



# DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD

(A Power Distribution & Retail Supply Utility, Govt. of Haryana)

AN ISO 9001:2008 Compliant Utility, CIN:-U99999HR1999SGC034165

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Memo No.Ch-41 /SE/Admn./Gen-8 A/Vol-III

Dated: 31.05.2018

To

1. All Chief Engineers in DHBVN.
2. All SEs (OP) Circle in DHBVN.
3. All SEs/M&P Circle in DHBVN.
4. CGRF, DHBVN, Hisar.
5. All XENs (OP) Division in DHBVN.
6. All XENs Vigilance in DHBVN.
7. All SDOs (OP) Sub Division in DHBVN.

**Subject: - CWP No.11326 of 2014 titled as Bhola Devi V/S DHBVN & Ors.**

Please refer to the Memo No. 97/LB-2 (50) dated 12.03.2018 issued from the office of Legal Remembrancer, HPU, Panchkula regarding judgment dated 15.02.2018 passed by Hon'ble High Court in favour of Nigam in the CWP No. 11326 of 2014 as mentioned in the subject. A copy of the judgment is enclosed for reference.

It has been mentioned in the above said reference of L.R./HPUs that the petitioners had filed CWP for quashing the checking report LL-1 and memo's imposed upon him on account of theft of electricity V/s 135 and 152 of EA Act 2003.

The relevant extract of judgment dated 15.02.2018 as mentioned in the reference of L.R./HPUs is given as under:-

*"If the petitioner was of the view that Section 126 of the Act was applicable, then she should have raised this issue before the criminal court even at the stage when the charge was framed under Section 135 of the Act but now she cannot be allowed to take the plea that the decision in the criminal case would not affect the civil rights of a person because the conviction of the petitioner under Section 135 of the Act is a fait accompli.*

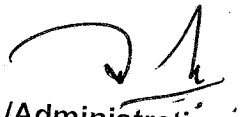
Thus, keeping in view the aforesaid facts and circumstances, I do not find any merit in the present petition and hence, the same is hereby dismissed, through without any order as to cost."

In reference to above judgment, it has been advised by L.R./HPUs that Hon'ble Court may be prayed for dismissal of similar cases of Nigam by placing reliance on the judgment dated 15.02.2018.

In this context, it is requested to go through the above said judgment as well as connected references and comply with the advice of L.R./HPUs, Panchkula, regarding reliance on the judgment dated 15.02.2018 while defending similar cases of Nigam..

This issue with the approval of CE/HR&Admn., DHBVN, Hisar.

**DA: As Above**

  
S.E./Administration  
DHBVN, Hisar

**Copy to:**

1. Sr. PS to the Chairman-cum-Managing Director, DHBVN, Hisar.
2. Sr. PS to the Director/Projects, DHBVN, Hisar.
3. PS to the Director/Operations, DHBVN, Hisar.
4. PA to the Chief Engineer/HR & Admn., DHBVN, Hisar.
5. L.R., HPUs, Panchkula.
6. SE/IT, DHBVN, Hisar. He is requested to upload the same on Nigam's website.

From

Legal Remembrancer,  
HPU, Panchkula

CHM/Secy	11/16/18
Secy Admn.	
Secy HR	
P.A.	
Asst. Secy	

To

The CGM/Admn.,  
DHBVN, Hisar.

The CGM/Admn.,  
UHBVN, Panchkula.

Memo No. 97/LB-2(50)  
Dated: 12.03.2018

**Subject: CWP No. 11326 of 2014 titled as Sh. Bhola Devi V/s  
DHBVN & Ors.**

Attention is drawn to judgment dated 15/02/2018 passed in subject cited case vide which the Hon'ble High Court decided the case in favour of Nigam. Petitioners filed CWP for quashing the checking report LL-I and memo's imposed upon him on account of theft of electricity V/s 135 and 152 of EA Act 2003

The relevant extract of judgment dated 15/02/2018 is given here under:-

*"If the petitioner was of the view that Section 126 of the Act was applicable, then she should have raised this issue before the criminal court even at the stage when the charge was framed under Section 135 of the Act but now she cannot be allowed to take the plea that the decision in the criminal case would not affect the civil rights of a person because the conviction of the petitioner under Section 135 of the Act is a fait accompli.*

*Thus, keeping in view the aforesaid facts and circumstances, I do not find any merit in the present petition and*

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108/16-378

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- U.S./HR-I
- U.S./HR-II
- U.S./Gen. ✓
- U.S./Legal
- XENT&M
- Supdt./RTI
- S.E. Admn.

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*hence, the same is hereby dismissed, though without any order as to costs."*

It is an important judgment on the issue after conviction of the petitioner by the competent criminal court in term of Sec. 154 of the Act it does not lie in the mouth of the petitioner to claim the application of procedure prescribed U/s 126 of the Act. Please circulate the same to the officer under your control for dismissal of similar cases by placing reliance on the judgment dated 15/02/2018 passed by Hon'ble High Court it is also requested to direct the concerned authority to host the Judgment dated 15/02/2018 on the website of concerned Power Utility. A complete copy of judgment dated 15/02/2018 are enclosed herewith for ready reference.

This issue with the approval of L.R.

DA/As above

*D. Singh*  
*09/03/18*

Legal Officer,  
HPU, Panchkula.

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No.11326 of 2014

Date of decision: February 15, 2018

Bhola Devi ...Petitioner

Versus

DHBVN (P) Ltd. and others ...Respondent

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Rajesh Garg, Senior Advocate, with  
Mr. Rakesh Dhiman, Advocate, for the petitioner.

Mr. Prateek Mahajan, Advocate,  
for respondents no.1 to 3.

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**Rakesh Kumar Jain, J.**

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the checking report LL-1 dated 05.02.2014 along with Memo No.718 dated 06.02.2014 by which a penalty of ₹57,24,674/- has been imposed upon the petitioner and Memo No.719 dated 06.02.2014 by which penalty of ₹8,50,000/- for compounding the offence of theft of electricity under Sections 135 and 152 of the Electricity Act, 2003 (hereinafter referred to as the "Act") has been imposed upon the petitioner.

In brief, the petitioner is stated to be the owner of the plot bearing no.42, Sector 7, IMT Manesar, District Gurgaon, in which son of the petitioner is running an industrial unit under the name and style of M/s S.M. Engineering for manufacturing plastic parts. The electricity connection bearing No.IMS-69 was released in the name of the petitioner having the Maximum Demand

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Indicator (MDI) with sanctioned load of 49.5 kilowatt. On 05.02.2014, premises of the petitioner was inspected in the presence of one Munish Verma, user of the premises, by the joint team of the DHBVNL consisting of its Operation Wing, M&P Wing and Vigilance Wing. The connecting load running at the time of checking was 76.148 KW as against the sanctioned load of 49.5 KW. According to the respondents, after opening the MCB seals, since it was found that the firm seals and paper seals were tampered with and the lock of terminal cover was broken, therefore, the meter was referred to the M&T Lab, Gurgaon for inspection. The checking report LL-1 was prepared, duly signed by the said Munish Verma who was also asked to attend the lab on 06.02.2014 at 10:00 a.m. so that the meter could be checked in his presence. It is also the case of the respondents that as per the laboratory report dated 06.02.2014, both the firm seals were found tampered with; the M&T seals were found intact but did not tally with the lab record and therefore, were fake; the right sealing screw was tampered; on opening of the meter, an external circuit comprising of a RF Switch remotely controlled was found installed so as to manipulate the reading recorded by the meter; and a remote control was found with the meter. The Nigam found that it was a clear cut case of theft of electricity, therefore, a notice dated 06.02.2014 of a loss of ₹57,24,674/- was served upon the petitioner and a notice for compounding of the offence was also served, asking the petitioner, to deposit ₹8,50,000/-. The petitioner, however, did not deposit the penalty amount of ₹57,24,674/- as well as the compounding fee and as a result thereof, FIR No.55 dated 10.02.2014, under Sections 135 of the Act was registered against the petitioner. It is also mentioned in the reply that on 05.02.2014, son of the petitioner, namely,

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Munish Verma, had admitted before the Joint Checking Team in regard to tempering of the meter having been done by one Lalit Kumar son of Rajinder Kumar. Accordingly, FIR No.54 dated 06.02.2014 for the commission of offences under Sections 135 and 138 of the Act was also registered.

During the pendency of the present petition, the trial in FIR No.55 dated 10.02.2014, registered against the petitioner, was conducted by the Court of Additional Sessions Judge, Gurgaon, in which the petitioner has been held guilty of the offence committed under Section 135 of the Act and was convicted vide order dated 29.04.2016 for a period of 1-½ years and to pay a fine of ₹10,000/- and in default of payment of fine to suffer a further simple imprisonment for a period of 3 months.

Since the petitioner has been convicted under Section 135 of the Act for having committed the theft of energy, the argument raised by the petitioner that the proceedings under Section 126 of the Act should have been carried out because tampering of meter is also related to the unauthorized use of electricity is of no consequence. It is sought to be argued that had the proceedings been carried out for the unauthorized use of electricity, then the procedure prescribed under Section 126 of the Act should have been followed, which provides for an opportunity of filing objection to the provisional assessment before the petitioner could have been asked to pay the huge amount of ₹57,24,674/-, which has been done straightway by applying to Section 135 of the Act, in which no such procedure is prescribed.

In reply, counsel for the respondents has submitted that Section 126 and Section 135 operate in different fields as Section 126 deals with unauthorized use of electricity and Section 135 with the theft of electricity. It

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is submitted that after conviction of the petitioner by the competent Criminal Court in terms of Section 154 of the Act, it does not lie in the mouth of the petitioner to claim the application of procedure prescribed under Section 126 of the Act.

I have heard learned counsel for the parties and examined the available record with their able assistance.

In the case of **Raj Kumar vs. Uttar Haryana Bijli Vitran Nigam and others**, CWP No.26366 of 2013, this Court has already clarified about the operation of Sections 126 and 135 of the Act. Thus, it is not necessary to delve into it again especially when the petitioner has already been convicted by the competent Court of law for the offence having been committed under Section 135 of the Act.

If the petitioner was of the view that Section 126 of the Act was applicable, then she should have raised this issue before the criminal court even at the stage when the charge was framed under Section 135 of the Act but now she cannot be allowed to take the plea that the decision in the criminal case would not affect the civil rights of a person because the conviction of the petitioner under Section 135 of the Act is a *fait accompli*.

Thus, keeping in view the aforesaid facts and circumstances, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

February 15, 2018  
vinod\*

(Rakesh Kumar Jain)  
Judge

Whether speaking / reasoned : Yes/No  
Whether reportable : Yes/No