made by the petitioner to the Chief Engineer Urban Amritsar, to review the demand. The petitioner was called in the office of the Chief Engineer Urban Amritsar on 05.08.2011 where the various contentions were raised including the average

2024:PHHC:110155



consumption of the last 5 to 7 years. The Deputy Chief Engineer (Operation) Urban Area, Amritsar, is stated to have written a letter dated 22.06.2010 to the Superintending Engineer and sought for the re-checking report along with the correction sheet. It is averred that notwithstanding the above said proceedings, the Senior Executive Engineer, Industrial Commercial Division, P.S.P.C.L. Urban Area, Amritsar, passed a final order of assessment dated 16.08.2011 for unauthorized use of electricity under Section 126 of the Electricity Act, 2003 of even date. Alleging that the provisions of law have been ignored while passing the order of final assessment, the petitioner filed a civil suit for declaration against the respondent Distribution Licensee. The said suit was dismissed by the Civil Court whereupon an appeal was preferred. After dismissal of the appeal, Regular Second Appeal No.1017 of 2016 was filed before this Court which was dismissed vide order dated 03.03.2016, however, liberty was granted to the petitioner to withdraw the same and to avail statutory remedies under the provisions of the Electricity Act, 2003.

3 Pursuant thereto, the petitioner filed an appeal before the appellate Authority i.e. Sub Divisional Magistrate-cum-Designated Authority, Amritsar, against the assessment order dated 16.08.2011. The Appellate Authority dismissed the said appeal vide impugned order dated 21.08.2018. Hence, the present writ petition.

4 A reply had been filed on behalf of the respondent Distribution Licensee in October 2019. As per the specific averments in the written

2024:PHHC:110155



statement, checking of the meter installed at the premises of the petitioner was undertaken on 27.04.2010 in the presence and under the signatures of the petitioner himself. It was noticed that the meter was burnt and the meter was not readable. Supply of the petitioner was thereafter restored directly and it was recommended to issue a meter change order. On the deposit of requisite costs by the petitioner, the meter was changed on 27.05.2010. As per the instruction No.21.4 (e) of the Electricity Supply Code and Related Matters Regulations 2007, the burnt and removed meter was returned to the M.E. Lab for checking. The relevant provision is extracted as under:-

“21.4 Defective Meters

xxx xxx xxx

(e) In case a meter installed at a consumer's premises gets burnt, a new tested meter will be installed within five days of the receipt of complaint. If the meter is burnt due to reasons attributable to the consumer, the Licensee will debit the cost of the meter to the consumer who will also be informed about his liability to bear the cost. However, supply of electricity to the premises will be immediately restored even if direct supply is to be resorted to, till such time as another tested meter is installed.”

5 The meter was thereafter checked on 02.06.2010 in the M.E. Lab by the Additional Superintending Engineer No.II, Amritsar in the presence of petitioner who also appended his signatures. The operative part

2024:PHHC:110155



of the report of the Additional Superintending Engineer No.II, Amritsar, reads thus:-

"After taking out the meter from the card box it was seen that meter is totally burnt After breaking open the cover of the meter following details were found.

Meter No. 10451 Make: HPL capacity 3x10-40 Reading:

After the inspection of the meter it was found that the ME seals of the meter were missing and the body of the meter was totally burnt. The digits of the counter gear of the meter were totally burnt. It is clear that consumer has intentionally burnt the meter to conceal the actual consumption. It is a case of the Theft of Electricity."

6 The old meter was packed in the presence of the petitioner. The order of provisional assessment was accordingly issued on 11.06.2010 under Section 126 of the Electricity Act, 2003, for a sum of Rs.1,82,209/-. The petitioner filed an appeal/representation before the Deputy Chief Engineer/Operation, City Circle, PSPCL, Amritsar for review of the amount. Personal hearing was granted to the petitioner and thereafter order dated 09.08.2011 was passed to the effect that the amount charged to the consumer is correct. Final order of assessment was accordingly issued to the petitioner for unauthorized use of electricity. It is averred that action was taken as per the provisions of the Electricity Supply Code and Related Matters Regulations 2007 but notwithstanding the procedure having been followed, a civil suit was filed by the petitioner which was dismissed by the Civil Judge (Sr. Divn.), Amritsar, vide order dated 19.03.2013. The appeal

2024:PHHC:110155



was dismissed by the District Judge, Amritsar vide judgment dated 12.08.2015. Thereafter, Regular Second Appeal bearing No.1017 of 2016 was filed before this Court which was also dismissed as withdrawn with liberty to the petitioner to file appeal in the appropriate court/forum. The appeal No.13 was thereafter filed by the petitioner which was also dismissed on 21.08.2018. It is averred that due process has been followed and principles of natural justice have been duly adhered to.

7 No replication disputing the factual assertions made in the reply has been filed even though a period of nearly 05 years has elapsed since the filing of the said written statement.

8 Learned counsel for the petitioner has argued that he was not granted any opportunity of hearing before passing the final order of assessment. It is argued that the average consumption of the petitioner over a period of 12 months prior to the date of burning of the meter shows the consumption on the lower side and that the same has not been taken into consideration by the respondent Distribution Licensee while making the assessment. He contends that the testimony of the witnesses of the respondent/PSPCL in the proceedings before the Civil Court has not been taken into consideration by the authorities. He submits that the meter was even though required to be changed within a period of 05 days, however, they took more than one month period to change the meter. It is also contended that the consumption of the connection of the petitioner was shown bearing between 1000 to 1100 per billing cycle and that the meter

2024:PHHC:110155



was burnt because it was made of plastic and that it was not a case of theft of energy.

9 Responding to the above, learned counsel for the respondent Distribution Licensee has argued that the submissions made by the petitioner are misplaced. The petitioner was duly heard before passing of the final order of assessment and even checking in the M.E. lab was conducted in his presence. He submits that the submission of the petitioner about the earlier consumption cannot be taken into consideration since the meter reading was not legible and it cannot be assumed as to what was the consumption. Besides, the determination of the assessment is done on the basis of the approved guidelines issued by the Appropriate Commission. No fault in any of the facts has been pointed out by the petitioner. He contends that the above said submissions were taken into consideration by the Appellate Authority and that no fault has been found in the order of assessment. It is argued that reliance on the statements of official witnesses in the civil suit is inconsequential since the said statement has to be read in the context of the findings recorded by the M.E. lab suggesting a case of theft of electricity. Since the Department has not chosen to initiate action under Section 126 of the Electricity Act, 2003 and has rather proceeded to invoke Section 135 of the Electricity Act, 2003 for assessment of civil liability, hence, the said testimony is inconsequential. Besides even after the said testimony, the Civil Court has not agreed to the petitioner after considering the entire evidence including the statement of DW.6 and had

2024:PHHC:110155



dismissed the suit. The appeal preferred by the petitioner was also dismissed and the regular second appeal was withdrawn by the petitioner with liberty to take recourse to the remedy of filing appeal before the appellate Authority. Hence, any testimony cannot be read in isolation and has to be seen in the light of totality of facts and circumstances.

10 No other argument has been raised.

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

12 The challenge to the impugned orders on the above said three grounds stands duly repelled by the counsel for the respondents. Since no replication was filed to the written statement, the factual assertion as regards the petitioner having been granted an opportunity of hearing before passing of the final order of assessment as also by the M.E. lab at the time of carrying out the inspection of the meter remains undisputed. It cannot thus be held that the principles of natural justice or the procedure as prescribed under Section 126 of the Electricity Act, 2003 had not been followed by the respondent/PSPCL. The findings of the M.E. Lab suggesting it a case of theft of electricity is in consequential since the petitioner contends that he did not commit any theft of electricity and that a direct supply was restored by the respondents. The respondents have themselves chosen not to proceed against the petitioner under Section 126 of the Electricity Act, 2003 and as such the argument has no significance or

2024:PHHC:110155



relevance at this stage. The above said aspect and extract of the testimony of DW.6 has thus no bearing on the actual proceedings that had been carried out by the authorities.

13 The counsel for the petitioner has failed to point out as to what parameter has been wrongly applied by the respondents and as to how the assessment was detrimental or unsustainable in the light of the statutory provisions. The only contention raised is that reliance had not been placed on the consumption pattern, however, he has failed to refer to any provision as per which such disputed consumption pattern had to be followed by the respondent while carrying out the assessment under the provisions of the Electricity Act, 2003 and the regulations framed thereunder. In the absence of reference to any statutory provision to substantiate his argument or to point out the obligation on the part of the respondents to take into consideration the average billing circle for the last 12 months prior to the detection of unauthorized use of electricity, the contention of the petitioner cannot be accepted. The Appellate Authority while considering the arguments advanced by the petitioner had specifically upheld the order passed. No illegality, impropriety or violation of any procedural or statutory safeguards has been pointed out by the counsel for the petitioner during the course of arguments or by making a reference to any precedent.

14 Under the given circumstances, I find that in the absence of any tangible and admissible material on the basis whereof the findings recorded by the authorities can be dispelled, the order passed by both the authorities

2024:PHHC:110155



cannot be interfered with. The present writ petition is accordingly dismissed.

15 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

August 20, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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