

2025:PHHC:028791



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

CWP-11936-2016 (O&M)

Reserved on: 20.01.2025

Date of Pronouncement: 25.02.2025.

AMAR SINGH

-PETITIONER

V/S

**PUNJAB STATE POWER CORPORATION LIMITED AND
OTHERS**

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Yogesh Aneja, Advocate for
Mr. G.L.Bajaj, Advocate,
for the petitioner.

Mr. A.K.Sharma, Advocate,
for respondents no.1 to 3.

KULDEEP TIWARI, J.

1. Through the instant petition, a prayer is made issuance of a writ in the nature of certiorari quashing of judgment dated 11.02.2016 (Annexure P-6), passed by the learned Special Court, Bathinda, and the memo bearing No.693, dated 24.02.2012 (Annexure P-3), whereby a provisional assessment order regarding theft of electricity under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the 'Act of 2003'), has been issued by respondent no.2. Further, a prayer is made for restraining the the respondent-PSPCL, from disconnecting the electricity connection, bearing No.SP 320047 installed in the premises of the present

petitioner.

2. Succinctly, the petitioner, who is a holder of electricity connecting bearing no.SP 320047, for running an *Atta Chakki*, has approached this Court, on account of issuance of a provisional order of assessment regarding theft of electricity under Section 135 of the Act of 2003, vide Annexure P-3.

3. Before approaching this Court, the present petitioner had filed a civil suit, seeking a declaration to the effect that the provisional assessment order under Section 135 of the Act of 2003, is illegal, null and void. However, the said civil suit was dismissed by the learned civil court concerned, vide a judgment and decree dated 17.09.2014 (Annexure P-4), on account of maintainability. Thereafter, the petitioner approached the learned learned Special Court concerned, by filing an appeal against the demand in question, which was also dismissed, on the ground of maintainability, vide its judgement dated 11.02.2016 (Annexure P-6), which caused grievance to the present petitioner, and propelled him to file the instant petition.

4. In the instant case, the petitioner filed an application on dated 17.05.2011 (Annexure P-1), with respondent no.3, i.e. the distribution licensee, for discontinuity of the electricity connection to his *Atta Chakki*, alongwith a self declaration (Annexures P-1 and P-2 respectively). In pursuance of the application (*supra*), the electricity connection was removed, and the meter which was installed and sealed in a cardboard box, and was subsequently, sent to the M.E.Lab, Sri Muktsar Sahib, for its attestation vide challan no.7, dated 17.02.2012. A

fresh meter was reinstalled at the said *Atta Chakki* of the petitioner. Upon receipt of report for the M.E.Lab, a provisional order of assessment, vide impugned memo. no.693, dated 24.02.2012 (Annexure P-3), was sent to the petitioner. As per the report, the meter was checked in the presence of the petitioner, and other officials, and it was found that both, the M.E. Seals and the body of the meter were tampered with, as such the petitioner was found to be controlling the electricity energy by tampering with the internal circuit of the meter, and the authority concerned, finding its a case of theft of electricity/unauthorised use of electricity, a notice under Section 135 of the Act of 2003, was also issued to the petitioner.

5. Learned counsel for the petitioner submits that the learned Special Court concerned, instead of dismissing the appeal of the present petitioner, on the ground of maintainability, ought to have decided the civil liability, and in view of Section 135 of the Act of 2003.

6. He further made an attempt to throw challenge to the impugned assessment order (Annexue P-3), on the ground that there is a delay in sending the meter to the laboratory, and even the meter was not sealed in his presence. Therefore, solely on the basis of such report, the impugned assessment order (*supra*), requires interference.

7. On the other hand, learned counsel for respondents no.1 to 3, vociferously opposed the asked for relief to the present petitioner on the strength of their reply.

8. This Court has considered the rival submissions, as made by learned counsel for the parties concerned, and has gone through the entire case file.

9. So far as the first issue is concerned, this Court do not find any illegality in the order passed by the learned Special Court concerned. Though the impugned notice was issued under Section 135 of the Act of 2003, to the petitioner, but thereafter, FIR has not been registered till date. Therefore, if the criminal liability is not fastened upon a consumer, therefore, no occasion arises for the learned Special Court concerned, to assess the civil liability. In that eventuality, the only remedy lies before this Court. For this purpose, this Court finds strength from a judgement of this Court in **“M/s. JTG Alloys Private Ltd. vs. Punjab State Power Corporation Ltd.and others”**, 2014 RCR (Civil) 224. The relevant extract therefrom reads as under:-

“8. Part XV constitutes the Special Courts and Section 153 states that a Special court will consist of the Single Judge who shall be appointed by the State Government with the concurrence of the High Court. The procedure for disposal of the case is contemplated under Section 154. Section 154(1) provides that the offence is triable only by the Special Court. Clause (1) therefore provides for prosecution of the criminal case only. Section 154(2) provides that in any court in the course of enquiry where it seems that an offence of theft punishable under Sections 135 to 140 and 150 is committed, it shall be transferred to the Special Court. This provision, therefore, would bring the exclusivity of the Special Court to deal with cases relating to theft of electricity. Section 154(3) provides for a summary manner of disposal and Section 154(4) prescribes a procedure for the Special Court to grant pardon and secure any information relating to the offence. Section 154 (5) provides that Special Court shall determine the civil liability against the consumer and Section 154(6) provides that the amount as determined provides for the manner of collection of the excess amount over what is already deposited by the consumer. Section 154(5) and (6) would require to be examined for the contention of the respondent as regards the competence of the petitioner to come by means of writ petition could be seen by examining whether the petitioner could have resorted to any action before the Special Court. Clauses (5) and (6) of Section 154 are reproduced as under:-

"(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of 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 which ever 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."

9. The above mentioned provisions contemplate a determination of civil liability in a procedure pending before it and there is no provision in the entire text of Section 154 for a person who is aggrieved by the final assessment of theft levied on a consumer by the assessing officer under the Regulation to come by means of a challenge by appeal or through an independent petition. On the other hand, the constitution of a Special Court under Section 153 is for prosecution of an offence and Section 154(1) to (4) contemplate the manner of prosecution of such case that the Court will follow for gathering evidence.

10. Without a case is being brought before the Special Court for prosecution, there is no scope for the Court to entertain any independent petition by any individual. The finality that obtains through an assessment under the Regulations could be reassessed only in a situation where Special Court itself decides on the prosecution of theft. If the authorities do not escalate their action by resorting to prosecution, after making assessment, before the Special Court, the only court before which a person could challenge the assessment, could be only the High Court under Article 226 of the Constitution of India. This challenge could be restricted only to examine whether there is anything patently erroneous and against the Regulations and cannot involve factual consideration of whether there has been a theft or not. I will not find therefor find that the writ petition itself is not maintainable and I will proceed to examine the case only to see whether the case of theft itself which is made against the petitioner suffers from any fundamental vice of violation of the procedures prescribed under the Regulations where an inference of theft was not possible at all. These facts are elicited in response to the provisions of the notice issued and the representation given by the petitioner to the Corporation under Regulation 37.2(c)."

10. Now coming to the second issue, this Court has even examined the impugned assessment order (*supra*). The facts, which are not under dispute that on the basis of the application preferred by the present petitioner on dated 17.05.2011 (Annexure P-1), the old electricity meter was removed, and it was packed and sealed in a cardboard box, and the same was shown to the petitioner while doing so. Thereafter, the meter was sent to the M.E.Lab, Sri Muktsar Sahib, by the J.E.concerned, vide *Challan* no.7, dated 17.02.2012. The meter was checked by the

M.E.Lab, after opening the cardboard box, in the lab in the presence of the J.E. concerned, by Additional S.E., Enforcement-1, alongwith his staff, in the presence of the present petitioner, who was very well present at the time of checking of the said said meter, and signed on the checking report, after admitting it to be correct. The meter was checked from external side, and it found that, both the M.E.seals and body of the meter were tampered with. Therefore, as per the report, the petitioner was found to be committing theft of the electricity, and notice/memo under Section 135 of the Act of 2003 (*supra*), was issued to him.

11. Though the petitioner submits that there is a delay in sending the electricity meter to M.E.Lab for checking, however, he is unable to satisfy this Court, as to whether, there was any tampering with the seal, when the same was opened in the lab in his presence.

12. No further argument has been raised by learned counsel for the petitioner. Therefore, this Court does not find any illegality or perversity, requiring any interference in the impugned memo./order (*supra*), which is, hereby, held to be legally maintainable, wherethrough right assessment has been made.

13. *In suma*, the instant petition, is hereby **dismissed**.

14. All pending application(s), if any, also stand **disposed** of accordingly.

February 25, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

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