
(2014) 02 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : R.S.A. No. 1002 of 2014 (O&M)

Hari Chand

APPELLANT

Vs

Dakshin Haryana Bijli Vitran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135, 145

Citation : (2015) 1 RCR(Civil) 58

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Amit Singla, Advocates for the Appellant

Judgement

Paramjeet Singh, J.—This is plaintiff's second appeal directed against the judgment and decree dated 01.11.2013 passed by learned District Judge, Fatehabad whereby judgment and decree dated 17.12.2012 passed by learned Additional Civil Judge (Senior Division), Ratia has been set aside and the suit of the plaintiff has been dismissed. For convenience sake, hereinafter parties will be referred to as they were arrayed in the Court of first instance i.e. appellant as plaintiff and respondents as defendants.

2. The detailed facts are already recapitulated in the judgments of both the Courts below and are not required to be reproduced. However, the brief facts relevant for disposal of this second appeal are that plaintiff filed a suit challenging the vires of memo Nos. 195 and 196 dated 31.01.2011 whereby demand of Rs. 1.17 lacs and Rs. 2 lacs, respectively, was raised on the basis of checking carried out at the premises of the plaintiff on 20.01.2011. It is alleged that plaintiff was a consumer of the defendants having power connection No. RG31/0010, installed at his premises of flour mill at Village Bahamanwala, Tehsil Ratia, District Fatehabad. The plaintiff was paying regularly for the same and there were no dues against him. His power meter was burnt. So, he moved an application for its replacement and alleged that he deposited required amount of Rs. 1750/- on 09.09.2009. He was assured of its replacement. But the meter was

not replaced. A checking was carried out on 20.01.2011 in his absence and the demand has been raised vide the abovesaid two memos. Various grounds have been taken that the checking was not valid which are noticed in para No. 2 of the judgment of lower appellate Court.

3. Upon notice, defendants appeared and filed joint written statement asserting that the plaintiff is a consumer but he got power connection bearing No. BW-51/0164 for running a tubewell. He was never given any power connection for running a flour mill. On 20.01.2011, flour mill premises of the plaintiff was checked by a checking party headed by Assistant Engineer. It was found that his power meter was burnt and direct supply of power was being taken, thereby the plaintiff was committing theft of energy. It is alleged that meter was removed from the spot and packed. The plaintiff was found to be consuming 9.355 K.W. Load. Checking report was prepared at the spot which was witnessed by the plaintiff. The report and memos are legal and valid and binding upon him. Besides this, it was alleged that civil Court has no jurisdiction to try the suit.

4. On the basis of the pleadings, the Court of first instance framed the following issues:-

"1. Whether notices bearing memos No. 195 and 196 dated 31.01.2011 whereby defendants have demanded a sum of Rs. 1,17,000/- as loss money and Rs. 2,00,000/- as compounding fee are illegal, null & void, opposed to principles of natural justice and thus are liable to be set aside? OPP

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPP

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD

6. Relief."

5. After perusal of the evidence led by the parties, the Court of first instance recorded issue-wise findings and decreed the suit vide judgment and decree dated 17.12.2012 and ordered to return 50% of the loss money to the plaintiff within two months from the date of order. Against that, defendants preferred an appeal, which has been allowed and judgment and decree of the Court of first instance has been set aside and the suit of the plaintiff has been dismissed, by the learned lower appellate Court vide judgment and decree dated 01.11.2013. Learned lower appellate court held that jurisdiction of civil court is barred and suit was not maintainable. Hence, this second appeal.

6. I have heard learned counsel for the appellant and perused the record.

7. Learned counsel for the appellant at the outset stated that the substantial questions of law involved in this second appeal have been formulated in the grounds of appeal which read as under:-

"i) Whether the appellant-plaintiff can be issued the impugned notices under Section 135 of the Electricity Act?

ii) Whether the impugned notices dated 31.01.2011 have any basis for the alleged calculation qua theft of energy with the power meter in burnt condition since the year 2009?

iii) Whether the appellant-plaintiff has been given any opportunity of being heard?

iv) Whether any prior notice is to be issued for checking the premises in question?

v) Whether it is the duty of officials of the respondents to maintain the power meter without any fault?

vi) Whether the learned first appellate Court has rightly interpreted the legal provisions of the Electricity Act, 2003."

8. Learned counsel for the appellant submitted that Civil Court has jurisdiction to try the suit. Learned counsel further submitted that only assessment under Section 126 of the Electricity Act could have been done and no notice under Section 135 of the Act could have been given to the plaintiff.

9. Before I deal with other issues, it would be appropriate to deal with issue whether the Civil Court has jurisdiction to hear the suit. The learned lower appellate Court has held that the jurisdiction of the Civil Court in such like matters is barred.

10. Admittedly, the impugned notices/memos have been issued for committing theft of energy by the plaintiff, therefore, the defendants are fully competent to issue notices under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the "Act"). Sections 126, 135 and 145 of the Act 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 unauthorized 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 authorized.

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

135. Theft of Electricity - (1) Whoever, dishonestly,-

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity;

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorized, so as to abstract or consume or use electricity shall be

punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is provided that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may, may upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity.

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the

complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment;

(2) Any officer of the licensee or supplier as the case may be, authorized in this behalf by the State Government may-

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

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."

On conjoint reading of the aforesaid sections, it is clearly made out that the Act provides a complete hierarchy for dealing with the matters with regard to theft of electricity or penalty to be imposed or assessment to be made by the Assessing Officer in connection with the theft of electricity. Section 126 stipulates 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 is the choice of the consumer

to accept the assessment. Section 135 of the Act relates to "theft of electricity". Interference with meters dishonest, tapping, making or causing to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; tampering of meter, installation or use of tampered meter, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; damages or destroys an electrical meter, apparatus, equipment, use of electricity through a tampered meter; use of electricity for the purpose other than for which the usage of electricity was authorized, constitute "theft of electricity" and constitute "offence" under Section 135 of the Act. Section 145 of the Act creates a bar that to the jurisdiction of civil court to entertain any suit or proceedings in respect of inspection and assessment made by the Assessing Officer under Section 126 of the Act. 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.

In U.P. Power Corporation Ltd. and others v. Anis Ahmad in Civil Appeal No. 5466 of 2012, decided on 01.07.2013, Hon"ble Supreme Court has held that the jurisdiction of the civil Court in matters like the present one is barred and in the case of M/s. Ujjal Rice Sheller v. Punjab State Power Corporation Ltd. & Others, 2011 (2) Law Herald (P & H) 965, it has also been held that Civil Court jurisdiction is barred.

In view of findings recorded by the learned lower appellate Court after appreciating the evidence, no question of law, much-less substantial question of law, as claimed, arises in this second appeal. No other point has been argued.

In view of above, I do not find any illegality or perversity in the impugned judgment and decree.

Dismissed in limine.