



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203

CWP-12717-2000 (O&M)
Date of decision: 21.10.2024

Sh. Maan Singh

...Petitioner

VERSUS

Punjab State Electricity Board, Patiala and another

...Respondents

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

Present :- Mr. Kuldip Sanwal, Advocate for the petitioner.

Ms. Harpriya Khaneka, Advocate for the respondent-PSPCL.

VINOD S. BHARDWAJ, J. (Oral)

1. The petitioner raised a challenge to the order dated 03.08.2000 passed by the Dispute Settlement Authority, Punjab State Electricity Board, Patiala (hereinafter referred to as '**the Authority**'), whereby case No.363 of 1999 filed by the petitioner was dismissed.

2. Learned counsel appearing on behalf of the petitioner contends that an electric connection No.SP21/18 had been released to the premises of the petitioner in the year 1986. The said meter was changed on 19.01.1988 vide MCO (Meter Change Order) No. 78/2053 dated 10.12.1987 on account of defect and a second meter was then installed. The said meter was burnt on 10.05.1999 and an information in this regard was sent to the Millarganj Unit under the Estate Division Ludhiana on the same day. The said burnt meter was changed vide MCO No.86/102 dated 10.05.1999 and a new meter was installed on 13.05.1999. At the time of removal of the old meter, no discrepancy or tampering was noticed and no adverse remarks were recorded. He contends that the respondents had issued a Commercial Circular No.8/99 dated 02.02.1999 as per which a detailed procedure for ensuring the security



and storage of the removed electricity meter had been prescribed. The same is extracted as under:-

“COMMERCIAL CIRCULAR NO.8/99

Issued vide C.E./Comml. PSEB, Patiala memo no.7036/7786/SSM-203 dated 2.2.1999.

Sub:- Packing of defective meters in Sealed Card board Boxes.

As per existing instructions contained in Para-2 (c) of C.C. No.45/97 dated 17.12.97, it is mandatory that all meters removed against any meter change order (MCO) are to be sent to M.E. Lab. in the sealed cardboard box duly signed by the concerned PSEB Officers/Officials and the consumer or his representative. The testing of such meters shall be done in the presence of consumer or his representative. In case, the consumer refuses to sign the meter test results/report, such meter shall be kept in the sealed box by the Op. S/Divn. till the final disposal of the case. If the consumer deposits the compensation amount without going to the Dispute Settlement Committee or Civil Courts, such sealed meter shall be returned to the M.E. Labs. Similar procedure is to be adopted in case of meters sealed by Enforcement Agencies/Operation Organisation in theft cases.

It has been brought to the notice of this office that above instructions are not being followed in letter and spirit with the result that the Board is losing cases in the Distt.



Consumer Disputes Redressal Forums. It has been viewed very seriously by the higher authorities. Accordingly, it is desired that above instructions should be followed meticulously and any officer/official found lacking in the implementation of these instructions shall be held personally responsible.”

3. He contends that the respondents never sealed the removed electricity meter in a cardboard box either in the presence of the petitioner or his representative and that no testing of the meter was ever undertaken in the presence of the petitioner or his representative. Nonetheless, the notice No.4196 dated 14.07.1999 was served upon the petitioner raising a demand of Rs.3,72,553/- alleging theft of power. The petitioner approached the Chief Engineer Operations Central Ludhiana, who ordered the petitioner to deposit 1/3rd amount so as to submit the case for reviewing before the Authority. An amount of Rs. 1,24,185/- was accordingly deposited by the petitioner on 21.07.1999 whereupon the matter was sent to the Authority.

4. During the proceedings before the Authority, the Senior Executive Engineer Enforcement-III, who conducted the M.E. Lab. testing was examined and in his examination-in-chief, it was stated by him that the meter was received in the Lab. unpacked and was checked in the absence of the consumer representative. It was also admitted by him in his cross-examination that the consumer representative was not associated as this meter was returned in routine, without any allegation of theft of energy. He also admitted that as per the instructions of Board, meters suspected of theft of electricity were to be submitted to the M.E. Lab. duly packed. It was also



admitted by him that no scratches on the digits or index plate of the meter were found during the said checking in M.E. Lab.

5. It is submitted by the learned counsel for the petitioner that no visual disparity was noticed at the time when the meter was removed and that the same having not been sealed in compliance of the instructions issued vide Commercial Circular No.8/1999, it cannot be concluded that the meter sent to the M.E. Lab. for testing actually belonged to the petitioner. He contends that a specific assertion of the petitioner, in this regard, before the Authority was declined only on a hypothesis that the petitioner was not in a position to establish any tampering of the meter. He contends that the object of providing for sealing of the removed meter and of the same to be countersigned by the representative of the consumer is only to maintain sanctity of the proceedings and to ensure that the case property relied upon by the respondents remained intact, while in seizure. It is contended that once the said procedural safeguards are not maintained, the possibility of the meter having been changed looms large and that benefit of doubt of any such possibility of removing/interference in the case property has to be extended to a consumer. A reference was also made to the operative part of the decision passed by the Authority which reads thus:-

“21. After hearing arguments of both the parties, record produced, evidence led the authority observed that in the above said case the meter was checked by Sr. Xen/ME lab. Ludhiana, capital AEE/ME Lab. and JE/Op. on 1.6.99 wherein it was observed that 2 No. ME seals bearing impression ME 1987 LDH were



found fake. 2 No. clamps were also found tampered. The lash wire of 2 No. ME Seals were found fake. On internal examination it was found that the counter of the meter has been found replaced with higher ratio of 300 rev. instead of 100 Rev. per unit. The meter was also checked on the test bench and was observed that it was recording only 33% of the actual consumption and the meter was slow by 67% confirming the replacement of counter.

22. *The consumption data of the consumer also shows that during the 88 to 93 before the replacement of meter with sanctioned motive load of 29 BHP the consumption was of the order of 6000 to 7000 units per year and about 10,000 to 15,000 units per year from 1994 to 1998. The rise in consumption is a result of usage of unauthorized load which was detected as 52 BHP on 10.05.99. The consumption recorded after the replacement of meter on 13.5.99 was to the tune of 2900 units in June 99 and thereafter the consumption during Jan. to May 2K varied from 1495 units in May 2K to 3157 units in Feb 2K despite the fact that consumer tried to suppress the consumption during July 99 to Dec. 99.*

23. *The authority further observed that a consumption of the light meter with sanctioned load of only 1.1 KW was*



recorded in the range of 3500 units to 5400 units per year which is not possible at all. From the perusal of the reading record of the consumer it reveals that even the meter was found removed in March 99 which also proves the misconduct of the consumer. The pleadings of the consumer that the meter was checked by AEE/Tech on 9.5.97 and did not point out any adverse remarks does not affect the merits of the case as the AEE/Tech do not have any impression of ME seals and is also not having any expertise to check tampering the seals/clamps. Moreover the working of the meter with higher load and movement of disc not rule out the replacement of counter. Similar is the position at the time of replacement of meter on 13.5.99 by the JE.

24. *Taking note of the pleadings of the petitioner that the meter was not kept pack as per CC No.45/97 and was packed in the presence of the consumer and opened in ME Lab after about the one month and the consumer is not responsible after the meter is removed from the consumer premises. Authority observed that the petitioner was not able to prove his apprehension that any tampering has been done during this one month period as the meter was returned to ME Lab in a routine manner with meter block burnt and more over the testing/checking in ME Lab was carried out in the*



presence of officers from three different organizations i.e. Enforcement, ME and Operation. Keeping in view of this fact that the authority decided that the consumer is liable to compensate the Punjab State Electricity Board for actual energy consumed but not recorded due to replacement of counter. The energy consumed be worked out by multiplying the recorded consumption for the period 19.1.1988 to 13.5.1999 (i.e. date of installation of meter to date of replacement of meter) by i.e. in the ratio of the counter as per CC 33/99.

25. No further charges own account of theft of energy are recoverable and the consumer accounts be over-hauled accordingly and amount recovered after adjusting the amount already deposited by the consumer on this account.

6. It is further argued that a specific assertion in this regard has been by admitted by the respondents while replying to para Nos.3 and 4 of the petition wherein they acknowledged that they had initiated departmental proceedings against the official for non-compliance of the instructions as contained in Commercial Circular No. 8/99. Hence, there is an admission of violation of the procedure laid down in the said circular.

7. Learned counsel appearing on behalf of the respondents-Punjab State Electricity Board (now Punjab State Power Corporation Ltd.) contends that the present writ petition deserves to be dismissed since the order in question was issued in exercise of the powers under Section 79(C) of the



Electricity (Supply) Act, 1948 and that an alternative remedy of Board Level Review Committee was available to the petitioner against the decision of the Authority. She further contends that infact as per the MCO dated 10.05.1999, the three phase meter block was found burnt and the same was also confirmed by the Assistant Executive Engineer, Ludhiana, in his report dated 10.05.1999. She claims that due intimation regarding inspection and checking of the meter was sent to the petitioner but he opted not to remain present during the course of checking. The laboratory submitted its report informing about the theft of electricity and that a demand was accordingly assessed and conveyed. She thus contends that thus the present writ petition deserves to be dismissed.

8. It has also been averred that non-compliance of the procedure prescribed under Commercial Circular No.8/99 should not be construed as vitiating the final outcome or the demand raised by the respondents.

9. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record with their able assistance.

10. It is undisputedly evident from the perusal of the pleadings and the contentions advanced by the learned counsel for the parties that the procedure as mandated under Commercial Circular No. 45/97 dated 17.12.1997 and extended in Commercial Circular No.8/99 had actually not been followed by the respondents. The old meter, upon its removal was not sealed and no signatures of the consumer or his representative were obtained on the card board box. The deposition of the Senior XEN Enforcement-III, who carried out testing of the meter in the ME Lab., is also material in this



regard. It was specifically admitted by him that the meter was received in the Lab. un-packed and it was checked in the absence of consumer or his representative.

11. Further, even though the respondents have submitted that they had sent an intimation to the petitioner/consumer for the testing to be conducted by M.E. Lab., however, no details thereof have been furnished. No explanation has been put forth by the respondents as to by what mode and manner, the intimation was sent to the petitioner. Hence, the respondents have withheld the best document which is in their possession, if any, with respect to effecting service on the petitioner about the date of conducting the inspection/testing of the meter by the ME Lab. The said stand is belied by the deposition of the officials of the respondents themselves.

12. The next point which arises for consideration of this Court is as to the effect of non-compliance of instructions/directions issued in Circular No.8/99. Perusal of the circular shows that it has been made mandatory for the officials/officers to seal the removed meter in a Cardboard box and it is also required to be duly signed by the concerned officer/official as well as by the consumer or his representative. The testing of the meter is also required to be undertaken in presence of the consumer or his representative. There is no pleading or evidence to *prima facie* establish that the said procedure had been followed. Even though the case of respondents is that the meter having been tampered with, there is a presumption of theft of energy, however, the core question which stares this Court is the sanctity of seized meter and as to whether the meter sent to the ME Lab. for testing actually belonged to the



petitioner. The mandate of Commercial Circulars including Circular No.8/99 was to ensure the safety and sanctity of the seized property is maintained and to ensure that no subsequent dispute is raised regarding the tampering of the case property. The essential link for establishing that the meter belongs to the consumer, against whom a demand against theft of electricity is being raised, had to be preserved. Surprisingly, the said procedure has not been adhered to and as such, the final outcome of the ME Lab. notwithstanding, it still remains as to whether there is sufficient prima facie evidence to conclusively establish that the meter tested by the ME Lab. undisputedly belongs to the petitioner-consumer or not.

13. It is also a settled position in law that an agency seeking to prosecute has to establish that the offence has been committed, beyond doubt. Preservation of the case property was an integral and essential link to prove the charge/allegations of theft of energy by the petitioner. Having failed to secure the same, despite instruction issued in the Commercial Circular No.8/99, the respondents have created doubt with respect to the sanctity of the proceedings and as to whether the case property had been kept intact or not. The possibility of tampering of case property thus cannot be ruled out, since the ME Lab. had received the case property un-packed. Besides, no notice was ever established to have been issued to the petitioner for remaining present at the time of testing of the meter. The admission of the officials of the respondents further strengthen the case of the petitioner.

14. Now adverting to the 3rd argument of the respondents that there is a remedy of appeal, I find that the said objection is highly belated at this stage since the writ petition pertains to the year 2000 and at this stage, it



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would not be in the interest of justice to remand the matter to the Appellate Authority. Further, there is no such disputed factual aspect which would require an examination by the Appellate Authority before an adjudication of the present case.

15. Under the given circumstances, the above said submission of the respondents is also declined.

16. The writ petition is accordingly allowed and the impugned order dated 03.08.2000 passed by the Dispute Settlement Authority, Punjab State Electricity Board, Patiala (hereinafter referred to as ‘the Authority’), in case No.363 of 1999 is set aside.

17. All pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

21.10.2024

Mangal Singh

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