IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17699 of 2014
Date of decision: 19.12.2015

M/s Park Hyundai
....Petitioner

Versus

Punjab State Power Corporation Ltd. and others
....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the 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. Ankit Goel, Advocate, for the petitioner.
Ms. Meena Bansal, Advocate, for respondent No.1.

PARAMJEET SINGH, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a direction in the nature of *certiorari* for quashing the impugned order dated 25.07.2014, which has been sent vide memo dated 04.08.2014 (Annexure P-9) whereby demand of ₹13,04,199/- by respondent No.1 on account of wrong application of multiplying factor from the petitioner has been upheld. Further prayer has been made to direct the respondents to refund the excess amount deposited by the petitioner along with interest @ 18% per annum.

Brief facts of the case, averred in the writ petition, are to the effect that petitioner is a limited company running the business of sale of motor vehicles having its showroom at Village Kamo Majra, District

Sangrur. Petitioner was sanctioned NRS electricity connection bearing No.GC-46/0043K for 69.620 KW on 02.06.2009. On 24.09.2013, officials of the respondents checked the connection at the petitioner's premises for the first time since its installation in June, 2009. During checking, officials found CT ratio of the metering equipment to be 200/5A whereas the meter ratio was 100/5A, thus, multiplying factor of two was required to be applied to petitioner's consumption. In pursuance of checking report, respondents raised a demand of ₹13,04,199/- as arrears of electricity dues on account of non-application of multiplying factor for the period from July, 2009 to September, 2013 vide demand letters dated 03.10.2013/10.10.2013 (Annexure P-3 Colly). Petitioner challenged the demand before the Zonal Disputes Settlement Committee, South Patiala. The Zonal Disputes Settlement Committee vide order dated 11.12.2013 upheld the demand raised by the respondents. Aggrieved against the decision of the Zonal Disputes Settlement Committee, petitioner approached the Consumer Grievance Redressal Forum, Patiala on the ground that there was no occasion for the respondents to raise a demand for a period of more than six months. The forum dismissed the representation/appeal filed by the petitioner vide order dated 09.04.2014 (Annexure P-7). Feeling aggrieved against the order of the Forum, petitioner filed an appeal before the Ombudsman Electricity, Punjab. While preferring appeal, petitioner deposited the requisite 40% i.e. ₹5,21,680/- of the total demanded amount of ₹13,04,199/-. The Ombudsman vide order dated 25.07.2014/04.08.2014

(Annexure P-9) rejected the appeal filed by the petitioner and upheld the demand of ₹13,04,199/- raised by the respondents from the petitioner. Hence, this writ petition.

In pursuance of notice of motion, respondent No.1 appeared and filed written statement contending that on 10.06.2009 electricity connection with load of 69.620 KW under NRS category was released to petitioner. At the time of release of connection, KWH meter with ratio of 100/5 Amp and CT capacity of 200/5 Amp was installed at petitioner's premises. The SCO was issued in which the capacity of CT was erroneously mentioned as 100/5 Amp., therefore, the billing of the petitioner's consumption was done treating the multiplying factor as 1 instead of 2 since the release of connection. However, during checking capacity of CT was found to be 200/5 Amp. Therefore, according to capacity of CT actually installed, billing of the petitioner was revised by a multiplying factor of 2 from the date of release of connection i.e. 10.06.2009 to August, 2013. The amount raised was as per the actual consumption of the petitioner as wrong energy bills were issued to the petitioner from the date of connection. Therefore, notice raising a demand of ₹13,04,199/- vide memo No.3150 dated 10.10.2013 was rightly issued to the petitioner. Period of two years as mentioned in Section 56(2) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') is not relevant to this case as the period of two years would be counted from the date of demand raised by respondents against consumption of energy. As per circular No.05/2002 dated 14.03.2012 the limitation of two years, as mentioned in Section 56(2) of the Act shall start from the date of detection of mistakes/demand raised by the PSPCL.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that CT ratio and meter ratio were 100/5 Amp., therefore, multiplying factor as 1 was applied. In this regard, learned counsel for the petitioner made reference to Annexure P-1. Learned counsel further contended that when the checking was carried on 24.09.2013, CT ratio of the metering equipment was found as 200/5 Amp. and meter ratio was 100/5 Amp. and multiplying factor of 2 was applied on the basis of which consumer was billed. Learned counsel for the petitioner vehemently contended that after inspection multiplying factor cannot be applied for a period of more than six months prior to the checking. Learned counsel further contended that as per the instructions, inspection of the connection was required to be done every six months. In support of his contention, learned counsel for the petitioner made reference to Regulation 21.4(g) (i) of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters), Regulations, 2007 (hereinafter referred to as 'the Regulations'), which reads as under: -

> *"21.4 Defective Meters.*
>
> *x x x x x x x*
>
> *(g) Overhauling of consumer accounts:*
>
> *(i) If a meter on testing is found to be beyond the limits of*

accuracy as prescribed in the Regulations notified by the Central Electricity Authority under Section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of six months immediately preceding, the :

(a) date of test in case the meter has been tested at site to the satisfaction of the consumer ; or

(b) date the defective meter is removed for testing in the laboratory of the Licensee where such testing is undertaken at the instance of the Licensee ; or

(c) date of receipt of request from the consumer for testing a meter in the laboratory of the Licensee.

Any evidence provided by the consumer about conditions of working and/or occupancy of the concerned premises during the said period(s) which might have a bearing on computation of electricity consumption will, however, be taken into consideration by the Licensee."

Learned counsel for the petitioner contended that Regulation 21.4 of the Regulations relates to defective meters and Clause (g)(i) of Regulation 21.4 refers to overhauling of the consumer accounts. According to Clause (g)(i) of Regulation 21.4, if a meter on testing is found to be beyond the limits of accuracy as prescribed in the Regulations notified by the Central Electricity Authority under Section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of six months immediately preceding the date of test in case the meter has been tested at site to the satisfaction of the consumer or the date the defective meter is removed for testing in the laboratory of the licensee where such testing is undertaken at the instance of the licensee or date of receipt of request from the consumer for testing a meter in the laboratory of the licensee. Learned counsel contended that bill has been wrongly revised from 10.06.2009 to 24.09.2013 and the demand raised is excessive. When the CT ratio, which is 100/5 Amp. squarely matches with the meter ratio which is also 100/5 Amp. multiplying factor of 1 will apply. However, during checking CT ratio was found to be 200/5 Amp. which gave rise to multiplying factor of 2. Even if it is presumed that multiplying factor of 2 is applicable, same cannot be revised for about four years. Learned counsel for the petitioner contended that meter is required to be periodically checked by the officials of the department in view of the provisions of the Act. The authorities cannot go beyond the provisions of law. In support of his contentions, learned counsel for the petitioner relied upon the Division Bench judgment of this Court in ***Punjab State Electricity Board v. Tagore Public School and another***, *LPA No.734 of 2010 decided on 29.06.2010.* Against this judgment, SLP preferred by the Punjab State Electricity Board has also been dismissed on 22.09.2014.

Per contra, learned counsel for respondent No.1 vehemently contended that bill has been rightly revised. Petitioner was released connection on 06.09.2009 for a connected load of 69.620 KW under NRS category. At the time of release of connection, KWH meter with ratio of 100/5 Amp. and CT capacity of 200/5 Amp was installed at petitioner's premises. However, inadvertently and erroneously CT was mentioned as 100/5 Amp., therefore, the billing of the petitioner's consumption was done treating the multiplying factor of 1 instead of 2. So from the date of release of connection till the said error was detected on inspection, multiplying factor of 2 is required to be applied and difference of billing due in view of the revised multiplying factor, is required to be paid by the petitioner. Therefore, the orders passed by the authorities are legal and valid. Learned counsel for respondent No.1 further made reference to Circular No.05/2002 dated 14.03.2012 and submitted that limitation of two years as mentioned in Section 56(2) of the Act shall start from the date of detection of mistake/demand raised by PSPCL. Learned counsel for respondent No.1 contended that petition deserves to be dismissed and the impugned order needs to be upheld.

I have given my anxious and thoughtful consideration to the contentions raised by learned counsel for the parties.

Admittedly, petitioner was released NRS category connection bearing No.GC-46/0043K for 69.620 KW and the said connection is running since 02.06.2009. Petitioner has been continuously paying the electricity bills as sent by the department treating the CT and meter ratio as 100/5 Amp. after applying the multiplying factor of 1.

Instruction No.104 of the Electricity Supply Instructions Manual, which sets up mandatory checking schedule to be observed by the officials of the department, reads as under: -

> *"**104. CHECKING OF CONNECTIONS:***
>
> *In order to arrest the tendency on the part of the consumers to*

indulge in unauthorized use of electricity (UUE) or theft of electricity or extensions in load, it is essential to conduct periodical checkings. Such checks must be exercised by the concerned officers as per schedule.

104.1 Checking Schedule:

i) All DS/ NRS / industrial and Bulk Supply connections with load up to 50 KW in the jurisdiction of J.E. shall be checked by him at least once in every six months. All other three phase connections shall be checked by him at least once a year in addition to carrying out checking of 50% single phase connections. JE,s are authorized to check the connections up to the point of supply.

ii) The AE/AEE/XEN (DS) shall check all the connections except LS/BS/RT (HT/EHT) having connected load more than 50 KW at least once in every six months. Additionally, he will check all the small power connections at least 50% (not less than 250) of the other 3 phase and 10% general connections each year.

iii) The Sr.XEN / Addl.SE (DS) shall check all the connections except LS/BS/RT (HT/EHT) having connected load more than 100 KW in his jurisdiction at least once in every year. Additionally, he will check 5% of the three phase industrial connections having load less than 100 KW.

iv) The Dy.CE/SE (DS) shall check all the connections except LS / BS / RT (HT / EHT) having load more than 500 KW every year. Additionally, he must carry out random checking of other 3 phase connections having load less than 500 KW."

As per Instruction No.104.1(ii) the AE/AEE/XEN (DS) shall check all the connections except LS/BS/RT (HT/EHT) having connected load more than 50 KW, at least once in every six months.

The connection of the petitioner falls under NRS category and is more than 50 KW i.e. 69.620 KW, hence, the same was required to be checked atleast once in every six months. Perusal of record shows that checking at the premises of the petitioner has been made after four years of release of connection, which is contrary to the aforesaid instructions. Furthermore, Regulation No.21.4(g)(i) clearly states that the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of six months immediately preceding the date of test in case the meter has been tested at site to the satisfaction of the consumer. Thus, charges for inaccurate reading cannot be for more than six months. Circular No.05/2007 clearly states that limitation period of two years, as mentioned in Section 56(2) of the Act shall start from the date of detection of mistakes by the officer(s)/ official(s)/demand raised by PSPCL. However, this will not be applicable for those cases where accuracy of meter/metering equipment is involved in view of Regulation No.21 of the Supply Code.

In the present case, meter ratio was 100/5 Amp and CT ratio of metering equipment was 200/5 Amp. This was detected for the first time on 24.09.2013 at the time of inspection at the spot by the enforcement staff, therefore, the multiplying factor of 2 is applicable on the consumer. Once the meter is not recording accurate reading, it will certainly be covered by Regulation 21.4(g)(i) and Circular No.05/2002 and not by Section 56(2) of the Act. Section 56 of the Act applies where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him. In other words Section 56 applies when bill is already issued and the amount is not paid and the recovery cannot be for more than two years.

In the present case, mistake was detected during inspection after four years of installation of the connection at petitioner's premises. As per instructions and regulations, inspection is required to be made every six months. In view of the mandatory instructions/regulations, petitioner cannot be burdened with charges for four years. However, the respondents are entitled to recover the amount for six months preceding the date of checking i.e. 24.09.2013. The present case is squarely covered by the ratio laid down by Division Bench of this Court in ***Tagore Public School (supra)*** which stands affirmed by the Hon'ble Supreme Court.

Petition is partly allowed in above terms.

(Paramjeet Singh)
Judge

December 19, 2015
R.S.