



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

202

CWP-10144-1999 (O&M)

Date of decision: 15.07.2024

Shanti Paul Mittal

...Petitioner

VERSUS

The Punjab State Electricity Board, Patiala and others

...Respondents

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

Present :- Ms. Anna Bansal, Advocate for the petitioner
(through V.C.).

Mr. Parminder Singh, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the letter No. 2775 dated 16.07.1999 requiring the petitioner to pay a sum of Rs. 58,264/- minus Rs. 29,132/- as well as to the minutes of meeting held on 21.06.1999 in the office room of the Chief Engineer Op. (Central) PSEB, Ludhiana, by the Zonal Level Dispute Settlement Committee upholding the demand of Rs.58,264/- raised on the allegations of theft of energy.

2. Learned counsel appearing on behalf of the petitioner contends that an electricity connection was released to the petitioner with a sanctioned load of 20 k.w. The connection was used for the purpose of electroplating, under the name and style of Super Engineering Corporation, Ludhiana. The electric meter was however damaged in the month of February, 1994. The



petitioner submitted a letter/application to the Sub-Divisional Officer, Punjab State Electricity Board, Janta Nagar, Ludhiana (as it was then), for installation of a new meter. The premises was visited by the staff of the erstwhile Electricity Board on 04.02.1994 and a report was made that the meter glass was found loose but there was no scratch visible on the counter and a new meter was ordered to be installed against cost. The old meter was kept under observation. There was no communication or information about the meter for a period of nearly two years, however, the petitioner was directed in the year 1996 to deposit a sum of Rs.23,186/- towards the penalty/compensation for theft of energy. The petitioner moved an application before the S.E.(DS) Ludhiana requesting him to allow the petitioner to make a representation of his case before the Dispute Settlement Committee as it was not a theft case and the demand was illegal. In accordance with the regulations in force then, 40% of the demanded amount was deposited by the petitioner to enable to represent the matter before the Dispute Settlement Committee.

3. She contends that on 31.01.1997 memo No.329 was issued by the Assistant Executive Engineer (Commercial), Unit No.1, Janta Nagar, communicating that the claim of the petitioner has been examined by the Dispute Settlement Committee on the basis of the affidavit filed by the petitioner and that it was decided to overhaul the account of the petitioner on the basis of load and demand factor and accordingly Rs.58,264/- was held chargeable from the petitioner.



4. She also contends that the petitioner had in the meanwhile filed a civil suit on 21.09.1996 in the Court of Civil Judge (Sr. Divn.) Ludhiana, challenging the demand of Rs.23,186/- raised by the respondents on the allegations of theft of energy. During the pendency of the said civil suit, a judgment was passed by the Hon'ble Supreme Court in the matter of 'Punjab State Electricity Board Vs. Ashwani Kumar and others', reported as (1997) 5 SCC 120 to the effect that the Civil Court would not have the jurisdiction to decide such matters and that the same have to be adjudicated by the Dispute Settlement Committee itself. The suit was accordingly withdrawn with liberty to move before the Chairman, Zonal Level, Dispute Settlement Committee for examining the said dispute. The meeting of the Zonal Level, Dispute Settlement Committee was held and the case of the petitioner was rejected and the demand was upheld.

5. Learned counsel for the petitioner contends that it is not a case of theft of energy and that the said allegation has been wrongly leveled. At the time of inspection by the staff of the Electricity Board, there was no evidence of tampering or existence of any artificial means to slow down the meter. The only observations recorded was that the glass fixed on the meter was loose and that it cannot thus be inferred from the same that there was a theft of electricity since looseness of the glass could be found due to variety of reasons. She further contends that the burnt/damaged meter was taken into possession by the respondents and as per the Rules it was to be sealed and be sent to the Laboratory for testing. Undisputedly, the said meter was



not sent to the Laboratory for testing for a period of nearly two years and no notice of the testing was ever sent to the petitioner. Further, the test report has also not been furnished to the petitioner and as such she cannot be held liable for the case of theft which was noticed by the respondents. No reasons have been cited in the communication sent to the petitioner on the basis of whereof a case of theft of energy has been recommended by the M.E. Lab. It is contended that as a case of theft has criminal consequences, before a presumption is raised, there has to be dishonest obstructions of energy and the presence of possibility of insertion of artificial means to render obstruction of recording of consumption of energy has to be established by the prosecution. None of the said parameters was fulfilled and as such the demand was unsustainable. She contends that at the time of admission of the present writ petition on 27.07.1999, the Division Bench had directed that the payment, if any, made by the petitioner in terms of the decision of the Zonal Level Disputes Settlement Committee shall remain subject to the decision of the writ petition and in the event of success, the petitioner shall get refund with interest at the rate of 18 per cent per annum.

6. There had been no appearance on behalf of the respondents at the initial stage whereupon this Court directed Mr. Parminder Singh, Advocate, to accept notice on behalf of the Distribution Licensee and seek instructions, vide its order dated 02.12.2022. Thereafter, the matter has been adjourned on seven different occasions to enable the counsel for the respondents to file response and/or to complete instructions. However, no



response has been filed. Matter pertains to the year 1999 and cannot be repeatedly adjourned. Hence it was heard on merits.

7. Learned counsel appearing on behalf of the Distribution Licensee refers to the Minutes of 5/99 Zonal Settlement Committee Meeting held on 21.06.1999 and contends that even though there was some delay in testing of the meter in the M.E. Lab but the condition of the meter and consumption data of the consumer clearly indicates a case of theft of energy. Enhancement of damages was also observed by the Committee in its order as it was recorded that the Commercial instructions prevailing at the time of defect in the meter was not considered initially and an amount of Rs.23,186/- was charged wrongly, which the Circle Level Dispute Settlement Committee rightly corrected in its judgment. He also contends that the Zonal Settlement Committee Meeting had specifically noticed that the meter of the consumer got burnt three times within a period of one and a half year which clearly indicates that there was excessive running of load and fiddling with the meter and hence it was held to be a case of theft of electricity. He thus contends that all the aspects were duly noticed by the Zonal Settlement Committee Meeting and noticing the consumption data as also the quick succession in which the incident of meter being damaged happened, the Committee rightly came to a conclusion that there was a theft of electricity. He however fairly concedes that the record of the case is not traceable and that the report of the ME Lab. has also not been furnished in the matter.



8. The counsel is however not in a position to inform as to whether any proceedings for theft of energy were initiated or not and if so, to what outcome. Invariably, there was no stay on further proceedings, which have seemingly not been taken. He is also not in a position to dispute as to whether any notice before testing of the meter was sent to the petitioner or not and also has no information whether copy of the report of the M.E. Lab. was furnished to the petitioner.

9. I have heard the learned counsel appearing on behalf of the parties and have gone through the documents available on record. Even though ordinarily such dispute may not be examined by this Court but a period of nearly 25 years has elapsed. It would thus be inappropriate at this juncture to relegate the parties to alternative remedies, especially when the respondents have chosen not to respond despite 25 years and 07 opportunities since December, 2022 to reply. The facts have thus not been denied.

10. In order to ascertain the case of theft of electricity, a meter is required to be examined by the M.E. Lab. for which a notice is required to be sent to the consumer intimating about the date of testing and to enable the consumer and/or his representative to remain present during the time of testing of meter. Further, the test report of the meter issued by the M.E. Lab. is also required to be furnished to the consumer as the same lays basis for determining the case of theft of electricity.

11. In the present matter, the testing of the meter was undisputedly



undertaken at the M.E. Lab. after a gap of nearly two years and there was nothing on record on the basis whereof it could be ascertained that notice of the testing was ever sent to the petitioner. It is thus not known as to whether the meter had been rightly preserved and had not been tampered with at the time of or prior to the testing by the M.E. Lab. Further, the testing report is also not available on record. The respondents are not in a position to substantiate or support their case that the testing report sent by the M.E. Lab. supported the *prima facie* of theft of energy in the present case. There can be no presumption of commission of offence in theft of electricity. The burden lies upon the respondents-Distribution Licensee to make out the ingredients of commission of theft of energy before the consumer can be put to test to rebut the evidence so provided. The benefit of any such default especially in relation to the documents and material which would have been in possession of the respondents, lies on the Distribution Licensee and the consequence of the lapse would not fasten a liability on the petitioner-consumer.

12. It is also evident that the assertions made by the petitioner have remained uncontroverted and no affidavit/response has been filed by the respondents to support their decision. The failure by the respondents would entail consequences for the respondents and not for the petitioner who has succeeded in showing this Court that the testing of the meter was undertaken after an inordinate delay and no notice of the testing was ever served to him and no report had been furnished to him.



13. Under the totality of the circumstances, I find that the impugned demand is unsustainable and is liable to be set aside. The writ petition accordingly **deserves to be allowed**. The petitioner is held entitled to get the refund along with interest @ 18 per cent per annum, as directed by a Division Bench of this Court vide its order dated 27.07.1999.
14. Let the needful adjustment be undertaken by the respondents within a period of 03 months from the receipt of certified copy of this order.
15. **Ordered accordingly.**
16. Civil Misc. application, if any, shall also stands disposed of.

15.07.2024

Mangal Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(VINOD S. BHARDWAJ)
JUDGE