

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.Ms. No.15948-15949-C of 2017 in/and
RSA No.6098 of 2017
Date of Decision: 15.03.2018**

Dakshin Haryana Bijli Vitran Nigam Ltd. & ors. ... Appellants

Versus

M/s Maa Sukhmabari Gwar Gum Bapora ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

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

RAMENDRA JAIN, J.(Oral)

C.M. No.15948-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 55 days in filing the appeal is condoned.

RSA No.6098 of 2017 (O&M)

Defendant-Nigam has preferred this regular second appeal assailing the judgment and decree dated 05.07.2017 of the First Appellate Court as well as of the trial Court dated 17.02.2014, whereby suit of the respondent-plaintiff was decreed with costs declaring the demand of ₹3,14,759/- by the appellants with allegation that on checking of meter of the respondent-plaintiff on 07.02.2011, the same was found to be 33.33% slow as illegal and wrong having not binding effect upon the respondent-plaintiff and further that the respondent-plaintiff was entitled for refund of the aforesaid amount along with interest @ 8% per annum from the date of payment, directing the appellants to refund the same within 2 months.

Briefly stated, the respondent-plaintiff is a consumer of the appellant-Nigam having an industrial electricity connection. He was making the payment of electricity consumption charges regularly. However, on 07.02.2011, checking team of the appellant-Nigam checked the meter of the respondent-plaintiff and raised a demand of ₹3,14,759/- for a period of 6 months w.e.f. 07.09.2010 to 07.02.2011 on the ground that meter of the respondent-plaintiff was found running slow by 33.33% on the basis of M&P report No.93/442 dated 07.02.2011.

The respondent-plaintiff challenged the said demand of the appellant-Nigam by way of a civil suit as illegal, null and void, having no binding effect upon him and that the amount aforesaid deposited by him may be ordered to be refunded to him along with interest on the ground that at the time of alleged checking, the seals of his electricity meter were found intact and okay and no defect or tempering was found in the same while taking last two readings on 06.01.2011 and 05.02.2011.

The appellants contested the suit.

Trial Court after holding trial, decreed the suit of the respondent-plaintiff in the manner as narrated above in the opening part of the judgment.

Being dissatisfied, the appellants-Nigam preferred an appeal, but remained unsuccessful as its appeal too was dismissed by the First Appellate Court.

Learned counsel for the appellants *inter alia* contends that both the Courts below failed to appreciate that on checking, the meter of respondent-plaintiff on 07.02.2011 by Maintenance and Protection Team (MAPT) of the appellant-Nigam, though no tempering was found in the same,

but on downloading the data preserved in the meter, it was found running slow by 33.33% on account of defect in the C.T wire which was replaced on that very day. Both the Courts below have failed to appreciate that M&P report was prepared by the officials of the appellant-Nigam in routine in discharge of their official duties on the basis of physical verification of the meter. Therefore, the aforesaid demand of ₹3,14,759/- was raised from the respondent-plaintiff on the basis of formula provided in the Sales Manual, 5th Edition, 2013, Instruction No.4.14, captioned as 'Adjustment of consumer's account if meter is found inaccurate or inoperative by a Nigam's employee'. Therefore, the same was justified and legal.

I have given anxious consideration to the submission made by learned counsel for the appellant.

At the outset, it is pertinent to mention that on 26.02.2018, he was directed to disclose as to whether the meter in question of the respondent was ever sent to the Laboratory for verification and checking about its running slow by 33.33% before raising the impugned demand from the respondent-plaintiff to which he has replied in the negative.

It is not disputed that M&P report was prepared by the officials of the appellant-Nigam unilaterally without associating the respondent-plaintiff at the time of alleged checking of his electricity meter. The appellant-Nigam also did not lead any evidence on the record that the team, which had allegedly checked the meter of the respondent-plaintiff on 07.02.2011, had any special expertise or skills to read the data preserved in electricity meter after unloading the same. In the absence of any such evidence, any action taken by the team of the appellant-Nigam against the

respondent-plaintiff cannot be said to be legal or justified, more particularly, when the respondent-plaintiff was not taken into confidence before taking any action against him. Therefore, raising of demand aforesaid by the officials of the appellant-Nigam from the respondent-plaintiff without issuing any prior show cause notice inviting objections from the respondent-plaintiff or sending the electricity meter to the laboratory has rightly been declared by both the Courts below as wrong and illegal.

No question of law muchless substantial has been raised or arise for consideration in this appeal.

I have gone through the impugned judgments of the Courts below and found no illegality or perversity in the same.

The appeal is dismissed.

15.03.2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No