

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

RSA No.316 of 2014 (O&M)

Date of decision:20.03.2018

Punjab State Power Corporation Limited, Patiala

... Appellant

Vs.

Tejinder Mohan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.S.Mittal, Advocate
for the appellant.

Mr. Vijay Lath, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-defendant is in Regular Second Appeal against the judgment and decree dated 07.05.2013 rendered by the Lower Appellate Court, whereby, suit of the respondent-plaintiff challenging the demand of ₹1,12,341 raised by the defendant, vide letter no.926 dated 02.06.2005, had been decreed.

The facts as emanating from per pleadings of the parties to the lis revealed that respondent-plaintiff instituted the aforementioned suit on the ground that the alleged demand raised was illegal, arbitrary and without any reasons or justification, for, the plaintiff being consumer of electricity had been making payment of the bills of actual electric consumption regularly. The checking was done at the premises of the plaintiff by the

officials of the defendant on 10.02.2006. The meter of the plaintiff was found defective, particularly there was wrong connections inside the meter and due to that reasons, the meter was running slow. It was alleged that the wires of the blue and yellow phases were connected wrongly, in essence, the same were cross connected. On 10.06.2006, the plaintiff was astounded to receive demand letter No.926 dated 02.06.2006 calling upon him to pay the amount of ₹1,12,341/-. It was also averred that the defendants failed to remove the seal and get the meter of the plaintiff checked from either ME Lab or from the Chief Electrical Inspector, therefore, the penalty could not have been raised.

The defendants appeared and filed written statement by raising objections qua maintainability and locus standi. On merit, it was stated that checking of the meter was done in the presence of the plaintiff, who appended the signatures on the checking report. The meter was running slow by 39.78% as it was recording reading 60.22 units instead of 100 units. Owing to the aforementioned fact, the demand was justifiably raised.

The trial Court on the basis of aforementioned pleadings framed the following issues:-

- “1. Whether the plaintiff is entitled for declaration and mandatory injunction as prayed for? OPP*
- 2. Whether the suit is not maintainable in the present form? OPD*

3. *Whether plaintiff has no cause of action to file the present suit? OPD*

4. *Relief.”*

The plaintiff in evidence stepped into witness box as PW1 and deposed through his affidavit Ex.PW1/A and reiterated the version of plaint by tendering the document Ex.P1 to Ex.P7.

It is a matter of record that the defendant was proceeded against ex parte or brought on record any evidence.

The trial Court on the basis of Regulation bearing Nos.64.5.1 and 64.6 partly decreed the suit only for a period of six months i.e., from 22.4.2005 to 10.02.2006.

The aforementioned judgment and decree was assailed by respondent-plaintiff before the Lower Appellate Court by filing an appeal bearing No.266 of 2011 which has been allowed, in essence, the suit has been decreed in toto.

Mr. B.S.Mittal, learned counsel appearing on behalf of the appellant submitted that the findings of the Lower Appellate Court in applying the provisions of Electricity Act, 1910 in respect of inspection conducted post promulgation of new Act is neither here nor there, much less most contumacious and perverse. The inspection was done in the presence of the plaintiff, who did not object to the same. Instead of meter recording 100 units, it was shown to be 60.22 units. The Regulations of Electricity Board empowered the electricity department to carry out the overhauling for a period of six months and thus, urged this Court for setting aside the

findings under challenge. In support of aforementioned contention, relied upon the ratio decidendi culled out by the Supreme Court of India in **Bombay Electric Supply & Transport Undertaking Vs. Laffans (India) Pvt. Ltd and another 2005(2) RCR (Civil) 587** to contend that department cannot be deprived of raising the demand of average consumption.

Per contra, Mr. Vijay Lath, learned counsel appearing on behalf of the respondent submitted that in view of fact that new Electricity Act came into force in the year 2003, it is to be seen as to whether the provisions of Electricity Act, 2003 would apply to the present case or not but fact of the matter is that action of the department in raising the demand was wholly fallacious and arbitrary, for, the meter was never subjected to any laboratory check and if any, was at the back of consumer.

In support of aforementioned contention, relied upon the judgment rendered by the Hon'ble Division Bench of this Court in **M/s Tirupati Industries vs. Punjab State Electricity Board 2000(1) RCR (Civil) 681** to contend that any inspection of the meter in the absence of the consumer would be nullity, for, principles of natural justice are required to be complied with. It is in that background of the matter, findings of the trial Court declining the relief in toto was assailed before the Lower Appellate Court and thus, urged this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the

view that there is no force and merit in submissions of Mr. Mittal.

Concededly, the meter was inspected in the presence of the consumer on 10.02.2006 but it was never checked in ME Lab by the department as no evidence has been brought on record. If at all, it had been done, nothing prevented the appellant-department to place on record the laboratory report by way of additional evidence in order to enable this Court to form different opinion to substantiate whether inspection was done in the presence of the plaintiff or otherwise, therefore, adverse inference was liable to be drawn against the appellant.

No doubt, the consumer cannot be permitted to steal the electricity by indulging into illegal and dubious means, equally so the department cannot be permitted to act as a 'King' without adhering to the settled canons of justice/principles of natural justice. In the absence of any ME laboratory report supporting the inspection report with regard to slow running of the meter, I am of the view that demand raised by the department was wholly erroneous.

There is no dispute with regard to the ratio decidendi culled out in the judgment cited by learned counsel for the appellant as facts of present case are totally different, therefore, same would not apply to the facts and circumstances of present case.

As an upshot of my findings, I do not find any illegality and perversity in the findings rendered by Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

March 20, 2018

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No