



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-452-1998 (O&M)

Date of decision: 23.10.2024

M/S J.S.W.IRON AND STEELS INDUSTRIES

.....Petitioner

VERSUS

PUNJAB STATE ELECTRICITY BOARD AND ANOTHER

.....Respondent

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

Present: - Mr. Saksham Mahajan, Advocate
for the petitioner.

Ms. Meena Bansal, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to Memo No. 542 dated 22.01.1990 (Annexure P-5) whereby a demand of Rs. 75,450.80 was raised against the petitioner.

2. Counsel for the petitioner contends that the respondent-Board had issued a demand notice on 04.01.1989 for a sum of Rs. 2,47,268.30 on the allegation that the Flying Squad headed by the Assistant Executive Engineer, Khanna had raided the premises of the petitioner-firm on 04.01.1989. On checking of the electricity meter, the Flying Squad found the

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paper seal on the steel box and wire-seal to be in order and intact and that the flying squad had also inspected the seven seals that were found to be in order. Two right side M & T seals were also found to be in order. It has been alleged that despite the seals being in order, for reasons best known, the flying squad declared that two M & T seals on the left side of the Meter had been tampered with and as such, declared the meter to be tampered and treated the case as theft of energy. The meter was removed and the electricity supply to the premises of the petitioner was disconnected forthwith. As the request of the petitioner for restoration of the electricity supply was not taken care of, hence, the petitioner instituted Civil Writ Petition No. 265 of 1989 before this Court. The said writ petition was disposed of vide order dated 12.03.1989 with a direction to the respondent-Board to refer the matter to the Disputes Settlement Committee constituted by the erstwhile Punjab State Electricity Board and the connection was ordered to remain restored till the settlement was finalized by the Disputes Settlement Committee and the amount demanded by the Board was also ordered to be not enforced till then.

3. The petitioner challenged the demand before the Disputes Settlement Committee on the grounds that there was no earlier instance of theft of electricity ever against the petitioner and that the officials of the respondent Board had been visiting the office as well as the premises of the petitioner firm every month. They had been regularly taking meter reading and also checking the seals including the paper seal and making entries of the checkings in the Pass Book. Further, there is no explanation put forth as

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to how and in what manner the demand in question had been assessed. It was also pleaded that all declarations for enhancement of load had been duly made from time to time and all bills were regularly paid by the petitioner. It is averred that the petitioner was never called by the Disputes Settlement Committee to explain his case and the members of the Flying Squad were also not called upon by the Disputes Settlement Committee to explain their position. Vide Memo No. 542 dated 22.01.1990, the petitioner was directed to deposit a revised demand of Rs. 75,450.80. The memo reflected that the dispute had been finalized at the Zonal Disputes Settlement Committee of the Punjab State Electricity Board in its meeting on 18.12.1989. The details of the charges as were being claimed had not been mentioned in the said memo. The theft of electricity period has been determined for 07 months commencing from May, 1988 to November, 1988. There were certain disputes also with respect to the assessment undertaken by the respondents. Hence, the present petition.

4. A written statement was filed by the respondents wherein it has been averred that the Flying Squad headed by the Assistant Executive Engineer had raided the premises of the petitioner on 04.01.1989 and it was found that the meter was tampered. It was also stated that theft of electricity was detected as there was no paper seal on the steel box containing the meter and the lead seal affixed on the meter cup board. Further, two M & T seals on the left side of the cover were also found tampered with. The meter cover could thus be opened by tampering of the two M & T seals on one side of the meter thereby providing access to the meter digit counter for lowering



the recorded energy consumption by reversing the meter reading digits. The averments as contained in para No.2 of the written statement are extracted as under:-

“That the contents of this para are admitted to the extent that a demand notice dated 4.1.1989 for Rs. 2,47, 268.30 paise was issued on the allegation that the Flying Squad headed by the Assistant Executive Engineer, Khanna had raided the premises of the petitioner's firm on 4.1.1989 and it was found that the meter was tempered. It is respectfully submitted that it was detected as the petitioner was committing theft of electric energy. There was no paper seal on the steel box (Meter Cup Board) containing the meter and the lead seal affixed on the meter cup board. Further two M.N.T. seals on the left side of the cover were also found tempered. The meter cover could be opened by the tempering of two M & T seals on one side of the meter thereby providing access to the meter digit counter for lowering the recorded energy consumption by reversing the meter reading digit.

That a checking report was prepared on the side and was witnessed and signed by the petitioner- Sanjay Kumar in token of acceptance of the checking. The tempering of the seal coupled with low consumption constituted theft of electric energy as per Clause-33 of the Abridged Conditions of Supply. It is denied being incorrect that the paper seal on the steel box and wire steel were in order to and intact or that the seals on the load meter were intact. It is denied being incorrect that the Assistant Executive Engineer (Flying Squad) had stated that a new meter shall be installed and the connection shall be restored immediately.”

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5. It was averred that as per Clause-33 of the Abridged Conditions of Supply, tampering of the seals made out a case for theft of energy and that the demand had been rightly assessed. It was also averred that the petitioner was granted full opportunity to present his case and to lead the evidence and tender documents before the Disputes Settlement Committee and it was only on consideration of the entire position that the fresh memo was passed by the said Committee. The demand had also been reduced from earlier Rs. 2,47,268.30 paisa to Rs. 75,450.80 paisa. The Committee decided to recast the accounts for the period of May, 1988 to November, 1988 on the basis of the average consumption recorded during the corresponding period and applying the corrective factors based on the test results of the M.M.T.S. Patiala dated 11.08.1989. It was also submitted that the visit of the officials of the respondent-Department for taking meter readings are only for the billing purpose and not for the checking of seals. Even at the time of monthly readings, the seals of the meters are not checked by the Sub Divisional Officer, hence, it cannot be assumed that merely because no such theft was detected earlier, the working and functioning of the meter should be deemed to have been reported as 'OK'. It is also pointed out that the meter in question was duly checked by the M & T Lab and it was also found to be genuine. An affirmation was made that the determination of the charge was as per law and that the detailed calculation of the entire demand had already been supplied to the petitioner.

6. The matter was admitted on 04.03.1999. Eventually, the matter was taken up for hearing on 06.09.2024, Counsel for the petitioner

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contended that the Memo No. 542 dated 22.01.1990 in relation to the decision taken by the Zonal Level Disputes Settlement Committee in its meeting held on 18.12.1989 has not been furnished to him. The counsel for the respondent-Board was directed to seek instructions and to produce the record of the said meeting.

7. On resumed hearing, it had been informed by the Counsel for the respondents that the record which is being sought for is nearly 35 years old and is not traceable in the office and that at no prior point in time, the petitioner or his Counsel ever pointed out that the proceedings of the meeting of the Disputes Settlement Committee dated 18.12.1989 had not been furnished to him. She contends that the abovesaid contention has been raised so as to dispute the decision taken. It is also submitted that there is a presumption of the proceedings having been undertaken and validity thereof cannot be questioned after such a substantive period of time has elapsed.

8. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record.

9. There has been reference and reliance on Clause 33 of the Abridged Conditions of Supply. The said clause is extracted as under:-

"33- THEFT OF ENERGY:

Wherever any consumer is found indulging in theft of energy or where fake seals or tampered seals are detected or where all M&T seals are found broken/missing/ removed and meter cover can be opened and the connected load pattern of Industrial operation and actual consumption recorded leads to the



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conclusion that the consumer has been indulging in theft of energy or where tubewell consumers governed under Flat rate are found using energy directly from the tubewell for residential buildings, poultry farms, cattle sheds, Hutments or excess motive load etc. the Board may without prejudice to its other rights, cause the consumer's supply to be disconnected forthwith without any notice to the consumer, as under :-

- (i) For 15 days for the first offence.*
- (ii) (ii) For one month for the second offence.*
- (iii) For 2 months for the 3rd and each subsequent offence."*

10. Even though an effort had been made by the Counsel for the petitioner to contend that the meter seals were not found broken or missing as per the initial reports furnished by the Flying Squad, and as such, it would not be case of theft of energy, however, the reading of the aforesaid provision shows that whenever any consumer is found indulging in theft of energy or where fake seals of "tampered seals are detected....." it is presumed to be a case of theft of energy. Moreover, it is also the specific case of the respondent-distribution licensee that in case two seals are removed, the meter box could be opened from side and the meter reading could be interfered with. This gives rise to a disputed question of fact that cannot be gone into by the High Court under Article 226 of the Constitution of India. The findings cannot be reversed only on a claim made by the petitioner.

11. It was then argued by the Counsel for the petitioner that the removed seal box was not sealed and no notice of the inspection by the

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M & T Laboratory had been given to him and as such it cannot be assumed that there was any theft on his part or that the meter belonged to him.

12. Counsel for the petitioner was called upon to refer to the provisions of law, as applicable then, as per which the removed meter box was required to be sealed. He was also asked to refer to the ground taken about violation of any Sales Circular requiring removed electricity meter to be kept in a sealed box and to be opened in presence of the consumer, either before this Court or before the Dispute Settlement Committee, which would ordinarily have been a prime argument if such a circular would have existed. He is not in a situation to refer to any applicable regulations or sale circular issued under the Electricity (supply) Act, 1948 or the mandatory procedure prescribed thereunder.

13. Insofar as the argument of the petitioner that he was not informed about checking of the meter in the M & T lab is concerned, the said argument is found to be false in view of Annexure R-1 that has been appended by the respondents alongwith the reply as per which Sanjay Kumar-Consumer representative was present at the time when the checking of the meter was undertaken by the respondents.

14. For the reasons as recorded above, since disputed questions regarding factum of theft of energy arise for consideration before this Court, I find that the same cannot be adjudicated by the writ Court. The present writ petition is accordingly dismissed at this stage with liberty to the petitioner to take recourse to appropriate alternative remedy, if any available to him in accordance with law.



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15. All the pending miscellaneous application(s), if any, are also disposed of.

OCTOBER 23, 2024
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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