
(2011) 04 AHC CK 0454

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 3170 (M/B) of 2011

Subhashis Chatterjee

APPELLANT

Vs

U. P. Power
Corporation Ltd.,
Lucknow and others

RESPONDENT

Date of Decision: April 6, 2011

Acts Referred:

- Electricity Act, 2003 - Section 126, 135

Citation: (2011) 6 ADJ 6371

Hon'ble Judges: Vedpal, J; Pradeep Kant, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Pradeep Kant and Vedpal, JJ.

Short counter-affidavit filed today is taken on record.

Heard Ms. Pushpila Bisht. learned counsel for the petitioner and Mr. Kapil Mishra, learned counsel for the Corporation-respondents.

With the consent of the learned counsel for the parties, the petition is disposed of finally.

2. The petitioner though challenges the impugned notice dated 28.3.2011 contained in Annexure-1 and also seeks the quashing of the inspection report dated 18.3.2011 with a further prayer that the respondents be directed to connect the domestic electric connection of the petitioner and during the course of argument, learned counsel for the petitioner stated that the petitioner would submit reply/objection to the provisional assessment notice dated 28.3.2011 and proceedings of assessment may be conducted in accordance with rules but in the meantime, the respondents be directed to restore the domestic electric connection of the petitioner.

3. In short, the facts of the case are that the petitioner had domestic electric connection of 3 K.W. which was given to him in the year 1995. The said electric connection was being used by the petitioner and he is paying the electricity dues accordingly. On 18.3.2011, the electric connection was disconnected as raiding team of the Corporation found that there was unauthorised use of the electricity inasmuch as the electricity was being used commercially for running cable network to the extent of 700 K.W. This inspection was made on 18.3.2011. It appears that electric connection was disconnected on that very date at the time of inspection and thereafter, a notice of provisional assessment was issued on 28.3.2011.

4. Assailing the inspection on the factual ground that there was no unauthorised use of the electricity by the petitioner, the learned counsel for the petitioner also submitted that very fact that the inspection report was not furnished/ sent to the petitioner on that very date or on the next date in terms of Clause 6.8 (v) of the Electricity Supply Code, 2005 goes to indicate that entire action was mala fide and against the Code. Further, submission is that there was no power under the Code to disconnect the domestic connection and as a matter of fact there is a specific bar in doing so but even then the authorities disconnected the electric connection.

5. The learned counsel for Corporation Sri Kapil Mishra relying upon short counter-affidavit filed by the Corporation particularly paragraph 11 submitted that the provisional assessment notice has been sent to the petitioner under Clause 6.8 (b) (i) and the petitioner is at liberty to submit his reply/ objection and thereafter if he is aggrieved by the assessment, he can challenge the same in appeal. He submitted that there was no illegality in conducting the raid and even if the inspection report was not sent or despatched on the said date or the very next date, it would not vitiate the proceedings as the said provision is directory particularly when the provisional assessment notice has been served upon to the petitioner.

6. In para 16 of the counter-affidavit, it has been submitted that the disconnection of the electricity supply has been done in terms of Code 8 (vii), (viii) and (iv) which specifically provides that in case of apprehension of evidence or continuation of misuse, immediate disconnection can be done. In the instant case, there was an apprehension of continuation of misuse of electricity, therefore, it was considered necessary to disconnect the electricity supply. In the same paragraph, it has also been curiously stated that since the misuse of electricity has been detected u/s 126 of the Act, the provisions of Section 135 and procedure of disconnection thereof under the Code 8.1 are not attracted in the present case.

7. In view of the submission made in paragraph 16 of the counter-affidavit of the Corporation read with provisional assessment notice which has been made u/s 126 of the Act, there remains no doubt that the Corporation is treating the instant case as a case of "unauthorised use of electricity" and not of theft.

8. Once the Corporation has taken the case as that of unauthorised use of electricity and not that of the theft for which proceeding u/s 135 could have been initiated, the applicability of Code 8.1 (vii), (viii) and (iv) for disconnecting the electricity would not be there. The aforesaid provision permits the disconnection of the electricity only in case of theft" and not in case of "unauthorised use". In fact, it was a case where the petitioner-consumer has allegedly tampered with the meter and rather installed a gadget which was not permissible for making commercial use of electricity and, therefore, it has been treated as unauthorised use of electricity.

9. Explanation attached to Section 126 of the Electricity Act, reads as under :

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

(iv) for the purpose other than for which the usage of electricity was authorised."

Sub-clause (b) aforesaid defines "unauthorised use of electricity" which means the usage of electricity (i). by any artificial means and (iv) for the purpose other than for which the usage of electricity was authorised. The petitioner"s case apparently falls within the aforesaid provision.

10. Clause (b) of Code 4.33 of Electricity Supply Code. 2005. which is also relevant for the purpose, requires search, seizure and removal of all such devices, instruments, wires and any other facilitator or article which has been or is being used for unauthorised use of electricity.

11. Clause 4.34 of the Code requires that search shall be done in the presence of the person concerned and during search, 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.

12. In the instant case, there is no case of the respondents that they have seized the devices or prepared the list and handed over to the person concerned rather they have disconnected the electricity supply with a view to check the illegal use any further.

13. Under the provisions of Electricity Act, 2003 as well as Electricity Supply Code. 2005 in relation to a case of unauthorised use of electricity, there is no power for disconnection

of domestic electric connection and at least no such provision has been placed before us. That being so the disconnection of domestic electric connection (residence) was not permissible, though it might have been done only for the reason to check future unauthorised use of electricity. The officer who conducted the raid ought to have known the steps that could be taken for putting a check on unauthorised use of electricity where a gadget has been installed for unauthorised use and electricity has been used for commercial use.

14. Under the circumstances, we direct that the domestic electric connection of the petitioner shall be restored forthwith and if necessary, the gadget which was detected at the time of inspection, shall be seized.

15. Counsel for the petitioner says that the electricity connection may be restored and the petitioner would have no objection in getting the alleged devices seized.

We order accordingly.

We further direct on the request of the petitioner that petitioner may file objection to the provisional assessment order within two weeks and the matter be concluded and decided expeditiously.

The writ petition is disposed of accordingly.