

(2018) 12 P&H CK 0144

In the Punjab And Haryana At Chandigarh

Case No : Latter Patent Appeal No 1487 Of 2018 (O&M)

Rajan Chopra

APPELLANT

Vs

Punjab State Electricity Board And Others

RESPONDENT

Date of Decision : 03-12-2018

Acts Referred:

Electricity Act, 2003 — Section 145, 126, 127, 127(2)
Constitution of India, 1950 — Article 226

Citation : (2018) 12 P&H CK 0144

Hon'ble Judges : Krishna Murari, CJ;Arun Palli

Bench : Division Bench

Advocate : Sameer Sachdeva

Final Decision : Dismissed

Judgement

Krishna Murari, J.

1. This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 19.07.2018 passed by the learned Single Judge dismissing the writ petition filed by the appellant herein.

2. The appellant-petitioner invoked the extra ordinary jurisdiction conferred upon this Court by Article 226 of the Constitution of India challenging the order of assessment passed under Section 127 of the Electricity Act, 2003 (for short 'the Act') as well as the order dated 03.01.2018 passed by the Additional Deputy Commissioner-cum-Appellate Authority dismissing the appeal filed under Section 145 of the Act challenging the assessment order passed under Section 126 of the Act.

3. Facts in brief are that the appellant-petitioner was having two temporary connections along with one permanent connection installed in Silver Residency Apartments, Nakodar Road, Jalandhar. On checking being carried out by Senior Executive Engineer (Enforcement) II, Jalandhar, the appellant-petitioner was found indulging in unauthorized use of the electric energy. A provisional

assessment to the tune of Rs.9,55,615/- was made and accordingly a show cause notice was issued to file objections thereto. After considering the objections filed by the appellant-petitioner, a final assessment order dated 20.11.2018 was passed under Section 126 of the Act.

4. Instead of availing the remedy available under the Act of filing an appeal under Section 127(2) of the Act, the appellant-petitioner choose to file a civil suit which was dismissed by the trial Court vide judgment and decree dated 24.03.2014 on the ground that it was not maintainable. An appeal was filed challenging the judgment passed by the trial Court which was dismissed by learned Additional District Judge vide judgment dated 30.05.2015.

5. Thereafter the appellant-petitioner filed an appeal purported to be under Section 145 of the Act challenging the final assessment order dated 20.11.2008. Section 145 of the Act provides for bar on jurisdiction of the Civil Court in respect of any assessment made under Section 126 or appellate order passed under section 127 of the Act or in respect of any action taken in pursuance of any powers conferred by or under the Act. The Appellate Authority treating it to be an appeal filed under Section 127(2) of the Act considered the same on merits and after hearing dismissed the appeal vide order dated 03.01.2008 on the findings that the appellant-petitioner was sanctioned two temporary connections and one permanent connection with sanctioned load of 12.989 KW, 10.460 KW and 10.970 KW respectively. During checking by the enforcement squad on 25.07.2008 the appellant-consumer was found consuming a total load of 56.038 KW which was in excess of the total sanctioned load of three connections. The sole ground on which the final assessment order was challenged was that checking was conducted behind back of the appellant-petitioner. The Appellate Authority after analyzing the record has returned a finding that the checking report confirms the presence of the representative of the appellant during the course of checking and was counter signed by him.

6. Admittedly, the appeal before the Appellate Authority was filed after 7 years only after the suit was dismissed and decree was confirmed in appeal. It appears that the appellant-petitioner deliberately filed an appeal under Section 145 of the Act instead of Section 127 in order to avoid deposit of half of the assessed amount which is a pre-condition for filing an appeal under Section 127 of the Act. Although the Appellate Authority considered the appeal on-merits and dismissed the same. However, for want of deposit of half of the assessed amount, the appeal itself was not maintainable and was liable to be dismissed. It appears that the appellant-petitioner was only putting an effort to delay the proceedings in one way or the other to avoid the liability imposed upon him for theft of electric energy.

7. In view of the above facts and discussion, we see no infirmity in the impugned order passed by the learned Single Judge requiring any interference by us.

The appeal is devoid of merits and stands dismissed.