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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1369-2020 (O&M)
Date of decision: 28.01.2025

Vikas Gupta

...Petitioner

Versus

Punjab State Power Corporation Ltd and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Abhishek Khullar, Advocate and
Mr. Lovepreet Singh, Advocate
for the petitioner.

Mr. Rishabh Gupta, Advocate
for the respondent-PSPCL.

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KULDEEP TIWARI, J.

1. Through the instant petition challenge is thrown to the preliminary assessment order dated 08.02.2018, final order of assessment dated 09.03.2018, and the judgment passed by the Ld. appellate Court concerned, wherethrough, the appeal preferred by the petitioner was dismissed.

2. Through the preliminary assessment a demand of Rs. 4,16,930/- was made, as the petitioner was found to be using unauthorized electricity.

3. Brief facts, which are necessary to adjudicate the instant petition are that the petitioner was engaged in the business of manufacturing auto parts, therefore, he applied for a Medium Supply (MS) connection

(industrial), and initially connection for 89.690 KW. was provided to the petitioner. Owing to reduction in the business of the petitioner, the petitioner made a request to the respondent Department for reduction of load on dated 24.10.2017. The application was duly accepted by the respondents authority, and the load of the petitioner electricity was reduced to 29.910 KW w.e.f. 14.03.2018. In between, the premises of the petitioner was checked by the assessing authority on dated 06.02.2018, and it was found that no industrial work is being carried out, rather the connection is being used in a double storey building for a godown on the ground floor, and for a trading unit (office) on the first floor, and in the petitioner's campus, no production is being done from the said meter of the petitioner, and on the basis of above checking report, a preliminary assessment Annexure P-2, was made and served to the petitioner, and finally, the preliminary assessment was retained as it is, as no objection was filed by the petitioner, and the final order of assessment was passed on dated 09.03.2018.

4. Having aggrieved with the above orders, the petitioner preferred statutory appeal, however, he remained unsuccessful, which led him to file the instant petition, to challenge all three orders (supra).

5. Learned counsel for the petitioner submits that there is no evidence, whatsoever, except the checking report with the respondent to substantiate the allegation that the petitioner is not carrying out manufacturing, rather is indulged in trading. He further submits that the checking report itself reflects that it is based on the presumptions of the

officers concerned. No photographs or videography, was ever taken to substantiate their report.

6. The second issue which is raised before this Court by the learned counsel for the petitioner, is that the preliminary assessment order was never served to the petitioner and no opportunity was given to the petitioner for filing the objections to the said report. Therefore, it is categorically violation of provision of Section 126 of the Electricity Act, which imposed obligations upon the respondents to serve the provisional assessment order, enabling the latter to file objections to the same. Therefore, the petitioner has thrown challenge to the impugned final assessment order on account of not adhering to the above statutory provision, and also invoked the doctrine of "*audi alteram partem*".

7. Thirdly, he in addition submits that even the checking verification report was never served to the petitioner, rather it is served to one Kapil Sharma, which is not disputed by the respondent.

8. Finally, he has submitted that the penalty, which was imposed upon the petitioner was for the period from dated 04.01.2017 to dated 24.10.2017, whereas, on 24.10.2017, the petitioner has already applied to the Distribution Licensee concerned for reduction of load on account of decrease in business of the petitioner. Therefore, for the period when he was actually running the machinery for the purpose of production, the respondent cannot impose the penalty upon them.

9. Learned counsel for the respondents made attempts to protect the assessment orders as well as the order passed by the Ld. appellate

authority concerned. He draws the attention of this Court to Annexure R-1, to submit that there is a considerable decrease in consumption which reflects from the meter unit from April, 2017 to December, 2017. Therefore, it clearly support the case of the respondents, that no industrial work is being carried out in the premises of the petitioner. He over and above submits that the assessment order was duly communicated to the petitioner, and the assessment order was served through post.

10. This Court has considered the submissions made by learned counsel for the parties concerned, and is of the considered view that this petition is amenable to be **allowed** for the hereinafter extracted reasons.

REASONS

11. Though, there is a checking report as prepared by the respondent concerned, but apart from checking report, there was no other supporting evidence like photographs of videography. The report is based on assumptions, therefore, proof of evidence cannot be supplemented through assumptions, whereas, the issue with regard to not adhering to the provisions of Section 126(2) of the Electricity Act is concerned, also requires consideration, as the respondent failed to substantiate before this Court, that the provisional assessment was actually served to the petitioner, which in fact caused prejudice to him, and deprived him from filing objections before the authority concerned, who could have considered with regard to the actual positions regarding the premises of the petitioner. This Court find strength from the ratio of judgment passed by this Court in ***M/s Alkem Labouratories Ltd. Vs. Additional Deputy Commissioner-cum-***

Appellate Authority under Electricity Act, 2003 and others (CWP-1457-2016 decided on 20.09.2017). The relevant portion of the same is extracted hereinafter :-

> *"8. As per the scheme of the provisions of Section 126 of the Act, in case it is found in inspection that the consumer is indulging in unauthorised use of electricity then the Corporation can assess provisionally, to the best of its judgment, the electricity charges payable by the consumer. The Provisional assessment order has to be served upon the person who is in occupation and possession or is in-charge of the premises. After service of the provisional assessment order, the consumer is to be afforded an opportunity to file objection, if any. In case, objections are filed, then the objections are to be decided by the competent authority by affording an opportunity of hearing. Once the final assessment order is passed, the right of appeal is also provided under Section 127 of the Act. Section 126(6)(b) of the Act also deals with the definition of unauthorised use of electricity. In the present case, the respondents have alleged that petitioner has been found indulging in unauthorised use of electricity because the petitioner has been found using the electricity for the purpose for which it was not authorised, meaning thereby, the electricity connection was given to the petitioner for industrial purposes but it was found using it for commercial purposes. Be that as it may. The provisional assessment order was undoubtedly passed by the Assessing Authority but objections filed by the petitioner were not dealt with in terms of Section 126(3) of the Act as no opportunity of hearing was granted and on the other hand, the petitioner was asked to pay sundry charges with normal bill of the consumption of electricity in*

routine which the petitioner had to pay because otherwise the medicine stored by the petitioner in the warehouse would have been destroyed. The respondent ultimately found that final assessment order has to be passed and as such it was passed when the appeal of the petitioner was pending before the Appellate Authority but the Appellate Authority instead of taking into account this fact that the final assessment order has been passed without affording an opportunity of hearing, dismissed the appeal also on the ground that now the final assessment order has been passed. To my mind, the entire exercise on the part of the respondents is contrary to the provisions of Section 126 of the Act and, therefore, I am of the considered opinion that the final assessment order dated 19.02.2015 and the appellate order are patently erroneous and is hereby set aside. As a result thereof, the matter is remanded back to the respondents to take into consideration the objection filed by the petitioner on 24.11.2012 (attached as Annexure P.4) and after affording an opportunity of hearing to the petitioner in terms of Section 126(3) of the Act and pass the order of the final assessment, if so, advised. In case any such order is passed by the respondent against the petitioner, on assessing the unauthorised use of electricity, finally, the petitioner would be at liberty to file the appeal against that order in terms of Section 127 of the Act. The sundry charges, which the petitioner had already paid repeatedly shall be adjusted by the respondent in the future bills of the petitioner towards the normal consumption of the electricity."

12. Finally, this Court is also not able to find out any reason in the impugned order for penalizing the petitioner for the period from 04.01.2017 to 14.10.2017. In absence of the reasons, this Court safely can conclude that

the assessment is made on the basis of assumptions / presumptions, which is not supported by any rational reasons. Therefore, the impugned orders are requiring interference by this Court.

13. In suma, this petition is **allowed**. The final order of assessment dated 09.03.2018, and the judgment passed by the Ld. appellate Court concerned, are hereby set aside. The *lis* is remanded back to the Distribution Licensee concerned for the purpose of providing opportunity of hearing to the petitioner to submit fresh objections, and thereupon pass final assessment order afresh. The amount which was deposited by the petitioner at the time of filing of the appeal, would be subject to the outcome of the assessment order.

14. All pending application(s), if any, also stands disposed of.

28.01.2025 **(KULDEEP TIWARI)**
Satyawan **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No