



Product S.No.550985300 Licensed to: Sh.Naresh Garg, Advocate Bathinda Punjab

This judgement ranked 1 in the hitlist.

Dakshin Haryana Bijli Vitran Nigam Ltd. v. M/s Nestor Pharmaceuticals Limited. (Punjab and Haryana) : **Law Finder Doc Id # 337181**

2010(1) Law Herald 659 : 2010(39) R.C.R.(Civil) 577

PUNJAB AND HARYANA HIGH COURT

Before:- Mahesh Grover, J.

R.S.A. No.4036 of 2009 (O& M). D/d. 22.1.2010.

Dakshin Haryana Bijli Vitran Nigam Ltd. and anr. - Appellants

Versus

M/s Nestor Pharmaceuticals Limited. - Respondent

For the Appellant :- Shri B.S. Rana, Advocate.

A. Electricity Act, 2003 Sections 24 and 26 Defective Meter - On checking meter was found running slow - Penalty of Rs. 6,17,677/- imposed - Challenged - Respondent/Plaintiff never confronted with checking report nor it was signed by its authorised representative - Principles of natural justice not complied with - Penalty not liable to be imposed.

[Paras [6](#) and [7](#)]

B. Electricity Act, 2003 Section 26 Defective meter - Penalty - If there was a dispute regarding the meter, the matter was to be decided by the Electrical Inspector - His report was essential to determine the extent of energy supplied to the consumer to ascertain the liability - Penalty imposed without referring the matter to Electrical Inspector, liable to be set aside.

[Para [7](#)]

JUDGMENT

Mahesh Grover, J. - This Regular Second Appeal is directed against the judgments and decrees dated 28.7.2004 and 15.11.2008 passed respectively by the Additional Civil Judge (Senior Division), Faridabad (hereinafter described as 'the trial Court') and the Additional District Judge, Faridabad (referred to hereinafter as 'the first appellate Court') whereby the suit of the plaintiff-respondent was decreed and the appeal of the defendants-appellants was dismissed. Since it is barred by limitation, C.M. No. 12288-C of 2009 has been moved for condonation of 107 days' delay in its filing.

2. The respondent had filed a suit disputing the penalty of Rs. 6,17,677/- imposed upon it on the ground that meter installed in its premises was checked and was found to be running slow. The penalty was questioned by alleging that the inspection was not carried out by the appellants by any technical instrument on 17.11.2000 and no show cause notice was served upon it and that the copy of the inspection report was never supplied to it. The respondent had also alleged that the inspection report was never got signed from any of its authorised officer. It was pleaded that in fact, no inspection had taken place on 17.11.2000 as the meter had been changed in December, 2000 and if it was running slow, then the appellants would have removed the meter on the same day itself.

3. The appellants contested the suit and defended their action in carrying out the inspection and also defended the imposition of penalty which was stated to be in accordance with law.

The parties went to trial on the following issues:-

1. Whether the memo No.1165 dated 4.12.2000 to the tune of Rs. 6,17,677/- is illegal and not binding on the rights of the plaintiff?OPP

2. Whether the suit is not maintainable in the present form?OPD

3. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD

4. Relief.

4. Both the Courts concluded that the appellants had failed to follow the procedure which was enshrined in Sections 24 and 26 of the Indian Electricity Act (for short, 'the Act') before imposing the penalty upon the respondent. It was held that the procedure for carrying out the inspection was also not adhered to. The suit was accordingly decreed and the appeal of the appellants was dismissed.

5. Hence, this appeal.

6. After hearing the learned counsel for the appellants and perusing the impugned judgments, I am of the opinion that there is no infirmity therein. The appellants had failed to establish before the Courts below that the principles of natural justice had been complied with by issuance of a proper show cause notice to the respondent and that it had been made aware of the checking report which ought to have been got signed from its authorised representatives. The signatures which appeared on the notice were not traced out to be any of the employees of the respondent. The report was also not put to the witnesses of the respondent. These two factors when evaluated in the light of the testimony of DW1- Shri R.K. Sehgal and DW2-D.N. Chaudhary shows that the respondent was never confronted with the report nor was it signed by any authorised representative of the respondent, even though it was admitted that senior officer of the respondent was present. It is not the case of the appellants that this senior officer of the respondent, who was present, had refused to sign the report, although the testimony of DW1 and DW2 further qualifies to say that when the said senior officer, Shri R.K. Khattar, was asked to sign, he further asked their Electrician, namely, Shri Krishan, to sign. It was imperative for the appellants to have mentioned this fact in the report or to have traced the signatures by establishing that the person, who had signed the report, was the employee of the respondent.

7. Besides, the provisions of Section 26(6) of the Act have also been violated. According to this section, if there was a dispute regarding the meter, the matter was to be decided upon an application of either of the parties by the Electrical Inspector. His report was essentially to determine the extent of the amount of energy supplied to the consumer to ascertain the liability. Concededly, that has not been done and consequently, the findings of the Courts below cannot be faulted with. 8. That apart, the appeal has been filed with a delay of 107 days which has not been satisfactorily explained.

9. Consequently, the appeal is dismissed on merits, as also being barred by limitation. C.M. No. 12289-C of 2009 which has been filed for staying the execution of the impugned judgments, is also dismissed in view of the above.

.