

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 320 of 2010**

- Vishal Jaiswal S/o Vijay Kumar Jaiswal, Through General Power Of Attorney, Kunal Jaiswal, Aged About 29 Years, S/o Vijay Kumar Jaiswal, R/o 45/4, Nehru Nagar East, Bhilai, Distt.-Durg CG

---- Petitioner**Versus**

1. C.G. State Power Distribution Co. Ltd., Chhattisgarh State Power Distribution Company Ltd., Bhilai-3, Distt.-Durg CG
2. Executive Engineer (STM), Chhattisgarh State Power Distribution Company Ltd., Bhilai-3, District – Durg (CG)
3. Assistant Engineer (Vigilance), Chhattisgarh State Power Distribution Company Ltd., Bhilai-3, District – Durg (CG)
4. Assistant Engineer (LTMT-Lab), Chhattisgarh State Power Distribution Company Ltd., Bhilai-3, District – Durg (CG)
5. Meter Tester, Assistant Engineer (Vigilance), Chhattisgarh State Power Distribution Company Ltd., Bhilai-3, District – Durg (CG)

---- Respondents

For Petitioner	:	Shri Prateek Sharma, Advocate
For Respondents	:	Shri Sunil Otmani, Advocate

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****02/01/2020**

This petition under Article 226 of the Constitution of India is preferred against demand letter and bill dated 24/11/2009 issued by 1st and 4th respondent respectively whereby the petitioner has been required to pay Rs.9,02,846/-. Additional demand notice has been served upon the petitioner on the allegation that the petitioner is guilty of tampering with the meter installation in the building and also that the building was being used for commercial purposes, whereas, the petitioner was

registered as consumer of electricity as domestic consumer and not on commercial basis.

2. Electricity connection was supplied in the name of one Smt. Sujata Jaiswal (since deceased - wife of the petitioner). Said Sujata Jaiswal had purchased a residential house No.21/1 situated in Nehru Nagar, (West) Bhilai. The said consumer had entered into an agreement with the respondent / electricity company also.

On 18/11/2009, a surprise check of the meter, installed in the residence of consumer -Smt. Sujata Jaiswal, was conducted by a team of officers of respondent / electricity company and it is alleged that the meter was found having been subjected to some tampering. panchanama was prepared, under which, the meter was seized. A notice was sent on 18/11/2009 requiring the consumer / representative to remain present at the time of Lab test of the meter alleged to be tampered with. However, consumer's representative, one Shri Nandkishore Jaiswal submitted letter seeking time on the ground that the consumer herself died and all affairs, thereafter, were looked after by her legal representatives. However, the respondents proceeded to conduct Lab Test and the meter was found to be tampered with in the manner stated in the Lab Test report which was forwarded to the competent authority. On the basis of the report, the impugned demand notice was issued to the petitioner.

3. Assailing legality and validity of the said action of the respondent in raising additional demand of Rs.9,02,846/-, learned counsel for the petitioner would argue that the entire proceedings drawn by the authority, which led to issuance of demand notice, are not only in violation of principles of natural justice but also contrary to the provisions of law regulating and governing assessment and additional demand. It was contended that the electricity supply was registered in the name of Sujata Jaiswal who died on 18/10/2009. The petitioner was away from station and during that period, on 18/11/2009, some inspection is alleged to have been carried out and

also Lab Test, of which, proper notice and opportunity of hearing was not given and in a hurried manner, within a short period, not only Lab Test was done in the absence of any legal representative of deceased consumer or any other authorised representative and based on the said report, additional bill has been raised. Learned counsel for the petitioner would argue that the petitioner was legal representative being the husband of the deceased / consumer and he was entitled to proper opportunity of hearing against the action. He would further highlight that even in the matter of Lab test, the respondent authorities have acted negligently because, without giving minimum 7 days' advance notice to the petitioner under clause 8.17 of the Electricity Supply Code, 2007, which was in force on the date of inspection and test, Lab test of the meter was got done. In his submission, the said Lab Test report could not be made a basis to come to the conclusion that there was theft of electricity. The second limb of submission of learned counsel for the petitioner that the respondent authorities did not give any notice regarding allegation of any tampering as mandatorily required under Section 126 of the Electricity Act, 2003 and straightway raised an additional demand of electricity charges to the extent of Rs.9,02,846/-. According to the petitioner, he never used the premise for commercial purpose and adverse material was collected behind the back of the petitioner and before issuing additional demand notice, no notice affording an opportunity of hearing to contradict the proceedings was given. Thus, the action of the respondents is illegal and unsustainable in law.

4. On the other hand, learned counsel for the respondent would argue that even though, the original consumer died on 18/10/2009, when the premise was checked on 18/11/2009 by responsible officers, apparent condition of the meter raised serious doubt with regard to tampering and therefore, in the presence of petitioner's authorised representative, the meter was seized and due panchanama was prepared. He would next argue that the notice was given on 18/11/2009 to the

representative of the consumer to remain present on 20/11/2009 at the time of Lab test of the meter but no one remained present. According to learned counsel for the respondent, the allegation that though, time was sought, but no time was granted, is an afterthought story and the representation dated 20/11/2009 is not sent by any registered post but only under the certificate of post which does not carry any presumption of service of the said notice. He would further submit that even after the said date, the petitioner did not raise any dispute with regard to correctness of the Lab test but kept on raising frivolous grounds. Learned counsel would further submit that as far as theft is concerned, it incurs criminal liability, as provided under Section 135 of the Act of 2003 and statutory civil liability towards payment of electricity charges for electricity consumption by way of theft or otherwise is dealt with under Section 126 of the Act of 2003. He would further submit that the petitioner was duly noticed and afforded an opportunity of hearing and then only impugned demand notice was issued. Therefore, without any substantive ground, the petitioner is not entitled to any relief under the law.

5. I have heard learned counsel for the parties and perused the record.

6. It is not in dispute that the electricity connection was provided in the name of consumer – Smt. Sujata Jaiswal. The averments made in this regard and the documents submitted by the parties clearly go to show that the connection was provided in the name of Smt. Sujata Jaiswal. Further averment in the petition that on 18/10/2009, the original consumer died, is also not disputed.

7. On 18/11/2009, a meter check is said to have been carried out in the residence of the petitioner. The petitioner and the respondent both have placed on record documents which show that on 18/11/2009, panchanama of seizure of meter which was installed in the house, was also made and thereafter, a notice was issued

on 18/11/2009 itself. Lab test was conducted on 20/11/2009. Though respondents have denied that any request was made for grant of time by the representative of the petitioner, this Court finds that there are averments in the writ petition supported with written application by Nandkishore, representative of the petitioner on 20/11/2009. The petitioner's submission that his wife passed away on 18/10/2009 and her legal representatives were not available, constitutes a good ground in support of his plea that proper opportunity of hearing was not afforded.

8. This Court also finds that the additional demand of Rs.9,02,846/- has not been carried out by following mandatory provisions contained in Section 126 of the Electricity Act. The said provision reads as under -

“1. If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

2. The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

3. The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

4. Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

5. If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve

months immediately preceding the date of inspection;

6. The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation:- For the purposes of this section,--

a. "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

b. "unauthorised use of electricity" means the usage of electricity--

i. by any artificial means; or

ii. by a means not authorised by the concerned person or authority or licensee; or

iii. through a tampered meter; or

iv. for the purpose other than for which the usage of electricity was authorized ; or

v. for the premises or areas other than those for which the supply of electricity was authorised."

Under sub-clause 6, unauthorised use of electricity includes amongst others, usage of electricity through tampered meter. The allegation against the consumer was that the meter was found tampered with. The other allegation was that the premise was being used for commercial purpose whereas the electricity connection was granted for domestic purpose.

9. The statutory scheme of Section 126 of the Act of 2003 lays down proceedings by which the assessment can be carried out. Sub-section 1 thereof provides for provisional assessment to the best of judgment of the competent authority with regard to electricity charges payable by any person against whom, the assessing officer arrived at the conclusion that such person is indulged in unauthorised use of electricity.

Sub-section 2 provides that the order of the provisional assessment shall be served upon the person in occupation or possession or in charge of the place or

premises in such a manner as may be prescribed.

Sub-section 3 provides for affording a reasonable opportunity of hearing to such person before the final order of assessment could be passed by the assessing officer.

Under sub-section 4, any person who is served with order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee.

Sub-section 5 provides for assessment that can be made by the assessing officer once he reaches to the conclusion that unauthorised use of electricity has taken place.

10. The aforesaid self contained code with regard to assessment, in case, the assessing authority found that any person is indulged in unauthorised use of electricity, as meant under clause (b) of explanation to sub-section 6, therefore, clearly mandates that the assessing officer is obliged under the law to first carry out provisional assessment and thereafter, serve the order of provisional assessment upon the consumer, afford him reasonable opportunity of hearing and then pass reasoned order of assessment. Obviously, any demand would follow only pursuant to final assessment that may be made by the assessing authority in terms of Section 126 of the Act of 2003.

11. In the present case, however, the aforesaid mandatory provisions have not been followed. In the present case, as the admitted facts of the case disclose, the premises were checked up on 18/11/2009. On that day itself, the notice is said to have been issued to the consumer / representative to remain present at the time of Lab Test on 20/11/2009. At this juncture, it is relevant to note that under clause 8.17 of the Electricity Supply Code, 2007, minimum 7 days' advance notice is required to be given to the consumer / representative to remain present at the time of Lab

testing. Furthermore, the assessing authority, though reached to a conclusion against the petitioner that it is a case of unauthorised use of electricity not only on one count but on two counts, firstly, it is a case of unauthorised use of electricity by tampering meter and using the same for commercial purpose, no provisional order was passed by the assessing authority. The assessment of the assessing authority was not followed by provisional assessment order, much less, service of the provisional assessment order on the petitioner and without affording any reasonable opportunity of hearing, the demand letter / notice impugned in this petition was issued. The law required the respondent authority to first pass a provisional order affording the petitioner an opportunity of hearing and then only pass final order of assessment. The demand notice could be pressed into service only after following the aforesaid mandatory provisions prescribed under Section 126 of the Electricity Act.

12. Having considered the aforesaid legal flow in the proceedings drawn by the respondents, this Court is of the opinion that the impugned demand notice cannot be sustained in law and has to be set aside and is therefore, set aside.

13. It would, however, be open for the competent authority to pass provisional assessment order in terms of sub-section 1 of Section 126, serve the same on the petitioner, afford him opportunity of hearing and then pass final order.

14. Number of grounds have been raised to assail the correctness and validity of the assessment which are other than violation of principles of natural justice. Since this Court has come to the conclusion that the impugned order cannot be sustained in law because of violation of principles of natural justice and mandatory provisions of Section 126 of the Electricity Act, all other issues are not required to be dealt with. It would, however, be open for the petitioner to take recourse to remedy which may

be available to him under the law, in case, any provisional assessment order is served upon him.

15. The petitioner was protected by an interim order dated 26/03/2010 that subject to deposit of 50% of the demand, electricity supply shall be restored. Moreover, this Court had made an observation that after restoration, the petitioner would be obliged to pay regular bills raised by the respondents. Since, this Court has set aside the demand notice on the ground of violation of provisions of law and also principles of natural justice, it is observed that if the respondents do not initiate fresh proceedings within three months from the date of receipt of copy of this order, excess recovery made from the petitioner under the impugned demand notice or during the period this petition remained pending, will have to be refunded to the petitioner. In case, proceedings are initiated within three months, final adjustment would depend upon the ultimate order that may be passed by the assessing authority.

16. This petition is accordingly allowed in the manner and to the extent indicated as above.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge