

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

**RFA No.2565 of 2018 (O&M)
Decided on : 05.12.2018**

Punjab State Power Corporation Ltd. & others ... Appellants

Versus

Usha Kiran ... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. J.S.Randhawa, Advocate, for the appellants.

G.S.SANDHAWALIA, J. (Oral)

CM-5669-CI-2018

Allowed, as prayed for.

CM-5668-CI-2018

Application for condoning the delay of 73 days in filing the present appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 73 days in filing the present appeal is, hereby, condoned.

CM stands disposed of.

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The present appeal is directed against the judgment of the Addl.District Judge, Jalandhar dated 16.11.2017, allowing the petition filed under Section 154(5) of the Electricity Act and for setting aside the demand of Rs.58,085/-, raised by the respondents, vide letter dated 14.01.2015 against electric connection No.MT54/1393 of the consumer which was installed at 3-Green Model Town, Jalandhar.

The reasoning given by the Court is that the meter which had been removed, had not been packed nor sealed and neither had been

checked in the presence of the consumer. The checking report (Ext.R-2) did not bear the signatures, as such, of the official, namely, Gagandeep, Junior Engineer, RW-3 and the alleged consent letter (Ext.R-5) did not bear any date. Even the signatures of the consumer were not present on Ext.R-5. It was further noticed that the meter was also checked after 20 months and it remained in the custody of the said official in the same room and neither any explanation nor any evidence was forthcoming, for the delay in sending the meter to the ME Lab. Resultantly, reliance was placed upon Regulation 57.3 that the same had to be forwarded to the ME Lab within one week after the damaged/burnt meter had been replaced, apart from the fact that the checking was to be done in the presence of the consumer. The argument that the consent had been given and the checking could be done in her absence was, thus, rejected, on the ground that the respondents had failed to follow the mandatory guidelines laid down under the Electricity Supply Manual and the report of the ME Lab dated 13.01.2015 (Ext.R-3) cannot be said to be sustainable.

Counsel for the appellant-Corporation has sought to argue that the delay was on account of the large number of meters which had to be checked and once there was a consent given by the consumer herself, the requirement to send notice and to get the meter checked in her presence, could be dispensed with.

The said argument does not cut much ice with this Court. A perusal of the record which has been summoned would go on to show that the meter was changed on 26.04.2013 (Ext.R-2) and it was the case of the consumer that the same was neither packed nor sealed, as per the

requirement of law and the demand was raised on 14.01.2015, on the basis of which, the petition came to be filed before the Court.

The defence of the Corporation was that the same was changed in the presence of the consumer and she was asked to be present in the ME Lab so that the meter could be checked. It has further been averred that the consumer showed her unavailability and gave consent to get the meter checked in the ME Lab in her absence. The checking was done on 13.01.2015 by the Addl. Superintending Engineer Enforcement-I, Jalandhar along with other Engineers and there was a report that additional outer resistance over the circuit of the electric meter was reducing the electric consumption and thus, a case of theft of electricity was made out and a notice of demand for Rs.58,085/- dated 14.01.2015 had been raised along with a sum of Rs.27,000/- on account of compounding charges and a total demand of Rs.85,085/- was made. A criminal complaint had also been lodged against the consumer.

The consumer, in her affidavit, took the plea that the meter was neither packed nor sealed. The cross-examination of RW-1, Rajesh Kumar Pandey, Revenue Superintendent would go on to show that he admitted that the meter was not removed by him nor packed or sealed in his presence. He also admitted that the meter had been checked in the ME Lab after 20 months and he did not know that as per the mandatory provisions of law, the meter was liable to be checked within 15 days of its removal. He did not know under whose custody it remained for 20 months.

The affidavit of Gagandeep, Junior Engineer, who has been

examined as RW-2, would go on to show that a consent letter had been obtained from the representative of the consumer (Ext.R-5) that she had no objection if the removed meter was checked in ME Lab in her absence. He had deposed that the checking was done in his presence as well as the Senior Engineers of the Corporation and thus, a case of theft was made out. In cross-examination, he admitted that if the meter was packed, the official/officer of the ME Lab would have put the tick mark in the column of 'packed meter'. He further admitted that as per Ext.R-3, the relevant column had been left blank by the official of the ME Lab, leading to the inference that the meter was not packed and sealed. He admitted that 20 months' period had lapsed and the meter had remained in his custody in his room and public dealing was also done in the same room where the removed meter was kept. The removal of the meter also did not show the signatures of the consumer and did not even bear any the reference to the tampered meter though he had clarified that the same was to be determined by the ME Lab. He deposed that he was present at the time of checking in the ME Lab but his signatures was not visible on the alleged ME report (Ext.R-3) which was supposed to be a photocopy. He had volunteered that he had brought the original ME report which bore his signatures. Ext.R-5 did not bear any date and the name of the consumer was written by him on the same. He admitted that he had prepared Ext.R-5 which did not bear the signatures of the consumer.

A perusal of Ext.R-5 would go on to show that it was a typed format whereby the consent of the consumer had allegedly been taken. In the said format, the meter number had been filled by hand and the name

of the consumer had been put. The translated version of the format, which has also been placed on record as Annexure A-1, reads as under:

“To

The Assistant Executive Engineer,
Commercial Unit No.2
Boota Village, Jullandhar

Subject: For investigation of Meter in ME Lab.

Sir,

It is prayed that my meter having Khata No. MT54/1393 has been changed. This meter has to be brought in ME Lab of your department for further investigation. My removed meter be checked in my absence. Whatever of its results, will be accepted to me.

Yours faithfully”

Thus, it is apparent that even if it is accepted that the same was signed by the consumer, it is a format which was taken at the asking of the officials and it cannot be held against the consumer to get over the regulations whereby the consumer is to be given an opportunity to be present before the ME Lab.

A Division Bench of this Court in **M/s Tirupati Industries Vs. Punjab State Electricity Board 2000 (2) PLR 356**, held that the rule of hearing and rule of fairness form part of concept of rule of law and the principles of natural justice have been firmly recognized by the Courts and every action has to be free from arbitrariness and discernible reasons.

In **Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Amarjit Singh Chadha 2010 (1) PLR 676**, it was held that before raising a demand, a show cause notice has to be issued and an opportunity of hearing must be given and the authorities are not competent at their own

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level to claim any extra amount for slow, defective meter or non-registering of energy on one phase.

The Trial Court had also placed reliance upon the judgment in Tarsem Singh Vs. Punjab State Electricity Board 2002 (2) RCR (Civil) 772 (P&H) and Uttar Haryana Bijli Vitaran Nigam Ltd. Vs. Brijesh Kumar Garg 2009 (2) RCR (Civil) 799 (P&H) to this effect.

Resultantly, this Court is of the opinion that the Trial Court was well justified in setting aside the demand, as such, on account of the fact that neither the meter had been sealed in the presence of the consumer and even the ME Lab had noticed that the meter was not sealed. The meter was kept for over a period of 20 months by the official in an open area which was accessible to all. Even at the time of checking, the consumer was not associated and no notice was issued to her and therefore, on all accounts, the respondents have chosen to violate their own instructions. In such circumstances, the order impugned cannot be faulted in any manner and the same is liable to be upheld, for the reasons mentioned above.

Resultantly, in view of the above discussion, the present appeal is dismissed in limine.

December 5th, 2018
sailesh

(G.S.SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*