

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

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**CWP-8418-1999 (O&M)
Date of Decision: 24.02.2023**

OM PARKASH GUPTA

... Petitioner

VERSUS

PUNJAB STATE ELECTRICITY BOARD AND ANR.

... Respondents

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

Present: Mr. Devyani Sharma, Advocate for
Mr. Sunil Chadha, Senior Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition seeks quashing of demand notice/letter memo No.1539 dated 19.02.1998 (Annexure P-3), letter memo No.2057 dated 11.03.1999 (Annexure P-4), letter memo No.5034 dated 02.06.1999 (Annexure P-6) with a further prayer for directing the respondents to refund the amount recovered from the petitioner pursuant to the impugned demand notice dated 19.02.1998 (Annexure P-3).

Briefly summarized, the facts of the present case are that the petitioner having electricity connection bearing account No.SB 46/0275 states that he had been paying the electricity bills regularly. He further alleges that he submitted an application on 20.01.1992 to SDO, East Sub Division, P.S.E.B., Ludhiana for checking and changing the meter. The petitioner claims to have met the officials of the respondent-Distribution Licensee, however, the meter in question was not replaced. The petitioner thereafter submitted another application dated 12.08.1996 to the Asstt. XEN (C), Unit No.2, P.S.E.B.,

Ludhiana for changing the electricity meter installed at the residence of the petitioner. It was only in the month September 1997 that the respondent-Department replaced the aforesaid meter with a new one. The petitioner was, however, shocked on receipt of a demand notice/letter memo No.1539 dated 19.02.1998 from respondent No.2, whereby the petitioner was informed that while checking the meter, which was removed from the premises of the petitioner, in M.E. Lab on 24.10.1997, the frules of the M.E. Seals were found fake and the petitioner was asked to deposit a sum of Rs.10,665/- and in the event of non-depositing the said amount, the electricity connection, which was already disconnected, shall then not be restored. Thereupon, the petitioner requested the respondents to refer the matter to Dispute Settlement Committee. He was informed that his matter was fixed for 26.02.1999 before the Circle Level Disputes Settlement Committee when he appeared on 26.02.1999. It was informed by him that at the time of replacing the meter, no such tampering was detected and the checking before M.E. Lab was conducted in his absence and without associating him in the process and as such, he cannot be held liable to pay any amount. Furthermore, the alleged checking was done on 24.10.1997, where the respondent-Department conveyed the result to the petitioner after a lapse of nearly four months. However, the claim of the petitioner was rejected by the Circle Level Disputes Settlement Committee without considering the submissions made by the petitioner. The respondent No.2 vide letter No.2057 dated 11.03.1999 informed the petitioner about the decision of the Circle Level Disputes Settlement Committee upholding the amount to be charged from the petitioner. Feeling aggrieved thereof, the petitioner made a written request dated 12.03.1999 to the Chief Engineer, Ludhiana for reviewing the matter. Considering his request, the case of the petitioner was put up before the Zonal

Level Disputes Settlement Committee on his depositing 50% of the balance amount. The petitioner appeared before the said Committee on 14.05.1999 and reiterated the stand taken by him before the Circle Level Disputes Settlement Committee. However, once again, the claim of the petitioner was rejected without considering the facts submitted by the petitioner. The present petition was accordingly filed thereafter.

It was submitted that the respondent-Authorities never supplied the copy of the impugned orders passed by them and that the communications sent to the petitioner by the respondent-Authorities do not give any reason for rejection of submissions advanced by the petitioner. Learned counsel for the petitioner contends that he had made repeated requests to the respondents to change the electricity meter, however, the respondent-Authorities did not act in time. A further reference is made to the provisions of the Sale Manual of the erstwhile P.S.E.B. as per which the issue in question was required to be determined by the Electrical Inspector and that in case the opinion recorded by the Electrical Inspector about the meter was not correct, the account was to be overhauled only thereafter and that too not for a period exceeding six months prior to the date of test. Instructions 116 of the Sale Manual of the P.S.E.B. is extracted as under:

“INSTRUCTION NO.116

DIFFERENCE OF DISPUTE OVER THE ACCURACY:

Where any difference of dispute arises as to whether any meter is or is not correct the matter should be decided upon the application by the either party to the Electrical Inspector under Section 26(6) of the Indian Electricity Act, 1910, as amended from time to time, and if in his opinion, the meter is not correct the amount of adjustment to be carried out in the consumer's account for a period not exceeding six months preceding the date of test.

Provided that before the Board or a consumer applies to Chief Electrical, he shall give to the other party not less than 7 days' notice of his intention to do so."

By placing reliance on the above said provisions of Sale Manual, it is argued that the matter regarding correctness of the meter was never referred to the Electrical Inspector and rather the meter was sent unilaterally with the M.E. Lab without making any attempt to join the petitioner during the said checking. It is also contended that at the time of removal of old defective meter in the month of September 1997, nothing wrong with the M.E. Seals was reported or suspected and that the demand was worked out only later in point of time.

Written statement had been filed by the respondents, wherein it has been averred that the petitioner has not come to the Court with clean hands and that no letter, mentioned in the writ petition as Annexure P-1 and P-2, were ever received in the office of Sub Divisional Officer, PSEB, Ludhiana requesting change of electricity meter. It was only during the month of August 1997 when the Meter Reader reported the M.E. Seals being broken and that the meter was ordered to be changed on 12.09.1997. The meter was thereafter removed from the premises of the petitioner and sent to M.E. Lab for checking the same. Upon checking the same, it was reported that it was a case of theft of energy as the frules of M.E. seals were fake and there were also scratches on the digits and the glass of the meter was also tampered with. The checking report of the M.E. Lab, whereby theft was declared, has also been appended as Annexure R-2. The demand notice was thereafter served upon the petitioner. The institution of proceedings before the Circle Level Disputes Settlement Committee as well as the Zonal Level Disputes Settlement Committee after depositing of 40% amount and 60% of the balance amount respectively is not

in dispute. It is contended that the petitioner is habitual of indulging in theft of energy and that even the meter installed in October 1997 was also tampered with and a second case of theft of energy was registered against the petitioner for which a separate notice of demand was raised and even the said case also stood established against the petitioner. There also the meter was removed from the premises of the petitioner on 11.12.1998 and upon examination by the M.E. Lab, the body of the meter was found tampered with and scratches on the digits were also noticed. A demand of Rs.10,300/- was again sent to the petitioner on 08.02.1999. It is thus averred that the petitioner being habitual of committing theft of energy, there is no reason for showing any indulgence. It is further averred that the orders in question were passed by the Circle Level Disputes Settlement Committee as well as Zonal Level Disputes Settlement Committee respectively in the presence of the petitioner and as per the then prevalent practice, the order was pronounced. It is also pointed out that there was no occasion for the meter to be checked in the presence of the petitioner, since it was not a disputed case. It was sent for a routine checking to the M.E. Lab before being consigned when the element of theft was noticed.

No rejoinder to the written statement was filed by the petitioner. Hence, the averments contained in the written statement remained controverted.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The issue in question pertains to the removal and checking of meter which is stated to have taken place in the month of September 1997 i.e. 25 years ago. The 70% of the claimed amount is stated to be deposited by the

petitioner. The case of the petitioner rests primarily on the ground that he had submitted two applications earlier to the respondents-Authorities for change of meter and that the respondents never removed the same. The respondents, however, in their written statement denied the submission of any such application(s). No such rejoinder disputing the above said denial was ever filed by the petitioner. Hence, there is no reason to believe that any such application was submitted by the petitioner at any point of time. Further, it is also not disputed that the petitioner had participated in the proceedings that took place before the Circle Level Disputes Settlement Committee as well as the Zonal Level Disputes Settlement Committee. No challenge to the said order(s) has been raised and only the demand notice sent pursuant to the above orders have been impugned herein. Even though the counsel contends that the orders had not been supplied, however, the same did not preclude the petitioner from challenging to the abovesaid decisions and to place the same on record later in point of time. Besides, the respondent-Department had also highlighted the conduct of the petitioner in repeatedly indulging in theft of energy in a similar manner.

There is no material available on record on the basis whereof the finding of theft recorded by the respondent-Authorities should be disbelieved or set aside. The said aspect has been considered concurrently by the Circle Level Disputes Settlement Committee and the Zonal Level Disputes Settlement Committee which have recorded a finding of theft of energy. The said concurrent finding of fact is not to be interfered with merely because of certain technical objections raised by the petitioner without substantiating the said objections. The respondents have given reasons explaining why the presence of the petitioner was not there at the time of checking of the meter in the M.E.

Lab since there was no suspicion reported and in the absence of any such suspicion of theft, there was no occasion for sending any advance notice to the petitioner. The explanation offered seems plausible. Besides, the petitioner has not levelled any allegation of malice, bias or mischief against any of the officials of the respondent-Department. Hence, the activities undertaken by the respondents were in the due course of business and there is no occasion to disbelieve that the imposition of penalty for detection of theft by the officials concerned was on account of any extraneous consideration. I, thus, find no reason to interfere with the decision taken by the respondent-Authorities.

The present writ petition is accordingly dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

24.02.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

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