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**(2014) 02 AHC CK 0226**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 59470 of 2011

M/s. Krown Bakers India Pvt. Ltd.

APPELLANT

Vs

Paschimanchal Vidyut Vitran Nigam and Another

RESPONDENT

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**Date of Decision :** 12-02-2014

**Acts Referred:**

**Citation :** (2014) 3 ADJ 773 : (2014) 5 ALJ 7 : (2014) 4 AWC 4283

**Hon'ble Judges :** Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

**Bench :** Division Bench

**Advocate :** B.C. Rai and H.P. Dubey, Advocate for the Appellant; Pankaj Kumar Shukla and Chandan Agrawal, Advocate for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. Heard Sri B.C. Rai, learned counsel for the petitioner, contends that the impugned demand bill dated 8.8.2011 is based on an assessment without following the procedure installing a check meter as prescribed in Clause 5.6 of the Electricity Supply Code, 2005. Sri Rai submits that unless the assessment is carried out by making a calculation as the results of a check meter as per the provisions so included in the 2005 Code, any bill raised is an erroneous exercise of power and the bill deserves to be quashed. 2. For the consideration of the case, Clause 5.6 is extracted herein under:

5.6 Defective Meters.--(a) The Licensee shall have the right to test any meter and related apparatus if there is a reasonable doubt about the accuracy of the meter and the consumer shall provide the Licensee necessary assistance in conduct of test. However, the consumer shall be allowed to be present during the testing.

(b) A consumer may request the Licensee to test the meter installed on his premises if he doubts its accuracy of meter readings not commensurate with his consumption of electricity, stoppage of meter, damage to seal, by applying to the Licensee in prescribed format (Annexure 5.1) alongwith the requisite testing fee.

The Licensee shall test the meter:

- (i) Within 15 days of the receipt of the application, at consumer's premises, or
  - (ii) Within 30 days at licensee's lab, or Independent lab, or
  - (iii) By installing a tested check meter in series with the existing meter within 7 days of filing of application.
- (c) In case of testing of meter at consumer's premises, the testing of meter shall be done for a minimum consumption of 1 kwh. The meter testing team of the licensee shall carry heating load of sufficient capacity to carry out the testing. Optical Scanner may be used for counting the pulses/revolutions or meter shall be tested as per the procedure described in IS/IER 1956 or through aqua-check for LT meters and through R.S.S. for others. The aqua check and R.S.S. shall be calibrated in laboratory of national repute once in a year.
- (i) In case the meter is found O.K., no further action shall be taken.
  - (ii) In case the meter is found fast/slow by the licensee, and the consumer agrees to the report, the meter shall be replaced by a new meter within 15 days, and bills of previous three months prior to the month in which the dispute has arisen shall be adjusted in the subsequent bill as per the test results. In case meter is found to be slow, at the request of the consumer, these charges may be recovered in instalments not exceeding three.
  - (iii) If the consumer disputes the results of testing, or testing at consumer's premises is difficult, the defective meter shall be replaced by a new tested meter by the Licensee, and, the defective meter after sealing in presence of consumer, shall be tested at licensee's lab/Independent lab/Electrical Inspector, as agreed by consumer. The option once exercised by consumer shall not be changed. The decision on the basis of reports of the test lab shall be final on the Licensee as well as the consumer.
- (d) In cases of testing of a meter in the licensee's/Independent test laboratory,
- (i) Consumer shall be informed of the proposed date of testing at least 7 days in advance so that he may be present at the time of testing, personally or through an authorised representative.
  - (ii) The signature of the consumer or his authorised representative, if any present, shall be obtained on the Test Result Sheet.
  - (iii) The results of testing, billing, and in case the consumer disputes the results of testing, shall be same as provided in clause 5.6(c) above.
- Note.--(i) The licensee may submit a proposal, with a list of reputed and approved test labs, alongwith their test charges to the Commission.
- (ii) The provisions of IER 1956 shall however be followed until rules are made under Sections 53 and 55 of the Act.

(e) In case a check meter is installed, and if after 7-5 days of the period of test, the existing meter is found to be fast or slow beyond the permissible limits, and the test results are not disputed by the consumer, then the same would be removed leaving the check meter in its place for future metering, and bills of previous three months prior to the month in which the dispute has arisen shall be adjusted in the next bill as per the test results, Where the test results are disputed, the procedure as per clause 5.6(c) as above, as the case may be, shall be followed.

2. A perusal thereof indicates that in the case of a defective meter, the licensee will have a right to inspect any meter and if there is a reasonable doubt in the accuracy of the meter, the same shall be tested and the consumer shall be allowed to be present during the time of testing.

It is useful to extract paragraphs 4 of the writ petition at this stage:

That on 18.4.2011 the officers of P.W.N.L. visited the factory premises no discrepancy was found with the main meter. However, it was mentioned in the sealing certificate that owing to defect, the meter is recording less consumption and the difference between main meter and double pole meter may be charged as per rule. A true copy of sealing certificate dated 18.4.2011 is being attached hereto and marked as Annexure 1.

3. A perusal of the said paragraph demonstrably leaves no room for doubt that the sealing certificate clearly indicated slow running of the meter about which the petitioner had full knowledge that the meter is recording less consumption and there is a difference between the main meter and the double pole meter.

4. A consumer has been given the right to question the correctness of any such inspection tests in accordance with the provisions of the aforesaid provision. There is nothing on record to indicate that the petitioner has made any attempt to question the correctness of the said defect in the meter, nor any request has been made to install a check meter. The presumption that cannot be drawn is that the petitioner did not have any objection to the said defect in the meter.

5. It is also relevant to point out that even the representation filed by the petitioner, which is Annexure-3 to the writ petition and also the subsequent applications, there is an indication of only questioning the bill that has been sent but there is no objection about the OP status of the meter leaving slow as found during inspection.

6. Consequently, there is no challenge raised to the factum of the meter running slow as such in our opinion the petitioner cannot question the consequential bills that have been raised in accordance with the calculation made by the respondent-department inasmuch as the petitioner himself has not taken any steps under Clause 5.6 as pointed out herein above. The obligation to install a check meter would arise only if there is a request by the consumer. The petitioner did not opt for the same and in his request he has also prayed for making payments in

installment. The deposit under protest does not raise any challenge to the technical fault of the slow running meter.

7. Consequently, we do not find any reason to interfere with the bill. The writ petition is accordingly rejected.