
(2013) 02 AHC CK 0133
In the Allahabad High Court
Case No : Writ Petition No. 5702 (M/S) of 2012

Vinod Sharma and Others	Vs	APPELLANT
U.P. Power Corporation Ltd. and Others		RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300
Electricity Act, 2003 — Section 126, 135, 135(1), 135(1A)

Citation : (2013) 2 ADJ 578 : (2013) 4 ALJ 334 : (2013) ELR 796

Hon'ble Judges : Visnhu Chandra Gupta, J

Bench : Single Bench

Advocate : Vishal Dixit and Mohd. Rafi, for the Appellant; Rajnish Srivastava, Manish Kumar and Prashant Arora, for the Respondent

Final Decision : Dismissed

Judgement

Visnhu Chandra Gupta, J.—In this writ petition following reliefs were claimed by the petitioners :

- (i) Issue writ order or direction in the nature of mandamus commanding the opposite parties UPPCL to raise the demand of civil liability at the time of final judgment of complaint case No. 109 of 2006.
- (ii) Issue writ, order or direction in the nature of certiorari quashing the impugned order dated 17.9.2012 passed by Special Court/ADJ Court.
- (iii) Issue writ, order or direction in the nature of mandamus commanding the opposite Parties Special Court that civil liability be imposed after final conclusion of trial of complaint case No. 109 of 2006 and liability be imposed after considering that petitioner is guilty for theft of electricity or not.
- (iv) Issue writ order or direction in the nature of mandamus commanding the opposite Parties that civil and criminal punishment be imposed at the same time on the final conclusion of complaint case No. 109 of 2006 by the Special Court.

FACTS

The brief facts to decide this writ petition are that for the alleged offence of committing theft of electricity a complaint has been filed u/s 135 of the Electricity Act (for short "Act") against M/s Parsadi Lal Tussi Ram Cold Storage Pvt. Ltd. and its owner. The accused persons were having 180 KVA power electric connection for cold storage. On 18.11.2004 the officers of Electricity Department raided the cold storage. Several irregularities were found and it was also found that there was electric theft. In pursuance of Section 126 of the Act liability of Rs. 28,79,572/- was fixed by the Department. Against this aforesaid liability accused person approached Electricity Regularity Commission (in short ERC). On 9th of March, 2005 the ERC passed the order that a case u/s 135 Electricity Act be filed against the accused persons because it is a case of electricity theft. After this order in pursuance of power conferred u/s 135(1A) Electricity Act the assessment was made in terms of Code 2005. This liability was of Rs. 56,79,572/-. The respondent No. 1 moved an application u/s 154(4) of the Act before Special Court for fixing the civil liability. When this was not fixed by the Special Court a writ petition has been filed in the Hon'ble High Court by accused persons with a prayer for issuing mandamus commanding the special Court to dispose of the complaint case No. 109 of 2006 expeditiously and further prayed therein for issuing direction in the nature of mandamus commanding the Special Court to dispose of the application 96(c) filed by complainant/respondent No. 1 for fixing the civil liability u/s 154 of the Act. Further direction was also sought in the nature of mandamus commanding the opposite parties/respondents not to initiate recovery proceedings against the petitioner till the disposal of application 96(G) filed by respondents. This writ petition having No. 4079 (M/S) of 2008 was allowed partly by this Court vide its order dated 22.8.2009 (Annexure-4 to this petition). The relief granted in the writ petition is extracted below:

For the reasons mentioned above, it will be just and proper in the facts and circumstances of the case to dispose of this writ petition with a direction to the Court concerned to pass order for fixing the civil liability on the application moved by opposite party No. 2 u/s 154(4) [Probably 154(5)] of the Electricity Act. Regarding the stay of the recovery proceedings till the disposal of application, this prayer will be considered by the Court concerned expeditiously within the stipulated time.

Hence, the writ petition is disposed of finally. The Special Judge, Hathras is directed to dispose of the application moved on behalf of opposite party No. 2 u/s 154(4) of the Electricity Act 2003 [Probably 154(5)] in complaint case No. 109/2006, H.S. Agarwal v. Parsadiram Tulssiram Cold Storage, Binana, P.S. Chandpa expeditiously. The Special Judge shall also pass order for staying the recovery proceedings till the disposal of the application and the application shall be decided within the reasonable time and in case more time is consumed, then the stay will be granted for recovery of the proceedings.

2. Later on, in pursuance of the order passed by this Court in aforesaid writ

petition, the Special Court fixed the civil liability of Rs. 56,79,572/-by impugned order dated 17.9.2012 and directed the accused persons to pay within a month. It was also directed by the Special Court in the impugned order that amount already deposited by the accused persons shall subject to adjustment.

3. Earlier to aforesaid writ petition the civil liability by the department u/s 126 of the Act was fixed. The order fixing liability u/s 126 was challenged before ERC by the petitioners. ERC on 9.3.2005 passed the order that action should be initiated against the petitioners u/s 135 of the Act. The order of ERC dated 9.3.2005 was challenged in writ petition No. 2813 (M/S) of 2006 by the petitioners. In this writ petition the Court vide order dated 29.5.2006 directed to restore the electricity connection of the petitioner within a week with a liberty to the department (UPPCR) to challenge the order of ERC by preferring an appeal. The Court in writ petition 2813(M/S) 2006 observed that without initiating the proceeding u/s 135 of the Act disconnection of electricity is per se illegal and bad in law which has been taken place on 17th of May, 2006. It was further observed that disconnection was made by the authority and initiation of proceeding u/s 126 of the Act is not sustainable in the eyes of law. The Court observed in its order dated 17.5.2006 as under:

The clarification made by the U.P. Electricity Regulatory Commission on 9.3.2005 has become final and binding upon the parties until and unless the same is annulled in appeal or set aside by any special forum and the authorities are bound to conduct themselves according to the direction in that order. The disconnection, therefore, made on 17.5.2006 on the assumption of the proceedings u/s 126 of the Act, 2003 is not sustainable in the eye of law. The Power corporation ought to have resorted to proceeding u/s 135 of the Act, 2003 and thereafter the liability should have been assessed and the same would have been realized from the petitioner.

It is admitted by the parties that the regular electricity bills for which electricity is being consumed by the petitioner is being paid and there is no default in that regard.

Considering the over all facts and circumstances of the case, the Power Corporation is directed to restore the Electricity connection to the petitioner with in a period of one week. The liberty is made to the Power Corporation to file art appeal as directed by this Court in accordance with law.

4. The order dated 9.3.2005 was also challenged by the department in another writ petition No.. 4422 (M/S) 2005 but this writ petition was disposed of with the direction to maintain status quo for the period of 10 days and liberty was granted to power corporation to file appeal against the order within 10 days. However, power corporation did not prefer the appeal against the order dated 9.3.2005 and that has become final between parties.

5. After order dated 29.5.2006 (Annexure-10 to the writ petition) passed in aforesaid writ, the complainant filed case u/s 135 of the Act (Annexure-8 to this

petition).

6. Now, by filing the present writ petition the accused persons of the complaint case, against whom civil liability was fastened, made a request for deferment of its recovery till the final verdict is recorded by the Special Court about the guilt of accused persons.

7. In the aforesaid background and keeping in view the statutory provision the matter has to be disposed of in accordance with law.

DISCUSSION

8. Heard learned counsel for the petitioners Sri Vishal Dixit and learned counsel appearing for U.P. Power Corporation Ltd.

9. Counsel for the petitioners would submit that Section 154 of the Act is the part of scheme of Section 135. The special Court constituted for conducting trial u/s 135 of the Act was designated as special Courts in view of Section 153 of the Act. A complete procedure and powers of Special Court constituted u/s 153 were provided u/s 154 for deciding lis. Section 154(5) and (6) are relevant for this case, which are reproduced here in below:

(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 detection of theft of energy or the exact period of theft if determined which ever 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 140 and Section 150.

10. u/s 157, the Special Court was given restricted power to review its order passed u/s 154.

11. It is now necessary to look into the scheme of Section 135 of the Act. Section 135(1) provides different type of electricity theft and the punishment thereof. u/s 135(1A) provides that in case offence of detection of theft of electricity, immediately disconnection of supply of electricity by the authorized officer shall

follow. The provision has also been made in the second proviso that First Information Report of such theft should be lodged within 24 hours. In 3rd proviso provides that on deposit of payment of the assessed amount of electricity charges in accordance with the provision of this act, shall, without prejudice to the obligation to lodge the complaint, the license or supplier as the case may be restore the supply line of electricity within 48 hours after the deposit of payment.

12. The statutory provision in Sub Section (1A) of Section 135 are reproduced here in below:

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity;

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment;

13. The conjoint reading of Section 135(1A) and Section 154(5) and (6) makes it clear that assessment of civil liability u/s 154 of the Act. is not dependent upon ultimate result of complaint filed against the person for commission of offence referred to in Section 135, 140 and 150 of the Act.

14. Now, in the light of facts of this case the legal position is required to be seen.

15. It is not in dispute that after the order of ERC to the effect that this case falls u/s 135 of the Act, the petitioners as well as Corporation after decision of writ petition No. 2813 of 2006 vide order dated 29.5.2006 are estopped to challenge that the case does not fall within the ambit of Section 135 of the Act or civil liability could not be fixed u/s 154(5) and (6) of the Act.

15-A. Section 135(1A) provides immediate disconnection of supply of electricity in the case of detected theft of energy, the disconnection could only be restored on payment of electricity charges determined in accordance with 3rd proviso of Sub-Section (1A) of Section 135 of Act.

16. The Special Court in case of offences falling u/s 135,140 and 150 of the Act

shall determine the civil liability against the consumer or person in terms of money for theft of energy which shall not be less than an amount calculated in terms of the provisions contained in Sub-section(5) of Section 154. In the explanation appended to sub-section (6) of Section 154 of the Act the "civil liability" has been defined. The civil liability accrues due to commission of offence referred to in Section 135, 140 and 150. It is not provided that civil liability will be occurred only after conviction of the accused u/s 135.

17. Section 152 of the Act provides that offence u/s 135 is compound-able and may be compounded on payment of certain amount as provided u/s 152 of the Act. In case the accused deposits the compounding amount the consequence will be that accused deemed to have been acquitted from the charges of electricity theft within the meaning of Section 300 of the Code of Criminal Procedure.

18. The scope of the provisions of Act does not prohibit assessment of the civil liability u/s 154 of the Act before final verdict is given by the Special Court on complaint filed u/s 135 of the Act. In view of 3rd proviso of Section 135(1A) it is clear that on payment of assessed amount of electricity charges in accordance with the provisions of this Act, without prejudice to the obligation to lodge the complaint u/s 135 of the Act, connection may be restored, this provision also makes it clear that even after restoration of electricity connection by making payment of the assessed amount complaint may be filed and later on civil liability determined u/s 154 by the Special Court would be final amount subject to adjustment of the amount already deposited.

19. The question now arises how the amount of electricity charges would be assessed. This statutory provisions provides that assessment of the same should be in accordance with Act.

20. Section 126 of the Act is not applicable between the parties in view of judgment of this Court delivered in writ petition No. 2813 of 2005 on 29.5.2006 and also in view of the order of ERC dated 9.3.2005. So, the assessment could only be done in the light of Section 154(5) of the Act. The scheme of the Act makes it crystal clear and draw a line in between the trial of offence u/s 135 and for fixation of civil liability, which ought to be considered on different footings.

21. After detection of theft of electricity it was incumbent upon the supplier or the license to disconnect the supply of electricity by the authorized officer immediately. This civil consequence will follow only after detection of theft of electricity and not after determination of the guilt of such person by Court,

22. Similarly, for restoration of electricity connection the assessed amount to be deposited by the consumer or person suspect of theft of electricity. This also fasten civil liability upon the consumer in case, he wants to get his connection restored.

23. As stated earlier the determination of the civil liability u/s 154 of the Act would be after detection of theft of energy and not after determination of the

guilt. The order dated 29.5.2006 passed in writ petition No. 2813(M/S) of 2006 has not been challenged by either of the parties and allowed to be final in between the parties. The order makes it clear that power corporation after institution of complaint u/s 135 of the Act assessed the liability and the same shall be realized from the petitioners. Now, the petitioners in view of this also estopped to challenge the recovery proceeding in pursuance of order impugned.

24. In a judgment in *Rais Ahmad Vs. U.P. Power Corporation Ltd. and Others*, , the Division Bench of this Court held that the civil liability fastened due to theft of electricity is independent and has no concerned with the result of case of theft. The Division Bench of this Court relied upon the decision of the Apex Court in *J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others*, . In this case the final report was submitted against the accused persons but so far as determination of civil liability is concerned, the same was upheld.

25. There is one more reason for upholding the impugned order, because, in the case in hand the electricity connection was disconnected just after detecting theft of electricity by the accused persons in view of Section 135(1A) but the same was restored against scheme propounded under the law without making any statutory deposit, for which the petitioners were bond to deposit before getting the connection restored. The industry of petitioner was found committing theft of electricity by tempering meter and also installing a device therein by which the excess energy was consumed but shown to be less. This type of theft should be strictly dealt with as held by Apex Court in *Jagmodhan Mehatabsing Gujaral and Others Vs. State of Maharashtra*, while dealing with a matter before introduction of fixation of civil liability by Special Court in 2007.

26. Though, this restoration of electricity connection was made in pursuance of the order passed by this Court on technical grounds but it is a fact that after detecting the theft of energy the connection was restored without making statutory payment which was mandatory for restoration of the connection. Therefore, on this ground too no interference is called for in the impugned order. The petition deserves to be dismissed,

27. A half hearted argument has been advanced from the side of the petitioner that the calculation of civil liability is not in accordance with law. But perusal of the record and also the impugned order it reveals that the petitioner in his written statement categorically relied upon Code 2005 for determining the civil liability. On the same principles and applying the same formula on which the accused persons relied upon before the Special Court the civil liability was determined and that too is also in accordance with mandate contained in Sub-Section (6) of Section 154 of the Act.

28. In this writ petition the petitioners are seeking such reliefs which are against the admissions made by the petitioners and also against the conduct shown by them while dealing with earlier petitions and litigation before ERC. The petitioners not only delayed the payment of civil liability but also getting the

energy without making prerequisite statutory deposits. Hence, it is held that petitioners "are bound to pay the amount determined by the Special Court as a civil liability without any further delay. Such type of frivolous and vexatious litigation should be deprecated by the Courts by imposing heavy costs.

29. On the basis of aforesaid discussion made, the petition sans merit and it is liable to be dismissed with-cost. The writ petition is dismissed with costs quantified at Rs. 25,000/-.