

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

RSA-915 of 2014 (O&M)

Date of decision: 02.03.2020

M/s Durga Jit Flour Mill

... Appellant

versus

Punjab State Electricity Board & Anr.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Kulwinder Singh, Advocate for
Mr. Rajbir Singh, Advocate,
for the applicant-appellant.

Mr. Bhupesh Dogra, Advocate for
Mr. Amit Aggarwal, Advocate
for respondent-PSPCL

ARUN MONGA, J.

CM-10680-C of 2017

For the reasons stated in the application, same is allowed. The main appeal is ordered to be restored to its original number. Let the main appeal be taken up for hearing today itself.

RSA-915 of 2014

1. The plaintiff's regular second appeal herein is against the appellate judgment and decree dated 18.12.2013 passed by the learned Additional District Judge, Gurdaspur, dismissing his suit by reversing the judgment and decree dated 06.01.2011 passed by the learned Civil Judge, Gurdapur.

2. Succinct facts are that plaintiff holds electricity connection with sanctioned load of 240.071 KW and is using the same for running his flour mill. Defendants had issued instructions prohibiting use of electricity during

peak load hours. Plaintiff's electricity connection was checked by the officials of the defendants on 09.04.2007. On the basis of that checking, notice dated 13.06.2007 was issued calling upon the plaintiff to deposit a sum of Rs. 5,72,848/- as penalty for using/consuming electricity in violation of peak load hour prohibition.

3. Aggrieved, plaintiff filed a civil suit challenging the legality and correctness of said notice of demand, seeking declaration and consequential injunction against recovery of the amount of demand. Shorn of details, it was pleaded that defendants never issued any notice or intimation to the plaintiff regarding peak load hour prohibitions. The plaintiff had not violated any such prohibitions. His connection was got checked by the defendants on 13.09.2006. During that checking, one of the seals on the right side of the meter was broken due to the fault of the checking staff, who had recommended that the meter be changed. The plaintiff's meter was again got checked by the defendants on 14.11.2006. Till then, the meter had not been changed. The checking party again recommended that the meter be changed. Ultimately, the meter was changed only on 11.04.2007. Plaintiff is not responsible for delay on the part of the defendants to change the meter. The functioning of the said defected meter on 09.04.2007, the date of checking, cannot be relied upon to sustain the impugned notice and demand.

4. Defendants pleaded that the plaintiff was aware of the prohibitions against use of electricity during peak load hours and was found to have used/consumed electricity in violation of the prohibition. Meter installed at his premises was digital electronic meter, which recorded consumption and the load used by the consumer. On surprise checking by the Senior Executive Engineer (Enforcement) along with other officials on 09.04.2007, the data was downloaded from the meter in the presence of the

consumer. That data showed that the consumer had violated the peak load hour prohibitions. The said data was self speaking and self evident, as the consumption as well as the load used were electronically recorded by the meter. The impugned notice of demand was perfectly legal and correct. Plaintiff was habitual of using electricity in violation of peak load hour prohibitions.

5. Plaintiff did not file any replication. Based on rival pleadings, trial Court framed following issues:

- “1. Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP*
- 3. Whether the suit is not maintainable?OPD*
- 4. Relief”*

6. After recording evidence and appraisal of record, trial Court held that plaintiff was aware of the peak load hour prohibitions, he had violated that prohibition during the last half hour (between 9-00 PM and 9-30PM), attracting Regulation 169.1.2 of the Sales Regulations for levy of penalty at half rate and that the defendants had wrongly demanded penalty at full rate. The trial Court decided issues No.1 and 2 accordingly in favour of the plaintiff. Its finding on issue No. 3 was recorded against the defendants and the suit was decreed with liberty to the defendants to issue fresh notice to the plaintiff for recovery of half of the amount imposed on him vide notice dated 13.06.2007.

7. First appeals filed by both sides were disposed of by the learned Additional District Judge vide impugned common judgment and decree dated 18.12.2013. Appellate Court below reversed findings of trial Court on issues

No. 1 and 2, allowed the defendants' appeal and dismissed the plaintiff's suit in entirety.

8. I have heard the learned counsel for the parties and perused grounds of second appeal herein vis a vis judgments rendered by both the Courts below. In my opinion, the instant appeal deserves dismissal.

9. Both the Courts below recorded a concurrent finding of fact that the plaintiff was aware of peak load prohibition but yet was found to have used electricity during peak load hours. To my mind, this finding/conclusion is based on correct appreciation of record and I am inclined to agree to the same.

10. Checking of the plaintiff's connection on 09.04.2007 is admitted. Record does not show if at all it was/is even the plaintiff's case that the time of checking of his meter on that date was between 9-00 to 9-30 PM. Print out of the meter data downloaded on 09.04.2007 (Ex P/5 also Ex DW-2/1) was/is the primary document and the actual basis for issuance of the impugned demand notice dated 13.06.2007. As noticed by the learned appellate Court in para 7 of its judgment, DW/2 Harjit Singh, Senior Executive Engineer of the defendant Board/Corporation, had deposed that on 09.04.2007 at about 2-52 PM, he along with others had checked the plaintiff's meter with the help of MRI device in the presence of the consumer who had signed on their register and also received the carbon copy of Ex P/5 also Ex DW-2/1, which is the meter data downloaded on 09.04.2007. The sworn testimony of DW/2 Harjit Singh, Senior Executive Engineer is corroborated by DW1 Joginder Singh Assistant Executive Engineer of the defendant Board/Corporation. Their statements coupled with documents prepared at the time of spot checking, the meter data downloaded on 09.04.2007(carbon copy of Ex P/5 also Ex DW-2/1) signed and copy

received by the plaintiff clearly show that checking on 09.04.2007 was actually done at about 2.52 PM.

11. There is not even a whisper in judgment of trial Court for doubting or disbelieving or any reason for not accepting and acting upon the aforesaid testimony of two senior functionaries of the defendants. The said testimony is supported by the relevant authentic documents prepared at the time of checking, which show that the time of checking on 09.04.2007 was 2.52 PM. As against this, memo No. 738 dated 01.06.2007 (Ex DW2/4) was a subsequent internal communication issued by DW2 Harjit Singh to the concerned Sub Divisional Officer instructing him to charge the penalty from the plaintiff. This memo dated 01.06.2007 was prepared and issued considerably long after the checking on 09.04.2007. In this memo, the reading of the electricity consumption from 29.01.2007 to 24.03.2007 was mentioned and it was also recorded that the checking on 09.04.2007 was done between 9.00 and 9.30. At the cost of repetition, it may be stated that it was/is nowhere even the plaintiff's own case that the time of checking of his meter on that date was between 9-00 to 9-30 PM and not at about 2-52 PM. There was overwhelming and reliable oral and documentary evidence showing that the time of checking was 2-52 PM. Apparently, it was by a sheer accidental or clerical mistake that in memo dated 01.06.2007 (Ex DW2/4), the time of checking on 09.04.2007 was wrongly recorded as between 9.00 and 9.30. Still, for its finding and conclusion, the trial Court relied upon memo No. 738 dated 01.06.2007 (Ex DW2/4) and observed that as per this document, in which the reading of the electricity consumption from 29.01.2007 to 24.03.2007 was recorded, the same is recorded exact at 9.00 and 9.30, it appeared that the default occurred during the last half hours i.e. 9.00 to 9.30.

12. In my opinion the trial Court misdirected itself in carving out this entirely new case for the plaintiff, erred in properly weighing/evaluating the evidence vis-à-vis the pleadings and consequently holding that the time of violation of the prohibition against use of electricity by the plaintiff was during the last half hour (between 9-00 PM and 9-30 PM, attracting Regulation 169.1.2 of the Sales Regulations for levy of penalty at half rate.

13. As against this, while reversing the findings of the trial court on issues No. 1 and 2, learned first Appellate Court noticed and obviously accepted/acted upon the evidence showing that the plaintiff's connection was checked on 09.04.2007 at 2.52 PM and he was found to have violated the peak load hours prohibition against use of electricity. I am inclined to concur with the same.

14. Plaintiff's own case is that during earlier checking on 13.09.2006, one of the seals of the right side of the meter had been broken due to the fault of the checking staff and it was due to this reason that the checking staff had recommended the change of meter. The same recommendation was repeated by the checking staff on next checking on 14.11.2006. The impugned demand notice was not for any tampering or faulty functioning of the meter or for its non-functioning or for not correctly recording of data of the consumption, load, amount and time of consumption of electricity. There is thus no reasonable ground to hold that at the time of checking on 09.04.2007 at 2-52 PM, the meter was defected, or its functioning was faulty or that it was non-functional or was not correctly recording the data of consumption, load, amount and time of consumption of electricity. It cannot, therefore, be said, as argued by the learned counsel for the appellant, that the checking data downloaded from the meter on 09.04.2007 showing use/ consumption of electricity during peak

load hours was not reliable or that the same could not sustain the impugned notice of demand.

15. To my mind, the learned First Appellate Court thus correctly reversed the findings on issues No. 1 and 2, decided them against the plaintiff and rightly accepted the defendants appeal, dismissed the plaintiff's suit as well as his appeal.

16. As a result of above discussion, the appeal is dismissed. No order on costs.

17. Pending applications, if any, stand disposed of.

(ARUN MONGA)
JUDGE

March 02, 2020
Jiten

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No