IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203

CWP-24915-2014
Date of decision: 22.08.2023

RAJ PAL ......Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD AND OTHERS

.......Respondents

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

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Present: - Mr. Diwan S. Adlakha, Advocate
for the petitioner.

Ms. Supriya Garg, Advocate with
Ms. Mallika Dhillon, Advocate
for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the impugned notice dated 12.05.2014 (Annexure P-8) vide which the petitioner had been directed to pay a total amount of Rs. 6,26,749/-. The additional challenge is to the Memo No. CH-4 dated 03.03.2009 (Annexure P-1) as well as Memo No. CH-5 dated 03.03.2009 whereby the petitioner was directed to deposit a penalty of Rs. 1,96,523/- as well as compounding fee of Rs. 2,40,000/-.

2. Learned Counsel appearing on behalf of the petitioner contends that Jaipal, brother of the petitioner was the subscriber and the petitioner is

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user/beneficiary of electricity connection bearing Account No. D4-404 provided by the respondent-distribution licensee. The premises of the petitioner was inspected by the officials of respondents on 08.12.2009 and the petitioner was called upon to sign certain papers as a token of routine inspection. A counter sign on the said documents was accordingly done by the petitioner, on the asking of the officials of the respondents. However, the petitioner received a checking report from respondent No.3. The relevant extract of the same is as under:

> *"At the time of checking, the meter checked by applied load 1.5 KW Meter bulb frinkling on Red phase on load. But meter bulbno frinkling in Yellow & Blue phase by applying load. Opened MCB cover and found that one firm seal of meter found broken & other firm seal found tempered, re- fixed with some adhesive material. It is suspected case of theft. Meter removed & packed in MCB. Sealed with khakhi tape, in presence of consumer. Signed slip of checking party & consumer is pasted on MCB with cello tape & may be sent to M&T Lab Dholkote for verification."*

3. A communication of a demand vide Memo No. CH-4 dated 03.03.2009 to the tune of Rs. 1,96,523/- was received by the petitioner as an assessment towards theft of electricity. Further, Memo No.CH-5 of 03.03.2009 was received for a sum of Rs. 2,40,000/- towards compounding charges.

4. Aggrieved of the aforesaid demands issued by the respondent-distribution licensee, the petitioner preferred a complaint before the District Consumer Disputes Redressal Forum, Yamuna Nagar on 16.03.2009. The District Consumer Forum directed the petitioner to deposit 50% of the disputed amount alongwith the current consumption charges and granted an

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ad interim indulgence directing respondent to not disconnect the electricity supply. In compliance of the abovesaid interim order, the petitioner deposited a total amount of Rs. 2,21,350/- on 26.03.2009 vide receipt No. 056552 amounting to Rs. 1,01,350/- and 056554 for a sum of Rs. 1,20,000/-.

5. That notwithstanding the above said deposit of amount by the petitioner, criminal proceedings were initiated by the respondent-distribution licensee and case FIR No. 76 dated 18.05.2009 was registered against the petitioner under Section 135 of the Electricity Act, 2003. The petitioner was convicted and sentenced for a period of one year for the said offence of theft of electricity vide judgment dated 19.07.2011 passed by the Special Court. He has already raised a challenge to the above said judgment by filing criminal appeal CRA-S-2042-SB of 2011 which is pending adjudication.

6. The consumer complaint filed by the petitioner was thereafter dismissed by the District Consumer Disputes Redressal Forum, vide order dated 23.07.2013 for want of jurisdiction. Liberty was granted to the petitioner to take recourse to the appropriate alternative remedies available to him in accordance with law and keeping in view the judgment of Hon'ble Supreme Court in Civil Appeal No. 5466 of 2012 of case titled as *"U.P. Power Corporation Limited versus Anis* Ahmad". The petitioner thereafter submitted a representation to the respondent authorities that since the petitioner has already faced criminal proceedings, hence, he is no more liable to pay the compounding charges and as the demand raised for restoring electricity supply to the petitioner was only a sum of Rs.1,96,523/-, hence, the amount already deposited by the petitioner be adjusted against the said demand and any excess amount which stands deposited with the respondents be refunded to him. No decision on the above said

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representation was however, taken. The petitioner was, however, surprised on receipt of a Memo No. 3256 dated 12.05.2014 whereby the petitioner was asked to deposit a sum of Rs. 6,26,749/- failing which the electricity connection of the petitioner would be disconnected. Aggrieved thereof the present petition had been filed.

7. Written statement on behalf of respondents through respondent No.3 has been filed wherein the abovesaid factual aspects has not been disputed. It is, however, pointed out that it was a case of theft of energy and that the demand has been rightly raised. However, vide order dated 14.11.2017, this Court directed the respondents to file the breakup of the amount demanded by them and as determined in the impugned communication dated 12.05.2014 (Annexure P-8).

8. In compliance thereto, a short affidavit of Dharamvir Singh, Sub Divisional Officer, Operation Sub Division, Uttar Haryana Bijli Vitran Nigam Ltd. Radaur, District Yamuna Nagar had been filed as per which the breakup of the amount as contained in the Memo No. 3256 dated 12.05.2014 is as under:

Particulars	Amount (Rs.)
Amount of penalty payable for theft of electricity	1,96,523
Compounding Amount	2,40,000
Total Amount	4,36,523
Amount deposited by the petitioner on 26.03.2009 in compliance of directions issued vide order dated 16.03.2009 by the District Consumer Dispute Redressal Forum, Jagadhary i.e. 50% of penalty amount.	98,262

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50% of compounding amount deposited by the petitioner on 26.03.2009	1,20,000
Total amount paid by the petitioner	**2,18,262**
Remaining Amount payable	2,18,261
Surcharge @ 1 ½ % per month up to April 2014 in terms of sub rule (x) of instruction No.5.4 of sales manual 2013.	3,85,849
Remaining Current Bill from September 2013 to April 2014.	21167
Surcharge @ 1 ½ % per month from September 2013 to April 2014 in terms of sub rule (x) of instruction no.5.4 of sales manual-2013.	1471
Total Amount Payable	**6,26,749/-**

9. Learned counsel appearing on behalf of the petitioner contends that a perusal of the aforesaid shows that total amount payable as per the demand initially sent on 03.03.2009 was Rs. 4,36,523/-. As against the above said demanded amount, the petitioner had deposited a sum of Rs. 2,18,262/- pursuant to the interim order passed by the District Consumer Disputes Redressal Forum vide receipt dated 26.03.2009. The respondents however, apportioned the above said amount equally towards the demand as well as the compounding charges. Thereafter, the respondents have calculated surcharge @ 1 ½ % per month upto April, 2014. The above said surcharge has been calculated on the outstanding amount of Rs. 2,18, 261/- and also includes the current bill of September, 2013 to April 2014 and surcharge on the said current bills.

10. Counsel for the petitioner contends that undisputedly, an amount of Rs.2,18,262/- had already been deposited by the petitioner on 26.03.2009 with the respondents. Once the FIR had been registered by the

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respondents on 18.05.2009, there was no occasion for apportioning the deposited amount towards compounding charges. The credit of the aforesaid entire amount ought to have been given to the petitioner towards deposit against the assessment conveyed by the respondents. He further submits that insofar as the claim towards the non-payment of the current bills and surcharge thereupon is concerned, he would not press the present petition qua the said assessment. He further points out that while issuing notice of motion on 14.01.2015, this Court had directed a conditional interim stay on the petitioner depositing a sum of Rs. 1 lac. The said deposit had also been made by the petitioner.

11. On a pointed query raised to the counsel for the respondent as to how the surcharge could have been levied even against the compounding charges and more so once the respondent department had already got the FIR registered against the petitioner and that an amount over and above the amount assessed by them had already been deposited by the petitioner on 26.03.2009 itself. Counsel for the respondent is not in a position to give a satisfactory response.

12. Even though two separate receipts apportioning the deposited amount in 50% equal shares towards assessment and compounding charges have been issued, however, there was no such bifurcation ordered. Be that as it may, the above amount was received by respondents on 26.03.2009, yet, the FIR was registered on 18.05.2009. No request was made by petitioner for seeking compounding of the offence and there was no further justification in showing the above amount in credit towards compounding charges and to demand surcharge even though the amount deposited exceeded the demand assessed.

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13. The respondents cannot claim that they have suffered any prejudice by continuing to show the credit in a different head especially when the FIR has been already lodged and the deposit towards compounding charges would not sustain any further. Being a Public Sector Undertaking, it cannot claim perfection of a right to claim surcharge solely on account of a technical non-deposit especially when the Consumer was not apprised after the registration of the FIR to seek a refund or to exercise the option of treating the above amount towards the assessment demanded. Profiteering from consumer because of a pure technicality does not vest any equity in favour of respondent-distribution licensee.

14. In view of the above, the present writ petition is disposed of with a direction to the respondents to treat the amount deposited by the petitioner on 26.03.2009 towards the demand of Rs. 1,96,523/-. No amount and/or the Surcharge could have been demanded towards compounding of the offence under Section 135 after the criminal proceedings were instituted and compounding was not sought by the Consumer.

15. Taking into consideration, the undisputed factual aspects noticed above and also that the FIR had been registered by the respondents against the petitioner on 18.05.2009, the demand towards compounding charges could not have continued to be in existence or reflected as a valid demand. The petitioner is thus entitled to claim adjustment of the total amount of Rs. 2,18,262/- deposited by him towards the assessment conveyed to him under Section 135 (1) of the Electricity Act, 2003 instead of Rs. 98,262/-. The respondents shall recalculate the amount in the following manner.

i) The respondents shall recalculate the surcharge, if any on the amount of Rs.1,96,523/- for a sum of Rs. 98,262/- till

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16.03.2009 and on the balance amount of Rs. 98,262/- till 18.05.2009 when the FIR was registered.

ii) The credit of the amount of Rs. 1,20,000/- reflected by the respondents in their account towards 50% of the compounding charges would be then credited towards the demand so assessed.

iii) In the event, the amount deposited by the petitioner exceeds the amount so assessed, the petitioner shall be entitled to refund/adjustment of the aforesaid amount alongwith interest @ 6% per annum.

(iv) Further, insofar as the additional amount of Rs. 1 lac deposited in pursuant to the order dated 14.01.2015 is concerned, the petitioner shall also be entitled to return thereof alongwith the above rate of interest from the date of its deposit till its final disbursement.

(v) In case the amount assessed exceeds the deposited amount as on 16.03.2009, the calculation of difference may be set off against the amount of Rs. 1 lac deposited by the petitioner as per orders of this Court and the petitioner would be entitled to refund of the balance amount only alongwith interest awarded i.e.@6% per annum.

(vi) If the amount is still to be recovered from the petitioner, the same be conveyed to him as per law and recovery be effected as per procedure prescribed.

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16. The necessary calculations and adjustment shall be conveyed by the respondents within a period of 10 weeks from receipt of certified copy of this order.

The petition is accordingly disposed of.

(VINOD S. BHARDWAJ)

AUGUST 22, 2023 **JUDGE**

Vishal Sharma

Whether speaking/reasoned	**:**	Yes/No
Whether Reportable	:	Yes/No

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