

C.W.P. No. 28310 of 2013

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 28310 of 2013

DATE OF DECISION:06.03.2018

Uttar Haryana Bijli Vitran Nigam Ltd.

.....Petitioner

Versus

Electricity Ombudsman, Haryana and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.S. Kundu, Advocate
for the petitioner.

Mr. Kunal Mulwani, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 15.6.2012 (Annexure P-4), whereby, appeal filed by respondent No.2 against order dated 28.12.2011/20.1.2012 (Annexure P-3) passed by the Consumer Grievances Redressal Forum (hereinafter referred to as 'the Forum') has been allowed and also to quash order dated 5.11.2012 (Annexure P-6), whereby, review petition filed by the petitioner against order dated 15.6.2012 was dismissed.

Briefly, the facts of the case as made out in the present petition are that respondent No.2 filed a complaint before the Forum, which was disposed of vide order dated 28.12.2011/20.1.2012 by stating that the

complainant was satisfied and no further action was required in the matter. Aggrieved by said order dated 28.12.2011/20.1.2012, respondent No.2 filed an appeal before respondent No.1 i.e. Electricity Ombudsman Haryana, which was allowed and order passed by Forum was set aside vide order dated 15.6.2012. Thereafter, the petitioner filed review of order dated 15.6.2012 before respondent No.1, which was dismissed vide order dated 5.11.2012.

Learned counsel for the petitioner submits that respondent No.1 has granted the relief to respondent No.2, which was not even claimed in the original complaint filed before the Forum. The relief granted more than the relief claimed to respondent No.2 is not permissible under the law. Learned counsel further submits that finding recorded by respondent No.1 that meter of respondent No.2 was not defective as it was not checked from M&T lab is contrary to the record as the meter was checked at the spot by the competent authority i.e. Sub Divisional Officer of the area. Learned counsel also submits that respondent No.1 while dismissing the review petition has not given any cogent reason and the order passed in the review petition is liable to be set aside. The payment of interest at the rate of 12% per annum has been granted without mentioning any reason and ground.

Learned counsel for respondent No.2 has opposed the submissions made by learned counsel for the petitioner by raising a preliminary objection that the writ petition is not maintainable as none of the rights of the petitioner has been violated. Learned counsel submits that the premises of respondent No.2 was checked on 13.5.2006 by SDO, UHBVNL, Babyal and declared the connected load of 17.452 KWs against sanctioned load of 27.893 KWs. The SDO further declared the installed

electric meter as sticky as per checking report dated 13.5.2006. A note was also appended to replace the existing Electro-Mechanical meter with Electronic Meter with MDI feature and also to overhaul the bill for the last six months on the basis of consumption for the period from May, 2005 to October, 2005. Learned counsel further submits that an amount of ₹41,837 was proposed to be charged from respondent No.2 vide letter dated 22.5.2006, whereas, bill of ₹53,210 was issued instead of ₹41,837/- The petitioner-department continued to charge an extra amount upto 17.2.2007, meaning, thereby that the Electro-Mechanical Meter was declared sticky in the bill dated 18.5.2006 to 19.8.2006 and 20.10.2006 to 17.2.2007. Learned counsel also submits that the meter installed at the premises of respondent No. 2 was not sticky as per consumption mentioned in bill dated 19.6.2006 and this fact is also substantiated from the consumption for the period w.e.f. May 2006 to June, 2007. A representation was also made to SDO, UHBVNL, Babyal vide letter dated 25.5.2016 to get the meter checked from the laboratory, however, the bill was paid under protest upto 17.2.2007. It is also the argument of learned counsel that meter with MDI feature was purchased from the market vide cash memo dated 23.7.2006 and the same was submitted to the department with Electro-Magnetic Meter and ultimately it was replaced in the month of January, 2007. The meter was supplied to the Department by respondent No.2 but still the meter rent was charged upto 12.11.2009. Due to action of the petitioner-department, excess amount to the tune of ₹1,03,585/- had to be paid. Learned counsel submits that by stating that the complainant-respondent No.2 was satisfied before the Forum, the complaint filed by respondent No.2 was disposed of by giving a wrong finding. There was no reason to file appeal against said

order in case respondent No.2 was satisfied. At the end, learned counsel for respondent No.2 submits that the working of the meter was in order and wrongly it was declared defective with mala fide intention. The meter was not got checked from M&T lab. The meter installed at the premises of respondent No.2 again became defective in the month of September, 2009 and remained defective upto November, 2009. Thereafter, it was replaced in the month of December, 2009. The consumption of the electricity was low in the months of November, 2004 to 2008 as compared with the consumption of November, 2010 and November, 2011. The bill was prepared after considering consumption of September, 2010 to November, 2010, which was the highest consumption. By considering all these facts as well as entire evidence and material placed on record, the claim of the petitioner was accepted and appeal filed by respondent No.2 was allowed, which requires no interference.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned orders and other documents available on the file.

A perusal of impugned order dated 28.12.2011/20.1.2012 clearly shows that the said order was passed by recording that the complainant (respondent No.2) was satisfied and no action was required in the matter. The relevant portion of the said order is reproduced as under:-

“The Forum considered the facts and observed that the charges put by the respondent SDO were as per the instructions of the Nigam and were correct. Also the complainant is satisfied. So no further action is required in the matter.”

Aggrieved by said order dated 28.12.2011/20.1.2012,

respondent No.2 filed an appeal before respondent No.1, whereby, it was clearly held that meter installed at the premises of respondent No.2 prior to 13.5.2006 and checked on 13.5.2006 by the checking party was in order and the consumption of respondent No.2 during the months of November to March was low due to less business activities. It was also held that the meter was not tested/checked from M&T Lab accurately by the competent authority. The petitioner-Department was directed to refund the amount charged from respondent No.2 for the period w.e.f. November, 2005 to January 2007 on account of defective meter along with surcharge. A direction was also issued to overhaul the account of respondent No.2 for the period September, 2009 to November, 2011 on the basis of consumption for the months of September, 2008 to November, 2008. However, the amount of surcharge was waived off. It was also held that since the meter was supplied by respondent No.2 during the month of July, 2006 but it was installed in January, 2007, the amount charged on account of meter rent after January, 2007 be refunded to respondent No.2.

After hearing the arguments of learned counsel for the parties and on perusal of all the orders, it is apparent that without verification of the meter and also by not considering the period when low consumption was there, the bill was prepared, therefore, correct assessment of the reading of the meter was not done

Accordingly, the present petition is disposed of with a direction to petitioner-Department to reconsider the claim of respondent No.2 as mentioned in the initial complaint or any other representation to be filed by him.

However, it is directed that while deciding the claim of

respondent No.2 all the factors, which were considered by the appellate authority, be taken into consideration. The petitioner is also at liberty to give opportunity of hearing to respondent No.2, if necessary. It is also directed that respondent No.2 shall not be liable to pay rent after the date of supply of the meter as directed by the appellate authority.

The necessary exercise be done within a period of two months from the date of receipt of a certified copy of this order.

March 06, 2018

pooja

(DAYA CHAUDHARY)

JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes