

[130] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-11-2022

Date of Decision : 14.01.2025

Dakshini HaryanaBijli
Vitran Nigam and others

...Appellants

versus

M/s Encon Furnaces Pvt. Ltd.

....Respondent

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Piyush Bansal, Advocate for the appellants.

PANKAJ JAIN, J. (ORAL)

[1] Defendants are in appeal, aggrieved of judgment and decree passed by learned Lower Appellate Court, affirming the findings recorded by learned Trial Court.

[2] Plaintiff filed a suit for declaration impugning various bills issued by the defendants-appellants. Plaintiff claimed that till March, 2016, defendants issued monthly electricity consumption bills to the plaintiff on KWH meter reading and the plaintiff was paying the billed amount. In May, 2016, there was sudden rise in the billed amount and the plaintiff was billed for excessive 23229 units under KVAH meter reading. After running from pillar to post, plaintiff came to know that for proper and accurate KVAH reading the consumer has to maintain standard power factor so that KVAH and KWH meter reading commensurate with each other. Owing to sudden change in the meter reading, plaintiff never got an opportunity to maintain standard power factor. Due to which, the plaintiff is being made to suffer.

[3] Suit was contested by the defendants.

[4] Defendants claimed that all the consumers have been informed through associations of consumers and industries regarding change of billing from KWH to KVAH and hence plaintiff cannot *feign* ignorance.

[5] On the basis of the pleadings, following issues were framed:-

- “1. *Whether the plaintiff is entitled to the decree of declaration and for permanent injunction, as prayed for?*
OPP
2. *Whether the suit of the plaintiff is not maintainable? OPD*
3. *Whether the plaintiff has concealed the true and material facts from the Court? OPD*
4. *Relief. ”*

[6] Learned Trial Court, while answering Issue No.1 held that the defendants having altered the billing system without there being any notice to the plaintiff, the action of the defendants was barred by the Principles of Fair Play and Natural Justice. Learned Trial Court decreed the suit filed by the plaintiff. The aforesaid findings stand affirmed by the learned Lower Appellate Court.

[7] Counsel for the appellant while assailing the impugned judgment submits that Courts below failed to appreciate that it is only the module of the billing that was being changed that too as per sale circular D-13/2015 and thus, the same would not involve Principles of Natural Justice. Plaintiff being consumer is bound by all sale circular(s) issued by the defendant-Board. Demand raised by the defendants against consumption can in no terms be barred by Principles of Natural Justice.

[8] In the present case, the challenge is not to the tariff but to the mode and manner in which the tariff was altered. Plaintiff claims that the same was altered without there being any notice. Defendants on the other

hand, claims that there was ample notice given to all the consumers through consumer associations and industrial associations. Thus, so far as requirement of putting consumer to the notice is concerned, the same is not disputed. The learned Lower Appellate Court has relied upon Instruction No.5.33, which is part of Sales Manual 2013 issued by DHBVN to hold that the same having not been complied, the demand raised is bad. Though, Instruction No.5.33 of Sales Manual 2013 deals with short assessment and may not be strictly applicable yet in view of the fact that the defendants in their own stand have admitted that notice was served upon the consumers but failed to show any service upon the plaintiff, the Courts have rightly decreed the suit filed by the plaintiff. I may add here that the counsel for the appellants admits that had the plaintiff maintained the common power factor, he would have been able to bring down energy charges. This shows that the plaintiff has been prejudiced due to non-service of notice *qua* change of tariff module from KWH to KVAH meter reading basis. In other words, plaintiff successfully proved prejudice caused to him.

[9] In view of above, this Court finds that the Courts below rightly held that the demand raised by the defendants altering the tariff system from KWH to KVAH being without notice is barred by the Principles of Natural Justice and is liable to be set aside.

[10] Finding no merits in the present appeal, the same is ordered to be **dismissed**.

[11] All pending miscellaneous applications, if any, stand *disposed off*.

(PANKAJ JAIN)
JUDGE

14.01.2025
'R. Sharma'

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