Municipal Committee, Hoshiarpur vs Punjab State Electricity Board & Ors on 19 October, 2010

Author: B.S. Chauhan

Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9651 OF 2003

Municipal Committee, Hoshiarpur .... Appellant

VERSUS

Punjab State Electricity Board & Ors. .... Respondents

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and decree dated 12.1.2001 passed in Regular Second Appeal No.1618 of 1998 by the High Court of Punjab & Haryana at Chandigarh, reversing the judgment and decree of the trial Court, as well as of the First Appellate Court.

Facts:

2. Facts and circumstances giving rise to this appeal are that the Municipal Committee, Hoshiarpur (hereinafter called the `appellant') had taken an electricity connection on 15.6.1992, for running a tubewell, from the Punjab State Electricity Board (hereinafter called the `Board'), for supplying water for daily use to the public of the locality at large. The average bill for the consumption of electricity of the said connection used to be around Rs.5,000/- per month and the said amount was paid regularly by the appellant. A bill dated 11.3.1994 to the tune of Rs.82,300/- was served upon the appellant by the Board. As the bill was very high, the appellant instead of making the payment, filed suit No. 304 of 1994 before the Civil Court challenging the said bill. The Board contested the Suit by filing a written statement contending that the connection had not been made properly and on checking, one of the Current Trap Potents (hereinafter called `CT') was found to be reversed, thereby nullifying the action of second CT, as a result of which only one CT was contributing to the

recording of the energy actually consumed. The meter was showing only 1/3rd of the actual consumption of the energy, and once the proper connection was made, the reading of the meter jumped three times. In view thereof, the account of the said meter was overhauled from the date of its installation and the fresh bill was rightly issued. The appellant filed a replication contending that no opportunity of hearing was given to it before revising the bill nor was the checking/inspection done in the presence of any responsible officer of the appellant. No notice was ever given by the Board to the appellant for inspection. More over, the appellant was not in a position to pass on the liability to its consumers.

3. After considering the facts and circumstances of the case and appreciating the evidence on record, the trial Court vide its judgment and decree dated 22.5.1995, decreed the suit. The trial Court came to the conclusion that appellant had not made any attempt to tamper with the meter nor committed theft of energy. The defect was due to the negligence of the Board, and the appellant could not be burdened for the same. The trial court declared the said revised bill as null and void. Being aggrieved, the respondent-Board preferred an appeal before the District Judge and the same was dismissed vide judgment and decree dated 30.9.1997, holding that there was no justification for the respondent-Board to issue a supplementary bill arbitrarily.

4. Being aggrieved, the respondent-Board preferred Second Appeal No.1618 of 1998 before the High Court which has been allowed vide impugned judgment and decree dated 12.1.2001, observing that after correcting the wrong connection, the reading of the meter jumped three times and therefore, from the very beginning only 1/3rd of the electric energy actually consumed stood recorded by the meter. Therefore, such a recovery was justified and there could be no equity in favour of the appellant to withhold the payment. Hence, this appeal.

Rival Contentions:

5. Shri K.K. Mohan, learned counsel appearing for the appellant, submitted that the High Court committed a grave error in deciding the Second Appeal without meeting the mandatory requirement of Section 100 of the Code of Civil Procedure, 1908 (hereinafter called `CPC') as no substantial question of law had been framed by the High Court. The bill was revised without giving any show cause notice or opportunity of hearing to the appellant. The High Court recorded a perverse finding that after the correct/proper connection was made, the meter reading jumped to three times the previous readings. The High Court failed to note that for certain months subsequent to the correction of connection, the reading shown by meter was less than what had been shown prior to the correction, i.e., November 1993. The appeal deserves to be allowed.

6. On the contrary, Shri Satinder S. Gulati, learned counsel appearing for the respondent-Board, has vehemently opposed the appeal contending that it was not that the appellant had made any attempt to commit theft of energy or tampered with the meter. It was merely a fault/negligence on the part of the respondent-Board that the proper connection of the meter had not been made and after connecting the meter properly the meter readings had shown 3 times the consumption of electricity shown earlier. Thus, it was a case of recovery of the amount that was due in accordance with law and as per the actual total consumption of energy. The High Court was justified in re-appreciating the

facts without formulating a substantial question of law in view of the provisions of Section 103 CPC. More so, the appellant has not shown what prejudice has been caused to it, if the High Court did not frame a substantial question of law and no opportunity of hearing was given to it by the Board before revising the bill. Thus, no interference is called for and the appeal is liable to be dismissed.

7. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

LEGAL ISSUES:

Second Appeal: Sections 100 & 103 C.P.C.:

8. These provisions provide for the conditions precedent for entertaining a Second Appeal and the specific manner of its disposal. Section 100 CPC reads as follows:

> "100. Second Appeal.-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.
>
> (2) .....
>
> (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.
>
> (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
>
> (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

....." Section 103 CPC reads as under:

> "103. Power of High Court to determine issue of fact.--In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,--
>
> (a) which has not been determined by the lower appellate court or both by the court of first instance and the lower appellate court, or
>
> (b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100."

9. In Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors., AIR 1999 SC 2213, this Court held as under:-

> "It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before an appeal can be maintained and no Court has the power to add to or enlarge those grounds. The appeal cannot be decided on merit on merely equitable grounds."

10. Further, there can be no quarrel that the right of appeal/revision cannot be absolute and the legislature can impose conditions for maintaining the same. In Vijay Prakash D. Mehta & Jawahar D. Mehta v. Collector of Customs (Preventive), Bombay, AIR 1988 SC 2010, this Court held as under:-

> "Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial or quasi- judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant .....The purpose of the Section is to act in terrorem to make the people comply with the provisions of law."

11. A similar view has been reiterated by this Court in Anant Mills Co. Ltd. v. State of Gujarat, AIR 1975 SC 1234; and Shyam Kishore & Ors. v. Municipal Corporation of Delhi & Anr., AIR 1992 SC 2279. A Constitution Bench of this court in Nandlal & Anr. v. State of Haryana, AIR 1980 SC 2097, held that the "right of appeal is a creature of statute and there is no reason why the legislature, while granting the right, cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory".

12. In Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad & Ors., (1999) 4 SCC 468, this Court held that the right of appeal though statutory, can be conditional/qualified and such a law cannot be held to be violative of Article 14 of the Constitution. An appeal cannot be filed unless so provided for under the statute and when a law authorises filing of an appeal, it can impose conditions as well.

13. Thus, it is evident from the above that the right to appeal is a creation of Statute and it cannot be created by acquiescence of the parties or by the order of the Court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a Court or Authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance of the conditions mentioned in the provision that creates it. Therefore, the Court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The Court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does

not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal, on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 C.P.C. It is the obligation on the Court to further the clear intent of the Legislature and not to frustrate it by ignoring the same. (Vide: Santosh Hazari v. Purshottam Tiwari (dead) by Lrs., AIR 2001 SC 965; Sarjas Rai & Ors. v. Bakshi Inderjeet Singh, (2005) 1 SCC 598; Manicka Poosali (Deceased by L.Rs.) & Ors. v. Anjalai Ammal & Anr., AIR 2005 SC 1777; Mst. Sugani v. Rameshwar Das & Anr., AIR 2006 SC 2172; Hero Vinoth (Minor) v. Seshammal, AIR 2006 SC 2234; P. Chandrasekharan & Ors. v. S. Kanakarajan & Ors., (2007) 5 SCC 669; Kashmir Singh v. Harnam Singh & Anr., AIR 2008 SC 1749; V. Ramaswamy v. Ramachandran & Anr., (2009) 14 SCC 216; and Bhag Singh v. Jaskirat Singh & Ors., (2010) 2 SCC 250).

14. In Mahindra & Mahindra Ltd. v. Union of India & Anr., AIR 1979 SC 798, this Court observed:

> "..... It is not every question of law that could be permitted to be raised in the second appeal. The parameters within which a new legal plea could be permitted to be raised, are specifically stated in Sub-section (5) of Section 100. Under the proviso, the Court should be `satisfied' that the case involves a substantial question of law and not a mere question of law. The reason for permitting the substantial question of law to be raised, should be recorded by the Court. It is implicit therefrom that on compliance of the above, the opposite party should be afforded a fair or proper opportunity to meet the same. It is not any legal plea that would be alleged at a stage of second appeal. It should be a substantial question of law. The reasons for permitting the plea to be raised should also be recorded."

15. In Madamanchi Ramappa & Anr. v. Muthaluru Bojjappa, AIR 1963 SC 1633, this Court observed:

> ".....Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by Section 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of Section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

16. In Jai Singh v. Shakuntala, AIR 2002 SC 1428, this Court held as under:

> "....it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible - it is a rarity rather than a regularity and thus it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection."

17. While dealing with the issue, this Court in Leela Soni & Ors. v. Rajesh Goyal & Ors., (2001) 7 SCC 494, observed as under:

> "20. There can be no doubt that the jurisdiction of the High Court under Section 100 of the Code of Civil Procedure (CPC) is confined to the framing of substantial questions of law involved in the second appeal and to decide the same. Section 101 CPC provides that no second appeal shall lie except on the grounds mentioned in Section 100 CPC. Thus it is clear that no second appeal can be entertained by the High Court on questions of fact, much less can it interfere in the findings of fact recorded by the lower appellate court. This is so, not only when it is possible for the High Court to take a different view of the matter but also when the High Court finds that conclusions on questions of fact recorded by the first appellate court are erroneous.
>
> 21. It will be apt to refer to Section 103 CPC which enables the High Court to determine the issues of fact:
>
> xx xx xx
>
> 22. The section, noted above, authorises the High Court to determine any issue which is necessary for the disposal of the second appeal provided the evidence on record is sufficient, in any of the following two situations: (1) when that issue has not been determined both by the trial court as well as the lower appellate court or by the lower appellate court; or (2) when both the trial court as well as the appellate court or the lower appellate court have wrongly determined any issue on a substantial question of law which can properly be the subject-matter of second appeal under Section 100 CPC."

18. In Jadu Gopal Chakravarty v. Pannalal Bhowmick & Ors., AIR 1978 SC 1329, the question arose as to whether the compromise decree had been obtained by fraud. This Court held that though it is a question of fact, but because none of the courts below had pointedly addressed the question of whether the compromise in the case was obtained by perpetrating fraud on the court, the High Court was justified in exercising its powers under Section 103 C.P.C. to go into the question. (See also Achintya Kumar Saha v. M/s Nanee Printers & Ors., AIR 2004 SC 1591)

19. In Shri Bhagwan Sharma v. Smt. Bani Ghosh, AIR 1993 SC 398, this Court held that in case the High Court exercises its jurisdiction under Section 103 C.P.C., in view of the fact that the findings of fact recorded by the courts below stood vitiated on account of non-consideration of additional

evidence of a vital nature, the Court may itself finally decide the case in accordance with Section 103(b) C.P.C. and the Court must hear the parties fully with reference to the entire evidence on record with relevance to the question after giving notice to all the parties. The Court further held as under:

> ".....The grounds which may be available in support of a plea that the finding of fact by the court below is vitiated in law, does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a re-appraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot be pre-judged, as has been done in the impugned judgment..".

20. In Kulwant Kaur & Ors. v. Gurdial Singh Mann (dead) by LRs. & Ors., AIR 2001 SC 1273, this Court observed as under :

> "Admittedly, Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the issue of perversity vis-`-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication -- what is required is a categorical finding on the part of the High Court as to perversity.
>
> The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 since the issue of perversity will also come within the ambit of substantial question of law as noticed above. The legality of finding of fact cannot but be termed to be a question of law. We reiterate however, that there must be a definite finding to that effect in the judgment of the High Court so as to make it evident that Section 100 of the Code stands complied with." (Emphasis added)

21. Powers under Section 103 C.P.C. can be exercised by the High Court only if the core issue involved in the case is not decided by the trial court or the appellate court and the relevant material is available on record to adjudicate upon the said issue. (See: Haryana State Electronics Development Corporation Ltd. & Ors. v. Seema Sharma & Ors., (2009) 7 SCC 311)

22. Before powers under Section 103 C.P.C. can be exercised by the High Court in a second appeal, the following conditions must be fulfilled:

(i) Determination of an issue must be necessary for the disposal of appeal;

(ii) The evidence on record must be sufficient to decide such issue; and

(iii) (a) Such issue should not have been determined either by the trial court, or by the appellate court or by both; or

(b) such issue should have been wrongly determined either by trial court, or by the appellate court, or by both by reason of a decision on substantial question of law.

If the above conditions are not fulfilled, the High Court cannot exercise its powers under Section 103 CPC.

Thus, it is evident that Section 103 C.P.C. is not an exception to Section 100 C.P.C. nor is it meant to supplant it, rather it is to serve the same purpose. Even while pressing Section 103 C.P.C. in service, the High Court has to record a finding that it had to exercise such power, because it found that finding(s) of fact recorded by the court(s) below stood vitiated because of perversity. More so, such power can be exercised only in exceptional circumstances and with circumspection, where the core question involved in the case has not been decided by the court(s) below.

23. There is no prohibition on entertaining a second appeal even on a question of fact provided the Court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (Vide: Jagdish Singh v. Natthu Singh, AIR 1992 SC 1604; Karnataka Board of Wakf v. Anjuman- E-Ismail Madris-Un-Niswan, AIR 1999 SC 3067; and Dinesh Kumar v. Yusuf Ali, AIR 2010 SC 2679).

24. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eyes of law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide: Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors., AIR 2010 SC 2685)

25. In view of above, the law on the issue can be summarised to the effect that a second appeal lies only on a substantial question of law and it is necessary to formulate a substantial question of law before the second appeal is decided.

The issue of perversity itself is a substantial question of law and, therefore, Section 103 C.P.C. can be held to be supplementary to Section 100 C.P.C., and does not supplant it altogether. Reading it otherwise, would render the provisions of Section 100 C.P.C. redundant. It is only an issue that involves a substantial question of law, that can be adjudicated upon by the High Court itself instead of remanding the case to the court below, provided there is sufficient evidence on record to adjudicate upon the said issue and other conditions mentioned therein stand fulfilled. Thus, the object of the Section is to avoid remand and adjudicate the issue if the finding(s) of fact recorded by the court(s) below are found to be perverse. The court is under an obligation to give notice to all the parties concerned for adjudication of the said issue and decide the same after giving them full opportunity of hearing.

Natural Justice:

26. The principles of natural justice cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. Thus, they cannot be put in a strait-jacket formula. "Natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of." The two rules of natural justice, namely, nemo judex in causa sua, and audi alteram partem now have a definite meaning and connotation in law and their contents and implications are well understood and firmly established; they are nonetheless non-statutory. The court has to determine whether the observance of the principles of natural justice was necessary for a just decision in the facts of the particular case. (Vide: The Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. v. Ramjee, AIR 1977 SC 965; Union of India & Anr. v. Tulsiram Patel, AIR 1985 SC 1416; and Managing Director, ECIL, Hyderabad v. B. Karunakar, AIR 1994 SC 1074).

27. There may be cases where on admitted and undisputed facts, only one conclusion is possible. In such an eventuality, the application of the principles of natural justice would be a futile exercise and an empty formality. (Vide: State of U.P. v. Om Prakash Gupta, AIR 1970 SC 679; S.L. Kapoor v. Jagmohan & Ors., AIR 1981 SC 136; and U.P. Junior Doctors' Action Committee v. Dr. B. Sheetal Nandwani & Ors., AIR 1991 SC 909).

28. However, there may be cases where the non-observance of natural justice is itself prejudice to a person and proof of prejudice is not required at all. In A.R. Antulay v. R.S. Nayak & Anr., (1988) 2 SCC 602, this Court held as under:

> "....No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity."

29. Similarly, in S.L. Kapoor (supra), this Court held:

> "The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

30. In view of the above, in case there is a non-compliance of a statutory requirement of law or the principles of natural justice have been violated under some circumstances, non-compliance of the aforesaid may itself be prejudicial to a party and in such an eventuality, it is not required that a party has to satisfy the court that his cause has been prejudiced for non-compliance of the statutory requirement or principles of natural justice.

Present Case:

31. The High Court was much impressed by the chart submitted by the respondent-Board after correcting the connection, which reads as under:

Month	Unit		Month	Unit
8/92	3124		7/93	2231
9/92	1841		8/93	2486
10/92	1812		9/93	2063
11/92	1270		10/93	7418
12/92	2032		C.T. Connection corrected	
1/93	1264		11/93	6171
2/93	1368		12/93	4656
3/93	1644		1/94	3012
4/93	1647		2/94	3359

---------- On perusing the same, the High Court reached the conclusion that prior to correct the connection, the meter was recording only 1/3rd of the total energy consumed, which seems to be factually incorrect.

32. Shri Gulati, learned counsel for the Board, could not answer our query that in case the report/chart prepared by the Board is taken to be correct, under what circumstances the meter reading in the months of March and April 1994 had been 1/5th of the total consumption of energy shown in August 1992 and 1/3rd of September- October 1992 and 1/4th of December 1992. In fact, the reading for the month of April 1994 had been 1/13th of the reading shown in the month of October 1993. Meter reading for the month of October 1993, just prior to correction had been the highest i.e. 7418 units, and after correction, readings should have been higher than the said figure.

33. The trial court while dealing with the issue after considering the facts and appreciating the evidence on record came to the following conclusions :

> ".....In case connection to one of the CT was found to be reversed then defendants

> were required to install a check meter. With the installation of check meter, Board can opine that the disputed meter is recording 1/3rd and only one CT was contributing for recording of energy. According to the Assistant XEN., disk of the meter was consuming 42 seconds. From the very beginning that is from the installation of the meter account of the disputed meter was overhauled. Counsel for the Board failed to site any authority that if there is wrong connection by the Board then account is to be overhauled from the date of the installation of the meter, secondly, no provision of the Electricity Sales Manual cited from which it could be ascertained that if the disk of the meter consumes 42 seconds for one revolution then it is to be presumed that the connection to the CT are wrong. If one only CT was contributing for recording of energy then best way for the board was to install a check meter. After comparing the recording of energy by both the meters, the Board can only opine that the meter installed is not correct one and is not correctly recording the energy. So simply by saying that the disk of the meter consuming 42 seconds for one revolution, connection to the CT is not correct. Connection were corrected on the day of checking i.e. on 5.10.93 but chart produced by the Board shows that in the month of 3/94 units consumed were only 842 and in the month 9/92 units consumed were 1841. So, chart shows that after correcting the connection energy consumed is not regular. The only conclusion which should be drawn is that account of the meter was wrongly over hauled from the date of the installation of the meter."

(Emphasis added)

34. The first appellate court concurred with the aforesaid findings of the fact. However, the High Court without framing a substantial question of law and without making any reference to Section 103 C.P.C. decided the case against the appellant by merely placing reliance on the aforesaid chart. The two courts below had correctly understood and appreciated the contents of the said chart and the High Court has interfered with the concurrent findings of fact in a most casual and cavalier manner. Such a course was totally unwarranted and uncalled for. The High Court committed a grave error in considering the findings of fact recorded by the courts below to be perverse.

35. Shri Gulati has placed much reliance on the conditions of supply of the electrical connection and, particularly, on Clause 23 which reads:

> "Where the accuracy of meter is not involved and it is a case of incorrect connections or defective CTs PTs, genuine calculation mistakes etc., charges will be adjusted in favour of Board/consumer, as the case may be, for the period the mistake/defect continued. Additional charges will be recovered by serving a supplementary bill cum show cause notice. The consumer may also be allowed to pay the amount in installments."(Emphasis added)

36. The aforesaid Clause 23 of the conditions of supply, stipulated in the agreement of supply of energy also, clearly provides that Board must issue a show cause notice to the consumer before the issuance of a revised bill. It is an admitted case that no opportunity of hearing had been provided to

the appellant. The demand notice dated 7.1.1993 reads as under:

> "In relation to abovementioned subject, it is to inform you that your tubewell's connection Account No. MS-19 was checked by the undersigned and the line supervisor. As per report working of the meter was found to be slow and the meter was recording 1/3rd of the consumption. This account of your's as per report the amount is to be calculated by overhauling account from 8/92 to 9/93. A supplementary bill of total amount of Rs.73,198.00 is being sent to you alongwith this letter for payment and it is requested to make the payment of the bill with in the due date of payment. This be treated as very urgent."

37. It is evident from the above-said demand notice that no show cause notice had been given to the appellant before revising the bill. The Board has examined Mr. J.L. Mehta, Assistant Executive Engineer, as DW.1 before the trial court and the relevant part of his cross examination reads as under:

> "……We did not inform the committee prior to our visit. However, the operator of the committee was present at that time. We did not inform the Municipal Engineer at the time of checking, however, the operator could have called the Municipal Engineer at that time. The detail along with the bill was served to the plaintiff, however, the bill alone does not indicate about the calculation……."

38. It is, thus, evident from the aforesaid deposition of the witness produced by the respondent-Board that no prior intimation of checking had been given to the appellant, nor was any responsible officer present at the time of checking. A copy of the checking report/chart was not given to the appellant for filing of objections nor was any show cause notice given along with the demand notice. Thus, it is a clear cut case of violation of the principles of natural justice as well as of clause 23 of the conditions of supply. Admittedly, no check meter had ever been installed and thus, it could not be held that the meter did not record the quantity of energy actually consumed. In view of the above, we do not find any force in the submissions made by Shri Gulati that the appellant must show the prejudice caused to it by not framing the substantial question of law by the High Court and not giving it the opportunity of hearing prior to the sending of the revised bill.

39. If we consider the case in the totality of the circumstances involved herein, we are of the considered opinion that the trial court as well as the first appellate court had considered all factual and legal issues involved in this case. While deciding the case, the courts below had appreciated the relevant evidence including the chart prepared and so heavily relied upon by the respondent-Board in correct perspective. As the Board did not install a check meter, the readings shown by the meter after correction of the connection could not be held to be correct. Subsequent to the correction, the readings had not been regular. Thus, the revised bill could not be held to be showing the correct quantity of energy actually consumed by the appellant. In such a fact-situation, there was no occasion for the High Court to decide the second appeal without framing the substantial question of law and it was not a case which could warrant consideration under Section 103 C.P.C. Thus, the judgment and decree impugned are liable to be set aside.

40. In view of the above, the impugned judgment and decree dated 12.1.2001 passed in Regular Second Appeal No.1618 of 1998 by the High Court of Punjab & Haryana at Chandigarh are hereby set aside and the judgment and decree of the courts below are restored. The appeal is allowed. In the facts of this case there shall be no order as to costs.

.....J. (P. SATHASIVAM) .....

.....J. (Dr. B.S. CHAUHAN) New Delhi, October 19, 2010