

(2014) 08 P&H CK 0141
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15438 of 2014 (OandM)

Tower Vision India Pvt. Ltd.

APPELLANT

Vs

Dakshin Haryana Bijli Vitran Nigam

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Electricity Act, 2003 — Section 126, 126(1), 127, 135, 135

Citation : (2015) 178 PLR 764 : (2014) 4 RCR(Civil) 614

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Rajkapoor Malik, Advocate for the Appellant

Judgement

K. Kannan, J.—The writ petition challenges an order issued by the authority for alleged offence of theft under Section 135 of the Electricity Act. The petitioner cites the provision under Section 135 that defines theft of energy and the said provision provides for certain punishments on the basis of the gravity of the offence including imprisonment and for fine. Section 152 provides for compounding of offence and special courts are constituted for speedy disposal under Sections 135 to 142 and 150. The petitioner would point out that if there is a theft of energy they have no power at all to demand a particular amount as payable, for, that shall be done under Section 126. Section 126 contemplates making a provisional assessment within the time frame and passing the final assessment on the basis of reply and if a person is aggrieved by such an order he will have an independent power of appeal under Section 127. The contention is that since the impugned order is purported to be a demand for payment being not issued under Section 126, the proceedings are required to be quashed. The petitioner states that his own case filed in CWP No. 14008 of 2014 this Court has ordered notice of motion and that recoveries will not be made. I find that there is a clear misreading of the purported assessment made which is impugned in the writ petition. Part XIV details offences and penalties and Part XV establishes special courts for dealing with the offences and Section 135 itself defines a theft

of energy to include five different circumstances. In this case, we are concerned about a notice issued on 18.11.2003 that recites a fact that an inspection was carried out and it was found that there had been a theft/dishonest use of electricity, for, in that load LL 1268/97 had been connected. The meters had been seized and the inspection was said to reveal that the petitioner was indulging in theft of electricity. The notice issued on 18.11.2013 makes an assessment of theft of electricity and sets out an amount of Rs. 9,91,480/- as the amount payable. It also states that if the petitioner accepted the assessment and deposited 100% of the amount, supply would be restored within 48 hours and in case of default, he would also be liable to pay interest. Independent of this notice which is issued under Annexure P-1 a notice is issued to the petitioner again on 18.11.2013 on the same day allowing for compounding of offences if he was prepared to pay a compounding fee of Rs. 1,18,000/-. Apart from the notice, a criminal complaint has also been lodged for commission of theft in FIR No. 845 dated 22.5.2014. The petition is now challenges this notice.

2. A fine could be imposed for theft of electricity under Section 135. Where in a case the load abstracted, consumed or used did not exceed 10 Kilo watts the fine imposed should not be less than 3 times the financial gain and if it exceeded 10 Kilo watts the fine imposed on first connection shall not be less than 3 times the financial gain. Clause 1-A of Section 135 empowers the licensee or supplier on detection of theft of electricity to immediately disconnect the supply of electricity. Clause 2 of Section 135 authorizes the licensee to enter, inspect and break open any premises and also search, seize and remove other devices. The right to disconnect and enter open the premises and make an inspection are available under Section 135 and the extent to which the notice details the act of disconnection and an opportunity given to the petitioner to make the payment by this cannot be said to be bad.

3. The assessment of charges for theft of energy cannot be taken to be an assessment made under Section 135. An assessment for theft of energy that partakes the character of unauthorized use is independently done under Section 126. It is the source of power for making an evaluation of the gain obtained by a consumer by un-authorized use. I have already observed that Section 135 defines a theft as referring to five different circumstances. They are detailed in the section 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

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 accurate metering of electricity;

d. uses electricity through a tampered meter.

e. uses electricity for the purpose other than for which the usage of electricity was authorized 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 or without fine both.

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use.

It shall be appropriate to see how a theft itself shall give a cause for an assessment under Section 126, which provides for assessment does not use the expression theft but it allows for an assessing officer to make a conclusion that person is indulging in unauthorized use of electricity. Unauthorized use is one of the items of theft contained under Section 135(i)(e) extracted above. In other words, the unauthorized use is a manner of commission of theft. In *The Executive Engineer and Another Vs. Sri Seetaram Rice Mill*, the Supreme Court pointed out for prosecution for theft under Section 135, mens rea or criminal intent is necessary, which for unauthorized use, an assessment under Section 126, no such intent is required to be proved. In this case the notice sets out that the petitioner has committed theft by supply of direct current from LT Line by wire and if such an unauthorized use is detected, an assessment which it makes must be taken as an assessment which is provisional under Section 126(1). If the electricity Board has decided to lodge a FIR and prosecute for criminal offence, it will be required to prove criminal intent. If, for making an assessment for unauthorized use, no criminal intent need be established. It is not as if the order of assessment has become final. The notice which is issued under Annexure P-1 must be taken as a composite notice making a provisional assessment and a notice of referring to a commission of theft and for consequential action. It must be noticed that Section 135 is not a provision for prosecution. It only defines theft. Consequently if a notice is issued stating that assessment was being made for theft under Section 135, it will be wrong to assume that the assessment is made under Section 135. The assessment is possible only under Section 126 and that is how the notice must be construed. This amount of what is assessed cannot be taken as having become final, for, the section itself provides the various steps at which the assessment would ultimately grant final assessment. If Annexure P-1 notice issued on 18.11.2013 must be taken therefore as an order of provisional assessment and he was at liberty to file an objection against the provisional assessment and if such an objection is filed he would be afforded a reasonable opportunity before a final order of assessment was made within 30 days.

4. Under the above circumstances if a notice is issued under Annexure P-1 there is nothing inherently wrong about it. The petitioner is entitled to join issues and contend in reply that there was no theft. Disconnection is independently possible under Section 135(1-A). The disconnection which is effected under Annexure P-1 must therefore taken as sourced to the power under a different provision. While the assessment must be taken under Section 126(1) without filing his objection to the notice under Annexure P-1 and inviting a final assessment order to be passed, a challenge to the notice under Annexure P-1 is untenable. If the petitioner's grievance is that the petitioner did not have adequate opportunity to contest the assessment in the impugned notice, it may resort to the process indicated in Section 126, invite a final assessment and if aggrieved, prefer an appeal under Section 127. The procedure for challenge has been set forth in the decision of the Supreme Court in W.E. SEB v. Syed Mukhul Hussain (2009) 2 SCC 727. The writ petition is misconceived and it is dismissed.