
(2014) 03 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1865 of 2014

Kapoor Singh

APPELLANT

Vs

Punjab State Power Corporation Limited and Others

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9 — Electricity Act, 2003 - Section 126, 126(2), 126(3), 127, 135

Citation : (2015) 2 RCR(Civil) 891

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : D.S. Gurna, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. The Government of Punjab in the Department of Home Affairs and Justice (Judicial-I Branch) issued notification dated 03rd December, 2008 in exercise of its power conferred by sub-section (1) of S. 153 of the Electricity Act, 2003 (for short "the Act") (Central Act No. 36 of 2003) and all other powers enabling the Governor of Punjab to constitute all the Courts of Additional Sessions Judges of every Sessions Division in the State of Punjab as Special Courts, for the purpose of providing speedy trial of the offences referred to in Ss. 135 to 140 and S. 150 of the Act. Further, in exercise of power conferred by S. 153(2) of the Act and with the concurrence of the High Court of Punjab and Haryana, at Chandigarh the Governor of Punjab has been pleased to appoint every Additional Sessions Judge of every Sessions Division in the State of Punjab as Judge of the Special Court so constituted. The background of the case is that the respondent Punjab State Power Corporation Limited ("PSPCL") raised a demand of Rs. 1,14,982/- against the petitioner vide notice dated 10th December, 2012 on account of alleged theft of electricity through an electric connection sanctioned to feed a tubewell for agricultural purposes. The petitioner objected to the demand before the designated authority and the amount after

hearing him was reduced to Rs. 86,184/-.

2. Dissatisfied, the petitioner filed a civil suit challenging the memo dated 10th December, 2012 as illegal. The Civil Judge (Junior Division), Bathinda returned the plaint holding that the plaintiff should have availed remedy provided under the Electricity Act, 2003 for redressal of the grievance. The plaint was not entertained citing S. 153 of the Act which mandates that matters falling under Ss. 135 to 140 and S. 150 are to be dealt with only by Special Courts constituted under S. 153. The trial Judge passed the order on 02nd September, 2013.

3. In the light of the notification of the Government of Punjab dated 03rd December, 2008 the petitioner brought an action in the Court of the Additional District Judge, Bathinda bearing CAO File No:47 of 10.10.2013 to vindicate his grievance. The memo dated 10th December, 2012 was impugned which reduced demand to Rs. 86,184/- which demand was unlawful.

4. Cases of theft of electricity fall under the provisions of S. 135 of the Act. By virtue of Rule 11 of the Electricity Rules, 2005 framed in exercise of powers conferred by S. 176 of the Act the jurisdiction of Courts other than Special Courts have not been barred under sub-section (1) of S. 154 till such time the Special Courts are constituted under sub-section (1) of S. 153 of the Act. This was a transitional provision in the rules so as not to leave consumers in the lurch without any remedy as other civil court remedies stood barred. This position has been altered by operation of the notification dated 03rd December, 2008 where subject matter is theft of electricity are now triable by the Special Court i.e. the Court of Additional District and Sessions Judge of the Sessions Division exercising territorial jurisdiction over the dispute raised.

5. Resultantly, the initial action brought before the Civil Court calling in question the demand notice finalized by the designated authority after hearing the petitioner was a final order. It is in this light that the impugned order dated 28th January, 2014 deserves to be examined by this Court in the present case. The learned Additional District Judge, Bathinda has held in the impugned order that when the representation of the petitioner was decided by the designated authority as per provisions of S. 127 of the Act against the initial demand and that order becoming final the Court had no jurisdiction against an order passed under S. 127 of the Act. To reach this conclusion, the learned Additional District Judge, Bathinda has relied on the decision of this Court in Gurdeep Singh Vs. Uttar Haryana Bijli Vitran Nigam and Others, where this Court held that Special Courts constituted under S. 153 of the Act are not vested with powers to deal with matters which are purely within the jurisdiction of the authority constituted under Ss. 126 & 127 of the Act which deal with unauthorised use of electricity. The Court below has held that Special Courts were constituted to deal with criminal offences, and not civil matters. Resultantly, the appeal was liable to be dismissed for want of jurisdiction. It was so ordered.

6. In his challenge to the aforesaid order the Learned counsel for the petitioner

submits that matters which fall under Ss. 135 to 140 and S. 150 are to be dealt with only by Special Courts constituted under S. 153 of the Act. He would point out that Ss. 126 and 127 deal with matters of unauthorized use of electricity where the channel of challenge is through "Assessing Officers" and "Appellate Authority". Therefore, in view of S. 9 of the Code of Civil Procedure, 1908 the Civil Court is competent to try the present matter. He draws attention of this Court to S. 154 (5) and (6) which fall for consideration under S. 153. Sub-sections (5) and (6) of S. 154 read as follows:--

"(5) The (Special Court shall) 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 whichever 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. Explanation. For the purposes of this section, civil liability means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in (sections 135 to 140 and section 150)."

7. Learned counsel further points out to Regulation 37.3 of the Regulations on Electricity Supply Code and Related Matters, 2007 which provide that the Special Court has jurisdiction to assess the civil liability in cases of theft. Thus civil liability is a matter to be determined by the Special Courts set up by the Government. He complains that the learned Additional District Judge fell in grave error in holding that Special Courts can only deal with criminal and not civil liability. Jurisdiction ought to have been exercised by the learned Additional District Judge in his second avatar as the Additional Sessions Judge. While dealing with cases of theft such as the present one the order had to be passed acting as Special Court exercising powers of both the Additional District Judge and Additional Sessions Judge of the Sessions Division.

8. To buttress his argument, learned counsel relies on the decision of the Supreme Court in U.P. Power Corporation Ltd. and Others Vs. Anis Ahmad, wherein the jurisdiction of consumer Courts to deal with matters concerning orders passed by authorities with regard to theft of electricity have been ousted and the State Governments have been directed to confer powers on special Courts. The aforesaid confusion with respect to jurisdiction is certainly not merited in view of the notification dated 03rd December, 2008 already notified by

the Government of Punjab in its official Gazette.

9. The learned counsel complains that the impugned order leaves the petitioner without remedy. Indisputably, the case set up by the respondent- Corporation is not for unauthorized use of electricity but of theft relatable to Ss. 135 to 140 and S. 154 of the Act. The Special Court has a twin responsibility to examine the case from both angles one of theft and one of civil liability and to pass orders accordingly. The framers of the law were wise to empower the Special Court in cases of theft to deal with both criminal and civil liability in order to avoid multiplicity of proceedings. The Civil Judge (Junior Division), Bathinda in her order dated 02nd September, 2013 while returning the plaint without making any comment on the merits of the case and ordering return of plaint to avail appropriate remedy according to law has recorded that the impugned demand of Rs. 86,184/- has been raised by the respondent-Corporation through memo 1743 dated 10th December, 2012 on the basis of checking conducted on 28th July, 2012 for allegedly committing theft of electricity by the consumer-petitioner plaintiff. If the demand notice was issued under S. 135 of the Indian Electricity Act, 2003 then the civil court did well to return the plaint.

10. The action brought in the shape of an appeal by the petitioner before the learned Additional District Judge, Bathinda was maintainable and triable by the Special Court. The learned Additional District Judge, Bathinda failed to appreciate his own jurisdiction by misdirecting himself to the provisions of S. 126 and 127 of the Act which deals with unauthorized use of electricity. In *The Executive Engineer and Another Vs. Sri Seetaram Rice Mill*, relied upon by the petitioner, the Supreme Court has drawn the distinction between S. 126 and S. 135 of the 2003 Act in the following words:--

"15. Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. Section 135 of the 2003 Act falls under Part XIV relating to "offences and penalties" and title of the Section is "theft of electricity". The Section opens with the words "whoever, dishonestly" does any or all of the acts specified under clauses (a) to (e) of Sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Sub-section (1A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under Sub-sections (2) to

(4) of the said Section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorized use of electricity". This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an "authorized use of electricity". Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the 2003 Act. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of Sub-sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

16. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of Criminal Jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

17. Thus, it would be clear that the expression "unauthorized use of electricity" under Section 126 of the 2003 Act deals with cases of unauthorized use, even in absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorization, like providing for a direct connection bypassing the installed meter. Therefore, there

is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

18. Section 135 of the 2003 Act significantly uses the words "whoever, dishonestly" does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. "Dishonesty" is a state of mind which has to be shown to exist before a person can be punished under the provisions of that Section."

For the foregoing reasons, the impugned order suffers from lack of exercise of jurisdiction vested in the Special Court and is therefore liable to be set aside. The petition is therefore allowed by quashing the impugned order. The case is remitted back with a direction to the Special Court to pass a fresh order on the merits determining both the criminal and civil liability of the petitioner. Nothing said in this order will influence the Special Court as only the question of jurisdiction to entertain the action before the Special Court has been examined and view expressed on maintainability.