

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

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**CWP-5965-2016 (O&M)
Date of Decision: 09.02.2023**

**MUNICIPAL CORPORATION, BATHINDA THROUGH
ITS COMMISSIONER**

... Petitioner

VERSUS

**APPELLATE AUTHORITY-CUM-SUB DIVISIONAL
MAGISTRATE, BATHINDA AND ORS**

... Respondents

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

Present: Mr. Sarthak Soni, Advocate for
Mr. Sanjeev Soni, Advocate
for the petitioner.

Ms. Promila Nain, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition seeks quashing of the order dated 05.11.2015 (Annexure P-4) passed by the Appellate Authority-Sub Divisional Magistrate, Bathinda, whereby he has dismissed the appeal preferred by the petitioner and upheld the order dated 16.08.2013 (Annexure P-2) passed by the competent Authority.

Briefly summarized, the facts of the present case are that the petitioner-Municipal Corporation, Bathinda received a bill payable upto 08.02.2013 for a sum of Rs.2,51,120/- out of which an amount Rs.2,02,755/- was shown as arrears on the basis of an alleged checking by the flying squad on 17.10.2012. As per the checking, it was found that the wires from the C.T. of yellow phase were badly damaged and the display of meter was showing as 0.0 AMP. on yellow phase, whereas the load on all

the three phases was 23 KW. Resultantly, it was observed that the meter was recording the current parameters only on the remaining two phases and the meter on the yellow phase-C.T. was not recording the consumption. Copy of the Checking Report dated 17.10.2012 has been appended as Annexure P-1. Upon receipt of the aforesaid bill, the petitioner-Municipal Corporation approached the respondents-Distribution Licensee for seeking correction of the bill, however, it was advised that the matter may be agitated before the Zonal Level Dispute Settlement Committee of the Department with a pre-deposit of the 20% of the amount. Accordingly, a pre-deposit of Rs.40,560/- was made by the petitioner and a petition was preferred.

The Zonal Level Dispute Settlement Committee, vide its order dated 16.08.2013 held that the meter was found running slow to an extent of 34.7% on 23 KW load. It was also noticed that upon examining the consumption pattern of the consumer, consumption had reduced from October 2012 after recording on the yellow phase had stopped w.e.f. 17.10.2012. Hence, the account was ordered to be corrected with minus 34.7% factor w.e.f. 17.10.2012 till the date on which the meter was replaced. Accordingly, the assessed amount came to Rs.1,00,934/-.

The petitioner then preferred an appeal before the Appellate Authority-Sub Divisional Magistrate, Bathinda against the above said order which has been dismissed by the Sub Divisional Magistrate. Aggrieved thereof, the present petition has been filed.

Learned counsel for the petitioner contends that the Sub Divisional Magistrate, Bathinda has failed to take into consideration the fact that the petitioner-Municipal Corporation had never been served with any

notice under Section 126 of the Electricity Act, 2003 and the procedure as contemplated therein has not been followed. He further submits that the checking of defective meter was not undertaken in accordance with the provisions of the Electricity Supply Code, 2007, as was in force at the time of checking of the meter and that no notice of the checking of meter in the Lab was ever served upon the petitioners. The finding of the Lab with regard to the meter thus cannot be relied upon for overhauling of the account. He further submits that his submissions have also not been considered by the Appellate Authority and the order of dismissal of appeal has been passed in a ministerial manner by a non-speaking order.

Written statement on behalf of respondent-PSPCL had been filed in February 2017, wherein it was specifically averred that the checking of the meter was done by the Sr. Executive Engineer (Enforcement), PSPCL in the presence of Mr. Amarjit Singh- Incharge- the representative of the consumer. The said representative, however, refused to sign the checking report. It is also averred that the meter was running slow by 34.7% on account of the damage caused to the CT wires of the yellow phase. The display of the yellow phase meter was also not giving correct reading and the current reading was being recorded only on the remaining two phases without showing any display of energy consumption on the yellow phase. It was hence that the energy consumption charges were revised and the arrears were claimed from the petitioner-Municipal Corporation. She submits that since it was not a case of Unauthorized Use of Energy and was only a case of a wrong billing due to the reading of the yellow phase having not been recorded, the procedure under Section 126 of the Electricity Act, 2003 for the Unauthorized Use of Energy was not adopted since the same was not

applicable. It is further averred that the petitioner was duly informed of the checking of the lab and their Incharge-Representative was also present at the time of checking of the meter, however, he chose not to sign the Checking Report. She further contends that even though the response by the respondent-PSPCL had been filed in the year 2017, however, no rejoinder/replication controverting the aforesaid specific factual stand had been filed despite expiry of nearly six years. The aforesaid factual aspect having remained uncontroverted, the Court is required to accept the undisputed version of the respondent-PSPCL. She further relies upon the order passed by the Appellate Authority-Sub Divisional Magistrate, wherein it points out that the facts with regard to the checking of meter and its being found running slow by 34.7% and the same having remained uncontroverted and also that there is no evidence to rebut the aforesaid conclusion. Hence, the consumer was required to deposit the amount which fell due on re-computation of the energy consumption charges. Relevant part of the order passed by the Appellate Authority-Sub Divisional Magistrate:

“Earlier, the appellant counsel was appearing but after 19.10.2015 has not present before the court. The representative of electricity board was appearing. He was heard. He stated that the demand is genuine and meter was found running slow during checking by the Flying Squad and running 40% slow. Therefore, this is demand for showing less consumption and not a penalty. Therefore, the appeal be dismissed.

Record of the case is carefully perused. It is found that the checking was conducted by the Flying Squad on 17.10.2012. At that time an employee namely Amarjit Singh of

Municipal Corporation is present but did not sign. It is record in this checking report that the meter was running 34.7% slow at the spot. Therefore, this demand has arisen due to slow running of the meter. This is not a penalty. Therefore, this is demand for showing less consumption. Thus, the appeal is dismissed.”

She further submits that it is wrong on the part of the petitioner to contend that the arguments advanced by the counsel for the petitioner had not been dealt with by the Appellate Authority. As a matter of fact, the counsel of the petitioner did not appear before the Appellate Authority and the said fact has been duly noticed by the Appellate Authority in the impugned order.

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.

It is evident from the facts noticed above that the petitioner does not dispute the factum of inspection of the premises and checking of the meter having been undertaken by the competent Authority on 17.10.2012. No rejoinder to the specific averments that the representative of the petitioner was present at the time when the checking of the meter was conducted and the said meter was found to be running slow by 34.7% has been filed. There is also no material to contradict the finding that the CT of the yellow phase meter was found damaged and the display was not working. Further, the revision of the energy bill has been undertaken after taking into the consideration the consumption pattern w.e.f. 17.10.2012 by the Zonal Level Dispute Settlement Committee and a revision had accordingly been done. The initial demand of Rs.2,02,755/- was reduced to

Rs.1,00,934/-. The defect in the meter has been noticed concurrently by the Authorities below and it has also been held that the energy bill served to the petitioner did not reflect the correct consumption. Accordingly, the petitioner was liable under the Electricity Supply Code, 2007 to pay the charges for the energy consumed by it.

Insofar as the argument of petitioner that procedure under Section 126 of The Electricity Act, 2003 read with Electricity Supply Code, 2007 having not been followed is concerned, there is nothing on record to show that it was a case of Unauthorized Use of Energy for which any notice of provisional assessment under Section 126 of the Electricity Act, 2003 was required to be given. The instant being a case of revision of the Bill, the procedure as prescribed under Section 126 and 127 of the Electricity Act, 2003 was not required to be followed. It is further evident that the revision of the Bill is for the period within limitation and as prescribed under Section 56 of the Electricity Act, 2003 which the respondent-Distribution Licensee was entitled to claim.

There is no material available on file to dispel that the finding recorded by the Appellate Authority-Sub Divisional Magistrate suffers from any illegality, impropriety, perversity or non-appreciation of evidence on record. In the absence thereof, the finding recorded concurrently by the Authorities would not be interfered with solely on the basis of a self serving averment of the petitioner. The burden was on the petitioner to establish the defects in the order under challenge and to show that the same is unsustainable by referring to the law or the facts. The petitioner has failed to refer to any such material.

Thus, I find that the conclusion drawn by the Appellate Authority-Sub Divisional Magistrate cannot be held as misplaced or not supported from the evidence available on record.

The present petition hence lacks merit and is accordingly dismissed.

09.02.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

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