IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 30.04.2019

CWP No.12441 of 2000 (O&M)

M/s. Tej Alloys Limited ...Petitioner

Vs.

Punjab State Electricity Board & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Suvir Sehgal, Advocate, for the petitioner.

None for the respondents.

RAJIV NARAIN RAINA, J.

1. This writ petition has been filed challenging the memorandum dated 31.08.2000 (Annex P-1) and the accompanying supplementary bill (Annex P-2) issued by the respondents whereby a demand of Rs.31,33,532/- has been raised against the petitioner after revising the electricity consumption of the petitioner for the period August, 1998 to June, 1999. The petitioner has further sought a writ of prohibition restraining the respondents from disconnecting the electricity supply to his factory premises.

2. The petitioner is a public limited company incorporated under the Companies Act, 1956. It is runs an induction furnace since 1993 and manufacturers mild steel ingots. For carrying on the manufacturing activity, the petitioner has an electricity connection bearing no. LS-15 with connected sanctioned load of 2000 K.W. from the Punjab State Electricity Board (for brevity “the Board”), and is a licensee under the

provisions of Indian Electricity Act, 1910. The petitioner states that it has regularly paid all the electricity bills raised by the Board from time to time. The electricity meter at the factory premises of the petitioner has been installed by the Board, for which the petitioner pays rent. The responsibility of maintaining the electricity meter and to ensure that it remains in working condition is on the Board. In the month of July 1998, the Current Transformer/Potential Transformer (CT/PT) unit of the metering requirement at the factory premises of the petitioner became defective and could not record actual consumption of electricity. Even though the Board was aware that the CT/PT unit of the metering requirement was defective, it changed the same in June, 1999. In order to cover the delay, the Board through respondent No.2 issued memorandum No.3617 dated 31.08.2000 (Annex P-1) revising the consumption of the petitioner from the month of August, 1998 to June, 1999 and raised a demand of Rs.31,33,532/-. Along with the memorandum, respondent no.2 raised a supplementary bill (Annex P-2) for the said amount and gave 15 days time to the petitioner to deposit the amount, failing which it was mentioned that the electricity connection of the petitioner will be liable to be disconnected without any further notice. Aggrieved against the issuance of memorandum dated 31.08.2000 (Annex P-1) and supplementary bill (Annex P-2), the petitioner has filed the instant petition.

3. At the preliminary stage, this Court, after hearing the petitioner on 14.09.2000, issued notice of motion to the respondents and granted stay of disconnection of electric supply subject to the condition that the petitioner deposits 50% of the amount in dispute with the Punjab

State Electricity Board before 15.11.2000. This Court further directed that in case the amount is not deposited within the stipulated period, the interim stay shall stand automatically vacated. The deposit was made.

4. Upon being served, the respondents appeared and filed their response. The respondents raised preliminary submissions as well as contested the writ petition on merits. The respondents admitted that electricity connection bearing Account No.LS-15 was sanctioned by it in the premises of the petitioner for running of the furnace. The CT/PT unit installed in the premises of the petitioner became defective on 15.07.1998 due to damage of CT/PT box and actual consumption could not be recorded in the meter. An intimation was received from the petitioner vide letter dated 15.07.1998 that the CT/PT unit was damaged on 15.07.1998 and that new CT/PT unit cannot be arranged immediately and it was requested that supply of electricity be made direct. Accordingly, the electric supply was provided directly by the respondents vide permit no.33 dated 15.07.1998, which was filled in by the Junior Engineer concerned. As per report dated 03.08.1998 recorded by the officials of the Board and duly signed by the representative of the petitioner, it was mentioned that the reading could not be taken due to damage of CT/PT unit. Vide letter dated 3rd August, 1998, the respondents asked the petitioner to either get the damaged CT/PT unit repaired or purchase a new one. The respondent sent a reminder dated 16.3.1999 to the petitioner. On 31st March, 1999, petitioner intimated that order for a new CT/PT unit has been placed and the same has not been received and the supplier has assured the dispatch of the CT/PT unit on 10th April, 1999. After the new CT/PT unit was provided by the petitioner, the same was tested by the respondents from

the ME Lab and was installed at the site on 25th June, 1999. The electricity bills for the period from August, 1998 to June, 1999 had to be revised by taking the average of consumption for preceding three months or by taking into consideration the actual consumption as recorded during the corresponding months of the previous year, whichever is more. The respondents further stated that after the installation of new CT/PT unit it was found that there has been a substantial increase in the consumption of electricity by the petitioner in comparison with the bills raised. Keeping in view the requirement of Sales regulation No.73.1.2.1, the accounts of the petitioner were overhauled and vide order dated 31st August, 2000 (Annexure P-1), a supplementary bill of Rs. 31,33,532/- was served upon the petitioner requiring payment within 15 days. The respondents admitted that the amount of Rs. 15,70,000/- had been deposited by the petitioner on 10.11.2000 and that in compliance with the order passed by this Court, the electricity connection was not disconnected.

5. On merits, the respondents denied their responsibility for the delay in changing the CT/PT unit of the electricity meter. The respondents took the stand that CT/PT unit is a separate unit and is not a part of the metering equipment. The respondents submitted that if there is any fault in the CT/PT unit, then only the CT/PT unit is to be changed and there is no need to change the electricity meter. As such, the respondents submitted that the electricity meter could not be said to have become defective. The respondents conceded that in case the CT/PT unit gets damaged, then the energy consumed cannot be correctly recorded in the meter and the supply to the consumer is either to be disconnected or is supplied direct on 11KV line for running the factory. For such period, the supply is liable to be

billed on monthly or average basis and later on the bill is to be reviewed and over-hauled as per the instructions of the Board.

6. The petitioner has filed replication reiterating the stand taken in the writ petition. In addition, the petitioner submits that during the disputed period, the respondents had been billing the petitioner on average basis as per previous consumption.

7. After considering the stand of the rival parties, the writ petition was admitted for regular hearing on 19.10.2001 and the interim order was directed to continue.

8. The counsel for the petitioner has been heard and with his assistance the court has gone through the record. Mr. Suvir Sehgal has urged on behalf of the petitioner that CT/PT unit is a part and parcel of the metering equipment and any defect in the same will affect the correctness of the electricity meter reading. He has relied upon the provisions of section 26(6) of the Act and argued that without getting the dispute adjudicated from the Electrical Inspector, it was not open to the respondents to raise a supplementary bill revising the consumption charges for the period the meter remained defective. He has placed reliance upon various judgments to buttress his arguments.

9. The admitted factual position is that the CT/PT unit installed in the premises of the petitioner became defective on 15.07.1998 and the new unit was installed at the site on 25.06.1999. During this period, the electricity was being supplied directly to the premises of the petitioner and a supplementary bill (Annex P-2) was subsequently raised revising the electricity charges for the period from August, 1998 to June, 1999.

10 It is necessary to notice the statutory provision as contained in section 26 (1), (2) and (6) of the Indian Electricity Act, 1910 (since repealed by the Electricity Act, 2003). The said provision is drafted as under:

"26 Meters. -

(1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter the licensee shall keep the meter correct, and in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) x x x x

(4) x x x x

(5) x x x x

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided upon the application of the either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector has been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity;

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall *give to the other party not less than seven days' notice of his intention so to do.*

(7) x x x x

Explanation. A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus."

11. Sub-section (1) to section 26 of the Act provides that the quantity of electricity supplied to the consumer is to be ascertained by means of a correct meter and where the consumer desires, the licensee is bound to supply a meter, for which the licensee may require the consumer to give him a security and enter into an agreement for hire thereof. Where the meter is supplied by the licensee, sub-section (2) imposes a duty upon the licensee to keep the meter in working order and further stipulates that in case of any default, the consumer will not be liable to pay for the hire of the meter for as long as the default continues.

12. Sub-section (6) of section 26 provides that in case of any dispute or difference as to whether any meter is serviceable or not, the matter will be decided by an Electrical Inspector. Either of the party is at liberty to approach the Electrical Inspector by way of an application. Where the Inspector finds that the meter has ceased to be functional, he shall estimate the amount of energy supplied to the consumer during the period of defect and shall levy charge for the same for a period not exceeding six months. The sub-section further provides that the register of recorded consumption shall be the conclusive proof of the electricity consumed by the consumer, in the absence of any fraud, etc.

13. In this background, the first issue which requires determination is as to whether CT/PT unit is a part and parcel of the metering equipment.

14. Current Transformer (CT) is a device that is used for the transformation of electric current from a higher value into a proportionate current to a lower value. A potential transformer (PT) or voltage transformer converts the high value of voltages into low voltage. These electrical devices are essentially used for connecting the electrical instruments to the measuring instruments. These devices reduce the voltage and current from high value to a small value so that the measuring instruments, such as, ammeters and voltmeters can easily measure the current and voltage otherwise very large devices will be required for the said purpose, which is not practicable.

15. The issue as to whether Potential Transformer (PT) is to be regarded as a meter came up for consideration before the Supreme Court in ***U.P.S.E.B. versus Atma Steels and another*** (1998) 2 SCC 597. The Supreme Court held as under:

> *"7. We have heard the counsel for the parties and seen the material on record and we see no reason to disagree with the conclusion of the High Court regarding the Inspector entertaining the application under sec.26 (7) especially in view of the fact that in the Manual on H.T. Consumers Metering published by the Central Board of Irrigation and Power regarding the potential transformer with relation to salient feature of metering equipments it is stated as under :-*
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> > *"(i) The metering equipments consist of CT and PT units. For LT meters (i.e., for 3 phases 4 wire) only three single phase VTs are required. For HT metering 3 phases PT and tow CTs in R & B*

phases are required. CTs and PTs or only CTs for LT metering are to be tested for their correct polarity and ratio as per their terminal markings and name plate details respectively, beside their insulation resistance etc. since the CT and PT ratios have a direct relation with the consumption recorded by a meter."

8. It is clear that the only function of the PT in a given case like the present where the power is being supplied to the respondent at 11000 Volt, is to reduce it to 110 Volt so no to enable the meter to record the amount of power which is consumed by the industry. It is common ground that the existing meter could not record the power consumed unless there was stepping down of the voltage from 11000 to 110. This stepping down was done by the PT. It is also not in dispute that after the recording of the consumption by the meter the power, which was reduced from 11000 to 110 Volt, is not used by the respondent. This clearly shows that the only function of the PT was to enable the ascertaining or regulating of the amount of energy supplied to the respondent. This instrument namely the PT has, Therefore, to be regarded as a meter in view of the provisions of sub- section (7) of sec.26 and the second proviso, in particular, and therefore the High Court was right in coming to the conclusion that the Electrical Inspector had the jurisdiction to exercise his powers under section 26(7) of the Act. The order of the apple late authority, therefore, was rightly set aside."

16. This judgment has been followed by the High Court of Chhattisgarh in ***M/s. Beekey Hygiene Products versus Madhya Pradesh Electricity Board and others,*** AIR 2014 Chhattisgarh 147. Consequently, there is no hesitation in holding that CT/PT is an essential part of the metering equipment, in the absence of which the quantity of electricity consumed cannot be measured.

17. Now, the second aspect which arises for consideration is as to whether the respondents were justified in issuing a supplementary bill without resorting to the remedy provided under sub-section (6) of section 26 of the Electricity Act, 1910.

18. This issue also stands settled by the Supreme Court in ***M.P.S.E.B. and others vs Basantibai,*** AIR 1988 Supreme Court 71. After noticing the statutory provision, the Supreme Court held:

> *"9. It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-section (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the Consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub- section 6 of section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of section 26(6) of the said Act. An Electrical Inspector, has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.*
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> *10. In the instant case it appears from the report of the Assistant Engineer of the State Electricity Board that*

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one phase of the meter was not working at all, so there is undoubtedly a dispute as to whether the meter in question is a correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. It is also evident from the said provision that till the decision is made no supplementary bill can be prepared by the Board estimating the energy supplied to the consumer, as the Board is not empowered to do so by the said Act…"

It was further held by the Supreme Court that:

"13....In our view, the view taken about the scope of section 26(6) in the decisions cited above are correct. In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding six months. The appellant No. 1 is not competent pending the determination of this dispute by the Electrical Inspector to issue the impugned notice threatening disconnection of supply of electricity for non-payment of supplementary bill prepared and sent by it. The Board is also not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy. For the reasons, aforesaid we affirm the order of High Court and dismiss the appeal without costs."

19 The same line of reasoning has been adopted in the High Court decisions in cases ***Topasa Ramasa Patil versus Karnataka***

Electricity Board and others, *AIR 1989* Karnataka 279; ***Khursheed versus Bombay Electricity Supply & Transport Undertaking,*** *AIR 1995 Bombay 79;* **and** ***R.S.E.B. versus M/s. Mayur Cold Storage & Ice Factory,*** *2009(5) RCR (Civil) 471* (DB).

20. From the return filed by the respondents, it is obvious that there is no allegation of tampering with the CT/PT unit or commission of any fraud by the petitioner in so far as the metering equipment is concerned. Rather, it was the petitioner who brought it to the notice of the respondents on 15.07.1998 that the CT/PT unit had become defective and was not recording the correct energy consumed. Again, record shows that it was the petitioner, who had purchased a new CT/PT unit, which after checking was installed in its premises by the respondents on 25.06.1999. Therefore, in this situation, the respondents were not justified in raising a supplementary bill without getting the dispute adjudicated from the Electrical Inspector.

21. To be fair to the respondents, the reliance placed by them in their reply upon Sales Regulation may be noticed. The respondents have relied upon Sales Regulation No.73.1.2.1 of PSEB to justify the overhauling of the account for the period from August, 1998 to June, 1999. For this purpose, the relevant Sales Regulation 73.1.2 of the PSEB (as it existed in the year 2000) may be noticed. It provides:

> *"73. ADJUSTMENT OF ACCOUNT IF METER FOUND DEFECTIVE*
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> *Following procedure shall be adopted whenever an energy meter on the premises of a consumer is found to be defective.*
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> *73.1 Dead Stop or Burnt Meter*

73.1.1 On receipt of a report regarding a meter becoming defective, dead stop or burnt, it shall be immediately replaced and necessary inquiries conducted. The meter along with the report should be forwarded to Xen/ME for further action.

73.1.2.1 The consumption pattern of the consumer shall be watched for a further period of two years after installation of correct meter and if the average consumption during this period exceeds the consumption already charged the provisional bill shall be revised on the basis of future consumption so worked out."

22. A perusal of the above regulation shows that Sales Regulation 73.1.2 is applicable in respect of inoperative, dead stop or burnt meters. Sales Regulation 73.1.2.1 provides for charging consumer on the basis of consumption pattern for two years after installation of proper or 'correct' meter. This regulation is applicable where the electric meter is at a stand-still, dead stop or burnt and is not recording any consumption. It is not applicable in the case of a meter, which may be recording under-consumption or excess consumption of energy supplied, as is the situation in the present case. In this regard paragraph 2 of the Preliminary Submissions in the written statement filed by the respondents may be noticed:

> *"2. That CT/PT unit installed in the premises of the petitioner mills had been purchased/ provided by the petitioner mills and the same became defective w.e.f. 15th July, 1998 due to the damage to the CT/PT box and consequently actual electricity consumption could not be recorded in the electricity meter."*

23. As such, the reliance placed by the respondents on Sales Regulation No. 73.1.2.1 to explain the issuance of supplementary bill

whereby additional demand was raised, is totally misplaced and deserves to be rejected.

24. Reference has been made by the petitioner on the observations of the Supreme Court in ***Bombay Electricity Supply and Transport Undertaking Vs. Laffans (India) (P) Ltd. and another*** (2005) 4 SCC 327:

> *"7. What is a correct meter? The language of sub-section (6) of Section 26 starts with ---- "where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct ....". The dictionary meaning of the word "correct" is: adhering or conforming to an approved or conventional standard; Conforming to or agreeing with fact; accurate.*
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> *8. As to what would be a "correct" meter, there is sufficient indication in the Act and the Indian Electricity Rules, 1956 in the explanation given at the end of sub-section (7) of Section 26 of the Act and sub-rules (1) and (2) of Rule 57, quoted hereinabove. Where the meter is completely non-functional on account of any fault or having been burnt, it will not register the supply of energy at all. Since a burnt meter does not record any supply of energy, it virtually means "no meter".*
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> *9. What is contemplated by Section 26(6) is a running meter, but which on account of some technical defect registers the amount of energy supplied or the electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter which is either running slow or fast with the result that it does not register the correct amount of energy supplied. There is an additional reason for coming to such a conclusion. Section 26(6) confers power upon the Electrical Inspector to estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct. Where the meter is running slow or fast, it will be possible for the Electrical Inspector to estimate the amount of energy supplied to the consumer by determining the extent or percentage of error in recording the supply, whether*

plus or minus. However, where the meter is burnt or is completely non-functional, such an exercise is not at all possible. Therefore, Section 26(6) can have no application in a case where a meter has become completely non-functional on account of any reason whatsoever."

25. It deserves to be noticed that sub-section (6) of section 26 provides that an application for deciding the dispute or difference by the Electrical Inspector can be submitted by "either party". However, record shows that in the present case neither of the two parties has filed any application for adjudication of the disputed matter from the Electrical Inspector, even though it was open to either of the two parties to approach him.

26. This aspect has been taken care of by of the High Court of Karnataka in ***Karnataka Electricity Board and another versus Topassa,*** 1991 Civil Court Cases 472. Dismissing the appeal filed by the Electricity Board against the judgment of the learned Single Judge in ***Topasa Ramasa Patil versus Karnataka Electricity Board and others,*** *AIR 1989* Karnataka 279, it was held by a Division Bench as follows:

"7. Now the precise question before us is as to whether it is for the consumer to raise a dispute before the Electrical Inspector or for the Electricity Board to raise a dispute. In our opinion, when Sub-section (6) of Section 26 of the Act says that either of the party is at liberty to raise a dispute before the Electrical Inspector it means the party aggrieved is entitled to raise a dispute. Naturally in the case of under-recording, it would be the Board which is the aggrieved party and therefore in such cases, it is for the Board to raise a dispute before the Electrical Inspector and have the matter decided if it wants to make back billing to the extent the Board's income was reduced on account of fault in the meter. In cases where the complaint is that the meter is over-recording naturally consumer would be the adversely affected party and therefore it is for him to raise a dispute before the

> *Electrical Inspector under Sub-section (6) of Section 26 of the Act, in order to have the amount of the bill reduced. It is of course open to the parties not to raise dispute. For instance in cases where there is under-recording if the consumer is satisfied that the meters having been tested in his presence, that actually the meter was under-recording, even without raising a dispute he might agree for paying the difference. If he does so, thereafter, he cannot object for the same as by such conduct he gives up his right to raise a dispute under Sub-section (6) of Section 26 of the Act. Similarly even in cases of over-recording if the authorities of the Board are satisfied that the meter was defective and it was over-recording, even without compelling the consumer to raise a dispute before the Electrical Inspector, the authorities themselves may fairly concede the fact that the meter was over-recording and give relief to the consumer. In such a case also the question of raising a dispute does not arise as that also amounts to waiver of the rights to raise a dispute, Unless there is such settlement amicably in cases of under-recording it is for the Board, and in cases of over-recording it is for the consumer, to raise the dispute before the Electrical Inspector. Once such dispute is raised the modification of the bill should await the decision of the Inspector. For these reasons, we answer the question set out first as follows:-*
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>> *In the case of under-recording of electricity by an electrical meter, it is for the Board to raise a dispute before the Electrical Inspector under Section 26(2) of the Indian Electricity Act, 1910.*
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> *8. As far as the present case is concerned as this is a case of under-recording and the respondent was disputing the same, it was for the appellant Board to raise the dispute under Sub-section (6) of Section 26 of the Act."*

27. As a sequel to the above discussion, the writ petition is allowed. The impugned memorandum dated 31.8.2000 (Annex P-1) and accompanying supplementary bill (Annex P-2), having been issued without getting the matter adjudicated from the Electrical Inspector as laid

down under section 26(6) of the Electricity Act, 1910, are held to be illegal and arbitrary and are consequently set aside. The respondents are directed to refund the amount of Rs.15.70 lakhs deposited by the petitioner along with same rate of interest which they charge from the defaulting customers.

28. Needless to mention, it will be open to the respondents to take recourse to the provisions of section 26(6) of the Act of 1910 or to any other mechanism provided under the Electricity Act, 2003, which came into force during the pendency of this writ petition on 26th May, 2003, and on that basis, the respondents may raise a supplementary bill, if any, under the law.

30.04.2019 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

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