IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.9264 of 2011 (O&M)
Date of Decision: February 03, 2017

M/s Harisar Rice Mills, Sahnewal Dehilon Road, Village Jassar, P.O. Ghawadi, District Ludhiana

...Petitioner

Versus

Punjab State Power Corporation Ltd, Patiala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Puneet Jindal, Senior Advocate with
Ms.Sakshi, Advocate,
for the petitioner.
Mr.Ashok Chaudhary, Advocate,
for respondent Nos.1 & 2.

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AMIT RAWAL, J. (Oral)

The petitioner Rice Mill is aggrieved of the findings rendered by the Zonal Dispute Settlement Committee and the Forum for Redressal of Grievances (Annexures P-4 and P-6).

Mr.Puneet Jindal, learned Senior Counsel assisted by Ms.Sakshi, representing the petitioner submits that the premises of the petitioner were inspected/checked on 26.12.2000, 17.1.2002, 2.7.2002, 27.1.2003, 28.4.2003 and 7.10.2003 by various agencies of the respondent-Board, especially Mobile Meter Testing Squad (MMTS) and found the meter as "OK". The petitioner was flabbergasted to receive a notice (Annexure P-1) dated 10.5.2004, whereby alleged abnormality in the meter regarding the Blue Phase CT of CT/PT Unit was found and resultantly on 5.4.2005, a supplementary demand of Rs.40, 12, 969/- on account of overhauling of the account from December 1998 till November, 2004 was raised.

The aforementioned demand was assailed before the Zonal Committee, which had upheld the same. The matter was taken to the Ombudsman, which had reduced the period of overhauling from 16.10.2000 to 11.11.2004. He further submits that the action of the respondent-board and the Zonal Committee is not in consonance with the provisions of Section 26 of Indian Electricity Act, 1910 (for short "1910 Act"), which was in force at the relevant time as the new Act of 2003 came into force w.e.f. June, 2003 and thereafter by notification, it was extended for a period of six months. As per notifications dated 8.12.2003, 9.6.2004 and 18.2.2010, the applicability of the old Act as regards the meter continued to operate till 15.4.2010.

He further submits that in view of the aforementioned notification, the provisions of 1910 Act would apply and as per sub-section (6) of Section 26 of 1910 Act, quoted in the present writ petition, which is also reproduced here-in-below in respect of the defective meters, the alleged demand can be only confined to a period of six months:-

> *26. Meters.—*
> *(1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:*
> *Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.*

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an 1[Electrical Inspector], and the decision of such Inspector shall be final: Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5)..................

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall

not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity: Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided also that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation.—A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus."

This fact has not been considered by the Zonal Committee and the Ombudsman. In support of his contention, he has relied upon the judgment rendered by the Hon'ble Supreme Court in **Belwal Spinning Mills Ltd. Versus U.P.S.E.B., AIR 1997 (SC) 2793** to contend that the aforementioned provisions had been upheld and, thus, urges this Court that the alleged demand can be only confined to a period of six months preceding the date of checking.

Mr.Ashok Chaudhary, learned counsel for respondent Nos.1 and 2 submits that the aforementioned argument on behalf of the consumer was never raised either before the Zonal Committee or the Ombudsman, therefore, it cannot be permitted to raise the said demand for the first time in the writ petition. Moreover, the provisions of 1910 Act would not apply and there is no provisions of raising the demand confining to period of six months. The orders of the Zonal Committee and Ombudsman are, thus, liable to be upheld and sustained.

I have heard the learned counsel for the parties and appraised the paper book.

The provisions of sub-section (6) of Section 26 of 1910 Act and as well as the notifications, referred to above, have not been disputed or rebutted by Mr.Chaudhary, thus, for all intents and purposes, the applicability of the old Act vis-a-vis the meter was in force till 15.4.2010.

Mr.Puneet Jindal, learned Senior Counsel, during the course of hearing, has drawn the attention of this Court to the notification dated 29.6.2007 issued by the Punjab State Electricity Regulatory Commission to contend that in such type of cases, the period of raising the demand is confined to six months, i.e., 21.4 (g), which reads as under:-

"Overhauling of consumer accounts.

(i) If a meter on testing is found to be beyond the limits of accuracy as prescribed in the Regulations notified by the Central Electricity Authority under Section 55 of the Act, the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of six months immediately preceding, the :

(a) date of test in case the meter has been tested at site to the satisfaction of the consumer; or

(b) date the defective meter is removed for testing in the laboratory of the Licensee where such testing is undertaken at the instance of the Licensee; or

(c) date of receipt of request from the consumer for testing a meter in the laboratory of the Licensee.

Any evidence provided by the consumer about conditions of working and/or occupancy of the concerned premises during the said period (s) which might have a bearing on computation of electricity consumption will, however, be taken into consideration by the Licensee.

(ii) The accounts of a consumer will be overhauled for the period a burnt meter remained at site and for the period of direct supply, on the basis of energy consumption of the corresponding period of the previous year after calibrating for the changes in load, if any. In case the average consumption for the corresponding period of the previous year is not available then the consumer will be tentatively billed for the consumption to be assessed in the manner indicated in para-4 of Annexure-8 and subsequently adjusted on the basis of actual consumption in the corresponding period of the succeeding year.

(iii) In case of stolen, meters the accounts of a consumer will be overhauled for the period of direct supply as per procedure applicable for a burnt meter contained in Regulation 21.4 (g) (ii).

(iv) If a consumer is liable to pay an additional amount or

> *entitled to a refund in consequence of an overhaul of his account in accordance with Regulations 21.4 (g) (i), (ii) and (iii), the Licensee will effect recovery or adjust the excess amount in the electricity bills of the immediately succeeding months."*

It cannot be believed that the party assailing the orders of the Zonal Committee and Ombudsman had not raised the aforementioned point. In my view, the contention of Mr.Chaudhary for not raising the demand is wholly misconceived. In fact, it was taken up. It is in this backdrop of the matter, the Ombudsman reduced the period of overhauling of account from 16.10.2000 to 11.11.2004.

On juxtaposition of the provisions of sub-section (6) of Section 26 of 1910 Act and as well as the notifications promulgated by the Punjab State Electricity Regulatory Commission, extracted above, demand can be only confined to period of six months, thus, in my view, the orders are not sustainable and liable to be modified. Resultantly, the demand of the Electricity Board is confined to six months preceding the date of checking.

It has been stated by Mr.Jindal that the entire amount demand has already been deposited and the petitioner is entitled to refund of the excess amount.

After making such deduction, the Electricity Board would release the amount within one month, failing which it will entail interest at the rate of 9% per annum.

Accordingly, the writ petition is allowed.

February 03, 2017 **(AMIT RAWAL)**
ramesh **JUDGE**

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