

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

**RSA No.5486 of 2017 (O&M)
Date of Decision.24.05.2018**

Dakshin Haryana Bijli Vitran Nigam Ltd. and others ...Appellants

Vs

M/s Key Bee Engg

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Longia, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-defendants had not been successful in defending the suit before the trial Court and in appeal before the lower Appellate Court whereby in the suit of the respondent-plaintiff for declaration and permanent injunction, Checking Report dated 6.9.2013 and subsequent assessment dated 12.09.2013 have been declared to be null and void.

Mr. R.S. Longia, learned counsel appearing on behalf of the appellants-defendants submitted that both the Courts below have abdicated in decreeing the suit by not noticing the fact that the meter installed at the premises of the respondent-plaintiff remained 33.33% slow for the period commencing from 3.6.2011 to 10.08.2011 and 66.66% slow from 10.08.2011 to 5.9.2013. It is in this backdrop of the matter, as per the Rules and accepted terms and conditions of the contract of supply entered into between the parties, demand was raised. There was no lapse of the technical procedure at the hands of the Department, therefore, there was no occasion for the Courts below to set aside the demand aforementioned by putting the blame

on the officials, particularly on the fact that officials as per the Rules and Regulations had to visit the premises every month. The suit was not maintainable as the plaintiff did not send notice under Section 80 of the Code of Civil Procedure. Once it was specifically found that the meter was running slow on the basis of the data recorded in the meter, there was no vesting right available to the plaintiff to seek declaration and injunction restraining the appellant-defendants, thus, urges this Court for setting aside the finding under challenge.

I have heard learned counsel for the appellants-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Longia, for, it has, prima facie, been proved on record that as per the Rules and Regulations of PSPCL, the officials of the concerned Department are required to visit the premises of the consumer having a load of more than 50 KW every month. DW-2 witness of the appellants-defendants admitted that there was no manipulation in the body of the electric meter or its seal. It was further submitted that as per the Rules, Sands Agency used to note the reading of tampered data every month. In view of such evidence, no explanation has come forward as to why the Department, if at all, had received the report from the Agency did not send the checking team. The demand raised upon the consumer was also against the principle of natural justice, for, it has not come on record whether the meter was checked in the lab or not and if the answer is yes, then the same was done in the absence or in the presence of consumer. In these circumstances, the Courts had rightly exercised the jurisdiction in declaring the demand to be illegal and

null and void.

Concededly, the checking was done in the month of September 2013 and as per the memorandum of appeal, the meter was allegedly running slow 33.33% since 3.6.2011 but no explanation has come forth for not inspecting the premises by sending concerned team, therefore, the blame placed upon the officials is correct observation/finding. No other argument has been raised.

As an upshot of my finding, the judgments and decrees rendered by the Courts below are perfectly legal and justified as the same are based upon correct appreciation of facts and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 24, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No