HRSO020016962020

Presented on : 28-10-2020
Registered on : 28-10-2020
Decided on : 30-07-2025
Duration : 4 years, 9 months, 2 days

IN THE COURT OF
Civil Judge (Junior Division), Sonipat
Presided Over by <u>Sh. Azad Singh</u>
<u>CS/1387/2020</u>

Balwan Singh son of Surat Singh, aged 63 years, R/o Gali No. 5, Shatri Colony, Sonepat.

….Plaintiff

Versus

1. SDO, (OP), Sub Division, Industrial Area, at Indira Colony, UHBVNL Sonepat.
2. XEN (OP) City Division, Fazilpur, UHBVNL Sonepat.

…. Defendants

<u>SUIT FOR DECLARATION DECLARING THE NOTICE NO. SDSIA/2020/1202 DATED 22.09.2020 FOR THE DEMAND OF RS. 71,567/- AS NULL AND VOID AND LIABLE TO BE WITHDRAWN AND FURTHER TO RETURN THE PENALTY AMOUNT TO THE PLAINTIFF UNDER PROTEST U/S 34 OF THE SPECIFIC RELIEF ACT</u>

Present: Sh. Sandeep Dahiya, Advocate for plaintiff.
Sh. Sandeep Kumar, Advocate for defendants.

<u>JUDGMENT:-</u>

Present suit has been filed by plaintiff seeking a decree for

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declaration to the effect that the checking report dated 16.09.2020 and the subsequent notice vide memo No. SDSIA/2020/1202 dated 22.09.2020 are wrong, illegal and arbitrary and are not binding on the rights of the plaintiff and the same are liable to be set aside and canceled on the grounds mentioned in the plaint may kindly be passed in favour of the plaintiff and against the defendants and the defendants may kindly be directed to refund the amount of Rs.71,567/-with interest @ 24% per annum to the plaintiff from the date of deposit till the day of refund without any further delay.

2. It is stated in the plaint that the plaintiff is user of electricity domestic connection bearing A/c No.6622030000, which was installed in the name of the plaintiff at the above mentioned address and he has been making payment of the consumption of bills of the said connection to the defendants regularly and nothing is due towards the plaintiff. Thus, the plaintiff is the consumer/user of the defendants. It is also stated that the plaintiff was surprised to receive the notice bearing memo No. SDSIA/2020/1202 dated 22.09.2020 for the demand of Rs.71,567/-, alleging that the premises of the plaintiff was checked on 16.09.2020 vide LL1 No. 591/46 and found committing theft of electricity. In fact, during the checking, everything was O.K. and no theft of energy was committed by the plaintiff. The main reason behind for making second raid at the

premises of the plaintiff is that the defendants have already filed a false case of theft of energy on 25.02.2020, for which the plaintiff had already deposited the amount and filed a civil suit against the defendants. Due to grudge of filing the civil suit, the defendants again raided the premises of the plaintiff and prepared false LL-1 No.591/46 dated 16.09.2020 at 4:10 PM, whereas, no theft was ever committed by the plaintiff and the LL-1 dated 22.09.2020 filled by one reason or the other for harassment. It is also stated that thereafter, the plaintiff visited at the office of defendant No.1 and requested him to withdraw the alleged notices. But the defendant No.1 flatly refused to withdraw the same and directed the plaintiff to deposit the demanded amount, otherwise, the electricity supply will be disconnected. It is also submitted that in order to avoid disconnection of the electric supply, the plaintiff deposited Rs.71,567/- with the defendants on 15.10.2020 under protest vide receipt No. 375/84044 dated 15.10.2020. It is averred that the alleged notices in question are wrong, illegal, arbitrary, null and void and are not binding upon the rights of the plaintiff and the same are liable to be set aside and canceled on the following grounds:-

(i) That no checking was ever carried out by the alleged officials of the Nigam, which is amply clear from the fact that no copy of the alleged checking report was ever supplied to the plaintiff along with the notices.

Furthermore, the alleged notices have been got issued by the alleged officials by making violation of the Nigam instructions and being biased with the plaintiff as the plaintiff did not oblige them with the illegal gratification, which was demanded by them and the notices in question, have been got prepared while sitting in the office. Thus, the alleged checking and the notices in question are not as per the provisions of the Electricity Act, 2003 and rules/regulations of the Nigam:

(ii) That the alleged checking officials are neither competent nor authorized to check the meter of the plaintiff and to get issued the alleged notices;

(iii) That the defendants are not legally competent and authorized to assess the penalty as per the Rules/Regulations of the Nigam.

(iv) That no norms on the basis of which the alleged penalty has been assessed and disclosed in the notices in question, which are also mandatory and hence in the absence of the same, the notices are not tenable;

(v) That further the defendants are also not legally competent and authorized to issue the notices, in question, as per rules/regulations of the Nigam;

(vi) That no opportunity of hearing before the assessment of penalty amount and/or prior to issuance of the notices, in question, was given to the plaintiff, which is also against the principles of natural justice;

In view of the above, the alleged checking and notices in questions are wrong, illegal, null and void and are not binding on the rights of the plaintiff and the same are liable to be set aside and canceled.

3. It is also submitted that after the receipt of both the notices mentioned above, the plaintiff approached and requested the defendant to withdraw the said notices and not to recover the penalty amount as mentioned in the notices from the plaintiff, but the defendant remained adamant and further threatened the plaintiff to make the payment of the entire amount penalty as mentioned in the notices to the Nigam immediately, failing which the electricity supply of the house of the plaintiff will be disconnected, However, the plaintiff deposited the demanded amount under protest in order to save disconnection of the electric supply. It is also averred that the above mention wrong and illegal act of the defendants have caused a great harassment, humiliation, mental agony, pains, sufferings and financial loss to the plaintiff on the part of the defendants. The cause of action arose to the plaintiff firstly on the day when the defendants sent the wrong and illegal notices and finally about a week back, when they threatened to disconnect the electricity connection of the plaintiff forcibly and illegally, if the demanded amount was not deposited. It is, therefore, prayed that a decree for declaration to the effect

that the checking report dated 16.09.2020 and the subsequent notice vide memo No. SDSIA/2020/1202 dated 22.09.2020 are wrong, illegal and arbitrary and are not binding on the rights of the plaintiff and the same are liable to be set aside and canceled on the grounds mentioned in the plaint may kindly be passed in favour of the plaintiff and against the defendants and the defendants may kindly be directed to refund the amount of Rs.71,567/-with interest @ 24% per annum to the plaintiff from the date of deposit till the day of refund without any further delay. Hence, the present suit.

4. The defendants were duly served and filed joint written statement taking preliminary objections qua maintainability, locus-standi, cause of action, concealment of material facts etc. On merit, it is submitted that the plaintiff has not been making the payment of the consumption of bills as alleged. An huge amount is due towards the plaintiff. In fact, on 25.02.2020, the officials of the defendants checked the premises of the plaintiff and prepared checking report on the site vide LL-1 No. 684/29 dated 25.02.2020 and as per checking report, "Site checked and found that single phase energy meter installed outside the premises, but consumer used direct supply from main LT line through 2/c black colour PVC and by pass the energy meter and direct supply connected to the house wire. So, it is a case of theft of energy.

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Videography done on site and supply disconnected. Wire snatched by the consumer." Thereafter, on the basis of checking report dated 25.02.2020, the defendants issued notices vide memo No. SDSIA/2020/521 dated 27.02.2020 for an amount of Rs. 72,717/- and notice vide memo No. SDSIA/2020/522 dated 27.02.2020 for an amount of Rs. 10,000/- as compounding offence and notice vide memo No. SDSIA/2020/523 dated 27.02.2020 for lodging an FIR against the plaintiff. Further, on 16.09.2020, the officials of the defendants checked the premises of the plaintiff and prepared checking report on the site vide LL-1 No. 591/46 dated 16.09.2020 and as per checking report, "At the time of checking, it was checked and found that a single phase meter installed at PCC pole near consumer premises. But the consumer was using direct supply from LT lie by using 2/c black colour PVC, other end which connected to house wiring. This is case of theft of energy. Videography done for evidence purpose." Thereafter, on the basis of checking report dated 16.09.2020, the defendants issued notices vide memo No. SDSIA/2020/1202 dated 22.09.2020 for an amount of Rs. 71,567/- and notice vide memo No. SDSIA/2020/1203 dated 22.09.2020 for non-compoundable offence and notice vide memo No. SDSIA/2020/1204 dated 22.09.2020 for lodging an FIR against the plaintiff. The said checking report and notices are legal, valid and genuine and the same are binding upon the plaintiff.

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5. It is also submitted that at the time of checking, the plaintiff found committing theft of electricity directly, Hence, the question of withdrawing the said checking reports and notices does not arise at all. At the time of checking, the plaintiff found committing theft of electricity directly. Hence, the checking report and notices are legal, valid and genuine and the same are binding upon the plaintiff. The plaintiff has no right to challenge the checking report and notices by way of filing the present suit on false grounds. The officials of the defendants duly checked the premises of the plaintiff and at the time of checking he was caught red handed by committing theft of electricity. Hence, the checking reports and notices are legal, valid, genuine and binding upon the right of the plaintiff. At the time of checking, the plaintiff was committed theft of electricity directly, hence the plaintiff has no right to challenge the checking report and notices by way of filing the present suit on false grounds. The defendants have legally and as per instructions of the Nigam recovered the said penalty amount from the plaintiff. The question of suffering great harassment, humiliation, mental agony, pains, sufferings and financial loss to the plaintiff does not arise at all. The plaintiff has no cause of action to file the present suit against the defendants. Rest of the averments were specifically denied by the defendants and with these averments, they have prayed for dismissal of the present suit, being devoid on merits.

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6. Replication not filed. From the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is entitled to a decree of declaration, as prayed for? OPP
2. Whether he is entitled to be refunded amount of Rs. 71,567/- along with interest as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether Civil Court has no jurisdiction to try this suit? OPD
6. Whether plaintiff is liable to pay court fee? OPD
7. Relief.

7. In plaintiff evidence, plaintiff has examined himself as PW1 and tendered his affidavit Ex. PW1/A and documents Ex. P1 which is receipt and thereafter, plaintiff evidence was closed by learned counsel for the plaintiff vide his separately recorded statement.

8. On the other hand, defendant examined Neeraj as DW1 through his affidavit Ex. DW1/A and documents Ex. D1 to Ex. D6 which are as follows:

Ex. D1	=	LL-1 Checking Report
Ex. D2	=	Letter from SDO (OP) Sonepat to Balwan regarding order of assessment

Ex. D3	=	Notice to SDO (OP), Sonepat to SHO I&P Rtk regarding lodging of FIR.
Ex. D4	=	Letter from SDO (OP) Sonepat to Balwan Singh regarding notice to consumer
Ex. D5	=	CD
Ex. D6	=	Certificate u/s 65-B of Evidence Act

Thereafter, defendant evidence was closed by learned counsel for the defendant vide his separately recorded statement.

9. No evidence was led in rebuttal and same is closed by learned counsel for the plaintiff.

10. I have heard Ld. Counsels for the parties and have perused the record carefully. My issue-wise findings, with reasons thereof, are as follows:-

Issues no. 1 to 6:-

11. Onus to prove the issue no.1 and 2 is upon the plaintiff and issue No. 3 to 6 is upon the defendants as per maxim Affirmanti Non-Neganti Incumbit Probatio i.e. burden to prove lies on the person who assert not on whom who denies. The issues being connected and identical are taken up together.

12. It is argued by Ld. Counsel for the plaintiff that the plaintiff has been using the electricity connection No. 6622030000 and has been

paying the regular bills. On 22.09.2020, plaintiff was surprised to receive the notice bearing memo No. SDSIA/2020/1202 dated 22.09.2020 for demand of Rs. 71,567/- alleging that premises of the plaintiff was checked on 16.09.2020 vide LL No. 591/46 and theft was detected. There is nothing on record to substantiate that copy of LL-1 was affixed on spot and photographs of same were taken. It is further argued that though it is alleged that photography of the spot was done but there is nothing on record to substantiate that checking was done on any specific date and at specific time. It is further argued that these checking reports were not supplied to the plaintiff or to his representative on the spot. It is further argued that the plaintiff was never indulged in theft of electricity as alleged. Allegations qua thefts are fake, false, wrong, illegal and unlawful. These checking reports and assessment compounding memos are against the instructions of sale circular U-13/2009.

13. On the other hand, learned counsel for the defendants has argued that plaintiff has suppressed the material facts from the court and has not approached the court with clean hands. Plaintiff has admittedly been using the electricity and it was found that he committing theft of electricity and proceedings under Section 135/151 of Electricity Act 2003 have been initiated by serving a notice of assessment under Section 135 of Electricity Act. Therefore, plaintiff has no locus to file the present suit.

Thereafter, on the basis of checking report dated 16.09.2020, the defendants issued notice vide memo SDSIA/2020/2012 dated 22.09.2020. The checking was duly conducted by the officials of the defendants in the premises of the plaintiff. Hence, it is case of theft of energy. It is further argued that plaintiff is not entitled for any relief as he was indulged in the theft of electricity. With these submissions, it has been prayed that the suit of the plaintiff may be dismissed.

14. In order to prove his case, plaintiff examined himself as PW-1 and reiterated the averments of plaint through his affidavit PW-1/A. He was cross-examined at length but nothing substantive could be elicited from his testimony to substantiate that procedure prescribed for imposing penalty in the alleged case of theft has been followed in letter and spirit.

15. On the other hand, defendant DW1 Neeraj, JE who admitted that they left the office at 09:00 p.m. and reached the spot at 10:40 p.m. He also admitted that plaintiff was not present at the time of checking and one woman is present and she refused to sign but there is not witness to the refusal. He admitted that checking team was not allowed to enter the house however, connected load was 3-4 kilowatt. No provisional notice was given before imposing penalty.

16. After hearing the rival contentions raised by learned counsels for both the parties and after perusal of record, this Court is of the

considered view that it is the case of the plaintiff that he has not having any electricity connection. However, it is pertinent to mention here that the power to decide whether the alleged theft of electricity took place or not lies with the special court under section 154 of The Electricity Act, 2003. This court being civil court does not have jurisdiction to decide criminal liability of theft of electricity. Hence, it is out of realms of this court to go into the question whether the LL1 report is legal or not, or whether LL1 report has any evidentiary value or not. LL1 report is merely a document prepared by Electricity Department on the basis of which accused is to be prosecuted for offence of theft of electricity before Special court and FIR is registered thereupon. Hence, legality, admissibility and relevancy of said report can’t be decided by this civil court otherwise it would tantamount to give a pre-emptive power/authority to this court over the Special Courts constituted under the chapters dealing with the offences and penalties. This cannot be the policy of law. Once the matter is expressly given in the domain of the Special Court then this court cannot pre-empt or tinker with or in any manner prejudice the jurisdiction of the Special Court constituted under the Act. Further, legality of FIR can neither be challenged before civil court. It can only be challenged before Hon’ble High Court or Hon’ ble Supreme Court being constitutional courts. Thus, this court does not have jurisdiction to decide whether FIR lodged against a person of theft of electricity is valid or not. Hence, this court can't go into question whether LL-1 and entire proceedings including registration/proceedings of FIR is valid and legal or not. Hence, no declaration can be passed in this regard.

17. However, as to validity of order of assessment u/s 135 of Electricity Act, 2003 on account of penalty, it is necessary to see the Hon'ble Apex Court differentiating between unauthorized use of electricity and theft of electricity in case of ***The Executive Engineer and another vs. M/s Sri Seetaram Rice Mill; 2012(3) Civil Court Cases 68*** held:-

Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act.

18. Section 135 of the 2003 Act falls under Part XIV relating to 'offences and penalties' Section is of 'theft of electricity'. The Section opens with the words 'whoever, dishonestly' does any or all of the acts specified under clauses (a) to (e) of Sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be

punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Sub section (1A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under Sub-sections (2) to (4) of the said Section.

19. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'authorized use of electricity'. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of

the 2003 Act.

20. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of Sub-sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

21. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of Criminal Jurisprudence and mens rea is one of the relevant factors for deciding a case of theft. On the

contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have feature or element which are traceable to the criminal concept of mens rea.

22. Thus, it would be clear that the expression 'unauthorized use of electricity' under Section 126 of the 2003 Act deals with cases of unauthorized use, even in absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simplicitor and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorization, like providing for a direct connection bypassing the installed meter.

23. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of

assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

24. Section 135 of the 2003 Act significantly uses the words 'whoever, dishonestly' does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. 'Dishonesty' is a state of mind which has to be shown to exist before a person can be punished under the provisions of that Section.

25. Admittedly in present case no provisional assessment / Final order has been passed by authorities / competent officer u/s 126 of 2003 Act. Impugned order of assessment of loss and compounding fee under Section 135 of Electricity Act. Once a consumer chooses not to opt for compounding, the authorities are bound to proceed as per section 126 or initiate criminal proceedings (lodge FIR or file complaint) or proceed u/s 126 as well as initiate criminal proceedings. It is only after final assessment u/s 126 or determination of civil liability by special court that alleged loss determined vide impugned order/notices could be enforced by defendants against plaintiff. Defendants, therefore, cannot enforce their demand raised vide impugned notices against plaintiff without

determination of liability to pay loss.

26. The intent of legislature is clearly made out from 2003 Act. By prescribing due procedure to enforce civil as well as criminal liability legislature has clearly made principle of natural justice integral part of adjudication process. The procedure prescribed under 2003 Act not only embeds principle of natural justice but also provides safe guard against arbitrary or illegal exercise of powers by the authorities under 2003 Act. A notice offering compounding of offence under 2003 Act in itself is not executable or binding upon consumer unless consumer agrees to pay compounding fee and get offence compounded. In absence of option for compounding the notice under Section 135 Electricity Act is unenforceable unless assessment under Section 126 or adjudication by special Court regarding liability of consumer is determined.

27. The finding of checking team cannot be held to be final unless it is subjected to procedure of adjudication laid down under section 126 or is adjudicated upon by special court. If merely on checking by field staff liability is enforced against consumer it would lead to arbitrariness as well as breach of natural justice. Validity of checking report is subject matter of adjudication process by passing of final assessment orders u/s 126 or by appellate authority u/s 127 or by special court while determining civil and criminal liability of defaulting consumer. **This view**

finds support from judgments of Hon'ble Punjab and Haryana High Court titled as Utttar Haryana Bijli Vitran Nigam Ltd. & Ors. Vs. Kartar Singh @Kartara, RSA No. 136 of 2021 (O&M) decided on 03.09.2021 and Dakshin Haryana Bijli Vitran Nigam Ltd. and Ors., Vs. Jaswant @ Jaibir, RSA No. 3933 of 2017 (O&M) decided on 30.08.2017.

28. Argument of Ld. counsel for defendant that suit filed by plaintiff is not maintainable in view of bar enacted by section 145 of 2003 Act as well as availability of alternative remedy of appeal u/s 127 is also without any merit. The issue of jurisdiction of civil court is also not res-Integra.

29. Ld. counsel for the defendants argued that in case of theft of electricity, the jurisdiction of the civil court is barred by the statute itself and therefore, the suit of the plaintiff is liable to be dismissed solely on this ground. However, this court is not convinced with these submissions of Ld. Counsel for the defendants. It is settled preposition of law that even if the jurisdiction of the civil court is specifically barred by the statute then also the civil court cannot be denied to assume the jurisdiction in a case where the fundamental principles of natural justice, equity and fairness have been violated by the concerned authority. In the case title as **State of Andhra Pradesh Versus Manjeti Laxmi Kantha Raw (D) by LR's and Others.,AIR (SC) 2200,** It was held by the Hon'ble Apex Court that :-

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"where a statute gives finality to the orders of the special tribunals jurisdiction of the civil court must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not excludes those cases where the provision of the particular act have not been complied with or the statutory tribunal has not acted inconformity with the fundamental principles of judicial procedure."

30. In case titled as ***Dakshin Haryana Bijli Vitran Nigam Ltd., and others Vs M/s Sirohi Medical Centre decided on 12.10.2015 in the RSA No.4054 of 2013 (O&M)*** it was held by the Hon'ble Punjab & Haryana High Court that:-

"The remaining question with regard to jurisdiction of the civil Court has to be answered in the light of nature of notice issued to the plaintiff by the defendants. The very nature of the notice shows absurdity thereby mixing both the provision. If the Authority acts illegally and in violation of principles of natural justice, civil Court has got jurisdiction under Section 9 CPC".

31. Further in the case titled as **Punjab Electricity Board Versus Jogender Singh, 2001 (4) RCR (Civil) 4**, it was held by the Hon'ble Punjab & Haryana High Court that:- *"Civil procedure code, 1908, Section 9-jurisdiction of civil court- Natural justice- Civil Court has jurisdiction to go into the disputed questions of Civil nature where fundamental fairness of procedure is violated-but where fundamental fairness of procedure is followed, cognizance of civil court is excluded by necessary implication.*

32. In **Dakshin Haryana Bijli Vitaran Nigam Limited, Panchkula and others Vs. Poonam Vashisth, 2009 RCR (Civil) 577 Hon'ble Punjab and Haryana High Court** had held that when demand is made in garb of theft of electricity then bar under section 145 of 2003 Act shall not apply. It is therefore clear where notice u/s 135 or for compounding is issued for theft of electricity the provisions of section 145 shall have no applicability. Section 145 bars jurisdiction of civil court 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 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. In present case no action u/s 126 or 127 has been initiated by defendants. Civil liability by Special Court has also not been determined. Action being challenged is forcible implementation of notice for compounding without consent of consumer to compound the offence, therefore ratio of above noted judgment is fully applicable and bar u/s 145 shall not apply to facts and circumstances of present case.

33. Full Bench of **Hon'ble Punjab and Haryana High Court in M/s Ranbaxy Laboratories Ltd. Vs. Punjab State Electricity Board,**

Patiala, 2004 (1) CCC 592, had held that jurisdiction of civil courts cannot be barred where order complained of is a nullity.

34. Section 145 of the Electricity Act, 2003 is not applicable in the facts of the present case and provisions which bar maintainability of the suit, restricts only to matters which an assessing officer referred to in Section 126 or the appellate Court 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.

35. Undisputedly, where ever there is statutory prescription excluding powers of the civil Court then such a provision has to be interpreted strictly. Section 145 of the Electricity Act, 2003 excludes jurisdiction of the civil Courts as specifically stated that the civil Courts shall not have jurisdiction in the matter where orders have been passed by the assessing officer referred in Section 126 of the Electricity Act, 2003 or appellate authority as mentioned in Section 127 or adjudicating officer appointed under Section 6 of the Electricity Act, 2003. There is no exclusion of jurisdiction of the civil Courts in relation to other matters.

36. At this stage it would also be useful to consider judgments of Hon'ble Supreme Court in this regard. The Constitution Bench of the

Hon'ble Supreme Court in the case of **Ram Swarup Vs. Shikar Chand, AIR 1966 SC 893**, while dealing with the issue of jurisdiction of Civil Courts has formulated the following two tests :- "The two tests, which are often considered relevant in dealing with the question about the exclusion of civil courts' jurisdiction are (a) whether the special statute which excludes such jurisdiction has used clear and unambiguous words indicating that intention; and (b) does that statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions. Applying these tests the inference is inescapable that the jurisdiction of the civil courts is intended to be excluded."

37. Hon'ble Supreme Court in the case of **Dhruv Green Field Ltd. Vs. Hukum Singh & Others, 2002 (6) SCC 416,** has outlined the principles for deciding the issue of jurisdiction of Civil Court's, in the following manner :-

"10. In the light of the above discussion, the following principles may be restated:

(1) If there is express provision in any special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the

provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a civil court, the court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil court is barred. If, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of the civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly, the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity."

38. Hon'ble Punjab & Haryana High Court in recent case titled **Mahesh Kumar vs. SDO & anr. RSA No. 4181 of 2016 a**nd connected matters decided on 14.05.2025 has also held that:-

44. Therefore, this Court is convinced, that only pursuant to a binding and conclusive verdict of conviction becoming made by the Special Court, vis-a-vis the errant consumer concerned, therebys the Special Court in terms of sub-Section (5) of Section 154 of the Act, 2003, shall proceed to determine the compensation amount to be paid by the consumer concerned, to the supplier concerned.

39. From the above mentioned law laid down by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab & Haryana, it is very clear that even if the jurisdiction of the civil court is specifically

excluded by a special statute then also the civil court will have the jurisdiction to try and entertain the suit to see whether the principles of fairness of procedure have been followed or not. No doubt, whether the penalty imposed upon the plaintiff by the defendants department is correct or not, is beyond the jurisdiction of the civil court, but certainly the court can look into the matter that whether the penalty was rightly imposed by the defendants, by following the due procedure as laid down by the statute and the defendant department vide its various rules and regulation or not.

40. In **Uttar Haryana Bijli Vitran Nigam Ltd. vs. Kartar Singh @Kartara: AIRONLINE 2021 P & H 927** has observed the following;

"Once theft had been alleged by the Department, the Assessing/Au- thorized Officer was not competent to pass any order demanding any specific amount as the liability of the consumer, which could have only been determined by the Special Court".

41. The impugned notices are disputed on the basis that the assessment of penalty amount was not made as per the provisions and rules made under the Electricity Act, 2003.

42. In the present case, the defendants have served the notices upon the plaintiff under Section 135, 138 and 152 of The Electricity Act, 2003 for committing the theft of electricity. Now, if the defendants were of the prima facie view that the plaintiff has committed theft of electricity under section 135 of The Electricity Act, 2003 then the defendants were required

to make a complaint either to the police or to the Special Court, constituted under Chapter XV of the Electricity Act 2003. The assessing officer had no jurisdiction to assess the amount of loss, on account of theft or penalty, at his own level. Giving any power to the assessing officer to make an order of assessment, even in those cases where the theft is claimed by the assessing officer/authorized officer on behalf of the consumer would tantamount to give a preemptive power/authority to the assessing officer over the Special Courts constituted under the chapters dealing with the 'offences and penalties. This cannot be the policy or philosophy of law. Therefore, when assessing officer has no power to make assessment in cases of theft of electricity then order of assessment u/s 135 of Electricity Act, 2003 notice of assessment of Rs. 71,567/- is illegal and void and it is without any authority of law.

43. Accordingly, issue no. 1 to 6 are decided in favour of plaintiff and against the defendants to the extent discussed above.

Issue No. 7 (Relief):

44. As a sequel to my findings on issues, suit of the plaintiffs is partly decreed with no order as to cost to the following effect:

(i) That assessment notice under Section 135 of Electricity Act assessment amount of Rs. 71,567/- dated 22.09.2020 is declared as null and void.

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(ii) However, checking report LL-1 is legally valid and cannot be declared void.

(iii) Defendant is directed to adjust the amount already paid by plaintiff in pursuance of impugned notice in his future bills regarding the electricity connection in question.

(iv) However, nothing herein shall be construed as a bar on the Electricity Department to proceed against plaintiff as per provisions of the Act.

Decree-sheet be drawn accordingly. File be consigned to record room after due compliance.

Announced in the open court: 30.07.2025

(Azad Singh)
Civil Judge (Jr.Divn.)
Sonepat.UID No. HR0527

Note: This order contains 28 pages and each page has been checked and signed by me.

(Azad Singh)
Civil Judge (Jr.Divn.)
Sonepat.UID No. HR0527

Bhavisha Gaba Gr-III,

(Azad Singh)
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