

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

RSA No.1917 of 2014

Punjab State Electricity Board and Ors.

....Appellants

Versus

M/s P.V.M Enterprises Pvt Ltd

....Respondent

Date of Order: 02.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Kumar Sharma, Advocate for the appellants.

Mr. Yogesh Goel, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

The present regular second appeal is directed against the judgment and decree dated 31.7.2013 passed by learned Addl. District Judge, Ludhiana whereby the appeal filed by them against the judgment and decree dated 25.3.2011 passed by learned Civil Judge (Jr. Division), Ludhiana, decreeing the suit of the plaintiff, has been dismissed.

It would be in the fitness of things to narrate the following facts, which read as under:

The respondent-plaintiff instituted the suit for permanent injunction restraining the defendants from disconnecting the electric connection No.FP-53/00582 installed in the premises of the plaintiff. It is averred that the plaintiff company had applied for electric connection for running its factory which was sanctioned and installed in the premises of the plaintiff with connected load of 661.613 KW. The plaintiff had been consuming the actual load and paying electricity bills etc and never violated the instructions. He all of a sudden received memo No.1262 dated

15.2.2007 demanding Rs.2,32,213/- belonging to the account No.FP-53-582 which was not related to the plaintiff as the account number of the plaintiff was FP-53/00582, for violation of the peak load of electricity. Another memo dated 31.7.2007 was also issued calling upon the plaintiff that his meter was defective for the period from 27.12.2005 to January 2006, February, March and upto 10.4.2006 and they created demand of Rs.6,24,269/-. It was averred in the plaint that the Board was not competent to create any demand and it is the Chief Electrical Inspector of Punjab Government, who was competent to decide the matter.

The suit was contested by the defendants, who raised various preliminary objections regarding maintainability of the suit. On merits, it was stated that one phase of meter CTPT unit was showing lesser output due to low voltage and due to that reason, a star was appearing/displayed permanently. The CTPT unit was defective and required to be changed. The load was extended to 661.630 KW and CTPT units were reported to be defective as per the report dated 02.3.2006 and were replaced on the basis of the above report, which was also signed by the consumer on 10.4.2006. New CTPT was installed in place of defective one. The audit party decided to revise the account of said connection for the installation of defective CTPT till its change and the account was revised from 27.12.2005 to 10.4.2006 and therefore the demand was totally justifiable.

The trial Court on the basis of evidence decreed the suit holding that it was the Chief Electrical Inspector, who was competent to decide the issue with regard to alleged violation. The appeal filed by the defendants against the said judgment was also dismissed by the lower Appellate Court.

Learned counsel for the appellants-defendants submitted that both the courts below have committed grave illegality and perversity while recording that the defendants have not followed the procedure of revising the bill once the meter was defective. Both the courts below have also not appreciated the fact that in such proceedings, the remedy available for adjudication of the alleged dispute was with the appropriate Forum, in terms of Section 143 of the Electricity Act, and in fact the matter was to be decided by the Dispute Settlement Commission. He submitted that the new Electricity Act of 2003 was applicable instead of Indian Electricity Act, 1910, therefore the findings of the courts below with regard to adjudication of the dispute by the Chief Electrical Inspector were incorrect appreciation of the provisions of the Act. In support of his contentions, he relied upon a judgment of this Court reported as **M/s Ranbaxy Laboratories Ltd Vs. Punjab State Electricity Board, Patiala, 2004(1) RCR (Civil) (FB) 816**.

Learned counsel for the respondent submitted that the alleged defective CTPT was never put to the consumer. Examination and removal of the same in the absence of the consumer was one of the grounds for challenging the alleged demand and both the courts below have rightly observed that the adjudication was to be done by the Chief Electrical Inspector. He, thus prayed for dismissal of the present appeal.

After hearing learned counsel for the parties and appraising the paper book, I find no merit in the contentions of learned counsel for the appellants as the law in the light of law laid down by Hon'ble Supreme Court in Punjab State Electricity Board Vs. Ashwani Kumar 1997(3) RCR (Civil) 147 is no longer a good law for in **M/s Ranbaxy Laboratories's case (supra)** it has been held that the Civil Court would have jurisdiction to

try and entertain the suit on such matters wherein the supply of electricity has been found to be without jurisdiction. It is well settled law that any impugned action of the Authorities without jurisdiction can always be amenable to the jurisdiction of the Court either under Article 226 of the Constitution or under Section 9 of the Civil Procedure Code de hors the availability of alternative remedy. Coming to the controversy in question as set up by the appellant before the courts below that once the CTPT unit was defective, the demand was made on the basis of average consumption, I find that no documentary evidence has been placed on record to substantiate this plea. The CTPT unit was not examined by any expert nor any excavation, if any was done in the presence of the consumer for the purpose of ascertaining the meter to be defective of running slow, the view of mine is derived from a judgment of Division Bench of this Court reported as **M/s Tirupati Industries Vs. Punjab State Electricity Board 2000(2) PLR 356**. Mr. Sharma has not been able to refer any documentary evidence on record that the Board had followed such procedure. It is also not in dispute that the alleged inspection of the premises was done post coming into force of Electricity Act, 1910. Since the Electricity Board did not adhere to the provisions as mentioned above, I am of the view that the demand was not justifiable and has rightly been observed to be not sustainable.

No ground is made out for interference much less no substantial question of law arises for determination.

Dismissed.

April 02, 2018
manoj

^(AMIT RAWAL)
JUDGE

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