IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16812 of 2000
Date of Decision.24

M/s Godwin Steel Pvt. Ltd. ....Petitioner

Versus

Punjab State Electricity Board and another ......Respondents

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate
for the petitioner.

None for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. The writ petition is a challenge to the notice issued on 5.6.1998 for ₹ 3,42,728/- purporting to be service connection charges as pointed out by the audit party. The petitioner's challenge to the demand before the Disputes Settlement Authority and Board Level Reviewing Committee failed in the respective Forums by the orders dated 28.09.1998 and 28.09.2000. The writ petition assails the said orders as well.

2. The petitioner had applied for electricity connection on 23.09.1995 when there was a self material scheme which allowed for installation to be made for parties and granted a concession in the manner of payment of electricity charges. The petitioner was directed to pay ₹1,86,938/- for availing of the scheme, which amount was

deposited and had completed their own works. The Electricity Board had taken a longer time than was originally envisaged for their installations and electricity connection was given only after the augmentation of 66 KW sub-station at Kohara in September, 1997.

3. Till the actual release of electricity connection to the petitioner after getting the deposit of the requisite fee, the Board kept extending the validity period of the demand notice for the service which had been initially sanctioned on 30.05.1996. Ultimately the impugned notice was issued making reference to a Commercial Circular No.3/97 dated 03.01.1997 which declared that the scheme for acceptance materials from consumers had been dropped since the material position with the Electricity Board itself was comfortable. The benefit of electricity concession in electricity charges was also, therefore, withdrawn. The circular contained, inter alia, the following clause:-

> "3. The above instructions shall come into force with immediate effect. The applicants/consumer to whom demand notices have already been issued and have exercised option for construction of their service line with own material prior to the date of issue of this circular shall be covered as per previous instructions on the subject."

4. The petitioner's contention is that since the petitioner had already used the materials and opted for availing of the benefit of the scheme, the concession already extended cannot be withdrawn by withdrawing the scheme for acceptance of materials from consumers which was brought for the first time on 03.01.1997. In such a situation, the clause extracted above in para 3 of the Circular was bound to be applied. I have gone through the order passed by the two authorities and I find that there is no reference to Clause (3) which is extracted above

which allows for the retention of the benefit as per the previous instructions on the subject. Consequently, if the petitioner had been charged only 25% of the payment namely ₹ 1,86,938/-, the question of making a demand for the remaining 75% after withdrawal of the scheme was not competent. The petitioner has also made reference to a Commercial Circular No.9/99 issued on 2.2.1999 which has clarified Circular No.3/97 as under:-

> "(i) As CC 3/97 dated 3.1.97 was actually issued on 10.02.1997, the issue date be considered as 10.2.97 and not 3.1.97 for all intents and purposes. Therefore, those applicants who had opted in writing for own material scheme and their requests were accepted in writing prior to or during the period 3.1.97 to 10.2.97 or those who were issued demand notices prior to or during the period 3.1.97 to 10.2.197 are eligible to be covered under the own material scheme provided such applicants fulfill conditions of CC 12/96. In such cases 25% of the prevalent per KW charges shall be payable as departmental/administrative charges as per para 3(b) of CC 12/96 dated 12.2.1996."

5. The Circular 3/97 dated 3.1.1997 itself could have been applied only prospectively to such of those persons who had provided the materials and set up their infrastructure. To such of those cases where the parties had exercised their options and had also installed the facilities, the withdrawal of the concession rate provided already was wholly unjustified. It is clearly brought out that the petitioner had been served with a demand for ₹ 1,86,938/- on 30.05.1996 itself that was before the issuance of 1997 Circular and it was impermissible on the part of the petitioner to withdraw the benefit. The order suffers from a serious vice of non-application of mind and non-reference to their own circulars. It is quashed.

6. It appears that the petitioner has deposited 2/3rd of the

amount demanded at the time of making a challenge before the Disputes Settlement Authority by paying ₹ 2,28,486/-. The said amount is directed to be refunded with 18% interest as contemplated under the Regulations from the date of payment by the petitioner till the date of refund. The entire exercise shall be concluded within a period of four weeks from the date of receipt of copy of this order.

7. The writ petition is allowed.

(K. KANNAN)
JUDGE

February 24, 2015
Pankaj*