

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

Date of decision: 17.07.2017

CR No.4587 of 2017 (O&M)

Dakshini Haryana Bijli Vitran Nigam Ltd. & others ...Petitioners

Vs.

Ami Chand Sihag ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pardeep Rajput, Advocate, for the petitioners.

RAJIV NARAIN RAINA, J. (ORAL)

This revision has been filed by the Nigam assailing the order passed by the Additional Sessions Judge, Sirsa on 3rd March, 2017 allowing the application under Order 39 Rule 1 & 2 of the CPC on the ground that prima facie a case was made out for grant of interim injunction and if such stay was not granted the Plaintiff-applicant a domestic consumer would be forced to pay an amount of penalty of ₹2,24,905/- and in addition compounding fee of ₹22,000/- to regularize the connection.

There is a clear distinction between 'theft of electricity' and 'suspected theft cases'. The petitioner – Nigam has issued Instruction No.5 contained in Circular No.D-43 of 2007 to its officers for guidance while dealing with the cases of theft of electricity under the Electricity Act, 2003; Electricity (Amendment) Act, 2003 & Electricity (Amendment) Act, 2007. Instruction No.5 has been reproduced in Para.10 of the impugned order and is reproduced below for easy comprehension as to why injunction was deservedly granted:

“No case for dishonest abstraction or theft of electricity, shall be framed only on account of seal(s) on the meter and / or meter cubicle is missing or tampered or fake or breakage of glass window or existence of hole in meter, loose glass, cut in the incoming PVC Cable or any act, where the evidence not available at site etc. and are referred to as “suspected theft cases” unless corroborated by consumption pattern of consumer valid tamper information and such other evidence which may substantiate that theft of energy was being actually committed. This analysis shall be done by the concerned assessing officer as per due procedure specified therein in Clause-12(B).”

The trial Court has prima facie found in the facts of the present case that the seals of the meter were found intact and only the locks on the body of meter were discovered broken at the time of checking. Besides, the accuracy of the meter had not been checked. To make matters worse for the Nigam, they issued notice and served it on the plaintiff vide memo dated 16th February, 2016 proposing to impose penalty and a separate notice for extracting compounding fee for the amounts noticed above.

The procedure in this regard is prescribed in Section 126 of the Electricity Act, which requires an order of provisional assessment to be served upon the consumer. The consumer has a right to file objections thereto and it is only after affording reasonable opportunity of being heard, the final order of assessment of electricity charges can be made effective. None of these procedural safeguards were honoured by the Nigam in its knee jerk reaction imposing penalty and demanding compounding fee.

To make matters worse still, Instruction No.5 was disobeyed and action taken without any corroboration with consumption pattern of consumer and valid tamper information and such other evidence which may

substantiate that theft of energy was being actually committed. It is for the Assessing Officer to analyze all these aspects and as per due procedure specified in Clause-12(B). None such is found on file.

The case is loaded against the Nigam at interlocutory stage of the suit which on merits deserves summary dismissal. This is frivolous and vexatious petition filed irresponsibly only to waste the time of the Court spent in passing this order and adding to stress of the registry to process the case for hearing. The alarm bells toll for the petitioning Nigam who first flagrantly disobeyed its own Instructions and then had the gumption to approach this Court to get its stamp. The stamp of this Court can cost dearly.

Accordingly, the instant petition is dismissed with costs of ₹25,000/- to be paid into the accounts of the Mediation & Conciliation Centre annexed to this Court within one month. The costs imposed shall be recovered from the officer/officials who took the reckless decision to file this petition at public expense.

17.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>