

(2014) 11 RAJ CK 0130
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8464/14

Hadmana Ram

APPELLANT

Vs

Jodhpur Vidyut Vitran Nigam Limited

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Electricity Act, 2003 — Section 135, 152, 153, 154

Citation : (2014) 11 RAJ CK 0130

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Suman Choudhary, Advocate for the Appellant

Judgement

Sangeet Lodha, J.—By way of this writ petition, the petitioner has questioned legality of the report prepared by vigilance checking report and the provisional assessment order passed by the Executive Engineer (Vigilance), Jodhpur Vidyut Vitran Nigam Limited (JVVNL) creating the demand assessing the compounding and civil liability charges quantified at Rs. 2,24,102.00. Further prayer is made in terms that the respondents may be directed to regularise the electricity connection of the petitioner as per circular dated 28.2.13.

2. The petitioner, an agriculturist, by way of an application dated 19.3.09, applied for installation of electricity connection in his agriculture field situated at the periphery of village Jakhasar. In response to the demand notice issued, the petitioner deposited a sum of Rs. 75,560/- on 21.5.14. Admittedly, no electricity connection has been released in favour of the petitioner till this date.

3. A vigilance checking was made by the vigilance team of JVVNL at the agriculture field of the petitioner, which found that the petitioner has installed his own transformer and laid down 11 K.V. Line and thus indulged in theft of electricity. The vigilance checking report was prepared wherein it was proposed that if the petitioner fails to deposit the compounding and civil liability charges, an FIR may be lodged against him for commission of offence under Section 135

of Electricity Act, 2003 (for short "the Act"). A provisional assessment order dated 28.8.08 was passed by the Executive Engineer (Vigilance), JVVNL, Bikaner creating a demand of compounding charges a sum of Rs. 1,04,000/- and civil liability charges Rs. 1,20,102/-. Accordingly, a demand of Rs. 2,24,102/- has been created against the petitioner.

4. Learned counsel submitted that the petitioner has already deposited a sum of Rs. 75,560/- pursuant to the demand notice issued by the JVVNL and therefore, his electricity connection deserves to be regularised by charging the amount as specified by the circular dated 28.2.13. Learned counsel submitted that the petitioner is not liable to pay the huge demand quantified at Rs. 2,24,102/- created by passing the provisional assessment order towards the civil liability and compounding charges.

5. Indisputably, no electricity connection has been released to the petitioner by the JVVNL till this date. The fact that the petitioner indulged in theft of electricity is not disputed before this court. It is to be noticed that the theft of electricity is an offence punishable under the provisions of Section 135 of the Act and the trial of the offences committed under the Act is conducted by the special courts constituted by the State Government by notification in the official gazette in exercise of power conferred by Section 153 of the Act. As per the provisions of sub-section (5) of Section 154, the special courts are empowered to determine the civil liability against the consumer or a person in terms of money for theft of electricity which shall not be less than an amount equivalent to two times the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or exact period of theft if determined, whichever is less and the amount of civil liability so determined shall be recovered as a decree of civil court. 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 is refundable by the Board or licensee or the concerned person, as the case may be, alongwith interest at the prevailing Reserve Bank of India prime landing rate for the period from the date of such deposit till the date of payment in terms of the provisions of sub-section (6) of Section 154.

6. A conjoint reading of the vigilance checking report and the provisional assessment order reveals that the petitioner's civil liability and compounding charges have been assessed by the Assessing Authority and the petitioner is given an opportunity to compound the offence by depositing the amount determined. But then, the petitioner is not under an obligation to deposit the sum specified. It goes without saying that the petitioner cannot be compelled to compound the offence in terms of provisions of Section 152 of the Act. But then, on failure of the petitioner to compound the offence, obviously, the appropriate proceedings regarding the criminal as well as civil liability shall be taken against the petitioner in accordance with the procedure laid down. Moreover, if the petitioner is aggrieved by the provisional assessment order, he has every right to raise the objection in this regard which are required to be dealt with by the

respondent-JVVNL in accordance with law.

7. The petitioner claims that he is entitled for regularisation of his electricity supply in terms of the notification dated 28.2.13 issued by the JVVNL. If the said circular is operative and the petitioner is entitled for consideration of regularisation of his electricity connection, then nothing prevented him from making an appropriate application before the authority concerned in this regard. A perusal of the representations alleged to have been made by the petitioner do not disclose that any such prayer in terms of the said circular was ever made by the petitioner.

8. In this view of the matter, keeping in view the provisions of the Electricity Act, 2003, which deals with theft of electricity, the petitioner who has apparently indulged in theft of electricity is not entitled for any indulgence by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

9. The petition fails, it is hereby dismissed in limine.