IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 1637 of 2015 (O&M)
Date of Decision:- 05.09.2017

Bharat Sanchar Nigam Ltd. ....Petitioner

Versus

Punjab State Power Corporation Ltd. & Ors. ...Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. Anil Rathee, Advocate, for the petitioner.

Mr. B.S. Taunque, Advocate, for respondent No.1.

Mr. Arihant Goyal, Advocate, for respondent No.5.

RAKESH KUMAR JAIN, J. (Oral)

The petitioner is having MRS category connection bearing account No. KC32/1506 with sanctioned load of 228.530 KW and Contract Demand of 253.922 KVA, running a Telephone Exchange, operating under Operation City Sub Division, PSPCL, Doraha. The extension in load from 113.73 KW to 228.530 KW was released to the petitioner on 17.10.2002. Regular bills were issued by the Department of Punjab State Electricity Board (for short 'the department') on the basis of the readings recorded. There was a fault on General Operating Switch (GO Switch) in June 2004 and other installations because of that the petitioner was not getting stable voltage of power supply and was facing hardship to run the Telephone Exhange, Doraha. Though, they had informed the department on 09.06.2004, but no action was taken to rectify the fault. Ultimately, the CT/PT unit installed in the meter room at the telephone exchange was damaged due to the faulty and erratic power supply on 17.06.2005. The department was requested to replace the CT/PT unit immediately so that the said telephone exchange could run to provide the service to the general public. On 18.06.2005, though the supply was restored but there were frequent interruptions in the supply for which another letter dated 08.09.2005 was written to the department. Due to non removal of the faults, the CT/PT unit was damaged. The connection of the petitioner was checked and data was downloaded by the Sr. Xen/MMTS-I, Ludhiana vide Enforcement Checking Register (ECR) No. 9/D-183 dated 18.06.2005 on a reference from AEE/Operation City Sub-Division, Doraha. It was reported that the door of CT/PT unit was found bend due to blast and paper seal was torn. On further investigation, the CT of red phase was found burst/damaged and not contributing towards consumption. On the basis of the DDL report, it was presumed that the damaged CT was not contributing since 17.10.2002 and as such the meter is recording 1/3 less energy. On the basis of this presumption, the petitioner was charged by enhancing recorded consumption by 50% treating that the consumption recorded is for two phases only. The department thus raised a demand of Rs. 8,90,394/-. It was challenged by the petitioner before the Civil Court by way of civil suit. The said suit was dismissed on account of lack of jurisdiction. The petitioner then filed first appeal against the order of the trial Court which also met with the same fate. Thereafter, the petitioner filed Regular Second Appeal No. 4940 of 2013, which was dismissed on 28.01.204 allowing the petitioner to approach the Dispute Settlement Committee of the Department constituted under Electricity Act, 2003. Accordingly, the petitioner approached the said committee. The committee which is known as Zonal Level Dispute Settlement Committee dismissed the case of the petitioner vide its order dated 25.04.2014 observing thus:-

> "*The committee after going through the petition dated 23.03.2014 and 25.04.2014, the documents placed on file and documents presented by PO and after hearing both the parties during the period of 32 months w.e.f 17.10.2002 to 17.06.2005 the total consumption of the consumer was 412410 unit whereas after change of CTPT during next 32 months came to 644792 unit. In case by admitting the consumption 412410 unit as RED phase if we overhaul the account then the average comes to 618615 unit which is less than the consumption of next 32 months.*"

The committee then decided the matter against the petitioner asking it to deposit the amount. Aggrieved against the said order the petitioner filed an appeal before the Consumer Grievances Redressal Forum (for short 'the Forum'). Their appeal was also dismissed on 22.07.2014 upholding the decision of the Zonal Dispute Settlement Committee taken in its meeting held on 25.04.2014. However, overhauling of account was ensured from the actual date of installation of CT/PT unit. The Forum further ordered in terms of Section 19 (1) and 19 (1A) of Punjab State Regulatory Commission (Forum & Ombudsman) Regulation 2005, the decision be implemented within 30 days. Still aggrieved the petitioner approached Ombudsman, Electricity Punjab by way of an appeal. The said appeal was dismissed on 16.12.2014 with the following order:-

> " *After persuasion of all these facts as discussed above, I have observed that the main contention in this case is regarding chargeability from the petitioner for a period of approximately 32 months i.e. from the date of installation of disputed CT/PT unit. The fact remains that the connection was checked and data was downloaded in the presence of SDO level officer of the petitioner. Copy of the downloaded data depicts that the Red Phase of CT/PT unit was not contributing towards recording of consumption irrespective of the fact that the power supply was being consumed by the petitioner. I have also analyzed the details of data downloaded after the disputed period vide DDL dated 26.09.2005 which shows almost equal current constantly on all phases proving that almost equal power*

was being consumed through all the three phases. Further analysis of consumption data for a period of six months before and after the disputed period shows an increase of above 60% of power consumption after 27.06.2005 i.e. the date of replacement of damaged CT upto 12/2005 in comparison to the consumption recorded from 1/2005 to 17.06.2005 i.e. the date of damage of CT unit, which also shows that there is some unbilled quantum of power which has been actually consumed by the petitioner. Moreover, it is also an established fact that the checking report and demand has been accepted by the petitioner by showing his intentions to make payment in installments, thereafter, he showed his intentions to refer the matter to Dispute Settlement Committee, but he instead of depositing the requisite amount of both occasions, opted to file suit/appeals in various Courts of law. Further arguments put forth by the Respondents on technical grounds, that the fault in GO switch cannot lead to damage of CT unit and that any electrical fault may cause damage to any equipment within few seconds and not after a period of one year, are also worth considering.

As a sequal of my above discussions and considering facts, oral arguments, Rules and Regulations, I *am of the considered view that any of the arguments put forth by the petitioner, do not support his case and accordingly he cannot came up with the plea that he is not liable to make payment of the amount as claimed by the respondents after overhauling of his account on the basis of enhanced consumption from the detected date of failure of recording correct consumption. Thus the charges levied are justified and are held recoverable under the provisions of Sr. No. 23 of Conditions of Supply and Regulation 73.8 of Electricity Supply Regulations-2005 (ESR). Accordingly, the respondents are directed that the amount excess/short, if any, may be recovered/refunded from/to the petitioner with interest under the relevant provisions of ESR-147."*

Learned counsel for the petitioner has argued that the petitioner is not at fault because the CT/PT chamber was in possession of the respondent and also that the damages could not have been imposed from 07.10.2002 as the new Act came into being in the year 2003.

On the other hand, learned counsel for the respondent has submitted that there is no dispute regarding accuracy of the meter and the only dispute is that Red phase was not contributing the energy which is being consumed by the petitioner. It is also submitted that the data has been downloaded from that DDL i.e. the data downloader and on the basis thereof it was found that there was a difference between the units consumed by the petitioner before the CT/PT was changed and thereafter. It is also submitted that the petitioner is rightly made liable to pay from the date CT/PT was installed.

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

The dispute in this case is in a narrow compass because it has been found by the Committee that the CT/PT was installed on 17.10.2002 and was checked on 17.06.2005 and during this period of 32 months the total consumption of the petitioner was 412410 units whereas after the CT/PT was changed, the consumption of the petitioner rose to 644792 units in 32 months. Thus, it was a case of overhauling of the account as per which the respondents have claimed the average from the petitioner.

I do not find any error in the approach of the respondents, and the arguments of the petitioner that the CT/PT was not in their possession is of no excuse because it has been found in the checking report that it was done in the presence of the petitioner that one of the phase was not contributing though the petitioner was using the energy for the purpose of running telephone exchange. The submission of the learned counsel for the petitioner that the recovery should not have been effected from the date of new Act came into being cannot be accepted because it has to be held that the petitioner has been using the energy from the date CT/PT meter was installed on 17.10.2002 and has to pay from that date only and not from the date the new enactment came into force.

At this stage, learned counsel for the petitioner has submitted that the petitioner is not liable to pay interest cannot not be accepted in the absence of law to the contrary.

No other point has been raised.

In view of the afore-said, I do not find any merit.

Dismissed.

September 05, 2017 **(RAKESH KUMAR JAIN)**
tripti **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable: Yes/No