THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21424 of 2011 (O&M)
Date of decision: February 24, 2015

Sachdeva Oils & Chemical (P) Limited

...Petitioner

Versus

Punjab State Electricity Board and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Vineet Soni, Advocate,
for the petitioner.

Mr. BS Taunque, Advocate,
for respondents No. 1 and 2.

K. KANNAN, J. (Oral)

1. The petition brings a challenge to an order passed by the Commissioner Appeals as regards the demand that is possible for a defective meter. The petitioner's premises was initially found to be installed with the meter which was defective on 11.11.1994 by the senior Executive Engineer and it appears that additional units were added from time to time till when a check meter was installed on 30.12.1995. The existing meter was not removed and the check meter was continued till 28.7.1998 when a checking was done and it was found that the petitioner's original meter had registered slowness to the extent of 8.65%. The Chief Electrical Inspector invoked Clause 26 (6) of the Indian Electricity Act, 1910 and found that the dispute ought to mean restriction of liability only for a period of six months

prior to the date of the demand and passed an award dated 21.8.2007 in favour of the petitioner. This was put to challenge before the Commissioner Appeals who has passed the impugned order through laconic observations that the Punjab State Electricity Board had raised the demand for the energy actually used by the consumer and gauged through a check meter which was legal and justified and allowed for the entire demand to subsist without being restricted only to a period of six months, the manner the Chief Electrical Inspector had passed the order.

2. Learned counsel appearing on behalf of the petitioner refers me to Section 26 and relevant sub-clauses contained under the Indian Electricity Act, 1910. For our purpose, it would be necessary to reproduce clauses 2, 5, 6 and 7:-

> **26 Meters.—(1)** In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:
>
> Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.
>
> (2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the

meter.

(3) xx xx xx

(4) xx xx xx

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line (but he may by giving not less than forty-eight hours' notice in writing to the licensee require the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the period of the notice.]

[(6). Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.]

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided, also that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation,— xx xx xx"

3. The counsel wants to place an interpretation that the period of six months of what sub clause 6 refers to must be for the period before the demand is made when in the opinion of the Inspector that meter had not been correct. I would hold that such interpretation is out of sync with the

language employed under Section 26 under the circumstances that it copes with. Section 26 (2), which we have extracted, requires the licensee to keep the meter correct and in default of his doing so, the consumer shall, so long as the default continues, cease to be liable to pay a higher meter. If the licensee, therefore, allows the mistake to go on, inspite of a consumer pointing out to the mistake in the meter, he will have his own right to collect the correct charges restricted till when a check meter is installed to check the correctness and in that process his own right shall be restricted to making a demand only for a period of six months.

4. If the meter was, in the opinion of the Inspector, not correct, in a situation as it obtains in our case, the meter is installed on 30.12.1995 and continues to be operating along side the defective meter, the right to make a demand and collect the charges shall obtain all the time from when the check meter was installed till when the demand is made, if the check meter had found that the meter installed was defective. I would apply clause 6 only to retrospective demand made before the installation of the check meter and when the check meter finds that there was a default and when such demand cannot be for a period more than six months, prior to such assessment of defect. In this case, the fact was that check meter was installed on 30.12.1995 and continued till 28.7.1998. The correctness of the demand shall be tested on the consumption that was actually made and registered in the check meter. What clause 6 seeks to prohibit is to be seen in the context of how it casts a responsibility for a licensee to ensure that he keeps the meter correct and for a defective meter, which he is bound to maintain, he cannot visit a consumer for a demand without any restriction by taking advantage of the licensee's own loss. That is why clause 2 states

that when a consumer entered into an agreement for hiring a meter, the licensee shall keep the meter correct. Clause 2 even relieves the consumer of any liability if the licensee makes a default in keeping the meter correct. If there is manipulation by the consumer, different consequence follow which we are not adverting in this case. In the absence of tampering of the meter by the consumer, the liability to replace it lies with the licensee and if an attempt is made, therefor, to have it checked and the checking results in a detection that the meter installed is defective, during all the period from when the check meter was installed till the demand is made, there could be no restriction. The interpretation as canvassed by petitioner, it would amount to lending premium to a consumer to have the benefit of wrong meter even if the licensee is prepared to put the check meter in place sufficiently for a long time to see that it was not merely some spike in the meter during short interval that registered a mistake but even sustained assessment of the actual energy consumed over a period clearly showed that the existing meter was defective over a period. I would, therefore, find a meaning to even the laconic statement made by the appellate authority that the consumer is bound to pay what is properly gauged through mechanical and electronic meter that was set up to check the consumption and to check whether the meter installed was defective or not. I would hold, therefore, that there was no error in the order passed by the appellate authority for intervention. I maintain the order passed by the appellate authority and dismiss the writ petition.

February 24, 2015 **(K.KANNAN)**
prem **JUDGE**