

**(2009) 01 AHC CK 0003**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 1545 of 2009**

Smt. Amrawati Devi

APPELLANT

Vs

Purvanchal Vidyut Vitran Nigam Limited and Another

RESPONDENT

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**Date of Decision :** 15-01-2009

**Acts Referred:**

**Citation :** (2009) 2 AWC 1189

**Hon'ble Judges :** V.M. Sahai, J;Ran Vijai Singh, J

**Bench :** Division Bench

**Advocate :** B.C. Rai, for the Appellant; H.P. Dube, for the Respondent

**Final Decision :** Allowed

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## Judgement

V.M. Sahai and Ran Vijai Singh, JJ.—The Purvanchal Vidyut Vitran Nigam Ltd. (in brief "the Nigam") replaced the old electricity meter on 14.12.2004 and installed a new Secure Meter No. U.P.E. 62373 at the hotel of the Petitioner. Another China Meter No. LT-1 089513 was installed outside the premises of the Petitioner on 16.12.2007. The hotel of the Petitioner was checked on 26.11.2008 and the officers of the Nigam found that the Secure Meter No. U.P.E. 62373 was running slow by 12.61%. It was decided by the officers of the Nigam that the aforesaid meter would be tested at the laboratory of the Nigam. On the same day the Secure Meter No. U.P.E. 62373 was sealed and the Petitioner was intimated that the meter would be tested at the laboratory of the Nigam and the Petitioner should be present on 4.12.2008. The Secure Meter No. U.P.E. 62373 was taken away and a new meter was installed at the hotel of the Petitioner.

2. At the laboratory of the Nigam on 4.12.2008 the seal of the Secure Meter No. U.P.E. 62373 was opened in the presence of the Petitioner. The meter and seal, after testing were found to have been tampered. Thereafter, provisional assessment notice dated 31.12.2008 was issued to the Petitioner which has been challenged by the Petitioner in this writ petition on the ground that the sealed meter should have been sent for testing by an independent agency as provided

by Clause 5.6 (c) (iii) of U. P. Electricity Supply Code, 2005 (in brief the Code, 2005).

3. We have heard Shri B. C. Rai, learned Counsel for the Petitioner and Shri H. P. Dube, learned Counsel for the Respondent. There is no dispute on facts and only interpretation of Clause 5.6 (c) (iii) of the Code, 2005 is involved. With the consent of learned Counsel for the parties we have taken up this petition for final disposal at the admission stage without calling for a counter-affidavit.

4. Shri Rai has urged that the Respondents should have informed the Petitioner that she had a right to get the sealed meter tested either at the laboratory of the Nigam or at the laboratory of some other independent agency. In absence of any information by the officers of the Nigam or knowledge the Petitioner cannot be presumed to have waived her right to get the sealed secure meter tested at the laboratory of some other independent agency. On the other hand Shri Dube, learned Counsel for the Respondents has urged that the Petitioner did not avail the opportunity when the meter was sealed and she was asked to appear on 4.12.2008, that she wants to get the sealed secure meter tested at the laboratory of some other independent agency. The seal of the meter was opened on 4.12.2008 and it was tested in the presence of the Petitioner. Clause 5.6 (c) (iii) of Code, 2005 provides for only one opportunity and that has not been availed by the Petitioner on 26.11.2008 and now it is not open to the Petitioner to claim that the Secure Meter No. U.P.E. 62373 be tested by an independent agency.

5. Clause 5.6 (c) (iii) of U. P. Electricity Supply Code, 2005 is extracted below:

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 reading 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 cases of testing of meter at consumer's premises, the testing of meter shall be done for a minimum consumption of 1 K.W.H. 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 I.S./I.E.R. 1956 or through Aqua Check for L.T. 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 the 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 I.E.R. 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 7-15 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.

6. From reading of Clause 5.6 (c) (iii) it is clear that this clause is unequivocal

terms declares that the defective meter after sealing in presence of consumer, shall be tested, at licensee's lab/independent lab/Electrical Inspector, as agreed by the consumer. Therefore, the agreement by the consumer is essential for testing of the meter either at the laboratory of the Nigam or at the laboratory of some other independent agency. It further provides that option exercised by consumer once cannot be changed. The clause, therefore, empowers the authorities to seal the meter and get it tested with consumer's agreement. Since the clause operates harshly against the consumer it has to be construed strictly. The consumer has a right to get the meter tested with independent agency. The authorities, therefore, have a corresponding duty to apprise the consumer of the right. Failure to discharge this duty, which flows from Sub-clause (c) (iii) by the authorities while exercising their right to send the meter for testing, renders the entire proceedings for sealing the meter irregular and illegal. Annexure-3 dated 26.11.2008 does not comply with this requirement. The relevant portion is extracted below:

7. It only informs the consumer that the meter shall be tested at licensee's laboratory and she should be present on 4.12.2008. In absence of intimation that she has a right to get it tested at independent laboratory, the notice was contrary to law.

8. It has been argued by the Respondents that the Code, 2005 being the law, the Petitioner cannot claim that she was not aware of it. On the other hand the counsel for the Petitioner argued that "ignorance of law is no excuse" does not apply universally. We do not consider it necessary to enter into this wider issue as we have found the notice dated 26.11.2008 Annexure-3 to be contrary to Clause 5.6 (c) (ii).

9. For the same reason the argument of the Respondents that once the Petitioner did not object, she waived her right to get the defective meter tested by independent laboratory cannot be accepted, unless she knew or had knowledge about the provisions of Clause 5.6 (c) (iii) of the Code, 2005. In such situation the doctrine of waiver cannot be pressed into service. The Apex Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, had held in paragraph 6 as below:

Secondly, it is difficult to see how, on the facts, the plea of waiver could be said to have been made out by the State Government. Waiver means abandonment of a right and it may be either express or implied form of conduct, but this basic requirement is that it must be "an intentional act with knowledge". Per Lord Chelmsford, L.C. in *Earl of Darnley v. London, Chatham and Dover Rly. Co.*, (1867) LR 2 HL 43 at 57. There can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. It is pointed out in *Halsbury's Laws of England* (4th Edn.) Volume 16 in paragraph 1472 at page 994 that for a "waiver to be effectual it is essential that the person granting it should be fully informed as to his rights" and Isaacs, J., delivering the judgment of the High Court of

Australia in *Craine v. Colonial Mutual Fire Insurance Co. Ltd.*, (1920) 28 CLR 305 (Aus), has also emphasised that waiver "must be with knowledge, an essential supported by many authorities."...Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in *Martindale v. Falkner*, (1846) 2 CB 706, "There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so." Scrutton, L.J., also once said: "It is impossible to know all the statutory law, and not very possible to know all the common law." But it was Lord Arkin who, as in so many other spheres, put the point in its proper context when he said in *Evans v. Bartlam*, (1937) AC 473"...the fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application. It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the Appellant had full knowledge of its right to exemption so as to warrant an inference that the Appellant waived such right by addressing the letter dated June 25, 1970. We accordingly reject the plea of waiver raised on behalf of the State Government.

10. In our opinion, in absence of intimation of Clause 5.6 (c) (iii) of the Code, 2005, the Petitioner could not be deemed to have waived her right to exercise her option to get her meter tested at independent laboratory. To be fair to the Nigam as well as consumer, a notice is required to be given by the Nigam to the consumer as to whether the consumer wants to get the defective meter tested at the laboratory of the Nigam or by Electrical Inspector or by an independent agency. The answer of the notice has to be given by the consumer. After the option is exercised by the consumer and he agrees to get the meter tested at the laboratory of the Nigam or Electrical Inspector, then the Nigam may fix the date for testing the meter. If the consumer exercises his option to get the meter tested from outside agency, the list of the names of the outside agency approved by the Nigam should be intimated to the consumer so that he may choose any one of the outside agency and according to the option of the consumer. The outside agency may test the meter and its finding about testing of meter would be final. It is after following this procedure that the option exercised by consumer cannot be changed. The decision on the basis of option exercised by the consumer, and the report of the test laboratory shall be final and binding on the licensee as well as on the consumer. But the Nigam did not inform the Petitioner to exercise her option on 26.11.2008 when the meter of the Petitioner was sealed and she was informed to appear on 4.12.2008 for testing of the meter.

11. We are of the considered opinion that after sealing the meter the Nigam must serve a notice, on which it should be printed in bold capital letters, intimating the consumer or his representative to exercise his option either to get the meter tested by the Electrical Inspector or at the laboratory of the Nigam or

the consumer may exercise his option to get his meter tested from one of the outside agencies approved by the Nigam mentioned in the notice. Once the consumer exercises his option then immediately a date has to be fixed for testing of the meter in the presence of the consumer.

12. For the aforesaid reasons the writ petition succeeds and is allowed. The provisional assessment notice dated 31.12.2008, issued by the Respondents Annexure-6 to the writ petition is quashed. We further direct the Respondents to send the meter of the Petitioner for testing by an independent agency in accordance with Clause 5.6 (c) (iii) and thereafter make provisional assessment provided the Petitioner deposits an amount of Rs. 2,50,000 with the Respondents within a period of fifteen days from today. The Respondents are further directed to restore the power supply of the Petitioner within 48 hours from the date Petitioner deposits the aforesaid amount. The Petitioner shall go on paying her regular electricity bills.

Parties shall bear their own costs.