

(2014) 11 MP CK 0051
In the Madhya Pradesh High Court
Case No : W.P. No. 5357 of 2014

Patidar Stone Crusher

APPELLANT

Vs

M.P. Vidyut Vitaran Company Ltd. and Others

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Electricity Act, 1910 — Section 39

Electricity Act, 2003 — Section 135, 135(1), 135(1A), 138, 26(6)

Citation : (2015) 1 MPLJ 618

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : S.M. Bangur, Advocates for the Appellant; D.S. Panwar, Advocates for the Respondent

Judgement

Prakash Shrivastava, J.—By this writ petition, the petitioner has challenged the order dated 24-6-2014 disconnecting the electricity connection in the petitioner's premises and making a prayer for restoration of electricity connection. In brief, the case of petitioner is that she had installed a stone crusher in 2012-13 and had taken 100 KA electricity connection from respondent company and was regularly paying the bill. On 6-2-2014, she had made an application for increasing the load from 100 HP to 170 HP for which the officers of respondents had demanded bribe and on account of not conceding to the demand, the respondents on 23-6-2014 alleging theft of electricity had disconnected the electricity whereas at that time, the crusher was not operating. Respondent No. 3 thereafter has filed challan under section 135 of Electricity Act, 2003 (for short Act) against the petitioner before the Special Judge Agar on 27-6-2014 in which the petitioner has been granted bail. On 24-6-2014 the petitioner had received the communication Annexure P-1 in respect of disconnection of the electricity supply and respondent No. 3 had passed the provisional order of assessment dated 26-6-2014 which was received by petitioner on 1-7-2014 without any enclosures. The reply against the provisional assessment order was filed by petitioner on 3-7-2014, in spite of that, the electricity was not restored and

demand of Rs. 74,44,663/- was maintained. Since according to the petitioner, no theft of electricity has been committed by her, therefore, she has approached this Court challenging the action of respondents in disconnecting the electricity and seeking restoration of the electricity supply.

2. A reply has been filed by respondents disclosing that petitioner is an HT consumer running stone crusher plant and inspection of petitioner's electricity connection and metering equipment was done on 23-6-2014 and Panchanama was prepared in presence of petitioner's husband who is managing the affairs of petitioner firm. During the inspection, it was found that petitioner had used 33 KCV voltage bearable insulated three rods for anchoring on 33 KV line just before the meter and metering equipment to bypass the recording of consumption in the meter and by also using the AIR Break (AB) Switch for disconnecting 33 KV power supply. The metering equipment was therefore seized and supply was disconnected. According to the respondents, the petitioner had committed large scale theft, unheard in respondents department in last 15 years and manner in which the petitioner had extracted electricity by use of three insulated cable rods from High Tension Lines was very dangerous and could result into death of any person within seconds. The reply also discloses that after the provisional assessment order dated 26-6-2014, the petitioner's objection was considered and final order of assessment dated 24-7-2014 has been passed and the petitioner has been criminally prosecuted for committing the alleged offence.

3. Learned counsel for petitioner submits that petitioner has not committed any theft of electricity and that the action of respondents in disconnecting the electricity supply is illegal action.

4. As against this learned counsel for respondents has submitted that considering the large scale of theft of electricity by petitioner, the respondents have rightly disconnected the electricity and they have acted in accordance with the provisions of the Act and the law laid down by this Court as well as the Supreme Court.

5. I have heard the learned counsel for parties and perused the record.

6. There is serious allegation against the petitioner in respect of committing large scale theft of electricity from high tension line by using three insulated rods and air break switch. The material which was used by petitioner for theft of electricity has been seized by the respondents and challan has been filed before the Special Court constituted with Electricity Act, 2003 for prosecuting the petitioner under sections 135 and 138 of Act. The Special Court has taken cognizance and has issued warrant against the petitioner.

7. Undisputedly, the provisional assessment order dated 26-6-2014 was passed assessing a sum of Rs. 74,44,663/- against which petitioner had preferred objection dated 3-7-2014 and thereafter the final order of assessment has been passed on 24-7-2014.

8. Section 135 of Act provides for punishment in case of theft of electricity and relevant part of section 135(1) reads as under :

"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; or

(d) uses electricity through an tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

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 within both:

.....
....."

9. Section 135(1A) of Act provides for the action which can be taken on detection of theft of electricity. Section 135(1A) reads as under :

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

.....
....."

10. The third proviso to section 135(1A) provides for restoration of electricity supply on deposit of electricity charges which reads as under :

"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."

11. In the present case, final order of assessment has been passed against the

petitioner assessing a sum of Rs. 74,44,663/-.

12. This Court by order dated 1-9-2014 had permitted the counsel for petitioner to seek instructions from the petitioner as to how much amount she is willing to deposit but learned counsel for petitioner has not come forward with any proposal to deposit any amount against the sum assessed in the final order of assessment. Undisputedly the amount assessed has not been deposited.

13. The Supreme Court in the matter of Jagmodhan Mehatabsing Gujaral and Others Vs. State of Maharashtra, while considering the issue of theft of electricity has expressed the desirability to discontinue the supply of electricity as a measure to curb the theft by holding as under:

"29. Large-scale theft of electricity is a very alarming problem faced by all the State Electricity Boards in our country, which is causing loss to the State revenue running in hundreds of crores of rupees every year. In our considered view, after proper adjudication of the cases of all those who are found to be guilty of the offence of committing theft of electricity; apart from the sentence of conviction, the Court should invariably impose heavy fine making theft of electricity a wholly non-profitable venture. The most effective step to curb this tendency perhaps could be to discontinue the supply of electricity to those consumers temporarily or permanently who have been caught abstracting electricity in a clandestine manner on more than one occasion. The legislature may consider incorporating this suggestion as a form of punishment by amending section 39 of Electricity Act, 1910."

14. This Court also in the matter of Bagh Cement Limited v. M.P. Electricity Board and others by order dated 18th May 2001, passed in WP No. 972/2001 has held as under :

"3. In a case of this nature where the cause of action is based on the theft of electricity the writ Court becomes almost foreign to the Lis. In other words the demand of dues of electricity if based on the case of theft cannot be assailed in writ jurisdiction but remedy of petitioner (consumer) lies somewhere else. The jurisdiction of writ Court to examine the correctness of demand is not to examine the facts but it has to be tested on the anvil of constitutional provisions or/and the breach of Electricity Laws. It is only when the writ Court prima facie finds that the demand of electricity is raised without there being any default on the part of consumer, it is only in that event, the writ Court steps in to decide whether the demand could be raised without getting the issue adjudicated by some independent agency as provided in section 26(6) of the Electricity Act. But when it is found that petitioner is indulged in the malpractices or a case of theft is detected then jurisdiction of writ Court gets excluded. Indeed this legal position is well settled by several judgments of Supreme Court and they even do not need to be cited."

Since in the present case also there is serious allegation of theft of electricity against the petitioner and challan has already been filed for prosecuting the

petitioner in terms of the provisions of the Act and petitioner has not deposited any amount in terms of order of assessment therefore, petitioner is not entitled to any relief by this Court at this stage. Hence the writ petition is dismissed. However, if the petitioner deposits the requisite sum in terms of the third proviso to section 135(1A) of the Act, then the respondents will take appropriate decision for restoration of electricity supply to the petitioner's establishment.

C.C. as per rules.