
(2013) 02 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 910 of 2013 (O and M)

Gurdeep Singh

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam and Others

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Electricity Act, 2003 — Section 126, 145

Citation : (2013) 02 P&H CK 0037

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : Gurpreet Singh, for the Appellant;

Judgement

A.N. Jindal, J.—The petitioner has sought to set aside the orders dated 5.3.2012 and 11.12.2012 passed by the courts below. The plaintiff had filed a suit for declaration to the effect that the inspection report dated 20.10.2011, laboratory examination report dated 25.10.2011, assessment order dated 30.11.2011 for deposit of Rs. 3,94,627/- and additional amount of Rs. 1,90,000/- as compounding fee, as illegal null and void and further mandatory injunction directing the respondents to restore the electricity supply to his premises, on the averments that he is proprietor of Bombay Sweets Manav Chowk, Ambala City, having electricity connection No. NDS468/M2360 in the name of his father. The electricity meter was fixed on the pole embedded on the divider on Ambala Hisar Road. On 20.11.2011, the defendants removed and took the electricity meter. At the time of inspection, the plaintiff was not present at the shop but he was called and his signatures were obtained on the report as well as the box containing the meter. It has been further averred that the meter was neither purchased; installed and nor the inspection of the meter was carried out in his presence. The notice of assessment has neither been issued in accordance with Section 126 of the Electricity Act, 2003 nor final assessment order was issued without issuing provisional assessment order and giving the plaintiff opportunity of being heard. It has been further averred that the plaintiff had not committed any theft. The

plaintiff had filed objections and deposited 40% of the penalty amount by way of cheque but the defendants instead of taking any action on the objections disconnected the electricity and returned the cheque to the plaintiff. The suit was also accompanied by an application seeking interim direction for restoration of the electric connection during the pendency of the suit.

2. On notice, the defendants appeared and filed written reply, inter alia taking the preliminary objection that the suit is not maintainable; the suit is barred by Section 145 of the Electricity Act, 2003; the plaintiff has no locus standi to file the suit; and the plaintiff has not come to the court with clean hands. On merits, it was submitted that the plaintiff was found committing theft of the electricity vide checking report dated 9.6.2004 and 29.6.2005 and penalty was imposed accordingly. The checking report was prepared at the spot which was signed by the plaintiff and the members of the Inspecting Party. The meter was checked in M & T Lab and it was found that the lash wires of all the 4 No. seals of the meter were cut and fixed with some adhesive material. On further checking by the test branch in M & T Lab, the meter was found slow by 30% and the metering system was also found tampered by installation of one number extra electronic circuit in the meter to affect the energy consumption recording by the meter system. It has been further submitted that the order of assessment has been served in accordance with the provisions of Section 126 of the Electricity Act, 2003. The objections of the plaintiff were dismissed by the defendant No. 3 vide speaking order and as such the cheque was returned.

3. The trial court dismissed the application for grant of interim injunction vide order dated 5.3.2012 and the appeal was also dismissed by the first appellate court vide order dated 11.12.2012.

4. The main question to be determined in this case is, "whether the civil court has got the jurisdiction to try the suit or not?"

5. Having probed the issue in depth, I need to reproduce Sections 126, 127 and 145 of the Electricity Act, 2003 which read as under:--

126. Assessment--(1) If on an inspection of any place or premises or after inspection of equipments, gadgets, machines, devices found connected or used, or after inspection of the records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of

hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept, such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation--For the purposes of this section:--

(a) "Assessing Officer" means an officer of the State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "Unauthorised use of electricity" means the usage of electricity:--

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised.

(v) for the premises or areas other than those for which the supply of electricity was authorised.

127. Appeal or appellate authority--(1) Any person aggrieved by the final order made u/s 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to one third of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen percent per annum compounded every six months.

145. Civil Court not to have jurisdiction--No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which as assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

6. On conjoint reading of the aforesaid sections, it could be made out that the Act provided a complete hierarchy for dealing with the matters with regard to theft of electricity or penalty imposed or assessment made by the Assessing Officer in connection with the theft of electricity. Section 126 indicates that on inspection by the Assessing Officer, if it is found that there is unauthorised use of the electricity, the officer shall make provisional assessment and thereafter a notice would be served upon the consumer and after hearing the consumer, about the objections, if any made by him, pass a final order of assessment of electricity charges payable by such person, and it was the choice of the consumer to accept the assessment. Section 127 of the Act provides for an appeal before the Appellate Authority, who after hearing both the parties shall decide the same and pass an appropriate order and thereafter serve a copy of the order upon the Assessing Officer and the appellant and the order passed by the Appellate Authority shall be final. Section 145 of the Act creates a bar that the civil court would have no jurisdiction to entertain any suit or proceedings in respect of which the Assessing Officer referred to in Section 126 of the Act or an Appellate Authority referred to in Section 127 or adjudicating officer appointed under the Act is empowered by this Act to determine. Section 145 of the Act further clarifies that no injunction would be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

7. The argument raised by the learned counsel for the petitioner that he has challenged the checking report made by the Assessing Officer, therefore the civil court has jurisdiction, is without any merit, as the Assessing Officer had acted in pursuance of the powers conferred over him under the Act, therefore, the Civil Court prima facie had no jurisdiction to try the suit wherein the act of the Assessing Officer has been challenged. It is also well settled by now that where a complete hierarchy of Tribunals or Courts is provided by the statute to resolve and redress the disputes, then in the light of the alternative dispute redressal forum, the civil court has no jurisdiction when expressly and impliedly barred by

the statute. If the procedure as adopted by the defendants to raise the claim is gone into, then it transpires that on 30.11.2011, Inspecting Team on checking of the meter, found the petitioner to be stealing electricity. Thereafter, assessment order dated 30.11.2011 was served upon the petitioner. Even after disconnection made by the defendants, the petitioner did not set up any claim before the competent authority, however, filed the present suit for injunction.

8. It would also be pertinent to mention here that the Special Court as constituted u/s 153 of the Act, are not vested with the powers to deal with the matters which are purely within the jurisdiction of the authority as constituted under Sections 126 and 127 of the Act. The rule bestows the jurisdiction of the courts other than the special courts till the special courts under sub-section (1) of Section 153 of the Act are not constituted. The special courts were and had been constituted to deal with the criminal offences, and not the civil matters.

9. Nothing has been shown on the record if the Nigam acted beyond jurisdiction, after the inspection was made, checking report was prepared and notice was issued to the petitioner.

10. It was observed in case U.H.B.V.N. and Others Vs. Vinod Kumar, as under:--

On the day the checking was done by the vigilance staff of the defendant/appellants, it was found that the plaintiff was committing theft of electricity by placing a magnet on the right side of MCB. The said assessment is to be dealt u/s 126 of the New Act. As per Section 145 of the New Act, jurisdiction of the Civil Court in such an assessment is barred. Since the issue involved in the present case is purely a legal issue, the same can be agitated by the appellants in appeal.

11. When once it is held that the civil court has no jurisdiction to try the suit then certainly the petitioner cannot be said to have a prima facie case in his favour for grant of injunction.

12. Both the courts below have taken right view of the matter while declining to grant injunction to the petitioner.

13. No merits. Dismissed.