

(2002) 04 P&H CK 0042

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 16772 of 2001

Tarsem Singh

APPELLANT

Vs

Punjab State Electricity Board
and Others

RESPONDENT

Date of Decision: April 1, 2002

Citation: (2002) 2 CivCC 584 : (2002) 2 RCR(Civil) 772

Hon'ble Judges: M.M. Kumar, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Kuldip Sanwal, for the Appellant;

Final Decision: Allowed

Judgement

G.S. Singhvi, J.

In this petition, the petitioner has prayed for quashing demand notice dated 30.10.1998 (Annexure P1) issued by the Assistant Executive Engineer (Commercial), Janta Nagar Division, P.S.E.B. (Special), Ludhiana requiring him to deposit Rs.70,137/- on account of alleged theft of electric energy. The other prayer made by the petitioner is to quash the decision taken by the Zonal Level Dispute Settlement Committee contained in Annexure P6 vide which it confirmed the decision of the Circle Level Dispute Settlement Committee and approved the demand created vide Annexure P-l.

2. One of the grounds on which the petitioner has challenged notice Annexure PI and the decision contained in Annexure P6 is the violation of the rules of the natural justice. He has averred that the meter installed at his premises was taken away and got tested in M.E.Laboratory without giving him notice and without following the procedure prescribed under the Commercial Circular No. 8/99.

3. The respondents have been duly served, but neither the written statement has been filed nor any one has appeared on their behalf to argue the case.

4. Sh. Kuldip Sanwal argued that notice Annexure P-I and the decision contained in Annexure P6 may be declared illegal and quashed on the ground of violation of rule of audi alteram partem enshrined in Commercial Circular Nos. 45/98 and 8/99 issued by the Punjab State Electricity Board (for short, "the Board"). He submitted that the meter installed at the petitioner's premises was removed and got tested without complying with the mandatory procedure laid down in the two circulars and without giving him notice of the date, time and place of testing in M. E. Laboratory and, therefore, the same should be declared illegal and quashed. In support of his arguments, Shri Sanwal relied on the decision of this Court in Tirupati Industries v. Punjab State Electricity Board and Ors. 2000(2) CCC 377.

5. We have given serious thought to the arguments of the learned counsel. For the purpose of deciding the legality of demand notice Annexure P1 and the decision of the Zonal Level Dispute Settlement Committee, it will be useful to take cognizance of the instructions contained in Commercial Circular No. 8/99, the relevant extracts of which are reproduced below:-

"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. Labs, in the sealed Card 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 refused to sign the meter test results/report, such meters 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 the 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."

At this stage, notice may also be taken of Clause(c) of Commercial Circular No. 45/98. The same read as under:-

"(c) In future all the meters removed against any meter change order (MCO) shall be sent to M. E. Laboratory in the sealed Card Board Box duly signed by the concerned PSEB officer/official 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 refused to sign the meter test results/report, such meter shall be kept in the sealed box by the Operation/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 ME Labs. Similar procedure shall be adopted in case of meter sealed by the Enforcement Agency/Operation Organisation in theft cases."

6. In M/s Tirupati Industries (supra), this Court referred to Clause (c) of Commercial Circular No.45 and held as under:-

"A bare reading of the above reproduced provisions of the Commercial Circular shows that the testing of meter removed against any meter change order is to be done in the presence of the consumer or his representative. This necessarily means that a notice should be given to the consumer or his representative about the date, time and place of the testing of meter."

In our opinion, the procedure contained in the above referred Circulars must be treated as mandatory because the same is intended to protect the consumer against arbitrary exercise of power by the authorities of the Board and ordinarily, the demand created in violation thereof would be liable to be invalidated. The petitioner has, as mentioned above, come forward with the plea that the meter was removed from his premises and got tested without complying with the procedure contained in Commercial Circular No. 8/99. He has categorically averred that before removing the meter and getting it tested, the concerned authority did not give him the required notice. This has not been controverted by the respondents. Therefore, there is no escape from the conclusion that the impugned demand is violative of the instructions issued by the Board and the principles of natural justice and is liable to be quashed on that ground alone.

7. We are further of the view that the decision of the Zonal Level Dispute Settlement Committee is liable to be quashed not only on the ground that the Committee has proved a patently illegal demand created by the Assistance Executive Engineer, but also because it does not satisfy the requirement of a speaking order indicated in the decisions of the Supreme Court in [Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjunwala and Others](#), ; [Bharat Raja Vs. The Union of India \(UOI\) and Others](#), ; [Travancore Rayon Ltd. v. Union of India AIR 1971 S.C. 862](#); [Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others](#), ; [Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another](#), ; [Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others](#), ; [The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India \(UOI\) and Another](#), ; [S.N. Mukherjee Vs. Union of India](#), ; [Shanti Prasad Agarwalla and others Vs. Union of India and others](#), , [Krishna Swami Vs. Union of India and another](#), and [M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others](#), .

8. Hence, the writ petition is allowed. Notice Annexure PI and the decision contained in Annexure P6 are declared illegal and quashed. However, liberty is given to the competent authority of the Board to pass fresh order after giving notice and

opportunity cbof hearing to the petitioner.

Sd/-M.M, Kumar, J.