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

355

CWP-7784-2000 (O&M).
Date of Decision: 01.12.2023.

Secretary, Punjab State Committee, Communist Party of India (Marxist), Punjab.

...Petitioner

Versus

Union of India and others

…Respondents

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

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Present: Mr. R.S. Bains, Sr. Advocate, assisted by
Mr. Vivek Vikas Singh, Advocate and
Mr. Amarjit Singh, Advocate,
for the petitioner.

Mr. Sumeet Jain, Addl. Standing Counsel,
for the respondents/U.T. Chandigarh.

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VINOD S. BHARDWAJ. J (ORAL).

Challenge in the present writ petition is to the electricity Bill No.59893, Account No.3008/7000-01Y dated 03.03.2000 claiming arrears for an amount of Rs.1,85,027.67 on account of an alleged less billing and with a further prayer seeking quashing of the Memo No.4113 dated 24.05.2000 (Annexure P-2) claiming the said amount as recoverable.

Learned Senior counsel appearing on behalf of the petitioner contends that the petitioner is the Secretary of the Punjab State Committee of Communist Party of India (MARXIST) having its Head Office at Baba Karam Singh Cheema Bhawan, Sector 30-B, Chandigarh. The above said electric connection was released on 10.12.1994 and the petitioner had been regularly paying all the electricity bills issued by the respondents to it from time to time. The petitioner was, however, served with the impugned bill dated 03.03.2000 claiming payment of Rs.1,92,664/- which included an amount of Rs.1,85,027.67 towards arrears. No details about the above amount had been furnished. A communication, in this regard, was also sent by the petitioner to the Executive Engineer, Electricity 6Construction Division, Sector 34, Chandigarh, on 10.03.2000 giving details explaining that there are no arrears which are payable and clarifying that all bills received against the said account number had already been cleared. A cheque No.QNT 275349 dated 10.03.2000 drawn on Punjab National Bank, Sector 19, Chandigarh for an amount of Rs.7,636/- was also attached along with the above said application. The respondents, however, refused to accept the said cheque along with the application initially but after scoring off the above said line, the application was accepted but the cheque was returned.

As details about the manner in which the arrears had been computed had not been supplied, the petitioner was compelled to approach this Court by filing CWP No.3198 of 2000 which came up for hearing on 17.03.2020. The above said writ petition was disposed of on the said date directing the respondent No.4 to consider and decide the application submitted by the petitioner and to communicate the decision to the petitioner herein.

After the passing of the above said order, a letter was submitted again by the petitioner to the respondent No.3 along with the cheque. It was thereafter that the respondents conveyed to the petitioner vide Memo No.4113 dated 24.05.2000 that the amount of Rs.1,85,027.67 had been found due during general checking to have not been correctly billed in the bills pertaining to the period from 10.12.1994 till the issuance of the fresh bill. It was conveyed that the actual multiplying factor which was 100/3, in fact was applied as 1/3. The above said factor 1/3 was taken for the city ratio and the meter multiplying factor of 100 was erroneously omitted. Taking into consideration, the actual energy consumption and meter readings of 3998 as on 04.02.2000, the amount was re-calculated with the correct multiplying factor and the demand had been raised. The said communication as well as the bill is now subject matter of challenge in the present writ petition.

Written statement on behalf of respondents had been filed wherein the respondents have averred as under:-

> *"7. That in reply to para-7 it is submitted that consumer was served bill on dated 3.3.2000 for actual consumption basis in mentioned in para No.6 with a arrear charged through sundry, for the period 12/94 to 12/99. The amount of average charge for genuine calculation mistakes from 12/94 to 12/99 was amounting to Rs. 185027.67 on account*

of less charged against actual consumption recorded by the meter due to wrong multiplying factor implemented. And petitioner was served bill as under:-

1. *Total units consumer, 3266 only amount charged*
   = Rs.7636/30
2. *Amount charged through sundry as arrear on a/c of wrong calculation applied during period 12/94 to 12/99.*
   = Rs. 185027/67

Total: Rs. 192664-00/-

It is pertinent to mention here that under general instructions prevailing in the Electricity Department, the checking of the meter at site with more than 20 KW load was carried out under the supervision of SDO (operation) Electricity Sub Division No.6 and during this checking it was found that the multiplying factor applicable in the case of the meter installed in the premises of the petitioner was 100/3 and not 1/3 of the total consumption recorded in the meter and being charged in the previous bills. It was only thereafter thorough checking of the whole record pertaining to the petitioner was carried out and from where it transpired that the factor of 1/3 on the actual consumption shown by the meter was being charged since December, 1994 from the time of replacement of the dead meter by the meter now in existence in the premises of the petitioner. Accordingly, under Note (i) of the instruction No. 115 of the Punjab State Electricity Board Sales Manual as applicable to the Union Territory of Chandigarh, a bill of sum of Rs.1,92,664/- dated 3.3.2000 bearing No.59893 was raised upon the petitioner which included a sum of Rs. 1,85,027.67 on account of the above rectification of the mistake of wrong application of the meter. The Note (i) of the instruction No.115 of the Punjab State Electricity Board

Sales Manual as also Clause 15 of the Abridged Conditions of Supply are reproduced herein below for kind perusal and facility of reference of this Hon'ble Court:-

*"**Note (i) of the instruction No.115 of the Punjab State Electricity Board Sales Manual**:-*

The cases involving incorrect connections, defective C.T.'s/ P.T.'s genuine calculations mistakes etc. are not governed under the above mentioned instructions but under the provisions of clause 15 of the Abridged Conditions of supply which reads as under:-

> *"Where the accuracy of meter is not involved and it is a case of incorrect connections, defective C.T.s and P.T.s, genuine calculations mistakes etc. charges would be adjusted in favour of Board/consumer as the case may be for the period the mistake/defect continued."*

***Clause 15 of the Abridged Conditions of Supply: C.T and P.T Meters**:-*

"Where the accuracy of meter is not involved and it is a case of incorrect connections, defective C.T.s, P.T.s genuine calculations mistakes etc., charges would be adjusted in favour of Board/consumer as the case may be for the period the mistake/defect manner."

It is thus apparent from perusal of above that the bonafide inadvertent calculation mistake can be rectified as and when the same comes to the notice of the department and for the corrections can be made for the period, the mistake continued. It is further submitted that the question of limitation does not arise in this case in as much as the *limitation may start running at the most from the date of acquiring of knowledge, though, in the submission of the answering respondent the same would start from the issuance of the demand notice after the mistake comes to the notice and a decision to effect recovery is finally taken. The answering respondent submits that in any case, in the presence case both the knowledge and issuance of demand notice are very much within a period of three years, as such, the demand cannot be said to be barred by time."*

It is thus averred that the demand had been correctly raised and that there is no error in claiming the said amount since there was a wrong application of the multiplying factor and instead of 100/3, a multiplying factor of 1/3 had been added.

No replication/rejoinder to the above said written statement has been filed.

Learned Senior counsel appearing on behalf of the petitioner has relied upon Section 26 (6) of the Electricity Act, 1910, as it was applicable then, to contend that the period of recovery could have been confined only to a period of six months prior to the defect having been noticed and that the respondents are in error in demanding the amount for the entire duration i.e. from the change of meter till the revision of the bill. He further contends that the respondents have never afforded any opportunity of hearing to the petitioner before raising the said demand and that even after an order had been passed by a Division Bench of this Court directing the respondents to convey the reasons, no opportunity of hearing had been extended. It is argued that the petitioner had not concealed any information and/or had not played any fraud upon the respondent-Electricity Department and had been depositing all the dues that were raised upon the petitioner. He further submits that in any case without pressing the issue any further, the petitioner is willing the pay aforesaid amount as demanded by the respondents through the impugned communication and that the amount of Rs.50,000 already deposited by the petitioner, in compliance to the order dated 13.06.2000 passed by this Court, be also adjusted.

Controverting the arguments advanced by the learned Senior counsel for the petitioner, counsel appearing on behalf of respondents-U.T. Chandigarh has contended that Section 26 (6) of the Electricity Act, 1910 is not applicable as the same is applicable only when there is a dispute or difference with respect to the meter. In the present case, the dispute does not pertain to the meter and only relates to a clerical mistake in wrongly computing the energy consumption charges to be deposited. There being no dispute vis-a-vis the electricity consumption and/or any defect in the meter recording, and the error being purely of a clerical nature that erupted on account of applying of a wrong multiplying factor, hence, Section 26 (6) of the Electricity Act, 1910 would not be applicable and the issue would rather be dealt with under Section 24 of the Electricity Act, 1910. The respondents would thus have a right to recover the arrear as assessed and the period of limitation is to be computed with effect from the date when such defect is noticed by the concerned authorities.

He, however, is not in position to dispute the fact that arrears had been demanded and that no opportunity of hearing had been granted to the petitioner. He although contends that there is no such procedure stipulated in the applicable regulations, however, fairly submits that the principles of natural justice would nonetheless be attracted once such arrears are being demanded.

Without going any further in to the above said controversy and noticing that the petitioner has already offered to make good the entire amount as demanded by the respondents from the petitioner within a period of 06 weeks from today, I deem it appropriate to dispose of the present petition with a direction that in the event of the petitioner depositing the entire amount of the bill as claimed against him by virtue of the impugned bills, within a period of 06 weeks from today, the petitioner be not held liable to any other surcharge that may be demanded thereupon.

The waiver of the surcharge is being allowed only as a equitable relief and noticing that the dispute has remained pending for a considerable period and relates to the year 1994 and a period of nearly 30 years has elapsed and there would have been schemes that may have been notified by the respondent- Electricity Department during the interregnum period, the benefit whereof has not been availed by the petitioner, including OTS/waiver of Surcharge Schemes. Besides, an amount of Rs.50,000/- had already been deposited by the petitioner in compliance of the order passed by this Court. The re-opening of the case to re-determine the surcharge would only amount to giving a fresh lease of life to a litigation which has remained pending for nearly three decades and the pending issue/amount would only be trivial. Thus, the litigation is required to be given a quietus even as per the litigation policy.

The present writ petition is accordingly disposed of.

Misc. applications, if any, shall also stand disposed of accordingly.

December 01, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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