(2015) 04 UK CK 0028

In the Uttarakhand High Court

Case No : Writ Petition No. 1820 of 2010 (M/S)

Uttarakhand Power Corporation Ltd. APPELLANT

Vs

Doiwala Sugar Company Ltd. RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 126, 126(5), 181, 42, 50

Citation : (2015) 3 UC 2210

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : D.S. Patni, Advocate, for the Appellant; V.K. KohliAdvocateAdvocate, assisted by Rajni Supyal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—Present petition is filed assailing the order dated 07.06.2010, passed by Electricity Ombudsman Uttarakhand on Representation No. 07 of 2009. The brief facts of the present case, inter alia, are that respondent Doiwala Sugar Company Ltd. is consumer of Uttarakhand Power Corporation Ltd. U.P.C.L./ petitioner herein, installed a Check Meter in the sugar factory premises on 20.05.2007 and second Check Meter with the separate C.T. was installed on 23.06.2007. On the basis of readings of both the Check Meters, an opinion was formed that old original meter installed in the sugar factory premises was recording 72.96% less consumption. Having opined so, old meter was removed from sugar factory premises on 18.08.2007. Thereafter, Assessing Officer formed an opinion that since original meter was installed on 15.01.2004 and opinion was formed about the less recording of consumption on 18.08.2007, therefore, sugar company had to pay additional amount of Rs. 66,22,842/- for the period from 15.01.2004 to 18.08.2007. Feeling aggrieved, respondent has approached Electricity Grievance Redressal Forum constituted under sub-Section (5) of Section 42 of the Electricity Act, 2003.

2. Learned Forum was pleased to dismiss the claim of the consumer/respondent herein, vide order dated 19.03.2009. Consequently, consumer/respondent herein made representation before the Electricity Ombudsmen Uttarakhand constituted under sub-Section (6) of Section 42 of the Electricity Act, 2003. Learned Ombudsman has observed in the impugned order that although original meter was installed in the sugar factory premises on 15.01.2004 and first check meter was installed on 20.05.2007, however, there was nothing before the Assessing Officer to come to the conclusion that original meter was running slow right from the day of installation i.e. 15.01.2004. Learned Ombudsman was further pleased to observe that as per Regulation No. 3.1.3 (6) of the Uttarakhand Electricity Regulatory Commission (Electricity Supply Code), Regulations 2007, Assessing Officer can assess the loss due to slow running of the meter for the maximum period of six months and not beyond that. Having observed so, learned Ombudsman was pleased to direct the Assessing Officer to make assessment afresh. Feeling aggrieved, petitioner/U.P.C.L. has preferred present writ petition under Article 226 of the Constitution of India.

3. At the risk of repetition, it is important to mention here that original meter was installed in the sugar factory premises on 15.01.2004 and first check meter was installed on 20.05.2007 and second check meter was installed with separate C.T. on 23.06.2007 and both the check meters were showing that original meter was recording 72.96% less consumption and original meter was removed from the premises on 18.08.2007.

4. Section 126 of the Electricity Act, reads as under:-

"Section 126 - Assessment:

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person serve with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven

days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to [twice] the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation: For the purposes of this section,-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity-

(i) by any artificial means: or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized."

5. As per explanation (b) (iii) of subsection (6) of Section 126 of the Act, uses of electricity through a tempered meter shall fall within the definition of unauthorized use of electricity.

6. As per sub-section (5) of Section 126 of Act, if a consumer is found using the electricity through the tempered meter, assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection. In other words, if Assessing Officer is able to find out the actual date of tempering meter, then assessment can be made for the period commencing from the date of tempering of the meter, however, if date of tempering of the meter cannot be ascertained, assessment can be made for the period of 12 months only immediately preceding the date of inspection.

7. Uttarakhand Electricity Regulatory Commission was pleased to make regulations by exercising powers under Section 50 read with Section 181 of the

Electricity Act, 2003 which was duly notified on 17.04.2007.

8. Regulation 3.1.3 (6) reads as under:

"When the meter is found to be slow beyond permissible limits, as specified in Rule 57 (1) of the Indian Electricity Rules, 1956 and the consumer does not dispute the accuracy of the test, the Licensee/consumer, as the case may be, shall replace/rectify the defective meter within 15 days of testing. The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a maximum period of not more than 6 moths or less depending on period of installation of meter prior to date of test and up to the date on which defective meter is replaced/rectified"

9. The bare perusal of Regulation No. 3.1.3 (6) would demonstrate that if consumer does not dispute the accuracy of the test meter, licensee/consumer as the case may be, shall replace/rectify the defective meter within 15 days of testing. The consumer has to pay difference due to the defect in the meter at normal rates, based on percentage error, for a maximum period of not more than 6 months or less depending on period of installation of meter prior to date of test and up to the date on which defective meter is replaced/rectified.

10. Mr. D.S. Patni, learned counsel appearing for the U.P.C.L./petitioner, herein, has submitted that cumulative temper report, Annexure No. 1 to the rejoinder affidavit, reveals that old meter was running slow right from the date of installation of the old meter i.e. on 15.01.2004. Therefore, U.P.C.L./petitioner is authorized and competent to assess the amount right from the date of installation of the original (First) meter on 15.01.2004, which was rightly done.

11. There is no dispute that meter is always installed after satisfying that meter is running properly and showing appropriate consumption.

12. Regulation 3.1.3. (6) provides that assessment in the case of slow meter shall be made for a maximum period of six months from the date of testing. Regulation nowhere provides that assessment can be made from the date of running the meter slow as in the case of sub-Section (5) of Section 126 of the Act which covers different filed i.e. when meter was tempered with.

13. In my considered opinion Regulation 3.1.3 (6) covers the field of slow meter while Section 126(5) covers the different field i.e. of the tempered meter. Present case is of slow meter and is not of tempered meter.

14. Mr. D.S. Patni, learned counsel for the UPCL, while referring to sub-Section (2) of Section 56, contends that UPCL can recover the entire amount due for the entire period of slow meter. He further contends that powers under sub-Section (2) of Section 56 are notwithstanding any other law in force, therefore, Regulation No. 3.1.3 (6) cannot curtail the powers of the Board not to recover the amount for more than six months.

15. Section 56 reads as under:-

"Disconnection of supply in default of payment- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from hi to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days'' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinued the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest.

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during preceding six months,

Whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity"

16. Sub-section (2) of Section 56 of the Act, demonstrates that no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied, notwithstanding anything contained in any other law for a time being in force.

17. Having perused sub-Section (2) of Section 56, I have no hesitation to hold that sub-Section (2) of Section 56 covers the entirely different fields of limitation, when sum due can be recovered. As per sub-Section (2) of Section 56, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless sum has been shown continuously as recoverable as arrears of charges for electricity supplied. The present case is not of the charges of electricity supplied but this is a case of assessment because of slow meter. As to how and what period, assessment can be made in the case of slow meter is clearly explained in the Regulation No. 3.1.3(6). In view of the discussion made, hereinbefore, present petition fails and is hereby dismissed.

