

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.22413 of 2014
Date of Decision:30.10.2015

Narender Kumar

. . . .Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam, and another

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Dr.Surya Parkash, Advocate,
for the petitioner.

Mr.Rajesh K. Sheoran, Addl. A.G. Haryana.

Mr.P.S. Poonia, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the validity of Memo No.SPL-1/RS-4 dated 4.10.2011 and Memo No.SPL-2/RS-4 dated 4.10.2011 issued by respondent No.2, demanding ₹9,71,930/-.

The petitioner is running a filling station, namely, 'HP Shri Pal Om Parkash Jain Filling Station' at Dharuhera, District Rewari since 2009. He has got an electric connection (3 phase) bearing account No.CD-31/001 for the last about 20 years with sanctioned load of 19.9 KW. The case set up by the petitioner is that on 25.9.2011, the filling station was not receiving full power supply, therefore, a complaint was made to the Complaint Cell of respondent No.2 that the power supply is not being received from one phase. After the complaint, employees of respondent No.2

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visited the filling station on the same day in order to find out the fault. After checking, it was found by them that one plate of the electric meter was burnt due to which power supply was not being received from one phase though it was being received from the other two phases. As the wire of the meter was burnt, they failed to connect the wire of the meter and directly connected that wire bypassing the electric meter with an assurance that the meter would be shortly replaced. Instead of replacing the meter, at the mid night of 1.10.2011 at 12:12 AM, a team of respondents headed by Ravinder Singh, JE inspected the electric meter/power supply. They alleged that the wire of one phase was directly connected and not through the meter though the seal of the electric meter was found intact without any tampering. The power was also being used on the sanctioned load i.e. 14.426 KW as against 19.9KW. Thus, the case of theft was made and checking report was accordingly filed. The inspection team also took away the electric meter installed at the premises of the petitioner with them. The petitioner made a representation on 4.10.2011 to respondent No.2 i.e. Sub Divisional Officer, Dharuhera, apprising him about his complaint, having been made to the Complaint Cell and the Linemen of the department, who had visited the premises and finding the plate of one phase burnt, connected it directly to the poll but the respondents hurriedly issued the Memo dated 4.10.2011 raising a demand of ₹9,71,930/-. The petitioner also filed a civil suit for declaration which was dismissed on 29.10.2011 and the appeal was also dismissed on the ground that the suit was not maintainable in terms of the provisions of Sections 126 & 135 of the Electricity Act, 2003. The petitioner had

deposited the entire amount of ₹9,71,930/- and interest of ₹1,96,000/-.

Learned counsel for the petitioner has submitted that the case set up by the respondents of theft of the electricity is concocted and illegal and in this regard, has referred to the complaint (Annexure P-1) registered with the complaint cell, which has been duly signed by the Assistant Linemen and the Lineman of the respondent/Department. It is further submitted that there was no theft on the part of the petitioner because the seal was found intact even by the checking/raiding staff in its checking report. It is further submitted that the averments made by the petitioner in para No.3 & 4 of the writ petition has not been denied by the respondents, who have rather taken a stand that employees of respondent No.2 did not visit the filling station of the petitioner on 25.9.2011 and they directly disputed the contents of Annexure P-1 though its existence is not denied.

Learned counsel for the respondents, however, has submitted that the petitioner has been found committing theft of the electricity at his filling station because the wire of one phase was connected directly with the electric poll with the transformer instead of meter. As a result thereof, there was no reading of the consumption of the said electricity. It is also submitted that none of their employee had visited the Petrol Pump of the petitioner on 25.9.2011, therefore, the story propounded by the petitioner is false.

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

The petitioner has made the following averments in para No.3 & 4 in the petition: -

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“3. That the petitioner was continuously been making payment of electricity bills used against the above said electric connection, well in time. The petitioner has never used electricity more than the load sanctioned by the respondents.”

4. That on 25.9.2011, the petitioner was not receiving full power supply at their filling station, therefore, a complaint was lodged with the complaint cell of the respondent No.2 stating that the power supply was not being received from one phase. A copy of the complaint register maintained by the complaint cell of the respondents, showing a complaint made by the petitioner on 25.9.2011 in this regard, is annexed herewith as Annexure P-1.”

In reply, the following averments have been made: -

“3 & 4. That the contents of para No.3 & 4 of the writ petition are matters of record.”

From the aforesaid pleadings, it is apparent that the respondents have not denied the existence of document Annexure P-1 in which the petitioner has allegedly made a complaint in the complaint register maintained by respondent No.2 about the failure of one phase out of three phases supplying electricity to its Petrol Pump. The said document is signed by the Linemen and Assistant Linemen of the respondents after making the necessary corrections. However in para No.5 of the reply, the respondents have averred as under: -

“5. That the contents of para No.5 of the writ petition are completely wrong, incorrect and hence vehemently denied.

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The employees of respondent No.2 did not visit the filling station of the petitioner on 25.9.2011. The contents of the preliminary submissions may also be read as part and parcel of reply to this para and the same are not being repeated for the sake of brevity.”

As a matter of fact, the averments made in para No.5 of the written statement runs contrary to the averments made in its para Nos.3 & 4. The petitioner has alleged that on the same day, there were two complaints registered, one by him and other by Rao Tejpal Singh. The same Linemen and Assistant Linemen had repaired the electricity supply of Rao Tejpal Singh while repairing the electricity connection of the petitioner on his complaint, therefore, it is established that the employees of respondent No.2 had visited the filling station of the petitioner on 25.9.2011 and the averments made in para No.5 of the written statement are wrong.

Since, it has been proved that there was a complaint made by the petitioner to the respondents on 25.9.2011 about the defect in supply of the electricity from one phase and the employees of the respondents had visited the filling station on the said date and repaired the same, which of course is not specifically mentioned as to in what manner the one phase was repaired but it lends credence to the case set up by the petitioner that they had not themselves directly connected the 3rd phase with the poll, avoiding the meter, for the purpose of reducing the reading and hence they cannot be held liable of committing theft of the electricity when the raid was conducted on 4.10.2011 especially when the stand taken

by the respondents is of totally denial of their employees having attended the complaint made by the petitioner on 25.9.2011.

Thus, in view of the aforesaid discussion, I find merit in the case set up by the petitioner and the same is hereby allowed. The demand raised by the respondents through Memos dated 4.10.2011 is set aside/quashed.

30.10.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**