



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

106

**RSA-1232-1994 (O&M)
Date of decision : 17.02.2025**

The Punjab State Electricity Board and others Appellants

versus

Ashwani Kumar Respondent

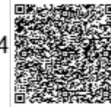
CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Munish Gupta, Advocate
for the appellants.

Mr. Anand Chhibbar, Sr. Advocate with
Mr. Utkarsh Khatana, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

1. Defendants are in appeal.
2. Plaintiff instituted suit seeking decree of declaration that the act of removal of meter bearing No.LS-23 by the officers of the defendants in his absence, is illegal, void and malafide. Further declaration was sought to the effect that demand of Rs.15,20,272/- raised vide memo bearing No.3092 dated 20.11.1987, is illegal and void. Plaintiff also sought decree of mandatory injunction directing the defendants to install the meter in his premises along with the consequential relief of permanent injunction restraining defendants from making any recovery from the plaintiff relatable to the removal



of meter.

3. Plaintiff filed suit pleading that he is a consumer of energy. He is making regular payments for the consumption thereof to the defendants. Plaintiff is facing harassment at the hands of the defendants. He was earlier constrained to file suit for permanent injunction against the defendants from recovering an amount of Rs.1,90,478-79/-. The suits were decreed in favour of the plaintiff. Plaintiff claims that he along with his family members were away on 17.11.1987 for the marriage of his sister. On the day, he returned to Khanna. After 20.11.1987, he came to know that meter from his factory has been removed by the officials of the defendants by breaking lock of the meter room illegally abusing their official position and the plaintiff was served with memo No.SPL-1/Site dated 16.11.1987 asking him to open the lock of the meter room. Plaintiff claims that he was threatened with lodging of FIR. After he filed suit, memo dated 20.11.1987 bearing No.3092 was served upon him which was received by the plaintiff after filing of the suit. By way of said memo, demand of Rs.15,20,272/- has been raised which is illegal, void and against the provisions of Electricity Act and the instructions contained in sales manual.

4. Suit was contested by the defendants claiming that the plaintiff was indulging in theft of energy. Defendants denied breaking the lock of the meter room. They claimed that the lock was broken by representative of the plaintiff namely Hari Ram Accountant. A Flying



Squad consisting of Assistant Executive Engineer, Flying Squad Moga and defendants No.3 and 4 inspected premises of the plaintiff on 16.11.1987. On reaching the premises, the officials were informed that the meter room is locked and the key is not available with Hari Ram. Notice was served upon the plaintiff vide memo No.SPL-1/Site dated 16.11.1987 to make arrangements to open the lock of the meter within 24 hours. Notice was served upon Hari Ram-representative of the plaintiff under his signatures. The meter room was opened by Hari Ram, Accountant. Defendants were having definite, information that plaintiff was indulging in theft of energy. Keeping in view this, paper seals were affixed and after it became definite that these paper seals have been tampered by the plaintiff firm, matter was reported to the Flying Squad who planned the checking of the meters and discovered that it was indeed a case of theft. Defendants claimed that it was found that the lab seals of the meters were fake/tampered which amounted to theft of energy under clause 33 of the Abridged Conditions of supply. FIR stands lodged with the Police Station Sadar Khanna vide memo No.3092 dated 20.11.1987 has been served upon the plaintiff as per law.

5. On the basis of the pleadings, Court of the first instance framed following issues:-

“1. Whether the Memo No.3092 dated 20.11.87, vide which the defendants have raised the demand of Rs.15,20,272/- is illegal and void? OPP.

2. Whether the plaintiff is entitled to the mandatory as well as to the permanent injunction as prayed for? OPP.

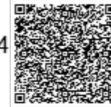


3. *Whether the plaintiff was indulging in the theft of energy? OPD.*

4. *Whether the suit is not maintainable? OPD.*

5. *Relief.”*

6. While deciding issue No.1 and 3, Court of the first instance found that document Ex.D-7 is silent about the less consumption of energy by the plaintiff. Nothing has been pleaded in the written statement about the varying consumption or alleged less consumption on which the defendants want to build the case. A.K. Verma S.D.O. DW-1 and Jaspal Gupta PW-2 admitted that less consumption was ever reported against the plaintiff by any officer/official of the defendant-board. Court of the first instance further referred to the statement made by A.K. Verma DW-1 that he visited the premises of the plaintiff on 10.10.1987. All the seals were intact. A new seal was put on 10.10.1987. The same is alleged to have been tampered on 09.11.1987. The theft is alleged to have been committed during the period commencing from 10.10.1987 to 09.11.1987. The alleged tampered seal of meter-cup-board dated 09.11.1987 was never produced before the Court. Trial Court further observed that from the structure of the meter, it is clear that unless the meter-cum-board seals are not removed or disturbed, it is not possible to approach the meter. The said fact has been admitted by the officers of the defendant-board in their statements. The star witnesses of the defendants DW-2, DW-3, DW-4 and DW-5 have admitted that it is not possible to reach the meter unless the meter-cup-board seals are disturbed or broken. None of these witnesses have seen the seals allegedly found tampered by



Shri A.K. Verma. The tampered seals removed by Shri A.K. Verma on 09.11.1987 were not shown to Flying Squad. Rather, M.L. Goyal appearing as DW-5 claimed that preserving of the seals was not important. Court of the first instance further referred to the spot report prepared by Flying Squad Ex.D-7, wherein it has been admitted that the right top and left bottom M&T seals were broken during the course of inspection of the meter. All these witnesses admitted in their statement that leash and seal are so intercasted that it is difficult to separate one from the other in the normal course and in the normal checking and they can be removed only by cutting the same with the cutter. Court of the first instance further referred to testimony of M.L. Goyal, DW-5, who admitted that if seals A & B are intact, it is difficult to reach the meter. The said fact was also admitted by other witnesses. Thus, the Court found as a matter of fact that the defendants neither could prove the tampering of the seals nor could prove less consumption and thus decreed the suit filed by the plaintiff.

7. In appeal preferred by the defendants, the findings recorded by the Lower Appellate Court stand affirmed.

8. I have heard counsel for the appellant.

9. It is not disputed that the findings recorded by the Lower Appellate Court in para No.17 and 18 are based upon proper reading of the evidence and the same reads as under:-

“17. Admittedly, the meter is inner part of the meter-cum-Board and unless and untill meter-cum-Board seals are not removed or disturbed it is not possible to approach the meter. In the case in hand, all the witnesses of



the defendant-Board had admitted that unless and until meter-cum-Board seals are not disturbed, there can not be any possibility of theft. All the star witnesses of the defendants/appellants Board namely Shri G.S.Kang, DW-2, Iqbal Singh DW-3, R.K.Garg, DW-5 and Mr.M.L.Goyal during the course of their statements had admitted that it is not possible to reach the meter unless the meter-cum-Board seals are broken or disturbed. The alleged tampered-cum-Board seals found by Shri A.K.Verma DW-1 on 9.11.1987 have not been produced in the court, so all these witnesses have not seen those seals which were allegedly found tampered with by Mr.Verma on 9.11.1987 nor it is in the evidence that those were shown to the Flying Squad. So, it can safely be concluded that there is no evidence that the seals of the meter-cum-Board were ever found tampered with by the Officers of the Board.

18. Further, the witnesses examined by the Electricity Board also clearly stated that the cup-Board seals found by them at the time of the inspection were found to be in correct position. Gurdeep Singh Kang, in his cross-examination admitted that the meter-cum-Board seal and lab seals were found to be correct on 18.11.1987. He also admitted to be correct that if any effort was ever made to tamper with the seal of the meter, then seals of the cup-Board are bound to be effected and further stated that on 18.11.1987 all the paper seals of the cup-board were found to be correct.”

10. In view of above, this Court finds that the Courts below rightly returned finding of the fact in favour of the plaintiff. DW-1 admitted in his testimony that when he visited the premises of the consumer-plaintiff on 10.10.1987, all the seals were found intact. He claims to have installed a new seal on 10.10.1987, which as per him was tampered on 09.11.1987. However, tampered seal has not been produced before the Court. Admittedly, the same was not even



preserved. It is not denied that without disturbing or removing the seals, the meter was inaccessible. Thus, in order to prove case against the plaintiff, the appellants-defendants could have either proved tampering of the outer seals or could have shown difference in consumption. Defendants failed on both the counts.

11. Pure finding of facts have been recorded by the Courts below. Finding no merits in the present appeal, the same is ordered to be dismissed.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

17.02.2025
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No