

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No.	Writ Petition No.8539/2016
Parties Name	Managing Director, M.P. Poorva Kshetra Vidhyut Vitran Co. Ltd and another Vs. Presiding Officer, Appellate Authority and another
Date of Order	22.06.2018
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsels for parties	For Petitioners: Shri Brijesh Choubey, Advocate. For Respondent No.2: Shri Manoj Sharma, Advocate.
Law laid down	The consumer, who is not indulged in an unauthorised use of electricity on the basis of provisions of Section 126 of the Electricity Act, 2003, although having connected load beyond the sanctioned load, in such a situation, no penal tariff can be charged.
Significant paragraph numbers	7, 8 and 9

**(ORDER)
(22.06.2018)**

Shri Brijesh Choubey, Advocate for the petitioners.

Shri Maonj Shrama, Advocate for respondent No.2.

With the consent of parties, the matter is heard finally.

The instant petition has been filed by the petitioners seeking quashment of order dated 03.12.2015 (Annexure-P-1) and further upholding the final recovery order dated 30.03.2013 (Annexure-P-4).

1. As per the facts of the case, respondent No.2-company deals with the manufacture and bottling of Mineral Water from its premises situated in village Oriya, Bypass Katangi Road, Jabalpur in the name and style – M/s Splendid Tradelink Private Ltd. They have taken low tension electric connection of 130 HP from the petitioners after

completing due formalities. On 11.12.2012, an inspection has been done by respondent No.4, during which Panchanama dated 11.12.2012 (Annexure-P-3) was prepared showing that respondent No.2 had total connected load of 176.26 HP beyond sanctioned load of 130 HP. The said Panchnama was objected by respondent No.2 vide its letter dated 15.12.2012 (Annexure-P-2). Petitioner No.2 communicated a reply to respondent No.2 informing that on inspection dated 11.12.2012 (Annexure-P-3), 46.26 HP load has been found in excess in their establishment and then, issued the order dated 30.03.2013 which is available on record as Annexure P-4 as per provisions of Section 126 of Electricity Act, 2003 (hereinafter referred to 'Act, 2003'). The amount of Rs.7,22,971/- has been assessed to be paid by respondent No.2 to the petitioners.

2. Respondent No.2 approached this Court by filing a Writ Petition No.20871/2013 which was disposed of vide order dated 13.12.2013 directing respondent No.2 to raise all the issues before the appellate Authority by filing an appeal. The appeal was preferred before the appellate Authority (respondent No.1 herein). In the appeal, the appellate Authority passed an order on 03.12.2015 (Annexure-P-1) holding that respondent No.2 has not consumed electricity in any of the month more than their agreement under which 130 HP electric connection has been granted and as such orders dated 18.01.2013 (Annexure-P-3) and 30.03.2013 (Anexure-P-4) have been quashed with the direction to the petitioners to pass amended order.

3. The order dated 03.12.2015 has given rise to the instant petition and the said order is assailed by the petitioners mainly on the ground that respondent No.1 has exceeded its jurisdiction. It is also contended that respondent No.1 failed to appreciate that it is found proved the consumption of electricity by respondent No.2

was in excess of sanctioned load of 130 HP. It is further contended that respondent No.1 failed to see that respondent No.2 has consumed electricity more than 150 HP, therefore, they fall within the limit of industrial tariff. It is further contended by the petitioners that while preparing the Panchnama, it was found that irregularities have been committed in the premises of respondent No.2 and proper assessment was done by the petitioners, despite that the appellate Authority has ignored that important aspect. In support of their contentions, the petitioners have also relied upon a decision reported in *2012 (2) MPLJ 628* parties being *Executive Engineer Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO) and another Vs. Sri Seetaram Rice Mill*.

4. During the course of arguments, the petitioners have emphasized on the ground that the appellate Authority did not consider the reply and objections which have been raised in para-7 of their reply (Annexure-P-5). As per para-7 of the reply, the irregularities found in the premises of respondent No.2 are in violation of agreement and also violative to the provisions of Section 126(6)(b)(ii) of Act, 2003 and as such, respondent No.2 has illegally consumed electricity thus, as per the case of **Shri Seetaram Rice Mill (supra)**, the order of assessment was proper and has been illegally set aside by respondent No.1 by order dated 03.12.2015 (Annexure-P-1).

5. *Per contra*, Shri Manoj Sharma, Advocate appeared on behalf of respondent No.2 supported the order of the appellate Authority passed on 03.12.2015 contending that respondent No.4 has wrongly applied the provisions of Section 126(6)(b)(ii) of Act, 2003 because it is not a case of consumption of electricity more than the sanctioned limit of 130 HP. In its reply, respondent No.2 has contended that there was no material found or produced by the

petitioners to show that in any of the month respondent No.2 has consumed the electricity more than the sanctioned limit of 130 HP. Respondent No.2 has pointed out that perusal of Panchnama prepared by petitioner No.4, very categorically reveals that there was no tampering with the meter or consumption of electricity more than the sanctioned limit of 130 HP found and as such the appellate Authority while taking note of those facts, very clearly observed that the provisions of Section 126 of Act, 2003 are not applied in the facts and circumstances of the case and the appellate Authority rightly set aside the orders of assessment dated 18.01.2013 (Annexure-P-3) and 30.03.2013 (Annexure-P-4). On the above premise, Shri Sharma while supporting the order of the appellate Authority, asking for dismissal of the petition on the ground that the same is without any merit.

6. I have heard the arguments of parties and carefully gone through the records.

7. This Court is of the opinion that the appellate Authority in its order dated 03.12.2015 (Annexure-P-1), which is impugned in this petition, has very elaborately discussed the existing facts and circumstances of the case and categorically observed that the provisions of Section 126 of the Act, 2003 is not applicable. The appellate Authority has also observed that admittedly it was not a case of consumption of electricity more than agreed sanctioned of 130 HP, but at the time of inspection only connected load was found more than the sanctioned limit and as such it is not proper to recover the amount from the consumer by changing the category of tariff imposing penalty upon them. It is also observed that the petitioners have not followed the terms and conditions of the agreement, specially condition No.7(C) which provides if in any of the two bills continuously more load is found or demanded than

that of sanctioned load, the consumer should be given a notice for changing the tariff category, but the said clause is not complied with and no notice was given by the petitioners to respondent No.2.

8. Looking to the controversy involved in the present case, it will be essential to examine the implication of the expression ‘unauthorised use of electricity’ as contained in explanation (b) of Section 126 of Act, 2003. It would be further necessary for this Court to refer Section 126 of Act, 2003 for examining the words of a Statute in their correct perspective. If we see the expression ‘unauthorised use of electricity’ on its plain reading, means use of electricity in a manner not authorised by the licensee of the petitioners. ‘Authorisation’ refers to the permission to the licensee to use of electricity, subject to the terms and conditions for such use and the law governing the subject. Generally, when electricity is consumed in violation of any or all of the provisions applicable, it would be understood as ‘unauthorised use of electricity’. However, this general view will have to be examined in the light of the fact that the legislature has opted to explain this term for the purpose of Section 126 of Act, 2003. The said provision is, therefore, reproduced herein as under:-

“**126. Assessment.--**(1) If on an inspection of any place or premises or after inspection of the equipment, 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 subsection (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 [twice] 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, 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; or
 - (v) for the premises or areas other than those for which the supply of electricity was authorised.]”

9. In view of the above provisions, it is clear that it is not a case of indulging respondent No.2 in unauthorised use of electricity, but it is a case of connected load beyond the sanctioned load. Hon’ble the Apex Court in the case of ***Sri Seetaram Rice Mill (supra)*** has explained the meaning of unauthorised use of electricity in para-28.

The same is being reproduced as under:-

“28. The ‘unauthorized use of electricity’ means the usage of electricity by the means and for the reasons stated in sub-clauses (i) to (v) of clause (b) of Explanation to Section 126 of the 2003 Act. Some of the illustratively stated circumstances of ‘unauthorized use’ in the section cannot be construed as exhaustive. The ‘unauthorized use of electricity’ would mean what is stated under that Explanation, as well as such other unauthorized user, which is squarely in violation of the abovementioned statutory or contractual provisions.”

Not only this, the Supreme Court in the aforesaid order has very categorically observed the purpose of Section 126 of Act, 2003 and thereby putting an implied restriction on unauthorised consumption of electricity. But admittedly in the present case, there was no such allegation made in report submitted by the petitioners, therefore, I am of the considered opinion that the appellate Authority (respondent No.1) has not committed any material irregularity and illegality while allowing the appeal of respondent No.2 and directing the petitioners to reassess the order of assessment.

10. In view of the above, the petition having no substance, fails and the same is hereby **dismissed**. No order as to costs.

(Sanjay Dwivedi)
Judge

ac/-