

2023:PHHC:158344

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

365

**CWP-13615-2000 (O&M)
Date of Decision: 01.12.2023**

KUNDAN MILL BOARD AND PAPER MILLS

... Petitioner

VERSUS

PUNJAB STATE ELECTRICITY BOARD AND OTHERS

... Respondents

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

Present: Mr. Alankrit Bhardwaj, Advocate
for the petitioner.

Mr. Sukhbir Singh, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the letter No.541 dated 31.03.1998 issued by Asstt. Executive Engineer (Op.) Sub-Division, P.S.E.B., Hambran (Ludhiana) raising a demand of Rs.2,40,353/- as well as memo No.1767 dated 20.09.2000 claiming interest of Rs.47,590/- over and above the amount of Rs.2,40,353/-.

Learned counsel for the petitioner contends that the petitioner is a partnership firm and is a consumer of the respondent-Distribution Licensee against account No.MS-31. The petitioner firm applied for electricity connection with a sanctioned load of less than 100 KW for manufacturing card board. The electric connection was released in favour of the petitioner on 31.12.1989. A meter was installed in the premises of the petitioner as per the procedure laid down in Sales Manual Instructions No.103 as per which

the meter, after being tested in the ME Lab, is to be sealed by the Meter Testing Lab and the seals affixed on them are to be kept intact at the time of installation of the meter. The Executive Engineer, Flying Squad, Ludhiana inspected the premises of the petitioner firm on 29.01.1998 and prepared a checking report under his own signatures. The observations recorded in the said checking report are extracted as under:

"Note:

- 1) After checking M.C.B.-cum-C.T.C. sealed with paper seal No.076539;*
- 2) C.T.s are contributing properly;*
- 3) The meter be changed immediately and after being packed sealed, its internal mechanism be checked."*

The Flying Squad noticed and recorded a specific note regarding the existence of the various seals affixed on C.T./P.T. and the meter was thereafter removed on 09.03.1998 as per the directions of the Executive Engineer, Flying Squad. At the time of removal of the meter, AEE, Op. Hambran personally checked the meter before and after its removal. It is mandated as per the Sales Manual Instruction No.109 and Clause No.17 of the 'Abridged Condition of Supply' to record specific observation about the condition of the meter removed. At the time of removal of the meter, nothing incriminating was noticed that could lead to even a remote inference regarding theft of energy. All the seals were found intact before the meter was removed. The seals were also broken by the AEE Operation and on opening the M.C.B., he examined the seals affixed on the meter by the M.E. Lab., which were also found intact. It is further averred as per the

Commercial Circular No.45 of 1997, the meter is required to be checked by M.E. Lab in the presence of the representative of the consumer. However, no notice for the checking of the meter in the M.E. Lab was sent to the petitioner firm. It is contended that the respondents claim to have conducted the test of the meter in the M.E. lab and a report was prepared on 31.03.1998 as per which it is reported that there was a hole on the upper side of the meter body, from which an access can be made to the inner side of the meter. The same is claimed to have made out a case of theft of electricity under the abridged conditions of supply. A demand of Rs.2.40,353/- was accordingly assessed & conveyed on 31.03.1998.

Learned counsel for the petitioner argues that the above demand is not sustainable for the reason that the Authorities had not followed the mandatory procedure. Reference is made to the Sales Instructions No.45 of 1997 in relation to the theft of energy as well as the commercial policies of the Punjab State Electricity Board, which reads thus:

"(c) In future all the meters removed against any meter change order (MCO) shall be sent to ME Lab in the sealed card Board Box duly signed by concerned PSEB officer/official and the consumer or his representative. The testing of such meters shall be done in the presence of consumer or his representative. In case the consumer refused to sign the meter test result/report, such meter shall be kept in the sealed box by the operation S/Divn. till the final disposal of the case. If the consumer deposits the compensation amount without going to the Dispute Settlement Committees or Civil Courts, such sealed meter shall be returned to the ME Labs.

Similar procedure shall be adopted in case of meters sealed by the Enforcement Agency/Operation Organization in theft cases."

It is contended that the abovesaid procedure mandates that the testing of the meter has to be done in the presence of the consumer or his representative. In case, the consumer refuses to sign the meter test results, then the meter has to be kept in sealed Box by the Operation Sub-Division till the final disposal of the case and that a similar procedure is also required to be adopted in case the meter is sealed by the Enforcement Agency/Operation Organization in theft cases. He further submits that the respondents never sent any information to the petitioner before testing notwithstanding that the Flying Squad Officer as well as the Assistant Executive Engineer, who removed the electricity meter, never noticed any tempering or alteration in the seals or the meter. Reliance is also placed on the judgment of a Division Bench of this Court reported as **2000 (1) R.C.R (Civil) 681** titled "**M/s Tirupati Industries versus Punjab State Electricity Board**" to support his arguments alongwith judgments in the matter of "**Harbans Singh versus PSPCL**" reported as **2017 (4) Law Herald 3210** as well as in the matter in "**DHBVNL versus Sudesh Rani**" reported as **2016 (2) Law Herald 1607**. Relevant extract of the judgment in the matter of **M/s Tirupati Industries** (supra) is reproduced hereinafter below:-

"11. A bare reading of the above reproduced provisions of the Commercial Circular shows that the testing of meter removed against any merit change order is to be done in the presence of the consumer or his representative. This necessarily means that a notice should be given to the consumer or his representative about the date, time and place of the testing of meter. Admittedly, that was not done in the petitioner's case. Shri Sukhbir Singh argued that the violation of the instructions

*contained in Commercial Circular No. 45 should not be made basis for nullifying the decision taken by the Board because these instructions do not have the force of law. We are unable to agree with him because it is a settled proposition of law that the executive authorities of the State and its agencies are bound to act in accordance with the administrative/executive instructions which regulate their actions - **Union of India v. K.P. Joseph A.I.R. 1973 S.C. 303, Amarjit Singh Ahluwalia v. State of Punjab, A.I.R. 1975 S.C. 984, Ramana Dayaram Shetty v. International Airport Authority of India, A.I.R. 1979 S.C. 1628.***

12. *We also do not find any substance in the argument of Shri Sukhbir Singh that in view of the instructions contained in the Sales Manual and the Abridged Conditions of Supply of Electricity, the impugned action and the decisions should be upheld notwithstanding the fact that the same were taken in violation of principles of natural justice. A bare perusal of paragraph 203 of the Manual shows that it empowers the board to take punitive action in the cases of theft of electrical energy, but there is nothing in the Sales Manual and the Abridged Conditions of Supply of Electricity from which it may be inferred that the procedure prescribed under Clause (c) of Commercial Circular No. 45 is not to be followed in the cases involving allegation of theft of energy. In fact, Commercial Circular No. 45 and the Sales Manual etc. operate in different fields and, therefore, violation of one cannot be justified by relying upon the other.*

13. *The rule of hearing and the rule of fairness in State action which form part of the concept of rule of law imposes an obligation on the State and its agencies/instrumentalities to give notice and opportunity of hearing and also to disclose reason for their actions which may adversely affect the rights of a person or which may visit such person with evil consequences.*

*The rule that no man can be condemned unheard has been treated as an integral part of the concept of rule of law which permeates the scheme of our Constitution. The thin line of distinction between purely administrative actions and quasi judicial actions has been completely obliterated by the judicial verdicts. More than 30 years ago, their Lordships of the Supreme Court in **State of Orissa v. Dr. (Miss) Binapani Dei and Ors., A.I.R, 1967 S.C. 1269** ruled that even administrative decisions may be invalidated on the ground of violation of the principles of natural justice. Some of the observations made in that action are extracted below:*

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon, he is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise for arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very

nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.... It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

14. *In the subsequent decision- Sayeedur Rehman State of Bihar and others, A.I.R. 1973 Supreme Court 239; Smt. Menaka Gandhi v. Union of India and Antoher, A.I.R. 1978 S.C. 597; S.L Kapoor v. Jagmohan, 1986 R.R.R. 341; Swadeshi Cotton Mills v. Union of India, A.I.R. 1981 S.C. 818; Olga Tellis and Others v. Bombay Municipal Corporation and others, 1986 R.R.R. 290 and S.N. Mukherjee v. Union of India 1991(1) S.C.T. 241, the Apex Court reiterated the same principles with greater emphasis. In Managing Director, ECIL, Hyderabad v. B. Karunakar, J.T. 1994(1) S.C.T 319; J.T. 1993(6) S.C. 1, a Constitution Bench of the Supreme Court held that before passing an order of punishment, the disciplinary authority must furnish a copy of the report of enquiry held against the employee and give him/her an opportunity to make representation against the findings recorded in such report.*

Although that decision turns on the interpretation of Article 311(2) (as amended by 42nd amendment), the proposition of law enunciated therein represents firm recognition of the principle that every piece of adverse material/evidence, which an authority seeks to rely upon for taking an action against a person, must be disclosed or made known to the affected person and he should be given an opportunity to defend himself with reference to such material/evidence.

15. *Another facet of the principle of natural justice which has been firmly recognised by the courts is that every State action must be supported by discernible reasons. In **S.G. Jaisinghani v. Union of India, A.I.R. 1967 S.C. 1427**, a Constitution bench of the Supreme Court held as under:-*

*"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. if a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey - "Law of the Constitution" -Tenth Edn., Introduction ex.) "Law has reached its finest moments", stated Douglas, J. In **United States v. Wunderlick, 1951-342 U.S. 98, 96 Law Ed. 113**," When it has freed man from the unlimited discretion of some ruler.....Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be sworn*

enemy of caprice, classic terms in the case of John Wilkes (1770-98 E.R. 327)." means sound discretion guided by law. It must be governed by rule, not humour; it must not be arbitrary, vague and fanciful."

The extracts of the other judgments is however not being reproduced to avoid repetition. No other argument has been raised on behalf of the petitioner.

On the other hand, counsel for respondent PSPCL has referred to the written statement filed on behalf of the respondents and has relied upon the following averments contained therein:-

"4. That the contents of this para are admitted to the extent that the electric connection was released to the petitioner firm on 31.12.89. Before the release of electric connection, the meter was installed in the premises was checked from the ME Lab and the same was drawn by Assistant Executive Engineer, Operation from the ME Lab on 9.1.97 vide challan dated 2.1.1997 with the reading 0080 and on the same date the meter was installed in the petitioner premises on 9.1.1997 vide MCD No. 188/39362 dated 2.1.1997, after it was drawn from ME Lab. The seals of the ME Lab were in existence however, some other seals were affixed at the time of installation of meter.

5. That the contents of this para are admitted to the extent, so far as these relates to the reproduction of provisions of Sales Manual Instruction No.109. However as per Annexure P-4, the procedure mentioned in this para is to be followed when it is reported as dead stop by meter clerk or meter Inspector. But in the present case, the meter was checked up on 29.1.1998 by the Sr. XEN Enforcement-II Ludhiana and found that the meter was dead stop and it was directed by the Sr. XEN Enforcement to remove the meter and send it the same to the ME Lab for

internal checking under permanent seal. It was not case of a reporting but the sudden checking done by flying squad. The replacement of the meter was effected on 9.3.1998 vide MCO No. 39/46884 dated 29.1.1998 and the same was checked in the ME Lab on 30.11.1998 and it was found that the meter body was having hole on its upper side through which the digits of the meter were found approachable easily. However it is submitted that Rachhpal Singh Sr. XEN Enforcement has categorically stated that as the hole was existent on the top cover of the MCB, so the hole could not come to his notice at the time of checking of the meter and immediately after the removal of meter, the same was packed in the presence of the petitioner and in the same condition It was checked in the ME Lab.

6. That the contents of this para are admitted to the extent of the issuance of Circular No.45/97. However, it is submitted that in the present case, the meter after it was removed was duly packed in the presence of the consumer. Even the consumer has informed by the Assistant Executive Engineer Sub Division Operation, PSEB Rambra. That the consumer was informed through Telephone to come present at the time of checking of meter in the ME Lab. But he did not reach in the ME Lab. This fact was also find mentioned in the letter dated 31-3-1998 written by Assistant Division, Executive Engineer, Operation Sub PSEB Hambra. So the petitioner was informed and despite of such information, the petitioner did not turned up in the ME Lab at the time of checking.

7&8. That the contents of these paras are admitted to the extent that the meter were checked by the Executive Engineer Enforcement on 29.1.1998 vide checking report dated 29.1.98 Annexure P-5. However, subsequently Sh. Rachhpal Singh, Sr. XEN Enforcement made the specific statement that the hole was on the upper side of the body. But it could not be checked due to inadvertence. However, it is submitted that there is no mention

either about the existing or the non existing of paper seals affixed on the meter cup Board on 9.1.1997. As such the seals were either broken/torn. Had there been any paper seals, the same would have been mentioned, so the petitioner cannot say that the meter seals were there on the meter cub board. In fact the hole could not be detected at the time of checking or at the time of removal of meter by over sight. However, at the time of checking in the ME Lab it was found that there was hole in the upper side of the meter and from where the meter digits can be controlled in order to suppress the actual consumption. And after taking into consideration, it was declared as a case of theft. It is pertinent to mention here that the lead seals on the meter cup board bearing impression OEB-405 was not serial numbered. So the Disputes Settlement Committee came to the conclusion that the involvement of ABE, operation was also not ruled out. The instructions of the Board was complied with by the Sr. XEN.

9. That in reply to this para it is submitted that the petitioner was informed telephonically by the Assistant Engineer Operation Humbra to associate in the checking of their meter in the ME Lab on 31.8.98. This is also clear from the letter bearing No. 541 dated 31.8.98 written by AEE Operation Division Humbra.

10. That the contents of this para are wrong and denied. It is denied that the meter was not checked in the ME Lab. The Senior XEN flying squad has rightly filled up the performa. It is clear from report dated 29.1.98 Annexure P-5 that the meter be replaced and brought in ME Lab for internal checking under a permanent seal. The hole was detected in the ME Lab. Inadvertently it could not be came to the notice of the Sr. XEN, Flying Squad at the time of checking on 28.1.99 as the hole was on the top of the meter at the time of removal of meter by the AEE. The report was rightly made by the officials after

examining the meter in the ME Lab. The meter was checked in the ME Lab by Sr. XEN flying squad, Ludhiana and Sr. XEN ME Lab Ludhiana. It is submitted there are no allegations that these officials have any ill-will towards the petitioner.

11. That the contents of this para are admitted to the extent that after the receipt of report from the ME Lab, the demand of Rs.9,40,353/- was rightly made vide annexure P-1.”

He further contends that no replication was filed controverting the contents of the reply filed by the respondents in March, 2002 and a period of more than 20 years had elapsed. It has thus remained undisputed that statement of the officer was duly recorded about his failure to notice any hole on the meter top cover of the MCB. The meter was removed & packed in front of the consumer and an intimation was also sent by the ME Lab to come present at the time of checking but he did not reach. It has also remained uncontroverted that despite being granted opportunity of hearing on 23.06.1999; 11.08.1999 & 13.11.1999 by the Broad Level Review Committee, the petitioner chose to abstain and not espouse his grievance before the Committee. The applicability of the instructions and its validation in judicial review was also emphasized and that no approval or concurrence of the State Govt. was required for issuance of the instructions. Reference was also made to the averments wherein the claim of the petitioner is denied. However, as no such argument was raised when matter was heard, the same is not being adverted to. It is also contended that the judgment relied upon by the petitioner are not applicable to the facts of this case as the prescribed procedure had been followed but the petitioner chose not to appear before the ME lab as well as during review Committee meeting.

I have heard learned counsel appearing on behalf of the parties and have gone through the documents as well as judgments relied upon by the parties.

It is evident from a perusal of the impugned memo No.541 dated 31.03.1998 that intimation regarding information is stated to have been given. The relevant part of the impugned memo reads thus:-

"Vide MCO No. 39/046884 dated 29.1.98, stopped meter of aforesaid account was changed on 9.3.98. The removed meter was checked in the M. S. Lab., Ludhiana in the presence of Senior Executive Engineer, Ludhiana (Flying Squad) and it was observed that there was alhole (sic) in the body of the meter, which makes out a case of theft. You were informed by the undersigned (through telephone) that the meter is to be checked in your presence but you did not reach at the spot. After waiting for a long time in the presence of undersigned, Senior Executive Engineer, Flying Swuad, (sic) Ludhiana and Seniro (sic) Executive Engineer, M. E. Lab. Ludhiana, meter was checked after opening the same. Being a thef (sic) case, you are asked to deposit the amount mentioned below and your connection is disconnected. Supply shall be restored only after deposit of the amount.

Connection Amount 98.902 KW @ Rs. 2000 = 1,98,000.00

A. D. 10,178.00

Security Amount 32,175.00

2,40,353.00"

The said intimation records that intimation was sent telephonically even though the regulations do not stipulate the telephonic intimation. However, even if contention of the respondents is to be briefly accepted, yet, the letter does not record the details as about the telephone

number on which the call was made or the person with whom any conversation was held. In the absence of the basic material disclosure about an oral information, there is no other supporting documentary evidence. The procedural safeguards stipulated in the rules are essential safeguards provided under the law, to be followed before any criminal liability can be fastened. The said safeguards have been held by the Division Bench judgment in the matter of *M/s Tirupati Industries (supra)* to be essential and binding. Once the obligation of intimation has been cast upon the Punjab State Electricity Board, the said burden was required to be discharged by cogent and trustworthy evidence. The same cannot be held to have been satisfactorily discharged only on an inference. A mere non denial to a vague averment would not amount to proving the contention especially when the case of the petitioner was founded on non-intimation & violation of Clause (C) of the commercial Circular No. 45 by the Punjab State Electricity Board.

In a case of criminal prosecution, burden lies on the prosecuting agency and such burden cannot be shifted on the accused merely on the basis of a remote inference of compliance sought to be drawn from a self-serving writing in the impugned order. The lapse gains further significance since multiple lapses are evident in the proceedings and even the officer does not dispute that no discrepancy was noticed at the time of removal & sealing of the meter in the presence of the consumer. The cumulative effect of the same is that a visible defect was not noticed at the time of sealing in presence of petitioner's representative and there is no proof of any valid communication before the testing of the meter. The lapses cannot be considered mere ministerial and inconsequential.

Taking into consideration the facts noticed above as also the ratio of the law laid down by this Court in the precedent judgments extracted above as well as the solitary reliance of the petitioner on the communication dated 31.03.1998 to prove intimation by way of telephone, I find that the demand raised by the respondents is not compliant of the ratio laid down by this court in its precedent judgments as regards the applicability of the commercial circular No.45 of 1997 in the matter of ***M/s Tirupati Industries (supra)***.

In view of the above, the present writ petition is allowed. The impugned letter No.541 dated 31.03.1998 raising a demand of Rs.2,40,353/- and memo No.1767 dated 20.09.2000 claiming interest of Rs.47,590/- are set aside. The amount already deposited by the petitioner may be adjusted by the respondents-Distribution Licensee against the future energy consumption charges.

Petition stands allowed accordingly.

01.12.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No