
(2008) 02 AHC CK 0015
In the Allahabad High Court

Kanwar Hasan

APPELLANT

Vs

State of U.P. and Jagdish Prasad Jain

RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 20

Citation : (2008) 4 RCR(Civil) 386 : (2009) 5 RCR(Criminal) 120

Hon'ble Judges : Vinod Prasad, J;Ajai Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Jagdish Prasad Jain, In-charge 33/11 K.V. Power Sub Station Kairana, District Muzaffar Nagar inspected M/s Hasan Steel and Alliances Private Limited, Kairana on 29.1.2008 at 3.00 p.m. of which petitioner Kanwar Hasan is the Managing Director. He prepared the checking report No. 1906, 1907-1908 and detected many illegalities and theft of electricity and therefore, after seizing the illegal articles found in the said premises lodged the impugned FIR of crime number 68 of 2008, u/s 135 of Electricity Act at police station Kairana, district Muzaffarnagar, which FIR is now being prayed to be quashed by the petitioner Kanwar Hasan, Managing Director, through the instant writ petition.

2. In the checking the illegalities that were detected were that initially the gate of the said premises was not opened for the checking purposes, when the informant Jagdish Prasad Jain had gone there for checking. On peeping from an adjoining window a man was viewed running behind from the meter room. Subsequent thereto the main gate was opened and the inspecting team entered into the premises and straightway went to the room constructed behind the meter room and there they detected a six meter long earthing plate which was connected with the meter with the help of two wires, which were recently cut. The said wires were connected with the help of nut and bolt with the earthing plate and the meter. It was further detected that LT side of a transformer

installed besides the petitioner's premises to feed electricity to a private water pump was open and a four core cable from the said transformer was drawn into the petitioner's premises, which according to the informant's case was used for extracting illegal electricity from the said transformer. Thereafter meter room was got opened and MRI was conducted by the checking party.

3. Subsequent thereto in the presence of firm's Manager CTPT chamber was checked. It was then detected that the original holographic seals affixed on the said chamber was tampered and re-affixed. Some other seals were also found to have been tampered. On opening of the CTPT Chamber it was further detected that one seal, which was fixed on both the CT terminals were found cut and some of the wire of both the CT terminals were made naked and those wires were fixed by the 4 core wire coming out from the transformer fixed outside the petitioner's premises. A hangared chamber was also found hanging from the roof and with the help of that chamber the wire was drawn towards the room erected behind the meter room and the said wire was connected with the help of the nut and bolt with the earthing plate lying there. It was thus deciphered that by bypassing the current, which was to go through the meter, electricity theft was being committed by consuming the electricity directly from the 33 KV line. Even marks of sparking were detected, which gave the inkling to the informant that the said sparking marks were because of shot circuiting of the wires. The six meter earthing plate, pieces of white wire of 5 meter, tampered plastic seals etc. were taken in possession by the informant, who then went to police station Kairana and lodged the impugned FIR against the petitioner which, as stated above, is now sought to be quashed by the petitioner by invoking our power under Article 226 of the Constitution of India through the instant writ petition.

4. We have heard Sri Satish Trivedi, learned senior counsel for the petitioner assisted by Sri Anubhav Trivedi in support of the writ petition as well as Sri H.P. Dubey, learned Counsel for the Electricity Department assisted by Sri Vijay Prakash Pandey and learned AGA in opposition and have ourselves perused the writ petition and the appended annexures.

5. Learned senior counsel for the petitioner canvassed before us that the FIR is a malafidy exercise because the petitioner did not grease the palm of the officers of the Electricity Department. He further contended that there was no tampering with the meter and the corresponding check meter installed outside the petitioner's premises did not show any theft of electricity. He further contended that the petitioner's premises was also earlier checked on 2.1.2008 and no theft of electricity was found. He contended that since the reading in both the check meters installed outside and the meter installed within the petitioner's firm recorded the same consumption reading therefore, there was no occasion to come to a prima facie conclusion that there was a theft of electricity. He further contended that the check meter installed outside shows the actual electricity consumption and so far as allegations of tampering with the holographic seals are concerned the said allegations are absolutely false as under no circumstance

the said seals can be tampered with. Arguing with vehemence he canvassed that to extract money the impugned FIR (annexure No. 1) has been lodged against the petitioner malafidly. Concluding the argument learned Counsel submitted that the FIR (Annexure No. 1) be quashed and the arrest of the petitioner be stayed meanwhile.

6. Learned Counsel for the Electricity Department on the contrary invited our attention to Section 135(1)(a) as well as (c) of Electricity Act and contended that taking the allegations levelled in the FIR to be correct, which as of now should be taken to be correct without any addition or subtraction, there is prima facie case of electricity theft being disclosed against the petitioner and his firm and therefore, there is no reason to quash the impugned FIR. They contended that CTPT is a part of installing the meter system and in view of the fact that the electricity was being extracted directly without allowing it to pass through the meter is a clear cut case of electricity theft. They further contended that tampering with the seals and the holographic impressions also are offences under the Electricity Act and therefore, the investigation must be allowed to proceed and the petitioner be directed to take his defence before the Investigating Officer and at present there is no reason to quash the FIR or install the investigation and this writ petition bereft of any merit be dismissed.

7. We have considered the arguments raised by both the sides. Under the Indian Electricity Act, 1910, hereinafter referred to as the Act, u/s 20 a licensee or any person duly authorised by it may enter into any premises and check the same for the purposes mentioned in the aforesaid section. The purposes which are mentioned include inspecting, testing, repairing, altering the electricity supply lines, meters fitting works and apparatus for the supply of energy belonging to the licensee, ascertaining the amount of energy supplied, removing apparatus and remove the supply lines meters and fittings where no electricity is required. Sub clause 3 of Section 20 provides that, if the consumer refuses to allow the licensee or any other person authorised on his behalf to check the premises then his electricity connection may be disconnected so long as the consumer does not allow his premises to be checked. Under such a provision the premises of the petitioner was checked by the informant who was the Incharge of 33/11 K.V. Power Sub Station, Kairana.

8. Section 135 of the Electricity Act, which has been quoted by the petitioner himself in paragraph 11 of the instant writ petition clearly provides that whoever taps any electricity with the overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee 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 or electric current or otherwise results in a manner whereby electricity is stolen or wasted...shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Proviso, which has been attached to Section 135(1)(c)(ii) provides as follows:

Provided further that if it is proved that any artificial means or means not authorized by the Board or license exist for the abstraction, consumption or use 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.

9. The above referred Section and proviso clearly indicates that if any article which can be used for illegal extraction of electricity is found in any premises then it is to be presumed, statutorily, that the electricity was being extracted illegally unless contrary is proved by the consumer. The said statutory presumption can be rebutted only at the stage of investigation or subsequently thereto at the stage of trial. At the very threshold of lodging of the FIR, without any investigation being ensued, the said favourable presumption in favour of Electricity Department cannot be set at naught. At the initial stage the said presumption has to be applied for looking as to whether on the uncontroverted allegations levelled in the FIR any offence of electricity theft is made out against the malefactor or not? The contention of learned Counsels for the Electricity Department is not without substance when they argued that at this stage allegations levelled in the impugned FIR has to be prima facie taken to be correct without any addition or subtraction of any outside material. For shorting of the controversy we only say this much that the said contention of the learned Counsel for the Electricity Department is in consonance with the law, which has been spelt out by the Apex Court many a times.

10. Viewed from such an exposition of law as is mentioned above, the allegations against the petitioner and his firm are that they have committed electricity theft by consuming electricity directly from the electricity supply lines without allowing it to pass through the meter installed in their premises and therefore, they were using the electricity without it being recorded in the meter which amounts to theft.

11. The further allegations are that they have installed other apparatus with the help of wires to show less consumption of electricity. This act also amounts to theft of electricity as has been defined u/s 135 of the Electricity Act. Our attention was drawn by the learned Counsel for the petitioner himself on the checking report prepared at the time of the inspection of petitioner's premises, which is a part of the FIR lodged against the petitioner. The said checking report has been signed by many officers including A.N. Singh E.E. (T), E.E. (D), A.E. (Trans.), J.E. (D) and others. The notings mentioned in the above inspection note also clearly indicates commission of electricity theft by the petitioner's firm. Since the said checking report forms the part of the impugned FIR therefore the facts disclosed therein have to be presumed to be correct and those notings clearly makes out cognizable offence of electricity theft and resultantly there does not arise any reason to quash the impugned FIR.

12. The above discussions is concluded by holding that the impugned FIR discloses commission of cognizable offence and there is no reason to quash it at its very threshold. The instant writ petition with the prayer to quash the said FIR dated 30.1.2008 relating to crime No. 68 of 2008, u/s 135 of Electricity Act, police station Kairana, district Muzaffarnagar is bereft of any merit and hence is dismissed.