

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No.29784 of 2019 (O&M)

Date of Decision:18.02.2020

Punjab State Power Corporation Limited

.....Petitioner

Versus

S.Kapur Singh and others

..... Respondents

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. G.S.Ghuman, Advocate  
for the applicant-petitioner.

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**LISA GILL, J(Oral).**

The petitioner, is aggrieved of order dated 20.03.2019, passed by the learned Additional District as Special Judge (under Electricity Act), Moga.

Brief facts necessary for the adjudication of the case are that a demand to the tune of ₹46,13,377/- was raised by the present petitioner on the allegations of theft of electricity committed by respondent no.1 in respect to the electricity connection provided to it as detailed in this petition. The demand was raised vide notice dated 11.01.2010. Petition under Section 154 of the Indian Electricity Act, was preferred by respondent no.1 before the learned Additional District Judge as Special Judge, Moga. Respondent no.1, pleaded that it was a consumer of the present petitioner, having taken an electricity connection, was paying all the electricity bills regularly without default. Notice dated 11.01.2010, was stated to be wrongly issued on the ground that during the course of checking of M.E. seals and body of the meter on its premises, were found to be tampered with and a case of theft of electricity was made out with the said respondent claimed to be using

extended load in an unauthorized manner It is pleaded that the reading of the meter was noted each month by the SDO of the Sub Division, while himself breaking down the M.E. seals and thereafter the fresh seals are provided. However, when checking was carried out in the last week of December 2009, fresh seals were not affixed. The alleged checking on 11.01.2010, it is stated was not conducted in the presence of any authorized representative of the petitioner. Supply was being received through the meter which was not tampered with in any manner. The data of the meter was allegedly downloaded at the spot, but the meter was never sent for checking from the M.E. Lab. Moreover, without waiting for the analysis report and without checking of the meter, it was wrongly declared to be a case of theft of electricity. The load, was stated to be wrongly calculated. The action on the part of the Corporation, is stated to be actuated by *mala fides* as one of the earlier SDO's posted in the Operation Sub Division, was inimical to the management of the consumer college because the SDO's demand for adjustment of his daughter in the Session 2006-07, in the B.Ed College at Mudhki *qua* the post of Lecturer in the regular scale, could not be met. FIR under Section 294, 506 IPC, is stated to be registered against the SDO Ranjit Singh. The consumer, thus, sought the relief of declaration and consequential relief of injunction *qua* the Corporation.

The Corporation, resisted the petition and claimed notice dated 11.01.2010, to be correctly issued. An objection to the jurisdiction of the Special Court, was raised. The petition, was dismissed on the ground of jurisdiction, but the said order was reversed on 07.12.2016 (Annexure P-6) in CWP No. 20323 of 2016 with a direction to the Special Judge, to pass orders afresh after considering the merits of the matter.

The following issues were framed by the learned Special Judge:-

1. Whether the demand raised by the respondents vide notice No. 1925 dated 11.01.2010 to the tune of ₹46,13,377/- is wrong, illegal and is liable to be set aside?OPP
2. If issue no.1 is proved in the affirmative, whether the petitioner is entitled to consequential relief of injunction? OPP.
3. Whether the petition is not maintainable? OPR.
4. Whether the petitioner has concealed the material facts from this Court?OPR
5. Whether the petition is not filed by competent person? OPR
6. Whether this Court has no jurisdiction to try and decide the present petition?OPR
7. Relief.

Evidence was led by both the parties in support of their respective claim.

After considering the evidence on record, facts and circumstances of the case, petition filed by respondent no.1, was partly allowed. It is held that the allegations of theft of electricity were unsustainable, especially as the meter was not even sent to the M.E. Lab for being checked and the attending circumstances also did not point out to theft of electricity. However, the Corporation, was held entitled to the charges on account of slow running of the meter and the extended load.

Aggrieved therefrom, this writ petition has been filed by the corporation.

It is argued that a raid was conducted on the premises of respondent no.1, on 11.01.2010, by the team led by Senior Executive Engineer, Enforcement Ferozepur, in the presence of one Kulwinder Singh, electrician, an employee of the plaintiff-college. Both the M.E. seals of the meter and body of meter were found tampered with. Connected load on the spot, was found to be 196.356 Kilowatt as against the sanctioned load of 141.73 kilowatt. Thus, the load was also found to be extended by 54.626

Kilowatt in an unauthorized manner. The officials declared the case to be of

'theft of electricity'. The entire proceedings were video-graphed. It is contended that merely, because the meter was not checked at M.E. Lab, Moga, it cannot be held that theft of electricity, is not proved. Learned Special Judge, Moga, has erred in this respect. A clear cut case of theft is made out against respondent no.1. It is thus prayed that order dated 20.03.2019 (Annexure P-13), be set aside.

Learned counsel for the petitioner, at this stage, submits that an application has been moved, seeking permission to have the meter checked at the M.E. lab and the same should also be allowed.

Having heard learned counsel for the petitioner, I do not find any ground whatsoever to permit the petitioner-Corporation, to have the electric meter checked at the M.E Laboratory, at this stage. There is no explanation whatsoever, leave alone, a reasonable one, to explain as to why necessary steps were not taken by the petitioner-Corporation, at the relevant time. The clear cut procedure prescribed under the law, has been given a complete go-bye. It is not open to the petitioner-Corporation, at this stage, to claim the checking of the meter. RW-1-Surinderpal Singh, Add. S.E., has admitted that the internal checking of the meter was not carried out and the meter was never even sent or checked at the M.E. Lab. Furthermore, affixation of the seals, is admitted to be the responsibility of the Electricity Board/Corporation. It is not disputed by learned counsel for the petitioner that the monthly meter reading, is required to be noted by an officer of rank of Assistant Engineer/ Assistant Executive Engineer/ Executing Engineer, as provided for under Instruction No. 81 of the Electricity Supplies Instructions Manual (for short 'Manual'). The broken seals, if any, are admitted to be visible to the naked eye without any special instrument. Therefore, it cannot be denied that in case, there had been any tampering with the seals of the

meter, the official taking the monthly meter reading, could not have been a mute spectator.

It is relevant to note, at this stage, that as per Inspection Report, Ex.R-8, the paper seal, which is reported to be torn was dated 07.07.2005 i.e., about five years prior to the date of checking i.e. 11.01.2010. As per Instruction no. 53.5 of the Manual, a paper seal under no circumstance, can be allowed to continue beyond a period of six months. The Manual, further provides in Para No. 53.3 (ii) that the officials/officers, taking monthly reading, are to record their findings in regard to the health of the meter/metering equipment seals in M.S.R. Officials/officers, are mentioned to be personally responsible for any discrepancy in this regard.

Furthermore, the consumption data, was admittedly not available with the official team at the time of the checking of the meter. This is so reflected in the testimony of RW-1-Surinderpal Singh. The data of the meter, was admittedly, downloaded, but the result of this downloaded data, has not been produced on record. Learned Additional District Judge, Moga, has rightly held that an adverse inference has to be drawn for withholding of the said data and that in all possibility, it would not have supported the version of the respondents. It is rightly observed that there is nothing on record to indicate that the slow running of the meter, was due to any interference with the internal mechanism of the meter. The tampering of the meter, could not be proved by the Corporation on the basis of the evidence on record. Learned Additional District Judge, has referred copiously and in great detail to the evidence on record and thereafter arrived at a correct finding that there is no evidence regarding theft of electricity in this case. It is further correctly held that the demand of ₹46,13,377/-, is not made out. At the same time, the petitioner-Corporation, has been held entitled to claim the

charges for the unauthorized extended load and also for the amount in respect to the slow running of the meter. It is specifically observed by the learned Additional District Judge, Moga, in this regard as under:-

“However, since the electric meter in question was found to be running slow to the extent of 32.45% when checked with 'Accu check meter', the respondents can charge for the said difference by multiplying the recorded consumption to the tune of 32.45% besides the charges for unauthorized load as detected at the time of checking which aspect has not been disputed by the petitioners. Accordingly, while holding the respondents entitled to claim charges only for 32.45% difference of recorded consumption due to slow running of meter coupled with the charges for unauthorized load to the tune of 54.626 KWs found at the spot, the remaining demand raised on the allegations of theft of electricity is held to be not sustainable and the issues under discussion are partly decided in favour of the petitioner and against the respondents.”

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned order dated 20.03.2019, passed by the learned Special Judge, Moga, which calls for interference by this Court at the instance of the petitioner-Insurance Company.

No other argument has been raised.

Writ petition as well as application for leading additional evidence, are accordingly, dismissed with no order as to cost.

**18.02.2020**  
s.khan

**[LISA GILL]**  
**Judge**

Whether speaking/reasoned : Yes/No.  
Whether reportable : Yes/No.