

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

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**R.F.A No. 5305 of 2017 (O&M)
Date of decision: 24.04.2018**

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

Vs.

Dilbagh Singh ...Respondent

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

Present: Ms. Bhavna Gupta, Advocate, for the appellants.

G.S.SANDHAWALIA, J. (Oral)

C.M No. 13225 – CI of 2017

Application has been filed for condoning the delay of 02 days,
in filing the appeal.

In view of the averments made showing sufficient cause
explaining for the delay duly supported by an affidavit, the delay of 02 days
in filing the present appeal, is hereby condoned.

C.M disposed of.

RFA No. 5305 of 2017

Appellant - Corporation has filed the present appeal against the
order dated 23.02.2017 passed by the Special Court comprising of the
Additional District Judge, Jalandhar under Section 156(3) of the Electricity
Act, 2003 (in short, 'the Act') Vide impugned judgment the petition filed by
the petitioner – Dilbagh Singh under Section 154(5) of the Act, was allowed
and the demand of Rs.72,314/- (Rs.55,274/- plus Rs.17,040/-) raised by the

appellant vide letter dated 20.11.2013 was set aside. The amount was to be adjusted against the future bills by respondents regarding consumption of electric energy through the electric meter connection.

The checking in case in hand was done on 12.10.2013, when the meter was removed in the presence of the son of the respondent. The testing was done on 13.11.2013 in the absence of the consumer or his representative on the basis of which the demand was raised on 20.11.2013, which led to the filing of the petition before the Special Court. The defence taken by the appellant – Corporation was that the sealing was done in the presence of son of the respondent, namely, Lovepreet Singh. The Special Court came to the conclusion after relying upon the relevant rules and regulations that the meter had been removed in the presence of the representative of the consumer but the consent letter Ex. D/3 was in performa which was got signed from the son. The report Ex. D/2 did not bear the signatures of the petitioner or his son Lovepreet Singh. Even the witness DW-1 had stated in his cross-examination that neither the MCO Ex. D/5, nor the report was in his hand. The Court noticed that no prior notice was given to the petitioner regarding the date, time and place of the checking of electric meter in the M.E lab, prior to the issuance of notice on the basis of which the demand was raised and resultantly, the petition has been allowed by setting aside the demand notice and rejecting the defence that the petition was not maintainable.

Reliance has been placed upon the Division Bench judgment of this Court in *M/s Tirupati Industries Vs. Punjab State Electricity Board, 2000(1) R.C.R. (civil) 681* and *Dakshin Haryana Bijli Vitran*

Nigam Ltd. & Anr. Vs. Amarjit Singh Chadha 2010(2) RCR (Civil) 605 by the Special Court. The Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters), Regulations, 2007, which pertain to the theft of Electricity provide, the procedure to be followed in the case of theft and electricity under Regulation 37. Regulation 37.2 provides for the consequence of theft of the Electricity and the procedure which is to be followed. The same reads as under:-

“(a)(i) In case theft of electricity by a consumer/person is prima facie established, then the supply to such premises will be immediately disconnected by an officer of the Licensee as authorized for the purpose by the Commission or any other officer of the Licensee of the rank higher than the rank of an officer so authorized by the Commission. In such a case, an officer so authorized by the Commission shall lodge a complaint in writing, in this respect with the police station having jurisdiction of the area within twenty four hours from the time of such disconnection. The Authorized Officer will also immediately initiate action under Regulation 37.2(b).

(ii) In case where a consumer is suspected to have indulged/indulging in theft of electricity by tampering with the meter/metering equipment and or its seals or otherwise then such equipment shall be sealed by the Authorized Officer so as to keep it as 'in found condition'. The consumer or his representative will also be permitted to affix his seal at that time.

(iii) In all cases falling under Regulation 37.2 (a)(ii) the Authorized Officer will, after giving the consumer/person an opportunity of being heard, determine within seven days whether or not there is sufficient evidence to conclude that a case of theft of electricity is prima facie established.”

A perusal of clause 37.2(ii) would go to show that where the tempering has been done of the meter and it has been kept sealed by the authorised officer, the opportunity of hearing is to be given to the consumer and the determination to be done within 7 days whether or not there is sufficient evidence to conclude that there is a case of theft of electricity. Nothing has been brought on record regarding this aspect, regarding the issuance of notice and the hearing given to the consumer's representative.

Factual finding has been recorded by the Special Court that when the testing was done on 13.11.2013 the consumer was not even associated with the said inspection process. Counsel for the Corporation is not able to show from the record that the finding is as such is incorrect as to the lack of association at time of checking of meter after removal and whether any notice was given which is the principle as such even laid down by the Division Bench judgment in *M/s Tirupati Industries'case* (Supra), which has been relied upon by the Special Judge.

In such circumstances the consumer could not have been faulted who has not been associated in the checking process of the meter, even if the meter has been taken in a sealed cover in the presence of son. The corporation is bound by its own regulations and the argument raised that report has not been challenged is without any basis once it has not been

done as per the procedure prescribed. The demand was raised on the basis of the report of ME lab and once the prescribed procedure has not followed by the officer's of the Corporation the benefit which has been granted to the respondent – consumer cannot be faulted in any manner.

Resultantly, there is no merit in the present appeal and the same is dismissed.

April 24, 2018
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(G.S. SANDHAWALIA)
JUDGE

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