

Punjab State Electricity Board & Anr vs Ashwani Kumar on 8 July, 2010

Author: Swatanter Kumar

Bench: Swatanter Kumar, B.S. Chauhan

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3505 of 2007

Punjab State Electricity Board & Anr. ...Appellants

Versus

Ashwani Kumar ...Respondent

WITH

Civil Appeal No. 3506 of 2007

Punjab State Electricity Board & Anr. ...Appellants

Versus

Sudesh Mahajan ...Respondent

JUDGMENT

Swatanter Kumar, J.

1. This appeal is directed against the Order dated 21st February, 2006 passed by the National Consumer Dispute Redressal Commission (hereinafter referred to as the 'National Commission'), New Delhi where it dismissed the review petition preferred by the Punjab and Haryana State Electricity Board (for short 'Electricity Board') against the Order dated 16th August, 2005. One Ashwani Kumar, respondent herein had filed a complaint before the District Forum alleging that the electric meter bearing No. MS-32/603 was installed in the premises owned and possessed by him in the name of Kartari Devi and Suraj Prakash who had sold the property through Registered Sale deed

dated 28th November, 1996 (Ext.C/1) and since the purchase of the property, he has been using the electric meter and connection. On 2nd July, 2002, he had received a Memo from the Electricity Board stating that the said connection had a sanctioned load of 52.49 KW and it was required to be clubbed with electric connection in the name of Janak Raj bearing electric connection No. MS-32/580 with sanction load of 56.79 KW. Reply was submitted by him to the Memo wherein he had stated the above facts. It was further clarified that his property was separate and distinct from property possessed by Sudesh Mahajan and the electric connection in that premises was in the name of Janak Raj. They denied the cross wiring in the property or even that the connection was being commonly used by the parties. Thus, they contested the demand raised by the Electricity Board to the extent of Rs.3,28,216/-.

2. Similarly, in the other case Sudesh Mahajan had filed a complaint claiming a sale in favour of his predecessor in interest on 28th November, 1996. They denied the charges of clubbing and took up the stand that they were independent properties wherein different meters have been installed and as such, the demand of Rs.4,56,025/- and Rs.3,28,261/- was not payable by any of the consumers namely Janak Raj and Kartari Devi or persons claiming through them. To challenge the same, complaints were filed by both which came to be dismissed vide orders dated 2nd June, 2002 and 8th September, 2003 respectively, passed by the District Forum. The appeals were filed by the private complainants against the Electricity Board before the State Consumer District Redressal Commission, Punjab which came to be registered as Appeal No. 218 and 219 of 2004 respectively. Both these appeals came to be allowed by the State Forum and the demands raised were quashed. A further direction was issued that the amount deposited by the respondents, if any, under the impugned demand notice, the same shall be refunded with interest @ 9% per annum. The State Forum while referring to the documents of sale in favour of the respondents further held that a circular being CC No. 4 of 1997 issued by the Electricity Board on 8th January, 1997 dealt with the subject of running of more than one connection in the same premises. According to the circular, if there were two connections in the same premises they were required to be clubbed for the purposes of payment of tariff. However, the Competent Forum in appeal found that they were two distinct persons, owning distinct properties and were having independent electric connections. Reliance was placed on the fact that the properties have been numbered as 136 and 136-A separately by the Municipal Corporation. The properties were subjected to property tax separately. The result of these two distinct properties was that they could not be termed as same premises under the relevant provisions and therefore, the demand raised was entirely unjustified. The Electricity Board filed appeals before the National Consumer Dispute Redressal Commission, which were dismissed, vide Order dated 21st February, 2006. As already stated, it is a small order and it will be useful to refer to the same at this stage:

"Heard the Ld. Counsel for the Petitioner. As per the Municipal record, two separate buildings are there. One building admeasuring 554 sq. yards in P-136 owned jointly by Shri Suraj Prakash, Shri Ashwani Kumar, Shri Subhash Chander S/o Shri Tilak Raj and Smt. Raj Rani. Other building admeasuring 504 Sq. Yards is P-136-A owned by the same person. On record there is evidence that Ashwani Kumar is running the business in the name of Ashwani Textiles and he is the proprietor. As against them there is other textile mill known as Mahajan Handloom Industries owned by Shri

Sudesh Mahajan. In this state of circumstances order passed by the State Commission cannot be said to be, in any way, erroneous. Hence, these Revision Petitions are dismissed."

3. The legality and correctness of the order passed by the National Commission is challenged in these appeals. At the very outset, we may notice that the electric supply regulations have been framed in exercise of the powers conferred under Section 49 and Sub Section (j) of Section 79 of the Electricity Supply Act, 1948 (for short referred as 'the Act') and other enabling provisions by the Board. These regulations deal with different aspects, in particular, they deal with providing of one connection in one premises and consumer is required to give an undertaking on a non-judicial stamp paper that no connection already exists in the premises, in which, the connection is being applied in terms of Clause 3.1.1 of the Regulations. Other relevant provisions which have a bearing on the matters in controversy before us, relate to new connection in the same premises, transfer of the premises, where there exists a connection and the obligation on the part of the consumer to get the connection clubbed. Now we may examine those relevant provisions which read as under:

"3.5.2 Whenever, an existing consumer applies for a new connection in the same premises i.e. even having independent shed/unit/piece of land having separate plot no. etc., in his name, it shall normally be not allowed. Such consumer should be asked to apply for extension in existing load. However, if a new connection has been applied in the name of a new firm/company of which the existing consumer is a Director/Partner, the connection will only be allowed if the premises are distinctly and physically separate/portioned so that it is not possible to utilize electricity from one premises to the other and further that in case of one of the connections having been disconnected due to default, it cannot be run from other connection by making temporary arrangement.

3.5.2.1 Where the premises in question are legally transferred, sold or leased to a new unit and appropriate entry exists in the municipal/ revenue record regarding such transfer, the consumer/applicant should furnish a copy of the registered deed for sale or lease as the case may be. An informal agreement of family partition/ lease etc. will not be acceptable.

3.5.2.2 Where the Punjab Government has allowed the registration of more than one unit/renting out of the premises for setting up industrial units in industrial plots/sheds in the Focal Points depending on the size of the plot and subject to fulfilment of some conditions laid down for the purpose, in such cases the new connection may be allowed provided such units are in the name of different persons and parts of such sheds/plots being used by different industrialists, are properly demarcated and separated from each other by making suitable partition so that it is not possible to use electricity from one unit to another and in case of one connection having been disconnected due to defaulting amount etc., the same cannot be run from other connection(s) in the adjoining industrial unit(s) by tapping some supply points.

xxx xxx xxx 3.5.7 Failure to get Connections Clubbed If a consumer fails to exercise option to get his connections clubbed within the stipulated date or declares that there is only one connection in his premises but later on it is detected that he is having more than one connection in one premises, he shall have to pay higher tariff and surcharge, if applicable w.e.f. 1.1.96.

4. The circular, which has been relied upon by the parties reads as follows:

"In order to encourage the consumers to opt for clubbing of their loads and also to facilitate a smooth transition, it has been decided that all consumers may be asked to give undertaking for clubbing/conversion of two or more connections in the same premises, wherever existing by 31.1.97. Further action in various situations may be taken as under:

(a) Cases where no change of voltage level is involved;

The cost of clubbing with regard to service Mains, if any, shall be borne by the Board.

However, consumer shall be charged higher tariff wherever applicable, from the date of undertaking, which in any case shall have to be given before 31.1.97.

(a) Cases where change of voltage level is involved;

In cases requiring conversion of supply voltage from LT to 11 KV, Board shall carry out the conversion including erection of a new 11/0.4 KV transformer with allied equipment in the first instance and recover the conversion cost in six equal monthly instalments from the consumer.

Note:- Where there is a transformer exclusively feeding the consumer, this may, on the option of the consumer, be sold to him as per the provisions contained in SMI-39.

In both the cases (a) and (b) above, such consumers shall be brought on higher tariff, wherever applicable and any surcharge due to voltage level shall be stopped with effect from the date of undertaking.

The above relaxation shall be applicable to the cases involving voltage level upto 11 KV.

(a) The consumers who do not exercise option by 31.1.97 or those who in the first instance declare that there is only one connection existing in their premises but later on are detected to be running more than one connection in the same premises, shall have to pay higher tariff and surcharge wherever applicable w.e.f. 1.1.96."

5. The bare reading of the above regulations and circular makes it apparent that the aim of the Electricity Board is to provide single connection in the premises. Not only this, it is the obligation of the consumer, to get the connections clubbed where more than one connection exists in the same

premises. This policy is, primarily, meant to encourage single connection as well as consumers to opt for clubbing of their loads and also to facilitate a smooth transmission. Besides this, the most important aspect is the mischief that these provisions ought to suppress. A consumer who gets two meters installed in his premises and in that garb receives bulk supply instead of medium supply clearly makes an attempt to avoid payment of higher tariff. It cannot be disputed that a consumer of a medium supply is subjected to a lower tariff than the one receiving bulk supply. Therefore, the intention, thus, is to avoid revenue loss to the Board by circulating the prescribed procedure. These regulations and circulars, thus, cannot be interpreted so as to defeat the very object of suppressing such a mischief in the consumption of electricity. Therefore, if the Electricity Board finds that such mischief is being played, there is nothing in law preventing the Board from treating it as a clubbed connection and impose such tariff and penalty as is permissible in accordance with law. No consumer can be permitted to defeat the spirit of the regulations and take undue advantage of receiving electric supply through all different meters in the same premises and with an intention to defraud the Electricity Board of its genuine dues for supply of electricity.

6. Having referred to these regulations, now we may revert back to the facts of the present case. The officers of the Electricity Board had conducted inspection of the premises in question and prepared an inspection report. As per the inspection report, there is only one plot being Plot No. 136, Industrial Area-A, Ludhiana and in that Smt. Kartari Devi is stated to be the consumer. She has a sanctioned load of 52.49 KW and the Consumer Account No. was MS-32/603. The other consumer is Shri Janak Raj in the same property having Consumer Account No. MS-32/580 with a sanctioned load of 56.79 KW. In the report, it was noticed as follows:-

"6. In the connected portion of premises (Aahata) one more connection MS-32/0603 Kartar Devi is installed. The supply of which also comes to this premises and at the moment some load of that connection is found running on this side.

7. The common wall of both sides has one shutter and one Kainchi Gate. In the half portion of Kainchi Gate a wall of approximately four feet exists. As per Board instructions case of clubbing is made out action be taken."

6. This report was signed by Shakti Jaggi, a representative of the consumer, to whom the copy of the same was given. The Department, vide their letter written to the consumer, had stated that in terms of circular No. 78 of 1995, dated 15th September, 1995 and 4 of 1997, dated 8th January, 1997, the connections were liable to be clubbed on the basis of this inspection report and they were expected to file reply within fifteen days from the date of issue of the notice. In the reply submitted by the consumers, no specific objections were filed to the effect that the inspection was conducted in a prejudicial manner or correct facts had not been noticed and that is why the protest was raised. In any case, it was open to the consumer to file objections to the report at a subsequent stage. Except that, there were two distinct properties and connections, nothing was averred in the reply or before the Forum as to why the officers had reported the facts in their report which justify clubbing of the connections. Thereafter, the demands of Rs.3,28,216/- and Rs.4,56,025/-, as stated above, were raised from these consumers. Both the reports have been received by the consumer's representatives. The demand notices were admittedly received by the consumer as they are the very

basis of the complaints filed by them. The circular being CC No. 4 of 1997, while referring to the scheme of the Electricity Board under Clause (c) of the circular, made it obligatory upon the consumers to exercise the option by 31st January, 1997 and even to those persons where one connection is stated to be existing in the premises but later on are detected to be running more than one connection and they would have to pay higher tariff and surcharge w.e.f. 1.1.1996. The version, put forward by the consumers, is that there were two separate premises and they had produced certain documents before the Forum, which persuaded them to treat these premises as separate. All these documents were prior to the date of inspection and it has been noticed by the Forum that the inspection reports were signed under protest. The reports, which have been placed before us at page Nos. 56 and 59 respectively of the paper book, show that some protest was raised, however, no objections were filed to show what was the protest and what exactly the consumer were objecting to. It, certainly, required a definite finding to be recorded by the Forum. Non-recording of such a finding has prejudicially affected the rights of the parties.

7. The documents (Ext.C1 to Ext.C10), noticed by the State Commission, show that the consumer had advanced the argument of separate properties, separate ownership and separate connections. However, there is no reason recorded as to why the evidence of the Department i.e. the inspection report is incorrect and cannot be relied upon. There is ambiguity. The District Forum, while relying upon the report, had rejected the complaint which was reversed by the State Forum. These are the findings of facts and they must be recorded in a manner which would clearly establish on record the case of one party or the other in accordance with law. The trading accounts filed by the consumer in one of the appeals related to financial year 1991- 92, 1992-93, 1993-94 and 1996-97. On behalf of respondents, Subhash Chander, had filed the rent receipts for the period 1st April, 2002 to 30th September, 2002. Primarily, the documents produced by the consumers related to the period prior to the date of inspection. The inspection of the premises was conducted on 19th June, 2002. It was required of the consumers to establish their case for the period, at the time of or subsequent to the date of inspection. There could reasonably be possibility of issues being answered against the consumers. The report prepared by the officers of the Electricity Board is an act done in discharge of their duties and could not be straight away reflected or disbelieved unless and until there was definite and cogent material on record to arrive at such a finding. It is not disputed before us that if two connections are operating in the same premises, in that event, the concept of clubbing and consequential charges and penalty would be attracted. That being so, and particularly, where a National Commission has not adverted to some discussion on the points raised in the appeal, the policy of the Electricity Board and the regulations cannot be rendered otiose. It is the obligation of every bona fide consumer to comply with the requirements and the regulations in the circular and not to abuse the advantage given under the policy of the Electricity Board. If there is a prima facie record to show that the consumer had attempted to circumvent the circular and with an intention to avoid payment of higher tariff, two connections were being utilized in the garb of different premises, while in fact, it was one and same premises, the penal consequences must follow. The circular issued and the regulations read with the provisions of the Act, clearly contemplate imposition of penalty and such charges with effect from 1st January, 1996. There is no explanation on record as to why the date is effective from 1st January, 1996. Even if taking the said date to be correct then the dues, which can be recovered, are the dues payable to the Electricity Board in accordance with law. The notice dated 2nd July, 2002 (Ext.C/5) was issued on the basis of the inspection report. From the

record before us it will be a serious question to be specifically answered by the Competent Forum, as to whether the premises in question are two distinct and different premises or it is one in the same (i.e. only property No. 136 or 136 and 136-A). If these are two independent premises owned by two different persons who are consumers of the Board in their own capacity and there is no intention on their part to use these connections collectively and have not violated their sanctioned load, the consequences in law will be different. But, if there is intention to use both connections and avoid higher tariff, the consequences will be entirely different in that case. The inspection report is a document prepared in exercise of its official duties by the officers of the Corporation. Once an act is done in accordance with law, the presumption is in favour of such act or document and not against the same. Thus, there was specific onus upon the consumer to rebut by leading proper and cogent evidence that the report prepared by the officers was not correct. As already noticed, no objections were filed to the said report except some protest, that too, without stating as to what was the specific protest about, whether the facts recorded in the report were factually incorrect or that the report was received under protest. As is apparent from the reports on record, it bears two signatures of the consumer/consumer's representatives, one with regard to the preparation of report and other with regard to receiving the copy of the report. The words 'under protest' have been recorded at the bottom of the report. This, itself indicates the ambiguity in the protest raised by the consumers.

8. In the circumstances aforesaid, we are of the considered view that the matter requires to be remanded to the Competent Authority in the Electricity Board to determine and record the clear findings afresh as to whether it was a case of clubbing or not in accordance with the provisions and observations afore-referred with liberty to the parties to produce any further documents, if they so desire. The authority shall pass a final order expeditiously. The fate of the notices and consequences thereof shall be subject to the final order that may be passed by the Competent Authority. Parties are at liberty to challenge the order so passed in accordance with law.

9. The appeals are, therefore, disposed off with the above direction while leaving the parties to bear their own costs.

.....J. [DR. B.S. CHAUHAN]J. [SWATANTER KUMAR]
New Delhi July 8, 2010.