

(2015) 08 AHC CK 0166

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 47644 of 2015

Rajesh Baudh

APPELLANT

Vs

U.P. Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 24-08-2015

Acts Referred:

Electricity Act, 2003 — Section 126, 126(3)

Citation : (2015) 10 ADJ 523 : (2016) 114 ALR 83 : (2015) 6 AWC 6458

Hon'ble Judges : Arun Tandon and Shashi Kant, JJ.

Bench : Division Bench

Advocate : Rajeev Kumar Upadhyay, for the Appellant; Baleshwar Chaturvedi and Ashutosh Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. Petitioner before this Court has admittedly taken a service connection for supply of electrical energy from the Power Corporation which had the right to distribute the electrical energy at the relevant time in district Agra.

2. It is not in dispute that Torrent Power Ltd., respondent No. 4, has been appointed as the licensee for maintenance of electricity connection and realisation of electricity dues from the customers by the U.P. Power Corporation (Reference paragraph 9 of the writ petition).

3. Petitioner before this Court seeks quashing of the assessment order issued by the Torrent Power Ltd. Under the signatures of its authorized officer dated 19.6.2015.

4. The order is being challenged before us on the ground that in view of Section 126 Explanation A of the Electricity Act, 2003 (herein after referred to as the "Act, 2003"), it is only the State Government or its officers who can issue the assessment order. Even if the State Government has issued an order authorizing the Assistant Engineer/Executive Engineer or any other officer of Torrent Power

Ltd., to exercise powers under Section 126 of the said Act, 2003, it will have no effect. For the purpose, reference has been made to the interim orders which have been passed by the Division Benches of this Court in Writ Petition No. 11866 of 2012, 10273 of 2013, 37013 of 2012, 31950 of 2012 and 30145 of 2012.

5. We, in order to examine the correctness or otherwise the stand taken on behalf of the petitioner examined the language of Section 126 of the Act, 2003 including the Explanation "a" added thereto.

6. For ready reference Section 126 alongwith Explanation A is quoted herein below:

126. Assessment.--(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised 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 an order 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 within thirty days from the date of service of such order of provisional 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 a State Government or Board or licensee, as the case may be, designated as such by the State Government."

7. From a simple reading of the aforesaid provision, it is apparently clear that the Assessing Officer would include an officer of the State Government or an officer of the Board or an officer of the Licensee, as may be designated by the State Government. It is not in dispute that the officer who has issued the assessment has been designated as the Assessing Officer by the State Government.

8. In view of the aforesaid statutory provision, we hardly find any substance in the challenge to the power of the Assessing Officer namely the designated officer of the Torrent Power Ltd.

9. Writ petition has no merit and is accordingly dismissed.

10. At this stage counsel for the petitioner submits that the objections raised to the assessment order so made may be directed to be decided.

11. Counsel for the respondent submits that no such objections have been filed till date.

12. We, in the facts of the case, however provide that if the petitioner files objection under Section 126(3) of the Act, 2003 before the competent authority, the same shall be considered and decided strictly in accordance with law preferably within three weeks from the date of filing of the objection alongwith a certified copy of this order.

13. All consequential action shall be taken accordingly.

14. We may clarify that if the objections are not filed within the time specified herein above, the licensee shall be free to proceed in accordance with law. Shri Baleshwar Chaturvedi, counsel for the respondent Nos. 1 and 2 is present.