IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 7662 of 2016 (O&M)
Date of Decision: 04.07.2018

SATISH SANDHU AND ANOTHER

...... Petitioner

V/s.

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. R.S. Bhudwar, Advocate
for the petitioners.

Mr. Deepak Manchanda, Advocate,
for the respondents.

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RAKESH KUMAR JAIN, J. (Oral)

The petitioners have assailed the validity of the notice dated 26.08.2002, checking report dated 13.08.2002 and testing report dated 20.08.2002 as well as the order dated 11.03.2016 of the Special Court. The petitioners have also prayed for refund of amount of ₹ 30,000/- deposited by them in the respondents' account on 28.08.2002 in pursuance to the order passed by the District Consumer Forum, Karnal.

In brief, the petitioners had purchased House No. 567, Model Town, Karnal on 06.07.2001 from one Amardeep alongwith electricity connection No. LS22-3290. The premises of the petitioner was checked on 13.08.2002 by the Assistant Director Vigilance, UHVPNL alongwith some other officials including Junior Engineer and two linemen. The checking staff found that the meter takes 30 revolution (for 1/10 unit) against the meter constant of 240 (24 Rev for 1/10 unit) at a running load of 29.5 Amps. It was also found that the meter was dead stop on phase 'B' with same running load and on phase R&Y at 6 KW load which takes 7 seconds for one revolution. It has come in evidence of P.K. Kadian, Executive Engineer UHVPNL, Panchkula and the meter was taken off on account of suspected theft of electricity and was sent to the M&T Laboratory for physical verification, etc. The meter was packed in a card box, papers were sealed and signed by the checking party and handed over to Sh. G.C. Dua, Junior Engineer for its verification.

The petitioners received a notice vide memo No. 1541 dated 26.08.2002 by which they were informed that on checking of the meter in M&T Lab., seal of the meter was found duplicate and fake and vide report dated 20.08.2002, they have been held guilty for theft of electricity and were fined with ₹ 60,586/-. They were directed to deposit the said amount within 48 hours.

The said report dated 20.08.2002 was challenged by the petitioners before the District Consumer Forum, Karnal. The Forum asked the petitioners to deposit at least half of the amount i.e. ₹ 30,000/- before the complaint could be entertained. The petitioners have deposited the said amount on 28.08.2002. The Forum allowed the complaint by its order dated 27.02.2004 but the appeal against it filed by the respondents before the State Consumer Disputes Redressal Commission, Haryana was accepted vide order dated 04.08.2010.

Thereafter, the petitioners challenged the order dated 04.08.2010 before the National Consumer Commission, New Delhi but the same was withdrawn on 01.04.2014 with liberty to take appropriate remedy in view of the decision of the Supreme Court rendered in the case of U.P. Power Corporation and others Vs. Anish Ahmad, before the Special Court constituted under Section 152 of Electricity Act, 2003. The petitioners filed the petition before the Special Court which was dismissed on 11.03.2016 and thus, the present petition has been filed to challenge the notice dated 26.08.2002, checking report dated 13.08.2002 and testing report dated 20.08.2002 as well as the order dated 11.03.2016 of the Special Court.

Learned counsel for the petitioner has submitted that DHBVN has issued a Sales circular No. D-43/2007 dated 20.07.2007 (hereinafter referred to as 'the Circular') to all its components, issuing the instructions for dealing with the cases of theft of Electricity under Electricity Act-2003, Electricity (Amendment) Act, 2003 and Electricity (Amendment) Act, 2007. This sales circular has superseded the earlier instructions issued vide sale circular No. D-44/2005 and its amendments and other sales Circular on theft of electricity. According to the learned counsel for the petitioner, the complete procedure is prescribed in the circular in cases of theft and suspected theft. In regard to the cases pertaining to suspected theft, following instructions have been issued: -

> ***"(B) In the case of suspected theft (broken/tampered/ fake seals of meter and / or metering cubicle / cut in incoming PVC Cable or any other instance where evidence is not available at site)***
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> > *(a) In the cases of suspected theft, the inspection team shall not disconnect the supply and shall restore the supply through a new meter of appropriate rating after sealing the original metering equipments at site by Johnson's paper seals,. After inspection, the authorized inspecting officer shall prepare a checking report giving details such as connected load / MDI, conditions of seals, working of meter and mention other irregularities noticed during checking. If needed, AIO shall remove the meter and put it in a properly sealed cardboard box in presence of consumer or his representative which shall be duly signed by checking team and consumer. Seizure memo*

would also be prepared. The AIO shall record the particulars of the same in the report before sealing and taking the meter /seals/ metering equipments for testing in M&T lab as per clause (d) or any other agency. The report must be signed by each member of the joint team.

(b) The consumer shall be served within 2 working days a notice ***(Annexure-II)*** *signed by senior most officer of the inspecting team at the site as to why the case of theft of electricity should not be framed against him/her. The notice should clearly state the time, date and place at which the reply has to be submitted and the name of the designated officer to whom it should be addressed. The notice must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of each must be pasted at a conspicuous place in/outside the premises. Simultaneously, the joint report and the notice shall be sent to the consumer under Registered Post.* ***The designated officer for the above purpose shall be SE 'OP' for the CT/PT meters and XEN 'OP' for Whole Current Meter****.*

The consumer is at liberty to represent to the designated officer within 3 days from the date of receipt of notice.

(c) Within 4 working days from the date of submission of consumers' reply, if made within prescribed period, the designated officer shall give a personal hearing to the consumer, if request in this regard has been received from consumer. After due consideration of the matter, the designated officer shall pass a detailed order within 15 days from the date of personal hearing or receipt of reply, as the case may be ***(Annexure-III)*** *as to whether the case of suspected theft of Electricity is established or not. The order shall contain the brief of inspection report, submissions made by consumer in his written reply and during personal hearing and reasons for acceptance or rejections of the same and the amount of assessment, period of assessment as per clause-III.*

*(d) **Testing of meter / seals /metering equipment: -** In cases of suspected Theft of Electricity through tampering of meters or metering equipments or seals, the meter / metering equipments shall be taken out from the premises in a sealed box duly witnessed by the consumer, for requisite testing in the M&T laboratories. The designated officer shall issue a letter to the consumer at least one week in advance, informing him about the date of meter testing, and requesting him to attend the same. If the consumer is not present during the testing on the scheduled date, the testing shall be carried out in the presence of the two officers of the Nigam not connected with the inspection*

(e) Further, in case of suspected theft of electricity, if consumption pattern for last one year is reasonably uniform and is not less than 75% of the assessed consumption as per clause-III, no further proceedings shall be taken and the decision shall be communicated to the consumer under proper receipt within 3 working days and connection shall be restored through original meter.

(f) Where it is established that there is a case of theft of Electricity, then the procedure as prescribed under Clause-(II)(12)(A)(c to g) shall be followed."

It is submitted that as per Clause 12 (B) (d), in a case where the meter is sent to the M&T Lab for testing, the respondents are obliged to give one week notice in advance to the consumer informing the date of meter testing and requesting him to attend the same. It is, however, submitted that in case the consumer receives the notice and not wish to be present there, then testing of the meter can be carried out in the presence of the two officers of the Nigam not connected with the inspection.

Learned counsel for the petitioner has challenged the entire proceedings carried out by the respondents on the basis of the provisions of Clause 12 (B) (d) of the Circular.

Learned counsel for the respondents has fairly conceded that no notice was given to the petitioner regarding the meter removed from their premises for testing in the M&T Lab. However, it is submitted that the petitioner had taken this plea before the Special Court but a finding has been recorded against them to the effect that "*Hence, the mere fact that the petitioners were not present at the time of checking of the meter in the laboratory, will not be a circumstance, sufficient enough in order to cast aspersion on the quality of evidence so adduced by the respondents.*"

I have heard learned counsel for the parties and perused the record with their able assistance. The question arises in this case for adjudication is as to whether in a case of suspected theft, where the meter is removed from the premises of the consumer and is sent to the M&T Lab for its verification or inspection, the consumer is required to be served a notice intimating him the date on which the meter has to be tested ?

The answer to this question is provided under Clause 12 (B) (d) of the Circular itself which has been issued by the respondents that in case of deciding the matter in regard to the suspected theft the Officer shall send a letter to the consumer at least one week in advance informing him about the date of meter testing and request him to attend the same.

That being so, it was the obligation on the part of the respondents to have played the game fairly inasmuch as by informing the consumers/petitioners about the date on which the meter was required to be tested in M&T Lab in order to ensure that the meter removed from their premises is not touched in their absence and was taken out of the seal cover in their presence.

Since, the respondents have not followed their own procedure set down in the Circular, therefore, they cannot be given advantage of their own wrong to impose penalty of ₹60,586/- upon the petitioners for the alleged act of theft of the electricity.

Thus, in my considered opinion, the entire proceedings are vitiated starting from the checking and upto the order dated 11.03.2016 having been passed by the Special Court who has erred in dismissing the petition without looking into the aspect of this matter only on the ground that the other evidence brought on record is sufficient to hold that the petitioners were engaged in the theft of electricity.

In view of the aforesaid observations, the present petition is hereby allowed and the impugned orders i.e. notice dated 26.08.2002, checking report dated 13.08.2002 and testing report dated 20.08.2002 as well as the order dated 11.03.2016 of the Special Court are hereby set aside.

It is further directed that a sum of ₹ 30,000/- deposited by the petitioner in the account of the petitioner, in pursuance to the order passed by the District Consumer Forum, Karnal, shall be returned within a period of one month from the date of receipt of certified copy of this order.

July 4, 2018 **(RAKESH KUMAR JAIN)**
Ess Kay **JUDGE**

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