

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

CWP No.10823 of 2015

Date of Order: 04.10.2017

Harbans Singh

....Petitioner

Versus

Punjab State Power Corporation Limited and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. L.S. Mann, Advocate for the petitioner.

Mr. Ashok Kumar Sharma, Advocate for the
respondents.

RAKESH KUMAR JAIN, J (ORAL)

The petitioner is aggrieved against the Memo No.769 dated 13.8.2013 issued by respondent No.3 on the basis of alleged checking report No.49/62 dated 22.7.2013 whereby he was held to be committing theft of electricity and was imposed a sum of ₹51,566/- as penalty and order dated 12.3.2015 passed by the learned Addl. District Judge, Fazilka whereby appeal filed by him under Section 154 of the Electricity Act, 2003 has been dismissed.

In short, the petitioner was enjoying the electricity facility at his house under Account No.H37/806 (Domestic) in the sanctioned load of 4.98 KW. In the month of November 2013, the petitioner received Memo No.769 dated 13.8.2013 issued by respondent No.3 in which it was mentioned that he was found committing theft of energy in terms of checking report No.49/62 dated 22.7.2013 as the ME Seals and body of the meter were tampered and the petitioner controlled the consumption after

opening the meter. The petitioner was asked to pay a sum of ₹51,566/- on account of theft of electricity.

Aggrieved against the said order, the petitioner filed appeal before the learned District Judge (Special Court) on 17.12.2013 but the same was dismissed on 12.3.2015. The petitioner has, thus, challenged both the orders by way of the present petition.

Learned counsel for the petitioner has submitted that due procedure has not been followed by the respondents as enshrined in Section 55(1) of the Electricity instructions Manual as he was not allowed to be present at the time when the meter, which was taken in possession by the respondents, was checked in the ME Lab. It is further submitted that the learned Appellate Court has also committed an error in rejecting the plea of the petitioner only on the ground that the presence of the appellant was not required at the time of inspection by the ME lab. In support of his submissions, learned counsel for the petitioner has referred to clause 55(1) of the Electricity Supply Instructions Manual, which read as under:

“55. REPLACEMENT OF METERS/METERING EQUIPMENT:

*55.1 Single Phase Electromechanical Meters:
E/M meters removed from the consumer premises on replacement with the electronic meters shall be returned to ME labs without any other formality and ME labs will not carry out any checking/testing of these meters except in case of disputed meters. In case of disputed meters removed under code- G,M & R (glass broken, meter burnt & ME seals broken) and in*

cases where there is sufficient evidence of left/tampering etc at the time of removal, the JE concerned shall record his observations on the MCO itself and such meters shall be packed and sealed in the presence of consumers for further checking in ME labs in his presence.”

Learned counsel for the respondent submits that there was old mechanical meter, which was changed and new electronic meter was installed in order to stop theft of electricity through old mechanical meter (Grariwala kala meter). After every MCO the old mechanical meter are generally sent for routine check up in ME lab. Because at that time the petitioner was not suspected of theft of electricity, however, at the time of inspection in the ME Lab, theft had transpired. It is also alleged that had it been a case of suspected theft of energy case/ prima facie case of theft, the department would have followed the other kind of process of packing the meter and calling the consumer in ME lab etc but in a case where the matter pertains to the theft, the presence of the petitioner was not required at the time, when the meter was checked.

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

According to the respondents, it was a case of theft and had it been a case of suspected theft, the petitioner would have been asked to be present in the ME Lab at the time when the meter was opened. Meaning thereby, the case of the petitioner was of established theft for which the petitioner was not required to be present at that time when it was opened by the ME lab for the

purpose of inspection. However, from clause 55(1) of the Electricity Supply Instructions Manual, it is apparent that where there is sufficient evidence of theft/tampering etc when the meter is removed, the JE concerned has to observe on the MCO itself and such meters shall be packed and sealed in the presence of consumers for further checking in ME labs in his presence. No such proceedings were conducted by the respondents.

The stand of the respondents is totally contrary to clause 55(1) of the Electricity Supply Instructions Manual and the finding recorded by the Appellate Court is also not correct whereby it has been held that there is no requirement of the consumer to be present at the time of checking the meter. Thus in view of the aforesaid circumstances, the present petition is allowed and the impugned orders are hereby set aside.

October 04, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No