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**(2014) 02 P&H CK 0032**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.W.P. No. 13860 of 2000

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| A.K. Rubber Industry | APPELLANT |
| Vs | |
| Punjab State Electricity Board | RESPONDENT |

**Date of Decision:** Feb. 19, 2014

**Citation:** (2014) 175 PLR 693

**Hon'ble Judges:** Ritu Bahri, J

**Bench:** Single Bench

**Advocate:** Kuldip Sanwal, Advocate for the Appellant; P.S. Thiara, Advocate for the Respondent

**Final Decision:** Allowed

**Judgement**

Ritu Bahri, J.
Petitioner is seeking quashing of notice dated 3.7.1996 (Annexure P2), order dated 9.8.2000 (Annexure P4) and notice dated 29.9.2000 (Annexure P5) whereby penalty has been imposed on the petitioner. Thereafter, his case has been dismissed by the Dispute Settlement Authority, PSEB, Patiala. Brief facts of the case are that the petitioner got S.P. Connection in 1979 with a sanctioned load of 18,703 K.W. He applied for extension of power load and in 1985 his power load was extended with M.S. Supply with a power load of 48.833 K.W. In 1992 his power load was extended to 64.248. In 1992 he again asked for extension and his power load was extended to 79.930 K.W. On 20.12.1995 he again asked for extension and his power load was extended to 94.390 K.W. As per the PSEB instructions, periodical testing has to be done after every three years and it is the duty of the Board to install correct meter and to maintain it correctly. On 3.7.1996 the connection of the petitioner was checked by the Enforcement Staff and it was reported that three No. ME lead seals (lash wired) were fake and two No. of paper-seals were found torn. The paper-seals were found intact on the MTC and MCB having serial No. 5252 and 5253. It was declared a case of theft of energy as per Annexure P1. The respondents sent a notice dated 3.7.1996 (Annexure P2) directing the petitioner to deposit Rs. 2,40,926/- on

account of theft of energy. The petitioner deposited Rs. 1,20,543/- and approached the Dispute Settlement Authority, PSEB, Patiala. Before the said Authority, a settlement was made by the Enforcement Staff on 9.8.2000 (Annexure P4). In cross-examination, he admitted that after checking the meter the meter was not got checked in the ME Lab and fake seals were declared by him at the site. He did not feel the necessity to refer the case to ME Lab.

2. Counsel for the petitioner has argued that once the Executive Engineer admitted in his statement (Annexure P3) that the meter was not sent to the ME Lab, it amounts to gross violation of the commercial circular 8/99. It is mandatory as per the above said circular that all meters removed against any meter change order are to be sent to the ME Lab in a sealed card-Board Box duly signed by the concerned PSEB officer/official and the consumer or his representative. The testing is to be done in the presence of consumer or his representative. He has also referred to Regulation 136.5.1 which reads as under:-

"All the meters removed against any meter change order (MCO) shall be sent to ME labs, in the sealed card-Board Box duty signed by concerned PSEB officer/official and the consumer or his representative. In case the consumer refuses to sign the meter test results/report, such meter shall be kept in the sealed box by the AE/AEE/XEN operation till the final disposal of the case. If the consumer deposits the compensation amount without going to the Dispute Settlement Committees or Civil Courts, such sealed meter shall be returned to the ME lab. Similar procedure shall be adopted in case of meters sealed by the Enforcement Agency/Operation organization in theft cases."

3. In view of the above circulars the Dispute Settlement Authority, Patiala, could not return a finding in its order dated 9.8.2000 (Annexure P4) that the seals on the meter body were found fake as per the site report of the Xen, Enforcement. Even if there was wide variation in the consumption before the detection of theft on 3.7.1996 it will not be sufficient to return a finding that the petitioner could be imposed with a penalty on account of theft of energy as per Circular 97/95. In the absence of the report of the ME Lab the Dispute Settlement Authority held as under:-

"25. After hearing arguments of both the parties, evidence led and record produced the authority held that 3 No. ME-92-93 seals on the meter body were found fake as per site report of Sr. Xen/Enforcement and further checking in ME Lab and the fact was further confirmed on observations of the meter and the seals by the authority.

26. The plea of the petitioner that the paper seals were old is immaterial as the 3 No. ME. seals were also found fake and two Nos. paper seals were found torn. The previous checkings by the JE and SD/OP who could not detect the fakeness of the seals does not effect the merit of the case as the impression of original seals was not available with them.

27. The authority further held that there is no difference in ink or handwriting in the ECR which can prove any addition in the ECR at later stage. Moreover, the petitioner copy and the office copy was having no material difference.

28. There is a wide variation in consumption before the detection of theft on 3.7.1996 as the consumption during 95 was of the order of 18000 to 25000 units which rose to 33000 units in 4/97 and was of the order of 29000 units from July 96 to August 97 per month in 97 i.e. after the theft was detected. The plea of the petitioner that the consumption of his unit is much more than other units does not prove no theft as the wide variation before & after the theft has been detected proves clear theft.

29. Keeping in view the above facts the authority held that the charges levied on account of theft of energy as per CC No. 97/95 are in order and fully recoverable from the petitioner firm after adjusting the amount already received in this account."

4. No reply has been filed by the respondents to the writ petition. Counsel for the respondents, however, has argued that the order passed by the Dispute Settlement Authority does not require any interference as the authority after going through the record produced came to a conclusion that seals on the meter body were fake as per the site report. After installation of the connection in the year 1979 it was subsequently that the load was extended and finally the load was extended in 1995 to 94.390 K.W. At this stage, a new meter was installed as per procedure of the department. Thereafter, on a regular checking on 3.7.1996 the seals were found to be fake and 2 No. of paper seals were found to be torn. The authorities did not feel the need to send the meter to the ME Lab as the tampering of the meter was apparent. The Dispute Settlement Authority has perused the record and has accepted the report of me Enforcement Officer. The firm is engaged in processing the waste rubber and production made front raw material. The variation in the consumption of electricity before the detection was 18000 to 25000 units and after the detection on 3.7.1996 it rose to 33000 unite in April 1997. Hence, the finding recorded vide order dated 9.8.2000 (Annexure P4) does not require any interference as the petitioner has been charged 25% as per provisions of CC 97/95. At this stage, reference can be made to a Division Bench judgment of this Court in Tirupati Industries Vs. Punjab State Electricity Board and Others, The Division Bench was considering the commercial circular No. 45 issued by the Board which required that when meters are changed under any meter change order, the same shall be sent to the ME Lab in a sealed card-Board box. The relevant clause "c" of the said circular reads as under:-

"(c) In further all the meters removed against any meter change order (MG) 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 refuses 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 Organization in theft cases."

5. The writ petition was allowed and the impugned demand was declared illegal and it was held that the Executive Authorities were bound to act in accordance with the Administration/Executive instructions which regulate their actions. The testing of meter removed against any unit changed order was done by consumer or his representative. A notice should have been given to a consumer or his representative of the date, time and place of testing. Reference was made to a Supreme Court judgment in case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, in which it was observed as tinder:-

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon, he is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise for arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice, be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case ..... It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State.

6. Applying the ratio of the above said judgment, in the facts of the present case, it was not being disputed by the Authorities that when the checking was done on 3.7.1996 the old meter was removed carrying fake seals but it was not sent to the ME Lab. The petitioner has suffered on account of principle of natural justice and non-compliance of the circulars issued by the respondent department which regulate that when a meter is

changed it should be sent in the presence of the petitioner or his representative to the ME Lab and further the checking should also be done in his presence. Without following the above stated procedure the notice dated 3.7.1996 (Annexure P2), order dated 9.8.2000 (Annexure P4) and notice dated 29.9.2000 (Annexure P5) imposing the penalty are quashed.

The writ petition is allowed.