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**(2009) 07 P&H CK 0026**  
**In the Punjab And Haryana At Chandigarh**

U.H.B.V.N. and Others

APPELLANT

Vs

Vinod Kumar

RESPONDENT

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**Date of Decision :** 22-07-2009

**Acts Referred:**

Electricity Act, 2003 — Section 126, 127, 145

**Citation :** (2010) 1 CivCC 241 : (2009) 156 PLR 134 : (2009) 4 RCR(Civil) 199

**Hon'ble Judges :** Sabina, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Sabina, J.—Plaintiff Vinod Kumar filed a suit for declaration challenging the checking dated 30.6.2004 vide which the penalty of Rs.

15,13,585/- had been imposed on account of alleged theft of energy and mandatory injunction directing the defendants to refund or adjust Rs.

12,10,866/- paid by the plaintiff against receipt No. 160 dated 2.7.2004. The suit of the plaintiff was dismissed by the Additional Civil Judge

(Senior Division), Panipat vide judgment and decree dated 27.7.2007. The appeal filed by the plaintiff was partly allowed by the Additional

District Judge, Panipat vide judgment and decree dated 18.12.2007 and directed the defendants to make fresh assessment of the amount of

penalty only for a period of 15 days in accordance with procedure prescribed u/s 126 of the Electricity Act, 2003 (for short "the New Act"). After

deducting the amount of penalty of Rs. 12,10,866/- deposited by the plaintiff, remaining amount was ordered to be refunded to him with interest

@ 12% per annum from the date of deposit till payment. Hence, the defendants have filed the present appeal.

2. The case of the plaintiff, in brief, is that he was holder of meter account No. R2 1283 LT. He had been making payment of the energy bills

issued by defendant No. 3. The officials of the defendants came on the premises of the plaintiff and a notice for payment of Rs. 15,13,585/- as

penalty on account of alleged theft of energy was issued. The said notice dated 30.6.2004 was illegal, null and void. It was averred by the plaintiff

that the meter in question had not been tampered with. No alleged checking ever took place either in his presence or his authorised representative.

The last checking of M & P staff was held on 14.6.2004 and at that time meter was found in order. As such, if penalty had to be imposed it could

only be for a period from 15.6.2004 to 30.6.2004. The plaintiff had deposited 80% of the alleged penalty as demanded vide the notice in order to

get restoration of electricity supply and to avoid lodging of an FIR. The plaintiff had also preferred an appeal to XEN/City defendant No. 2 on

7.7.2004 but no action has been taken on his appeal so far. Hence, the suit was filed.

3. The defendants in their written statement took up preliminary objections that the suit was not maintainable and the plaintiff has no cause of action

to file the suit. On merits, it was averred that on 30.6.2004, the premises of the plaintiff had been checked between 7 A.M. to 10.45 P.M. A

magnet was found affixed on the right side of MCB and the factory was found in running condition. Thus, the meter was found obstructing power

unlawfully to run his factory by making the meter un-functional by placing a magnet on right side of MCB. The penalty was imposed as per the

rules. The checking conducted by M&P on 14.6.2004 was periodical checking of the meter. But only on the checking done on 30.6.2004 by the

Vigilance staff, it was found that the plaintiff was committing theft of electricity.

4. On the pleadings of the parties, following issues were framed by the trial Court:

1. Whether notice/memo No. 3875 imposing penalty of Rs. 15,13,585/- is illegal? OPP

2. Whether the plaintiff is entitled to refund of Rs. 12,10,686? OPP

3. Whether the suit of the plaintiff is not maintainable? OPD

4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

5. Whether the plaintiff has no cause of action? OPD

6. Relief.

5. Learned Counsel for the appellants has submitted that in terms of the New Act, the jurisdiction of the Civil Court to try the suit was barred.

Learned Counsel for the respondent, on the other hand, has submitted that the Civil Court had the jurisdiction to try the suit. The substantial

question of law that arises in this case is ""whether the Civil Court has no jurisdiction to try the suit?

6. Section 145 of the New Act is reproduced herein-below:

145. Civil Court not to have jurisdiction-No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an

assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act

is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or

to be taken in pursuance of any power conferred by or under this Act.

Section 126 of the New Act is reproduced 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 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, if the case may be, designated as such by the State

Government;

(b) ""unauthorised use of electricity"" means the usage of electricity-

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorised.

7. The plaintiff has filed the suit to the effect that the demand notice in dispute, dated 30.6.2004 issued by the defendant appellants, on the basis of checking report dated 30.6.2004 to the plaintiff was illegal, null and void.

8. On the day the checking was done by the vigilance staff of the defendant/appellants, it was found that the plaintiff was committing theft of

electricity by placing a magnet on the right side of MCB. The said assessment is to be dealt u/s 126 of the New Act. As per Section 145 of the

New Act, jurisdiction of the Civil Court in such an assessment is barred. Since the issue involved in the present case is purely a legal issue, the

same can be agitated by the appellants in appeal.

9. In view of Section 145 of the New Act, present appeal is liable to be allowed as the Civil Court had no jurisdiction to try the suit. Hence, the

substantial question of law arising in this appeal is answered accordingly.

10. Hence, this appeal is allowed. The impugned judgment and decree passed by the lower Appellate Court are set aside and the judgment and

decree passed by the trial Court are upheld though for different reasons. Consequently, suit of the plaintiff is dismissed.