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IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

220

CWP-8281-2021 (O&M).
Date of Decision: 05.09.2024.

BALI MOHHAMAD

.. Petitioner

Versus

ELECTRICITY OMBUDSMAN AND ANOTHER

... Respondents

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

Present: Mr. Irshaan Singh Kakar, Advocate,
for the petitioner.

Mr. H.S. Jugait, Advocate,
for respondent No.1.

Mr. Ashish Yadav, Advocate,
for respondent No.2.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the order dated 23.02.2021 (Annexure P-2) passed by respondent No.1-Electricity Ombudsman as well as to the order dated 28.10.2020 (Annexure P-3) passed by the Consumer Grievances Redressal Forum-respondent No.2. A further prayer has been made for directing the respondents to reconsider and decide the matter afresh on the basis of various complaints submitted by the petitioner as far back as on 10.07.019 specifically with regard to the incorrect and defective readings recorded in the months of November, 2018 and January 2019 and the same having not been correctly noticed.

2 Learned counsel for the petitioner contends that the petitioner is a consumer of electricity and is running a workshop for repair/manufacture of small parts of the machinery being used in the Stone Crushers situated at Village Brijkotia. Non-Domestic Electricity Supply Connection bearing Account No.PS35/5165 was released to the said premises in the year 2013. The sanctioned load of the aforesaid Connection/meter was 7.00 Kilo Watt. It is submitted that the petitioner has been regularly paying the electricity consumption charges and the average consumption of the petitioner's Electricity Connection used to vary on an average between 600-1600 units for a bi-monthly billing period, depending on the actual use of the installed load since the release of the Electricity Connection. It is submitted that an inflated reading of 13,501 units was recorded by electricity meter installed at the petitioner's premises for the billing cycle November, 2018. A representative of the petitioner approached the office of the respondent Distribution Licensee and a verbal complaint about the wrong meter reading and excessive spike in the consumption being recorded. However, no action was taken on the said complaint. Thereafter, another erroneous and inflated reading of 4500 units was recorded for the billing cycle January 2019. The petitioner again approached the respondents about the wrong consumption reading being recorded. He was orally assured that the matter shall be looked into. The

petitioner was, however, called upon to deposit a sum of Rs. 1,40,000/- and the same was paid under protest to avoid disconnection. Thereafter, the bill from March, 2019 to July, 2019 were normal and no abnormally high readings were recorded. A formal complaint dated 10.07.2019 was also submitted by the petitioner with the Respondent No.2 in relation to the meter readings for the billing cycle for the period November 2018 and January, 2019. However, no action was taken on the same and rather the petitioner was forced to make a further part-payment of Rs.25,000/- and then Rs.30,000/- to avoid disconnection. It is submitted that bill for the month of September, 2019 was received with a very high and inflated consumption of 20,649 units recorded in the meter installed in the premises of the petitioner regarding which he again approached the respondent No. 2 but still no action was taken. The entire summary of meter reading/billing has been appended along with the present writ petition as Annexure P-5. Another complaint was lodged by the petitioner on 03.12.2019 and on the insistence of the petitioner, the defective electricity meter installed at the premises of the petitioner was replaced by another meter. The removed meter was sent to the Laboratory for testing on 18.12.2019. The said meter was checked in the Laboratory, in the presence of the petitioner, on 31.12.2019 and it was recorded by the M.E. Lab that the meter was found to be defective due to failure of the Real Time Clock (RTC) an internal component of the meter, and that no tempering was found inside the meter and that a perusal of the meter reading/testing data would reveal that the data has been extracted only from April, 2019 onwards whereas the petitioner had made specific complaints regarding the wrong readings also recorded in the months of September, November, 2018 and January, 2019. There was no fault in the functioning of the new meter that had been installed at the premises of the petitioner and the consumption recorded during the subsequent cycles was 1040; 1292; 663; and 1964 units for the period January, 2020 to July, 2020. A request dated 09.06.2020 for overhauling of the account was submitted by the petitioner for the entire defective period from November, 2018 to September, 2019 on the basis of the readings of the corresponding period of previous year or those of the new meter, however, no response thereto was ever received by the petitioner. The Sub-Divisional Officer of the respondent No.2 addressed a letter dated 12.06.2020 to the Executive Engineer Operatin Division of the respondent No.2 for seeking approval to over haul the account of the petitioner for the billing cycle from September, 2019 to January, 2020 only, on the basis of the readings of corresponding period of the year 2017-2018, instead of corresponding period of the year 2018-2019. In order to expedite the matter, the petitioner approached the Consumer Grievance Redressal Forum where comments were sought from the Respondent No.2. The official of the respondent No.2 submitted before the CGRF that the account of the petitioner had already been over-hauled for the billing cycle September, 2019 to January, 2020 and a benefit of Rs.31,565/- has already been extended to the petitioner, in view of the Instruction No.6.9.1 contained in circular No.25/2016. The petitioner specifically submitted before the CGRF that neither any intimation was received with respect to the factum of overhauling of the account nor any benefit has been extended to him, however, the CGRF passed an order on 29.10.2020 refusing to overhaul the account of the petitioner for the period under complaint i.e. November 2018 to September 2019. Aggrieved thereof, an appeal was preferred before the Electricity Ombudsman. The said appeal bearing No.39 of 2020 was also dismissed by the Electricity Ombudsman vide order dated 23.02.2021. Hence, the present writ petition was filed.

3 Learned counsel has argued that the repeated requests submitted by the petitioner for overhauling of the account and/or carrying out a testing of the meter had not been addressed by the respondents and that the assessment of the charge has been made by also considering the spiked up unit consumption to arrive at an average consumption due to which, average consumption has been derived on the basis of an inflated consumption that had been reflected. He contends that data for arriving at an average consumption itself being defective, the conclusions drawn by the respondents at the stage of overhauling the account and for recording an average consumption thus is liable to be rejected. He contends that under the said circumstance, the respondents were required to ascertain the average consumption on the basis of the consumption of 12 months period prior to November 2018 or by taking into account the consumption for the period post installation of the new meter more-so especially when the testing report specifically established that there had been no tampering with the meter. He contends that once the defect in the meter has already been accepted by the respondents, they cannot fasten the liability of a defective

Real Time Clock of the meter and to burden the petitioner with a heightened liability. A specific reference is made to the order of the Electricity Ombudsman and it is contended that even though the respondents submitted that the meter was tested and found to be 'OK' on the receipt of the complaint on 10.07.2018, however, the said testing was not in M.E. Lab but was tested 'OK' as per the ledger. He contends that the same is not an admissible evidence for determining the accuracy of a meter for levying a charge on a consumer. A reference is made to the Regulation 6.9.1 of the Electricity Supply Code 2014 which says that in case no previous correct consumption data is available, owing to new connection or otherwise, the consumer shall be billed provisionally for the units as mentioned in the table provided thereunder or in case such a data is not available then on the basis of the average consumption of the past six months immediately preceding the date of the meter being found/reported defective. The operative part of the said regulation reads thus:-

> ***"6.9.1 Billing in case of defective/sticky/dead stop/burnt meter***
> *(1) In case of defective/sticky/dead stop /burnt meter, the consumer, during the period of defective meter, shall be billed provisionally in the following manner.*
>
> *(a) On the basis of the consumption recorded during corresponding period of previous year when the meter was functional and recording correctly.*

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(b) In case the same is not available, then on the basis of average consumption of the past 6 months immediately preceding the date of the meter being found/reported defective.

(c) If period of installation of meter is less than six months, then the consumer shall be billed on the basis of average consumption of the period from the date of installation of the meter to the date of the meter being found/reported defective.

(d) In case no previous correct consumption data is available, owing to new connection or otherwise, the consumer shall be billed provisionally for the units as mentioned in the table below:-

(i) For Domestic Supply / Bulk domestic supply / Non - Domestic Supply consumers: -

Sr. No.	Category	Consumers fed through Rural Feeders	Consumers fed through Urban feeders
1	Domestic Supply/Bulk domestic supply	40	50
2	Non - Domestic supply		
	For General	75	150
	For Restaurants, Hotels, Petrol Pumps and Cinemas	120	180
	For Nursing Homes and Hospitals with indoor nursing facilities, shopping malls, mobile towers.	120	240

(emphasis supplied)

4 By referring to the above, it is contended that the respondents are required to rework the admissible charges against the petitioner on the basis of Regulation 6.9.1 (b) or (d) above.

5 Responding to the above, learned counsel for respondents No.2 to 4 relies on the written statement that had been filed and submits that on receipt of complaint dated 10.07.2019 submitted by the petitioner, the same was got thoroughly examined by the respondents and the meter was duly checked by the competent authority and it was found that there was no defect/error in the meter regarding the period of November 2018 and January 2019 as alleged. It is submitted that on account of the receipt of the complaint in the month of September 2019, the meter was got checked and the same was found to be defective on the failure of the "Real Time Clock." Accordingly, the electricity connection/account of the petitioner was overhauled as per the settled notifications/instructions and average units for the last one year i.e. from September 2018 to September 2019 was taken and necessary correction/adjustment was made in the bill of the petitioner. It is submitted that the Forums i.e. Consumer Grievances Redressal Forum as well as the Electricity Ombudsman have examined the arguments advanced by the petitioner and having found no favour with the same, the complaint as well as the appeal have been rightly dismissed.

6 Learned counsel for respondents No.2 to 4 further contends that in the event there was a defect in the electricity consumption pattern, the petitioner ought to have approached on the first available option but the formal complaint was filed only in July 2019.

7 No other argument has been raised.

8 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

9 The specific case of the petitioner in the present case is that his average bimonthly consumption against the sanctioned load of 7 KW was between 600 units to 1600 units and that as against the said consumption pattern, the bill issued in the month of November 2018, showed a consumption of 13501 units and 4700 (wrongly mentioned as 4500) units in January 2019 and a consumption 20649 units in the bill raised for September 2019. It is also undisputed that on checking of the meter by the M.E. Lab, it was noticed that the Real Time Clock of the meter was defective and the actual consumption was recorded only w.e.f. April 2019. The M.E. lab also reported that there was no tampering of any nature whatsoever in the meter. After the change of the electricity meter at the premises of the petitioner, the consumption for the billing cycles January, March, May and July was 1040, 1292, 663 and 1964 units respectively which are more commensurate to the earlier consumption pattern of the petitioner.

10 The respondents have relied upon the report of their officer, on the basis of Ledger, in respect of the defect in the meter and to contend that the said report was 'OK' and that the requisite fee for getting the testing of the meter had not been deposited hence the M.E. lab report had not been received. However, the subsequent inspection of the meter clearly revealed

that the meter was defective. Once the report is not disputed, the consumer cannot be made to suffer and discharge the liability. Besides, it is necessary to tabulate the consumption data considered for the overhauling of the consumer account which is as under:-

Sr. No.	*Month*	*Consumption*	*Meter Status*
1	*Jan. 2020*	*1040*	*Defective on basis of Lab report*
2	*Nov. 2019*	*2123*	*Defective on basis of Lab report*
3	*Sep. 2019*	*20649*	*Defective on basis of Lab report*
1	*Jan. 2019*	*4700*	*O.K. as per ledger*
2	*Nov. 2018*	*13501*	*O.K. as per ledger*
3	*Sep. 2018*	*1824*	*O.K. as per ledger*

The overhaul was carried out on the basis of consumption data for the period from September 2018 to September 2019.

11 I am of the opinion that there is some element of dispute with respect to the correctness of the data that has been relied upon by the respondents for arriving at an average consumption and to overhaul the account of the petitioner. The entire period of the defect and the exaggerated spike of consumption has thus come within the zone of consideration and has been relied upon for determining the average consumption pattern of the petitioner.

12 The provisions of the Electricity Act, 2003 are meant for protecting the interests of the consumers as well. The respondents, being licensee, are always at liberty to examine the correctness of data and should not be permitted to contend that notwithstanding the possibility of an error in the data, they would still be entitled to place reliance thereupon despite the regular consumption pattern for the period prior to November 2018, showing an average consumption much below what has been reflected in the billing cycle for November 2018, January 2019 and September 2019.

13 Regulation 6.9.1 as referred to and extracted above contemplates the assessment of the consumption pattern under clauses (b) as well as (d) thereof in relation to the aspects where there may be a dispute pertaining to the actual assessment of consumption. I find that the respondents have opted not to rely upon the provisions that are beneficial to a consumer and have rather preferred reliance on the provisions that are favourable to the licensee and in the said process, the possibility of the consumer being overcharged, by supplanting an erroneous data for raising a demand. The Regulations have to be seen in totality and once a reasonable suspicion with regard to the validity of the empirical data is established from an unimpeachable evidence and contemporaneous evidence, the consumer would earn the benefit thereof. The licensee is then required to establish as to why the said benefit be not extended to the consumer.

14 The object of the Electricity Act, 2003, are meant for protecting the interests of the consumers as well. The respondent Distribution Licensee being custodian of the entire record, it is required to

establish its claim in entirety and cannot seek protection of being a licensee. The Scheme provides for enough safeguards for the Distribution Licensee and has a comparatively lesser provision favouring consumer. In the event of grey area, the benefit would accrue in favour of the consumer.

15 I am hence inclined to extend the benefit of such an error on the part of the respondents, in the facts of the present case, since an unimpeachable regular consumption pattern, prior to the defect being pointed out and even after the change of the meter, shows that the actual consumption has been between the range of 600 to 1600 units on an average basis. Further there is no complaint of any defect/tampering of meter by any nature whatsoever that has been reported by the respondents during the testing in the laboratory in the presence of the petitioner.

16 The present writ petition is accordingly allowed. The order dated 28.10.2020 (Annexure P-3) passed by the Consumer Grievances Redressal Forum-respondent No.2 as well as the order dated 23.02.2021 (Annexure P-2) passed by respondent No.1-Electricity Ombudsman are set aside. The respondents are directed to overhaul the account of the petitioner again and re-determine the same as per Regulation 6.9.1 (b) or (d) to claim the amount for which the petitioner is liable. In the event of average consumption and liability being assessed is less than the amount that has already been deposited by the petitioner, the benefit of such excess deposited amount along with interest as determined by the appropriate Commission shall be given to the petitioner by adjustment in the next energy consumption cycle(s).

17 Let the above exercise be completed by the respondents within a period of 03 months of the receipt of a certified copy of this order.

September 05, 2024. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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