

2024.PHHC.164118



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

CWP-4247-1998 (O&M)

Judgment Reserved on: 12.11.2024

Judgment Pronounced on: 29.11.2024

**PUNJAB STATE INDUSTRIAL DEVELOPMENT CORPORATION
LIMITED**

... Petitioner

VERSUS

UNION TERRITORY, CHANDIGARH AND OTHERS

... Respondents

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

Present: Mr.Karan Singla, Advocate
for the petitioner.

Ms. J.S. Lalli, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

1. Challenge in the present petition is to the Report no 484 MAP/ 97 dated 02.12.1997 (**Annexure P-5**) sent by the respondent board as per which the meter was found running slow by 53.44% along with the sundry charges demanded by the respondents from the petitioner – Punjab State Industrial Development Corporation. The demand of Rs.31,20,579/- was communicated vide memo No.7551 dated 18.12.1997 (**Annexure P-7**) pertaining to the previous checking report reflecting the meter to be slow by 45.38% along with the bills issued by the respondents have also been challenged.

2. Counsel for the petitioner has argued that the petitioner is a Punjab Government undertaking registered under the Companies Act and is owner in the possession of Udyog Bhawan, Sector 18, Himalaya Marg, Sector 17, Chandigarh. The said building is used as Administrative Headquarter not only by the petitioner corporation but also by the Punjab Small Industries and Export Corporation and certain other agencies and instrumentalities of the state of Punjab.
3. Only one electricity meter registered in the name of the petitioner bearing account number 1704/80174 RT existed in the premises and was installed in the year 1992. The respondents used to raise bills for the electricity connection on the petitioner and the same was being paid regularly. The petitioner Corporation was, however, shocked to receive the bill dated 22.01.1997 (**Annexure P-1**) demanding a sum of Rs.17,90,435/-, which included a sum of Rs.12,90,529/- towards sundry charges. A memo bearing No.10754 dated 31.01.1997 (**Annexure P-2**) was accordingly sent by the petitioners to the respondents claiming details about the upto date charges and as to how such a huge amount has been asked against sundry charges. In response, the respondents vide Memo No.496 dated 04.02.1997 (**Annexure P-3**) intimated that on checking of the meter at the site, it was found to be running slow by 45.38% and that the sundry charge is levied for the recovery of the differential energy consumption charges.
4. The abovesaid bill was challenged by the petitioner in CWP 1901 of 1997 on numerous grounds including that the sundry charges could not be levied without referring the matter under Section 26(6) of the Indian Electricity Act, 1910 and that the inspection was not done in the presence of the

petitioner and the same was done, if any, in violation of the procedure prescribed. The recovery was stayed by this Court and the writ petition was finally disposed of with a direction to the respondents to appoint an Electrical Inspector, who was required to submit a detailed report and if as per re-test/ re-checking, the demand was to be reviewed, the same ought to be done within a period of one month. If the demand already raised was found to be correct then the correctness of demand was to be intimated to the petitioner within one month. Liberty was also granted to the petitioner to challenge the revised demand.

5. Pursuant to the said order dated 25.11.1997 passed in CWP 1901 of 1997 the checking was done on 02.12.1997 and a copy of the report has been appended along with the present petition as Annexure P-5. As per the said report, paper seal dated 12.11.1996 was found open, connections to the meter were found to be incorrect, meter was found to be running slow by 52.1% at 5 revolution and 53.44% slow at 10 revolutions. It is, however, alleged by the petitioner that the checking was not done by the Electrical Inspector as per the orders of the Hon'ble Court and he has merely recorded on the report that "Seen, done in my presence".
6. Counsel for the petitioner further contends that the procedure as prescribed under the Indian Electricity Act, 1910 and under the Electricity (Supply) Act, 1948 was not followed in the present case. Reference is made to Instruction No.114 pertaining to testing of meter/ overhauling of consumers account and the procedure required to be followed for such process for over-hauling the accounts. He further refers to Instruction No. 161 in relation to unauthorized extensions in load, overhauling consumers account.

It is thus argued that as per these instructions, the checking was to be done at 10%, 20%, 30% of the load and so on till 100% and that the average was to be taken but the same was not done in the present case and that the incorrect consumption charges are to be claimed only for the period when the defect continued. Periodic inspection was required to be undertaken, however, despite the same, the needful was not done by the officials of the respondent board, as it was then. A revised bill of Rs.31,20,579/- had although been paid by the petitioner but the same was under protest and without prejudice to their interest. Counsel for the petitioner further argues that the principles of natural justice were not followed in raising the said demand and that the same was not tenable in light of the Section 26(6) of the Indian Electricity act, 1910 since the demand could not be raised for the entire period and there was a cap of 6 months for revising the demand of overhauling the accounts. No other argument or judgment has been referred to by the counsel for the petitioner.

7. Counsel for the respondents – U.T. Chandigarh contends that the present petition is misconceived and is based on misreading of the statutory provisions. He contends that routine checking of the electricity meter was undertaken on 12.11.96 and the meter was found running slow by 45.38% due to connections having being wrongly done and being found to be incorrect. Accordingly, a detailed bill was supplied to the petitioner vide memo No.7551 dated 18.12.1997 which was a matter of challenge in CWP-1901 of 1997. He states that in compliance of the order dated 25.11.1997, vide which the abovesaid writ petition was disposed of, re-checking of the electricity meter at the petitioner premises was done on 02.12.1997 in the

presence of the representative of the petitioner who were satisfied with the checking report.

8. He further contends that Instruction No.114 as relied upon by the petitioner is applicable where accuracy of a meter is involved and in the instant case the C.T. connections of the meter were found incorrect, thus the said instruction is not applicable to the facts of the present petition. The working of the meter was set right by correcting the wrong connections, with the consent of the representative of the petitioner, and thereafter the reading on the energy meter, after correcting the connections, was 017324 on 12.11.1997. He submits that the meter was found running slow due to the incorrect C.T. connections which was set right and the bill as raised was duly submitted by the petitioner on 09.02.1998. He further states that the statement of the petitioner with regards to the same being done in total contravention of the principles of natural justice is totally false and fabricated, all the opportunities were duly provided to the petitioner and nothing was done in violation of laws.
9. He submits that the meter was found incorrect during the routine checking of the connection on 12.11.1996 and subsequently on re-checking on 02.12.1997 similar findings were observed. He submits that the case of the petitioner is governed as per Instruction No.115 which involves the cases of incorrect connections, defective CT's/PT's, genuine calculations mistake etc. and where the accuracy of the meter is not involved charges would be adjusted in favour of Board/Consumer as the case may be for the period the mistake/defect continued. It is further submitted that it is settled Law that when the electric meter does not register correct figure in the matter of

consumption of electricity due to defective wiring, as is the case in the meter of the petitioner then it cannot be said that the meter is not correct as envisaged by Section 26(6) of the Indian Electricity Act, 1910.

10. It is submitted that the clause of charging for 6 months i.e. Section 26(6) is not applicable in this case since the connections of the meter were found incorrect and the meter was recording less consumption but the meter was not defective. Hence, the difference of units less recorded by the meter has only been debited to the petitioner which are correct and have been charged only as per the relevant rules and instructions. No other argument or judgment has been referred to by the counsel for the respondent.
11. I have heard the counsel for the respective parties and have gone through the documents with their able assistance.

CONSIDERATION: -

12. Before proceeding further with the matter, it would be relevant and necessary to reproduce the relevant statutory provisions that are relevant for proper adjudication of the present case. The same are as under: -

Section 26 of Indian Electricity Act, 1910. Meters. — (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his

doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorized by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1); and except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an [Electrical Inspector], and the decision of such Inspector shall be final:

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, [but he may by giving not less than forty-eight hours' notice in writing to the licensee require the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the period of the notice.]

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the

energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.]

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided also, that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation. —A meter shall be deemed to be “correct” if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be “correct” if it complies with such conditions as

may be prescribed in the case of any such indicator or other apparatus.

Section 4, Punjab State Electricity Board Sales Manual – Instruction No. 114 – Testing of meter/ overhauling consumers account –

- (a) All energy and KVAh meters (excluding MDI's) would continue to be tested and re-calibrated in accordance with the I.E. Rules and ISS. In case of disputed/doubtful meter testing shall be done at steps of loads of 10%, 20%, 30%, 40%, 50%, 60% and so on upto 100% of the meter capacity.*
- (b) Where the error at any loading exceeds 3% meter would be declared defective.*
- (c) For over-hauling the accounts in case of such defective meter, the slow-ness/fast-ness factor would be computed on prorate basis of the test result corresponding to the 80% of the average maximum demand of the consumer as recorded in the six months preceding the month of testing in case of Large Supply Industrial consumers. Slow-ness fastness factor in case of SP, MS, consumers would be computed on prorate basis of the test results corresponding to 80% of the sanctioned connected load of the consumer.....*

Section 4, Punjab State Electricity Board Sales Manual – Instruction No. 115 - Adjustment of Consumer's Account if Meter is found Defective by a Board Employee:

Following procedure should be adopted whenever an energy meter on the premises of a consumer is found to be defective by Board's employee: -

1.a) Dead Stop or Burnt Meter (Other than LS. Consumers and Other Consumers with load above 100 KW)

On receipt of a report regarding a meter becoming dead stop or burnt, it should be immediately replaced and necessary enquiry conducted. The meter alongwith the report should be forwarded to Xen/ME for further action. So far as charging the consumer for the period the meter remained inoperative is concerned, some ad-hoc

charges based on the average consumption of the last 3 or 6 months or the average of the same months of the preceding year, whichever seems to be reasonable should be levied. It may be worthwhile if the field staff ensures through personal enquiries from the neighbours etc. that there was no special occasions like marriage etc. for the consumers to exceed the normal consumption during the period. In such an eventuality the consumer should also be billed for such probable consumption as determined by the field staff.

b) Inaccurate Meters (Other than L.S. Consumers and Other consumers with load above 100 KW)

(i) In the case of single-phase meters-where the accuracy of the meter is doubtful or the meter is found creeping forward no adjustment in accounts may be carried out but the meter should be replaced.

(ii) In such cases where the inaccuracy of the single phase meter is pronounced or in case of three phase meters, which may be suspected/found to be incorrect, the consumer should immediately be informed in writing that the meter already installed at his premises is incorrect (or has been tampered with by the consumer as the case may be) and a check meter for determining the %age inaccuracy is being installed in series with the old, meter and also that his accounts would be adjusted as per the test results in terms of clause 14 of the Abridged Conditions of Supply, appended to the agreement executed by him. As far as possible the existing metering equipment should not be disturbed or tampered with so that it remains in the 'as found' condition. The check meter 'as found' condition well as the old metering equipment in 'as found, condition should be sealed and consumer's signatures in token of this fact obtained in meter sealing record so that the consumer is unable to tamper with the arrangement.

(iii) Readings of the old and the check meters should be got initialled from the consumer both at the time of commencement and expiry of the test period (which may last upto 7 days) so

that he may not be able to contest it at a later stage. In case the original meter, is found to be incorrect as compared to the check meter, the accounts of the consumer should be adjusted as provided in clause 14 (f) of the Abridged conditions of supply.

Note: In case of LS. Consumers and others with load above 100 KW, matter may be referred to AEE/MMTs.

2 (a) The testing done by AEE/MMTS of the meter at consumer's premises in 'as found condition' should not be subject to re-testing in the M.E. Lab and in case of any dispute, such a meter be re-tested at the consumer's premises itself in the 'as found' condition. The re-testing of the meter would be allowed in rare cases depending upon the merit of the case.

(b) In case a meter is found in-accurate by AEE/FS the intimation of the same shall be given to AEE/MMTS for checking the same at site in 'as found condition' In order that the metering equipment found in-accurate is not disturbed or tampered with, paper seals be affixed by AEE/FS, and intimation of the same will be given to AE/AEE (DS) and AEE/MMTS. After testing by MMTS if the metering is found in accurate the same shall be paper sealed and kept in as found condition for a period of one month. The consumer shall be informed immediately regarding the results of meter by AE/AEE (DS) incharge and subsequent overhauling of consumer accounts on the basis of test results and in case no dispute/representation is received from the consumer within one month, the meter shall be replaced with an accurate meter. In case of dispute/Court case further action shall be taken in consultation with Legal Section/Board's counsel.

In cases where the metering is found to be working accurately but is found otherwise running slow due to wrong/unstandard connections and it is not possible to determine percentage error through testing

by RSS meter, check meter may be installed to determine the exact percentage in error.

3. If however, the consumer is unwilling to pay the charges as determined above he has the option to refer the matter to the Electrical Inspector (as provided in the *ibid* conditions) whose decision would be binding on both the parties. In such an eventuality the disputed inaccurate meter should not be removed. As a matter of fact both old as well as the check meter should remain in position until the Electrical Inspector has made the requisite investigation. The consumer on the basis of the check meter/finding should be billed of AEE (MMTS) in the intervening period. In case the consumer is neither prepared to refer the matter to the Electrical Inspector nor comes forward to pay the amount worked out, he should be served with a disconnection notice of 7 days and premises disconnected on the expiry of the notice period.

Note: (i) The cases involving incorrect connections, defective C.T.'s/P.T.'s genuine calculations mistakes etc. are not governed under the above mentioned instructions but under the provisions of clause 15 of the Abridged Conditions of supply which reads as under:-

"Where the accuracy of meter is not involved and it is a case of incorrect connections, defective C.T s and P.T s, genuine calculations mistakes etc. charges would be adjusted in favour of Board/consumer as the case may be for the period the mistake/ defect continued."

ii) This provision shall also be applicable to periodical testing of meters by AEE/MMTS.

(Emphasis Supplied).

13. Now coming back to the controversy involved in the present petition.

Counsel for the Petitioner states that the meter installed at the petitioner's premises was a defective meter and therefore as per Section 26 (6) of the

Indian Electricity Act, 1910 and Section 4 of the Punjab State Electricity Board Sales Manual and the incorporated Instruction No.114(c) which provides for 6 months limit for fixing of charges in case of defective meter, the respondents could not have overhauled the account of the petitioner for more than the said period and overhauling of account for more than 6 months' time-period is illegal and against the safety provided for to the consumers under the Statute as well as the rules incorporated.

14. On the other hand, the Counsel for the Respondent had vehemently argued that the meter installed at the premises of the petitioner was not defective meter but a correct one and it was on account of wrong connection that the meter was slowed and the same also came through the checking report of the Electrical Inspector. He had further stated that to deal with such situations Instruction No.115 of the Punjab State Electricity Board Sales Manual was incorporated. Section 26 of the Indian Electricity Act, 1910 would only come to the aid of the petitioner in case the meter is found to be defective. Since, in the present petition the meter installed at the premises of the petitioner was not defective rather it was a case of one of wrong connection, the demand was rightly raised by the respondents.
15. The only question that arises for the determination of this court is whether the meter installed at the premises of the petitioner was a correct meter or not and in case it was an incorrect meter whether it was right on the part of the respondent to overhaul the account of the petitioner for the entire period?
16. Even though on a plain reading a very plenary definition of a correct meter has been given, however, the Sales Manual Instructions need to be read for

a better clarification. Instruction No.114 relates to the cases where the error at loading exceeds 3% and then an overhauling of the account was to be done on the slowness/fastness of the meter. However, the cause for such instruction arose where energy and KVAH meters were to be calibrated and then the error was noticed. The said calibration takes into consideration the KWH and KVAH calibration and the difference in energy consumption on the basis thereof and thus caps the overhaul of the account to a period of six months preceding the testing.

17. On the other hand, Instruction No.115 deals with the adjustment of a consumer's account if meter is found defective. Clause 2(b) deals with the metering to be otherwise working accurately but running slow due to wrong/unstandard connections. Similar situation is also stipulated in Clause 3 of the said instructions. The note (i) thereof is of much significance and clarifies that where it is a case of defective C.T.'s & P.T.'s, the charges would be adjusted for the period the defect continued.
18. It is the specific case of the respondent that meter was slow due to incorrect CT connections, which was corrected in the presence of AGM of the petitioner and the Executive Engineer. The re-checking was done on 02.12.1997 as per direction of the High Court which ratified the earlier demand. The said re-checking was done on 02.12.1997 in the presence of representative of the petitioner and the difference was duly noticed in the consumption pattern after correct wiring as well. It is further recorded in the reply of the Chief Electrical Inspector that no objection to the report was raised by representative of the petitioner even though their AGM and Executive Engineer (Electrical) were present at the time of testing.

- 19. Even though replication was filed by the petitioner but it never disputed presence of its representatives at the time of checking and merely said that their presence cannot be deemed as admission of liability.
- 20. There is, however, no dispute of their presence on lack of any objection by its officials. There is thus no fault in the testing procedure followed.
- 21. The argument of the petitioner about load-based testing would have been relevant only in case the case fell under Instruction No.114 but since it does not fall under the same, the testing procedure provided thereunder is not applicable. The determination is thus to be done as per Instruction No.115 for the entire period when the defect continued and has been rightly done by the respondent(s).
- 22. The present petition is accordingly disposed of as being without merit. The demand raised by respondents is accordingly upheld, in the absence of any valid challenge to the report dated 02.12.1997 of the Chief Electrical Inspector.
- 23. No order as to costs.

NOVEMBER 29, 2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

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