

Before Amit Rawal, J.

DARSHAN SINGH —Petitioner

versus

PUNJAB STATE POWER CORPORATION LTD. AND OTHERS

— Respondents

CWP No. 24925 of 2013

January 11, 2017

Electricity Act, 2003 – Ss. 126, 127, 135 and 154 – Theft of electricity – per curiam – Petitioner was running a flour mill – Assistant Executive Engineer issued memo to deposit Rs.3,29,872/- as theft of electricity and Rs.1,30,000/- as compound charges on the basis of checking – It was on the premise that electric meter was closed and the electricity was used by direct wire – Thereafter, final assessment order was passed – It was challenged by the petitioner before the Additional District Collector (ADC) who dismissed the same on grounds of locus standi and lack of evidence – FIR was also registered, it resulted in acquittal – Challenge to order by ADC – Petition was opposed being not-maintainable as S.135 dealt with theft of electricity, and remedy to challenge the order was before the Special Court under S.154 – Judgment of co-ordinate Bench of this Court in CWP No.14746 of 2013 titled PSPCL v. Ashok Kumar, holding thus, was relied upon – Held, in the criminal proceedings initiated by the Electricity Board, Additional District Judge or the District and Sessions Judge has the power to determine civil liability so that Board is not required to file a separate suit on the basis of conviction for theft of electricity – S.154 does not deal with any situation enabling the consumer to challenge the order of theft in any Court – Whereas, on the contrary, S.145 bars the jurisdiction of Civil Court – In essence, the consumer cannot be left remediless – No legislature would render the affected party remediless – Therefore, the petitioner rightly availed the remedy under S.127 before the ADC – View taken in Ashok Kumar case cannot be said to be a precedent as relevant provisions of S.135 (d) and (e) were not noticed to form an opinion, shall be read in per curiam – Petition was allowed and remitted to ADC for fresh adjudication since he had dismissed the appeal primarily on the ground of locus standi without affording proper opportunity of hearing.

Held that, it is in the criminal proceedings initiated by the

Electricity Board, the Additional District Judge or District and Sessions Judge has the power to determine the civil liability so that Electricity Board may not undergo the rigours of filing of separate suit on the basis of conviction on account of theft of electricity, in essence, the Electricity Board may not have to file a separate suit by paying the court fees. The aforementioned section does not deal with any situation enabling the consumer to challenge the order of theft in any Court, whereas, on the contrary, Section 145 of 2003 Act bars the jurisdiction of the Civil Court, in essence, the consumer cannot remain remediless. No legislature of any country would render the affected party remediless. It is in this backdrop of the matter, the petitioner availed the remedy under Section 127 of 2003 Act.

(Para 10)

Further held that, I beg to differ with the findings rendered by a Co-ordinate Bench of this Court relied upon by Ms. J.S.Gurna, Advocate as the provisions of sub-sections (d) and (e) of Section 135 have not been noticed but is only sub-sections (b) and (c), to form an opinion. Moreover, the provisions of Section 154 of 2003 Act have also not been noticed by the authority, thus, the judgment rendered cannot be said to be as precedent and accordingly shall be read in per curiam.

(Para 12)

Jasbir Rattan, Advocate
for the petitioner.

J.S.Gurna, Advocate
for respondents No.1 to 3.

AMIT RAWAL J. oral

(1) The petitioner has approached this Court seeking vindication of the grievance by challenging the order dated 23.04.2013 (Annexure P-1) passed by Additional District Collector, Patiala, who has dismissed the appeal filed against the final assessment order with regard to alleged theft.

(2) Mr. Jasbir Rattan, learned counsel appearing on behalf of the petitioner submits that originally, Sh. Kishan Singh son of late Sh. Chet Ram was availing electricity power facility for running his flour mill from the respondent powercom vide account No.P-54SP-540009-A and the petitioner was assisting Sh. Kishan Singh during his life time and after his death, the petitioner is running the flour mill. In this regard, he has attached documents Annexures P-2 and P-3. Thereafter,

the electricity was provided through the aforementioned connection. However, on 25.08.2011, the Assistant Executive Engineer/Sub-Division, Ghamraundha issued memo with a direction to deposit an amount of Rs.3,29,872/- as theft of energy and Rs.1,30,000/- as compound charges on the basis of checking. The aforementioned demand was raised on the premise that electric meter was closed and the consumer was using electricity by direct wire, in essence, it was a theft of electricity. Thereafter, the final assessment order (Annexure P-7) was passed, against which, the petitioner preferred an appeal before the Additional District Collector (A.D.C.) Patiala, District Patiala on 25.10.2011, but the same has been dismissed on the ground of locus standi, much less no evidence has been brought on record. The Additional District Collector had also observed that the petitioner has not transferred the meter connection in his name from the name of his father, account holder, who has since expired.

(3) During the course of hearing, learned counsel has passed on a copy of the order dated 13.11.2014 rendered in SC No.33 of 01.02.2014, which is taken on record and tagged at the end of the paper book, whereby an FIR No.185 dated 26.08.2011 was registered, which resulted into acquittal. Copy of the order has also been given to Ms. J.S. Gurna, Advocate.

(4) Per contra, Ms. J.S.Gurna, learned counsel appearing on behalf of respondents No.1 to 3 submits that the order under challenge is perfectly legal and justified. The petitioner had no locus standi to assail the findings as the separate procedure is prescribed in respect of the theft of electricity, in essence, Section 135 of the Electricity Act, 2003 (hereinafter referred to as “2003 Act”) deals with the theft of electricity and the remedy lies under Section 154, i.e., before Special Court, thus, appeal was not maintainable and therefore, writ petition is liable to be dismissed.

(5) In support of her contention, she relies upon the ratio decidendi culled out by a Co-ordinate Bench of this Court in **CWP No.14746 of 2013 titled as Punjab State Power Corporation and another vs. Ashok Kumar and another, decided on 05.12.2014**, wherein, it has been held that jurisdiction exercised by the SDM was wholly without any legal authority.

(6) I have heard learned counsel for the parties and appraised the paper book.

(7) For the sake of brevity, the provisions of Sections 135 and

126 (6) of the Electricity Act 2003 read thus:-

Section 135. (Theft of Electricity): 1(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,

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

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(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 authorized 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 hours from the time of such disconnection: 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.

(2) Any officer of the licensee or supplier as the case may be, authorized in this behalf by the State Government may –

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity 2

[has been or is being,] used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.”

Section 126(6) of 2003 Act.

(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates 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, as 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 2

(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 authorized.”

(8) On co-joint reading of the provisions, sub-sections (d) and (e) of Section 135 are almost para materia to clause iv and v of sub-section 6 of Section 126 of 2003 Act. The remedy to assail the final assessment order has been provided under Section 127 of 2003 Act. However, Chapter Part 15 deals with the constitution of Special Court, who is not below the rank of Additional District Judge or District and Sessions Judge. The procedure or power of the Special Court had been prescribed under Section 154 of 2003 Act.

(9) For the sake of brevity, Section 154 reads as under:-

“Section 154. (Procedure and power of Special Court)

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under [2 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 139 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 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 subsection (1) of section 260 or section 262 of

the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 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 subsection, 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, be deemed to have been tendered under section 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 detection 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.”

(10) It is in the criminal proceedings initiated by the Electricity Board, the Additional District Judge or District and Sessions Judge has the power to determine the civil liability so that Electricity Board may not undergo the rigours of filing of separate suit on the basis of conviction on account of theft of electricity, in essence, the Electricity Board may not have to file a separate suit by paying the court fees. The aforementioned section does not deal with any situation enabling the consumer to challenge the order of theft in any Court, whereas, on the contrary, Section 145 of 2003 Act bars the jurisdiction of the Civil Court, in essence, the consumer cannot remain remediless. No legislature of any country would render the affected party remediless. It is in this backdrop of the matter, the petitioner availed the remedy under Section 127 of 2003 Act. The operative part of the order passed by the Additional District Collector reads thus:-

“After hearing the arguments, and perusal of reply of the respondents and rejoinder filed by the appellants and other documents appended with the file, I have come to the conclusion that appellants are not consumer of the respondents nor the meter connection is functioning in their name. The disputed electric connection is running in the name of Kishan Singh, but Kishan Singh was father of the appellant, but as per facts and circumstances of the appeal, he had died in the year 2001. The appellants have not produced and explained any reason before the Court as to why they have not transferred the meter connection in their name. Therefore, being not consumer of the respondents, they are not entitled to file the present appeal against the respondents, they are not entitled to file the present appeal against the respondents, besides this the appellants stated that checking was not conducted in their presence or in the presence of independent witness, whereas the checking report was signed by the appellants. From perusal of the same, it is clear that checking was made in the presence of the appellants. The appellants have not produced any proof

and witnesses in their defence. Therefore, appellants have failed to prove their case. Accordingly, present appeal as per facts and circumstances is against the law and the same is *hereby dismissed.*

Produced in open Court, after due compliance file be consigned to the Record Room Mall, Patiala.”

(11) From the perusal of the aforementioned findings, it surfaced that the appeal of the petitioner has been dismissed primarily on the ground of having not submitted any application for transfer of the electricity connection from the name of his father (since deceased) to his name or in the name of any other legal representative, much less locus standi. Had the petitioner been given an opportunity of hearing, he would have been able to satisfy the authority by leading direct or cogent evidence with regard to alleged theft or produce other material enabling the Court to form an opinion whether there was any theft or not but the authority should not have dismissed the matter in the manner and mode indicated above.

(12) I beg to differ with the findings rendered by a Co-ordinate Bench of this Court relied upon by Ms. J.S.Gurna, Advocate as the provisions of sub-sections (d) and (e) of Section 135 have not been noticed but is only sub-sections (b) and (c), to form an opinion. Moreover, the provisions of Section 154 of 2003 Act have also not been noticed by the authority, thus, the judgment rendered cannot be said to be as precedent and accordingly shall be read in per curiam.

(13) In view of the aforementioned facts, I am of the view that the remedy availed by the petitioner is correct, as indicated above. Resultantly, the impugned order is set aside. The matter is remitted back to the Additional District Collector Patiala, District Patiala to decide the appeal afresh in accordance with law by affording the opportunity to the parties to the lis to lead evidence as expeditiously as possible.

(14) Parties through their counsel are directed to appear before the Additional District Collector Patiala, District Patiala on 17.02.2017.

(15) Accordingly, the writ petition stands allowed.
