

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

1. CWP No. 26818 of 2016

Date of Decision: 8.5.2018

Dr. Avinash Suri

.....Petitioner

v.

State of Haryana and others

.....Respondents

2. COCP No. 366 of 2017

Dr. Avinash Suri

.....Petitioner

v.

Manoj Yadav and another

.....Respondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Dr. Surya Prakash, Advocate, for the petitioner(s)
Mr. Saurabh Mohunta, DAG, Haryana
Mr. Raheel Kohli, Advocate, for the private respondents

RAKESH KUMAR JAIN, J.

This order shall dispose of two petitions bearing CWP No. 26818 of 2016 titled as **Dr. Avinash Suri v. State of Haryana and others** (for short the '1st petition') by which the petitioner has prayed for the issuance of a writ in the nature of certiorari to quash the order dated 30.11.2016 passed by the Ombudsman, Electricity Haryana and the COCP No. 366 of 2017 titled as **Dr. Avinash Suri v. Manoj Yadav and another** (for short the '2nd petition'), which has been filed for the alleged violation of the order dated 30.11.2016 passed in the first writ petition.

The controversy in this case has arisen with the checking of the

two meters, namely CT Meter and Polyphase Meter, installed inside and outside the premises respectively of the petitioner. The petitioner had lost before the Consumer Grievances Redressal Forum, DHBVN, Hisar on 26.6.2013 against the demand dated 6.3.2013. The Ombudsman decided against the petitioner vide the impugned order dated 30.11.2016 observing that “I am of the view that under the circumstances, the consumption of the appellant's meter be calculated as per the Regulation No. 6.9 (d) of Regulations HERC/29/2014 by taking the number of units per kilowatt of the sanctioned load or part thereof per month for the relevant category.”

Learned counsel for the petitioner has submitted that the Ombudsman has committed an error in law in misreading the circular Regulation HERC/29/2014 as Regulation No. 6.9 (d) is not applicable to the facts of the case and rather the Sales Manual Instruction are applicable.

Learned counsel for the petitioner has drawn the attention of the Court to Clause 6.9.1 of the Regulations which read as under :

“6.9.1 Billing in case of defective/sticky/dead stop/burnt meter

(1) In case of defective/sticky/dead stop/burnt meter, the consumer, during the period of defective meter, shall be billed provisionally in the following manner -

(a) On the basis of the consumption recorded during corresponding period of previous year when the meter was functional and recording correctly.

(b) In case the same is not available, then on the basis of average consumption of the past 6 months immediately preceeding the date of the meter being found/reported defective.

(c) If period of installation of meter is less than six months, then the consumer shall be billed on the basis of average consumption of the period from the date of installation of the meter to the date of the meter being found/reported defective.

(d) In case no previous correct consumption date is available owing to new connection or otherwise, the consumer shall be billed provisionally for the units as mentioned in the table below.”

It is submitted that the said Regulation would apply to a case of defective, sticky, dead stop, burnt meter, whereas the meter in the present case is none of them. This is also not denied by Mr. Raheel Kohli, Advocate, who is appearing on behalf of the private respondents. However, he has submitted that the Clause 6.9 (d) of the Regulations has been applied because the data was not available.

I have heard learned counsel for the petitioner and after examining the record, am of the considered opinion that there is a patent error on the part of the Ombudsman in concluding against the petitioner while directing that the petitioner be billed in terms of Clause 6.9 (d) of the aforesaid Regulations because the said Clause 6.9 (d) would itself says that it would apply to a case of “Billing in case of defective/sticky/dead stop/burnt meter.”

Since it is not the case of the respondents that the meter installed at the premises of the petitioner was either defective, sticky, dead stop or burnt, therefore, Clause 6.9.1 of the Regulations cannot be applied to the case of the petitioner, much less Clause 6.9 (d) as has been done by the Ombudsman. Therefore, I am of the considered opinion that the Ombudsman has committed a serious error in concluding against the petitioner in terms of Clause 6.9 (d) of the Regulations. The impugned order passed by the Ombudsman, Electricity Haryana is thus, hereby set aside.

Then the question would arise as to what amount the petitioner is liable to pay?

In this regard, the petitioner has submitted that his case would be

governed by the Instruction No. 1.17 and No. 4.20 of the Sales Manual Instructions which is denied by learned counsel for the private respondents.

Thus, it would be a matter of debate before the Ombudsman who would take a decision on this issue after hearing both the parties and after referring to the record and the relevant circulars/regulations etc.

Parties are directed to appear before the Ombudsman on 9.7.2018.

The second petition of the petitioner bearing COCP No. 366 of 2017 is not pressed, therefore, the same is dismissed as not pressed.

A photocopy of this order be placed on the connected case file.

(RAKESH KUMAR JAIN)
JUDGE

8.5.2018.
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No