

(2014) 09 P&H CK 0113
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 23006 of 2013

Suraj Bhan

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135, 135, 136

Citation : (2015) 177 PLR 718 : (2015) 1 RCR(Civil) 894

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Rajkapoor Malik, Advocates for the Appellant; P.S. Poonia, Advocates for the Respondent

Judgement

K. Kannan, J.—The writ petition challenges an order passed by the Additional District Judge, Kaithal exercising his power as a Special Court constituted under Section 153 of the Electricity Act, 2003. The petition has been filed by the petitioner, who was served with notice of theft of energy under Section 135 of the Electricity Act and for assessment of charges payable for the alleged theft. The petitioner's contention before the Special Court was that the statutory provisions had not been duly complied with and no final order had even been passed after the provisional assessment was made. The Special Court held that if an order was passed under Section 126, the Civil Court would have no jurisdiction till he exhausted the remedy under Section 127 of the Electricity Act. The Special Court also observed that jurisdiction of the Civil Court was barred under sub-section 5 of Section 154 and it had not any power to pass any order quashing the assessment which was made. I find the entire exercise by the petitioner has been grossly misplaced and out of sync of the scheme of the Electricity Act and the regulations. The theft which was detected was subsequent to an inspection carried at the premises where it was alleged to have been found that the unit was running by passing an energy meter and the inspection had been carried out in the presence of the petitioner himself. It amounted to theft of energy and the Nigam had removed the energy meter and assessed the units

consumed by applying the formula prescribed for assessment of theft as per the circular No. U-54/2007 dated 13.07.2007 (Annexure R-2/5). The amount of Rs. 45,588/- which was assessed was directed to be paid within 24 hours to secure resumption of power and he had been served also with a notice compounding the criminal offences if Rs. 24,000/- was paid as the compounding charges. The amount as assessed had been paid and the application has been filed under Section 154 of the Electricity Act by the petitioner before the Special Court. The proceedings before the Special Court were incompetent and the remedy which the petitioner was trying to invoke was not tenable at all. The regulations have been issued by the Regulatory Commission on 29.06.2007 in exercise of power conferred under Section 181 read with relevant provisions of Section 135 and other provisions. The regulation 37 deals with theft of energy and the provision sets out the procedure in case of theft of electricity. To our purpose would be necessary to examine 37.2 which deals the consequences of theft of energy and 37.2(b) details the nature of order that could be passed. Clause (b) reads as under:--

"Where theft of electricity in a premises is prima facie established under Regulation 37.2(a)(i) or Regulation 37.2(a)(v), the Authorized Officer will assess the amount payable by the consumer/person who has benefited by such theft as per procedure specified at Annexure-8. The assessment order will state the basis on which theft of electricity has been established. The Authorized Officer may, after recording reasons in writing, suitably reduce the presumptive period of theft of electricity as specified in Annexure-8 in case he is satisfied that such theft had actually occurred for a lesser period. Such an order of assessment will be delivered to the concerned consumer/person within 24 hours of theft of electricity having been established."

2. This is precisely the notice which has been issued under Annexure P-1. The same regulation provides under 37.2(c) that a consumer who was not satisfied with the assessment order could prefer within 15 days of the assessment a representation before the authority designated for this purpose by the commission in respect of such licensee. Sub-clause (ii) of clause (c) states that authorized or designated authority will furnish copy of the final order to the consumer and in the Special Court immediately after the submission of the challan by the police. This procedure is adopted by the designated authority on furnishing the final order to the consumer and also to the Special Court after the police issues the challan. If in this case, the Nigam had prosecuted the criminal case before the Special Court, the Special Court will also be competent in Section 154(6) to determine the civil liability. Otherwise the liability already assessed becomes final and a consumer could not have any grievance. A grievance which is possible must be confined to what the regulations themselves provided namely of either a representation before the authority as appointed by the Commission within a period of 15 days from the date of notice demanding the amount after assessment or a challenge that could be competent to resort through a writ petition when it can be pointed out that there were any statutory violations that

would give rise to an inference that assessment made was not proper. Instead he has also allowed for a challenge before the Special Court by means of an application. An application by a consumer is not contemplated under Section 154 at all. Section 154 contemplates an action that is for an enquiry or trial for an offence punishable under Section 135 to 140 and Section 150. The Nigam itself has not applied to Special Court for launching the prosecution yet. It is only in such a prosecution that clause (6) can be invoked where a civil liability determined already could be a matter of assessment and a determination possible under sub-clause (5). A person who is served with notice has no competency to apply to Special Court for any reassessment. The procedure adopted was wrong and the Special Court was also justified in dismissing the petition although for different reasons than what I have outlined above.

3. Learned counsel for the petitioner refers to me a judgment of this Court in Rakesh Kumar v. UHBVNL and others in CWP No. 27521 of 2013 decided on 18.12.2013. With respect, I am of the view that the case has not been properly considered from the legal provisions which I have extracted above. I state with respect that it is not possible for me to follow the same.

4. There is no substantial objection to the manner in which the notice is issued or how the amount has been calculated. On other hand, I have satisfied myself that notice given and what is secured under Annexure RW2/1 sets out the correct manner of calculation of the amount. I will find no error in the order to sustain the challenge brought through the writ petition. The writ petition is dismissed.