

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.11917 of 2013
Date of Decision.08.02.2017

Narinder Kaur alias Ramnik KaurPetitioner
Vs

Punjab State Power Corporation Ltd. and othersRespondents

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Ajay Pal Singh, Advocate
for the petitioner.

Mr. Sapan Dhir, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-. -

AMIT RAWAL J. (ORAL)

The petitioner is aggrieved of the impugned order dated 16.05.2013 (Annexure P-5) rendered by respondent No.3, the Superintending Engineer, Operation Circle, Mohali which has been passed in pursuance of the demand raised in the bill dated 14.03.2013 on the ground that the petitioner had been indulging into theft of electricity as the meter was found to be tampered with.

Mr. Puneet Jindal, learned senior counsel assisted by Mr. Ajay Pal Singh, Advocate appearing for the petitioner submits that the alleged meter on removal was allegedly checked in the ME Lab in the absence of petitioner, in essence, no opportunity of hearing for undertaking the task/exercise of assessment of alleged tampering of the meter had been given.

In support of his contention, he relies upon the ratio decidendi culled out in the judgment of Division Bench of this Court in M/s Tirupati Industries Vs. Punjab State Electricity Board 2000(2) PLR 356 followed

by single Bench of this Court in *UHBVNL and others Vs. Brijesh Kumar Garg 2009(2) RCR (Civil) 799* and *M/s A.K. Rubber Industry, Ludhiana Vs. Punjab State Electricity Board, Patiala and others 2014(3) PLR 693*, thus, the proceedings, much less, the demand raised are totally fallacious and perverse. There is defiance of principles of natural justice/audi alteram partem.

Per contra, Mr. Sapan Dhir, learned counsel appearing on behalf of the Electricity Board submits that the checking report (Annexure P-6) reveals the tampering of the meter. The meter was removed in the presence of the representative of the petitioner, thus, it cannot be said to be an illegal act. The objections raised were totally vague and baseless. The checking of the meter in the ME lab was done on 06.03.2013 and the same was found to be tampered with. The petitioner is holder of a domestic connection of electricity having 7 KW single face meter in a sealed iron box and the same was found to be tampered with by the ME squad at the time inspection, therefore, the demand raised is perfect and justified, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that shown of the facts above, the factum of checking of the meter in the ME lab in the absence of the petitioner is not rebutted in the written statement, thus, there is defiance of the ratio decidendi culled out by the Hon'ble Division Bench of this Court in *M/s Tirupati Industries's case* (supra). For the sake of brevity, relevant para No.13 is reproduced as under:-

“13. The rule of hearing and the rule of fairness in State action which form part of the concept of rule of law imposes an obligation on the State and its agencies/instrumentalities to give notice and

opportunity of hearing and also to disclose reason for their actions which may adversely affect the rights of a person or which may visit such person with evil consequences. The rule that no man can be condemned unheard has been treated as an integral part of the concept of rule of law which permeates the scheme of our Constitution. The thin line of distinction between purely administrative actions and quasi judicial actions has been completely obliterated by the judicial verdicts. More than 30 years ago, their Lordships of the Supreme Court in [State of Orissa v. Dr. \(Miss\) Binapani Dei and Ors.](#), A.I.R, 1967 S.C. 1269 ruled that even administrative decisions may be invalidated on the ground of violation of the principles of natural justice. Some of the observations made in that action are extracted below:

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon, he is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise for arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.... It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High

Court was, in our judgment, right in setting aside the order of the State."

The aforementioned aspect has conspicuously been absent, despite having been urged/raised before respondent Nos.2 to 4. It is too late in a day to even remand the matter back as the meter must have been left to rust. In the absence of compliance of principles of natural justice, a unilateral demand cannot be sustained.

Even there is no compliance of regulation 21.4(d) as extracted in the writ petition. For the sake of brevity the same reads as under:-

“(d) In case of testing of a meter removed from the consumer premises in the licensee's laboratory the consumer would be informed of the proposed date of testing at least 7 days in advance. The signature of the consumer, or his authorized representative, if present, would be obtained on the test result sheet and a copy thereof shall be supplied to the consumer.”

For the foregoing reasons, the impugned orders/bill seeking the demand on account of alleged theft of electricity are hereby set aside. The writ petition stands allowed.

It is conceded position on record that while issuing notice of motion, this Court had imposed condition of deposit of ₹20,000/-. The same shall be adjusted in the subsequent bills raised for usage of electricity charges.

(AMIT RAWAL)
JUDGE

February 08, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No