IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

202 **CWP-2567-2013 (O&M).**
Date of Decision: August 18, 2022.

M/s Rainbow Resorts, VPO Chideen, Amritsar

... Petitioner

Versus

The Ombudsman, Electricity Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Vishal Garg, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate,
for the respondents No.2 to 6.

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VINOD S. BHARDWAJ, J. (ORAL)

1. The point which arises for determination in the present case is whether the electric wiring connected in a meter would be a defect in the meter or it would be a defect of metering of consumption. The said aspect has an impact on the entitlement of the Distributors from effecting recovery of arrears upon the defect being detected.

2. The present petition under Articles 226/227 of the Constitution of India, has been filed raising a challenge to the impugned judgment dated

13.12.2012 (Annexure P-8) passed by the respondent No.1 – The Ombudsman, Electricity Punjab, as well as order dated 28.08.2012 (Annexure P-6), passed by respondent No.4–Chief Engineer-cum-Chairman Forum for Redressal of Consumer Grievances and the order dated 23.12.2011 (Annexure P-3) passed by respondent No.7–Zonal Dispute Settlement Committee, PSPCL whereby the petitioner was directed to deposit a sum of Rs.1,95,939/-, pursuant to the notice dated 11.11.2010.

3. Briefly summarised, the dispute is to the effect that the petitioner, who is running a Water Amusement Park in Amritsar, is having an electricity connection of 249 Kw on 11 KV from the respondents. The said meter was burnt in the year 2008 and was replaced on 18.11.2008 with a new meter. The petitioner continued to pay the energy charges for the bills so raised by the respondent –PSPCL.

4. In the year 2010, the Department raised a charge from the petitioner on the pretext of 'low power factor surcharge' having been applied while calculating the energy charges recoverable from the petitioner against the electricity consumed. It was pointed out that the 'power factor' was being applied wrongly thus resulting in the low reading of the meter as the sequence was RBY (Red-Blue-Yellow) instead of RYB (Red-Yellow-Blue). The said defect was acknowledged by the respondent PSPCL to be a defect on account of wrong wiring and connection done by the staff of the respondents.

5. Initially, a notice for recovery of Rs.3,13,984/- was issued by Sub Divisional Officer on 11.11.2010. Upon objection, the same was reduced to Rs.2,98,097/- on 28.01.2011 and finally calculated at Rs.1,95,939/- by the Zonal Disputes Settlement Committee (ZDSC) for the

period from 18.11.2008 till 09.11.2010. The assessment of Rs.1,95,939/- so done by the Zonal Dispute Settlement Committee (ZDSC) was further subject matter of challenge before the Consumer Grievances Redressal Forum. The decision of the Zonal Dispute Settlement Committee was upheld by the Consumer Grievances Redressal Forum and the appeal was dismissed vide order dated 28.08.2012 (Annexure P-6). A further petition was preferred before the Electricity Ombudsman and the same was also dismissed by the Electricity Ombudsman vide order dated 03.12.2012 (Annexure P-8). Hence, the present petition.

6. Learned counsel appearing on behalf of the petitioner has contended that the Electricity Ombudsman as well as the Consumer Grievances Redressal Forum have dismissed the petition preferred by the petitioner and have directed the petitioner to pay the differential energy charges for the entire period commencing from 18.11.2008 till 09.11.2010. He contends that as per the Instructions of 59.7 of the Electricity Supply Instructions Manual, 2010 and Electricity Supply List Manual, 2011 of PSPCL read with Regulation 21.4 (g) of the Electricity Supply Code, 2007, the arrears on account of inaccuracy in the meter could only be demanded for a maximum period of six months. He contends that recovery of the discrepancy in the energy charges has been restricted under the Act and the regulations framed thereunder, for a maximum period of six months.

7. Per contra, learned counsel appearing on behalf of respondent - PSPCL has contended that the aforesaid regulation is not applicable to the facts of the present case inasmuch as it was not a case of inaccuracy in the meter and that it was a defective reading/metering of the electric consumption recorded on account of the lapse of the employees of the

PSPCL. Consequently, Regulation 21.4 (g) of the Electricity Supply Code, 2007 would not be applicable to the case in hand and that the order passed by the Electricity Ombudsman affirming the order passed by the Consumer Grievances Redressal Forum is correct.

8. I have heard the learned counsel for the respective parties and have gone through the pleadings on record with their able assistance.

9. Before proceeding further, it would be essential to refer to the extract of the provision contained in Regulation 21.4 (g) of the Electricity Supply Code 2007 which reads as thus:-

> *"21.4 (g) Overhauling of consumer accounts*
>
> *(1) If a meter on testing is found to be beyond the limits of accuracy as prescribed in the Regulations notified by the Central Electricity Authority under Section 55 of the Act, the account of a consumer will be overhauled and the electricity charges for all categories of consumers will be computed in accordance with the said test results for a period of six months immediately preceding, the:*
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> *(a) date of test in case the meter has been tested at site to the satisfaction of the consumer; or*
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> *(b) date the defective meter is removed for testing in the laboratory of the Licensee where such testing is undertaken at the instance of the Licensee; or*
>
> *(c) date of receipt of request from the consumer for testing a meter In the laboratory of the Licensee.*
>
> *Any evidence provided by the consumer about conditions of working and/or occupancy of the concerned premises during the said period(s) which might have a bearing on computation of electricity consumption will, however, be taken into consideration by the Licensee."*

10. A perusal of the same shows that in the event of the meter being found beyond the limits of accuracy, the electricity charges for all the categories of consumers are to be computed in accordance with the said test results for a period of six months immediately preceding the date of testing. The aforesaid provision is not disputed by the respondent as well. The inaccuracy of meter is also not the matter in dispute anymore. However, the contention raised is whether the erroneous wiring would amount to an inaccuracy in the meter or a defect outside the meter termed as defect of metering or a unit of measurement.

11. The term meter has been defined under the Regulation 2 (w) of the Electricity Supply Code, 2007, which reads thus:-

> *"Meter" means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system and shall include, wherever applicable, other equipments such as Current Transformer, Potential Transformer, Voltage Transformer or Capacitor Voltage Transformer with necessary wiring and accessories for such purpose."*

12. Furthermore, as per Chapter - II of the Electricity Supply Code, 2007, dealing with the Supply, Installation, Testing and Replacement of Meters- overhauling of Accounts, the requirement of meters has been described. The same reads thus:-

> *"21.1 Requirement of Meters.*
>
> *The distribution licensee shall not supply electricity to any person, except through installation of a correct meter in accordance with the CEA (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.*

> *The term meter shall also include, wherever applicable, other metering equipment such as current transformer, voltage transformer with wiring & accessories etc. essentially required for measuring recording consumption of electricity and shall hereinafter called "Meter".*

13. A conjoined reading of the aforesaid definition of meter shows that "meter" is a device suitable for measuring, indicating and recording consumption of electricity and shall include the equipments along with necessary wirings and accessories. Furthermore, even as per the requirement of "meter" stipulated in The Electricity Supply Code, 2007, it also includes the wiring and accessories required for measuring/recording consumption of electricity. Hence, the entire process which is necessary for enabling and energizing the meter to activate the same and make it capable of recording the consumption of energy has been enshrined in the definition of a 'meter.' Thus, the process of metering of energy consumption recorded in the meter becomes an integral part of the meter and any inaccuracy in the said process would invariably be enshrined as an inaccuracy in the meter itself. The wiring that makes the meter-recording functional, cannot in my view, be held to be not a part of the meter.

14. This Court in the matter of **Tagore Public School, Agar Nagar, Ludhiana, Vs. Punjab State Electricity Board and another, bearing CWP No.14559-2007, decided on 09.11.2009**, has held as under:-

> *"Lt. Col. K.P. Singh, appearing of the respondent Electricity Board, on a query put by this Court, has stated that in the present case, petitioner has not tampered with the electricity meter and has not used any*

device for causing inadequate turns. No willful misconduct has been attributed to the petitioner.

Once that is so, the meter was not giving correct reading, therefore, the petitioner cannot be held liable for a period of five years. Section 26(6) of the Act specifically states that in such a situation, electrical quantity supplied cannot be quantified for a period exceeding six months. Therefore, there is no doubt that section 26(6) of the Act limits the liability of the consumer, only for a period of six months. An ancillary question, which has also arisen is: whether the Current Transformer can be construed as part of the electricity meter or it is some separate device? Learned counsel, appearing for the Electricity Board, has made an attempt to urge that the defect in the Current Transformer cannot be inferred as a defect of electricity meter.

*To controvert this, Mr. Sunil Chadha has relied upon a Division Bench judgment of Bombay High Court rendered in '**The Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India' 2002 (2) RCR (Civil) 183** to contend that Current Transformer enables the electric current from being reduced, so that it could pass through the meter without causing any damage to it. Therefore, the Current Transformer is a meter within the meaning of section 20 of the Act and the defect in Current Transformer is to be understood as a defect in the electricity meter.*

Lt. Col. K.P. Singh, appearing of the respondent Electricity Board, is unable to dislodge the legal proposition propounded by Bombay High Court. Therefore, the present writ petition is accepted, order (Annexure P-4) dated 7th the December, 2006 passed by the appellate authority is set aside and order (Annexure

> *P-2) dated 23rd August, 2005 passed by the Chief Electrical Inspector is maintained."*

15. LPA preferred against the aforesaid judgment bearing number LPA-734-2010, was dismissed on 29.06.2010 and the SLP was also dismissed by the Hon'ble Supreme Court vide order dated 22.09.2014

16. Resultantly, the explanation put forth by the counsel representing the respondents – PSPCL is not in consonance with the definition provided in the Regulations.

17. Learned counsel for the respondents could not refer to any definition of the expression "metering" used by him. Besides, he also could not dispute the definition of the word "meter" under The Electricity Supply Code, 2007 and the Instructions issued under the Act. The Electricity Supply Code, 2007 is notified under Section 50 of the Electricity Act, 2003 and is thus statutory is nature. The said Code itself provides for the definition of 'meter' and the limitations on recovery of arrears imposed therein.

18. In so far as the contention of the respondents– PSPCL to the effect that the bill is being collected for the energy actually consumed/used and that the petitioner cannot be granted any benefit for an error on the part of the employee is concerned, the said submission is noticed to be rejected. Even though the entitlement of the PSPCL to recover the amount is not a subject matter of the dispute, however, the remedy to recover the aforesaid amount has been limited by the statute to a period of six months prior to the detection of the inaccuracy. The remedy having been taken away by operation of law, the respondents- PSPCL cannot claim entitlement to the

energy charges for a period beyond the period of limitation prescribed under the Code and the regulations framed thereunder.

19. All levies, charges, tariffs and penalties etc. to be claimed by the respective licencee are required to be approved by the appropriate Commission before the same are levied, collected or retained by any licensee under the Electricity Act, 2003 or the Rules and Regulations framed thereunder.

20. A distribution licensee cannot claim any right better than what has been prescribed. A bar on recovery, consciously imposed through legislation, cannot be violated. A Court of law cannot direct the distribution licensee to claim and retain the levy/charge prohibited by law. It cannot legitimize an illegality and create a right over a claim which has been abolished by operation of law.

21. A Court of law is a custodian of legislature and legislative intent. It cannot be used as a tool to destroy what it is constitutionally bound to protect. It was indeed a conscious act of legislature to limit the recovery of arrears owing to defect in meters, from the consumers, who are equally not at fault and who had no role in the installation of the meter or connection thereof. In fact, any act of tampering due to an external reason causes consequences for consumer. The employer cannot refuse to take responsibility for the conduct of its employees. Thus, it was a conscious decision of legislature to limit the period of such recovery.

22. In view of the above, the present petition is partly allowed. The order dated 28.08.2012 passed by the Forum for Redressal of Consumer Grievances and as affirmed by the Electricity Ombudsman vide order dated 13.12.2012 is modified and the respondents - authorities are directed to

compute the energy charges for a period of six months prior to the detection of the inaccuracy and the computation so done shall be then so adjusted in the future energy bills of the petitioner.

23. It has also been pointed out by the learned counsel for the petitioner that the petitioner had already deposited 50% of the disputed amount at the stage of preferring his appeal before the Electricity Ombudsman and the amount which may be so assessed may be above the amount likely to be computed in terms of the order passed today.

24. In the event of aforesaid statement being found correct, it would be open to the petitioner to claim the credit of the balance amount after adjusting the assessed computation for the period of six months. The necessary exercise be concluded within a period of two months from the date of receipt of certified copy of the order.

(VINOD S. BHARDWAJ)
JUDGE

August 18, 2022.
raj arora

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