

(2014) 07 MP CK 0330
In the Madhya Pradesh High Court
Case No : W.A.No. 209/2014

The Hotel Adityaz Limited

APPELLANT

Vs

Madhya Pradesh Kshetra Vidyut Vitran Col

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 135, 135, 135(1)
Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 — Section 9(j)
Criminal Procedure Code, 1973 (CrPC) — Section 260, 262, 263, 264, 265

Citation : (2014) 07 MP CK 0330

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : V.K. Bharadwaj, Sr. Advocate and D.K. Katare, Advocate for the Appellant; Vivek Jain, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard.
2. This appeal has been filed by the appellant against the order dt. 14.7.2014 passed in W.P. No. 4056/2014.
3. The appellant was provided a service connection from High Tension Line of 300 KVA in April 2010. Being a high tension service connection, a service meter was installed on the electric pole and a CT/PT box was also installed, it was attached with high tension line of 33 KVA. A 33 KVA line was connected with DP structure and thereafter the CT/PT diverts the power to the load and proportionately to the meter so the appellant can get the proper voltage of the power.
4. An inspection was carried out by the officers of the electricity department on 30.6.2014 and it was found that an additional device was attached with the secondary box of CT/PT unit, so the current, which was flowing in the meter could be stopped and regulated. The officers videographed the inspection and they had also taken photographs. After inspection it was found that the appellant

was indulged in theft of electricity. A Panchnama was prepared and because the seals were damaged, the box was opened and the additional circuit was found. The authority came to the conclusion that the appellant or its employees had been operating the flow of electricity to the meter by remote control. Thereafter, CT/PT was seized. The electrician of the appellant Hotel Mr. Sunil Sharma was present and he signed the Panchnama.

5. The respondents conducted assessment in regard to theft of electricity by the appellant in accordance with the provisions of M.P. Electricity Supply Code 2013 (hereinafter referred to the Code of 2013) and a demand of Rs. 1,11,30,027.35 and compounding fee of Rs. 10,27,500/- was raised against the appellant. The aforesaid action was challenged by the appellant before the Writ Court and the Court has dismissed the Writ Petition vide impugned order.

6. Learned senior counsel has contended that the premises of the appellant Hotel was inspected by the employees of the electricity department fifteen days before and no irregularity was found, hence, the liability of the appellant could not be determined for a period of last one year. It is further contended by the learned senior counsel that it is not possible for the appellant to install the device in CT/PT without shutting down the line because it was a high tension connection, hence, the appellant could not be made responsible for theft of electricity. It is further contended that before raising the demand, the appellant was not given any opportunity of hearing, hence, the action is arbitrary. Learned senior counsel further contended that in determining the penalty u/s 135 of the Electricity Act 2003, it is obligatory on the part of the respondents to follow the provisions of Section 126 of the Electricity Act. In support of his contention learned counsel relied on the following judgments:-

- (i) The Executive Engineer and Another Vs. Sri Seetaram Rice Mill,
- (ii) Smt. Basantibai Vs. M.P. Electricity Board, Indore and Others,
- (iii) Hamidullah Khan, Jabalpur Vs. The Chairman, Madhya Pradesh Electricity Board, Rampur, Jabalpur and Others,
- (iv) Hotel Utsav Vs. M.P.E.B.-1992 MPWN (II) SN 170.
- (v) Bhagwandas Tiwari Vs. State of M.P.,

7. In the present case, the proceedings against the appellant have been initiated u/s 135 of the Electricity Act. The relevant provisions of the aforesaid Section 135(1) of the Electricity Act is 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 a 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 with both.

8. The Ministry of Power, Govt. of India vide order No. SO 790(E) dated 8th June 2005 directed the State Commission for inclusion of measures to control theft of electricity in Electricity Supply Code and the State Commission is empowered u/s 50 of the Act to include method of assessment of the electricity charges payable in case of theft of electricity pending adjudication by the appropriate court and detailed guidelines were issued by the Commission in regard to method of assessment of charges in case of theft of electricity by EHT/HT and LT consumers, which is as under:-

10.2.1 Issue of assessment order for theft of electricity:

12.2.2 When a case of theft of energy is detected, the Authorized Officer shall assess, in accordance with the formula procedure laid down in this chapter hereafter, the energy consumption for the entire period during which such theft of electricity has been detected or for a period of 12 (twelve) months immediately proceeding the date of inspection, whichever is less. The Authorized Officer shall prepare assessment order on two times the rates (which comprises of fixed charges, energy charges and other applicable charges) as per applicable tariff and serve on the person under proper receipt.

9. In case of a regular connection, where a case of theft of electricity is detected, assessment of the theft of energy shall be made as under:-

(i) In case no change of category/purpose is detected and the assessed consumption is more than the minimum consumption/actual recorded consumption, after giving due credit for consumption already billed, balance consumption shall be billed at twice the tariff.

(ii) In case change of category/purpose is detected and the assessed consumption is more than the minimum consumption/actual recorded/consumption, the assessment may first be done at twice the normal tariff and credit of amount already paid may be given.

(iii) Duty and cess or any other applicable charges/taxes levied by Government shall be billed on normal rate for all the units assessed giving due credit for

already billed amount on this account.

(iv) In addition to the charges of assessment for theft as provided in the tariff Over that become due on such assessment shall also be levied. However, any increase in incentive on account of the assessed consumption of theft shall not be allowed.

10. Clause 10.2.3.2 also provides tampering with the meter part if the wiring is found tampered with an object of less consumption by external device. In the present case, in an inspection it was found that the appellant installed an external device so less consumption of electricity could be recorded and accordingly assessment was made in terms of clause 10.1 Chapter X under Code of 2013. The Madhya Pradesh Electricity Regulatory Commission had notified Code of 2013 in exercise of powers conferred by Section 181(2)(t) read with Section 43(1), Section 181(2)(x) read with Section 44, Section 48(b), Section 50 and Section 56 of the Electricity Act 2003 (No. 36 of 2003), Section 9(j) of Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 (No. 4 of 2001). Hence, Code of 2013 has statutory force of law. When a special procedure has been prescribed under the aforesaid code in regard to assessment of theft of electricity, the provisions of Section 126 of the Act of 2003 would not be applicable. Hence, in this regard the findings recorded by the writ court are in accordance with law.

11. In regard to other argument that the inspection of the premises of the appellant was made fifteen days before, hence, the demand could not be raised against the appellant taking into account the consumption of the appellant for the last one year, there is a provision in the supply code in this regard. In the earlier inspection only meter was checked and CT/PT device was not checked. It can not be said that when the device was inserted by the appellant, however, as per the details of the consumption of the appellant and the bill of electricity deposited by the appellant indicates prima facie there was a theft of electricity and these are the questions of facts, which could not be determined in a writ petition or in an appeal. In this regard writ court has considered the facts in detail.

12. Section 153 of the Electricity Act 2003 prescribes constitution of special courts. Section 154 empowers the special court to determine the civil liability against the consumer which is as under:-

154. Procedure and power of Special Courts.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under sections 135 to 140 and section 150 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 140 and section 150 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by

such Special Court in accordance with the provisions of this Act:

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court.

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973 (2 of 1974), try the offence referred to in sections 135 to 140 and section 150 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial:

Provided that where in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered u/s 307 thereof.

(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 detention 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 139.

13. The appellant has a liberty to raise all the grounds in regard to determination of liability of the appellant before the special court because a case of theft has been filed against the appellant and the appellant has a remedy to raise all the objections before the civil court.

14. Hon''ble Supreme Court has considered the aforesaid provision in The Executive Engineer and Another Vs. Sri Seetaram Rice Mill,

15. In this view of the matter, in our opinion, there is no merit in this appeal. It is hereby dismissed.

16. No order as to costs.