IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3368 of 1997
Date of decision:1.5.2015

Punjab State Electricity Board and another ….Appellants

VERSUS

National Insecticides and Chemicals Ltd. .....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: None.

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HEMANT GUPTA, J.(Oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by learned trial Court on 11.12.1993 and affirmed in appeal by learned first Appellate Court on 03.05.1997.

The plaintiff-respondent filed a suit for declaration and for permanent injunction disputing demand of Rs.87,625/- raised by the defendants on account of establishment charges pursuant to issuance of commercial circular dated 26.07.1988. Learned trial Court decreed the suit holding that such establishment charges claimed by the defendants cannot be claimed from the plaintiff as the work for providing independent feeder was complete before the issuance of said circular. Therefore, the additional charges fixed in the circular cannot be claimed from the plaintiff.

The contract demand of the plaintiff was 825 KW. The plaintiff deposited a sum of Rs.5,47,653/- to claim an independent feeder i.e. cost of service line on 04.05.1997 as per its specific demand. The work to lay down the service line was taken in hand on 15.05.1987 and the same was completed during March, 1988. The entire charges claimed by the defendant were paid and the electric connection was released on 07.06.1988. But thereafter a demand of Rs.87,625/- was raised on account of establishment charges as per commercial circular issued on 26.07.1988. The said circular was challenged on the ground that the circular cannot be implemented with retrospective effect and the appellant cannot impose any financial burden upon the consumer retrospectively for which there is no provision in the Act. The commercial circular cannot over-ride the statutory provision contained in the statute. The amount represents 16% establishment charges over and above the estimated cost of the independent feeder, therefore, the demand raised 4 years after provision of service line is illegal and unwarranted.

Learned trial Court found that the circular cannot be made applicable from 01.04.1988 though the same was issued on 26.07.1988. Therefore, additional charges raised by the respondent are not tenable. Such finding was affirmed in appeal.

The stand of the appellant-Board is that commercial circular No.46 of 1988 superseded earlier circular No.96 of 1985 and that the work of laying down of independent feeder was completed on 07.06.1988. Therefore, the establishment charges are payable by the plaintiff.

I find that the following substantial question of law arises for consideration:-

> "Whether the establishment charges claimed on the strength of commercial circular No.46 dated 26.07.1988 are being claimed as penalty or for providing services of independent feeder?"

I find that the instructions which creates penal consequences or affects civil rights cannot be retrospective. Circular No.46 dated 26.07.1988 (Ex.P7) deals with recovery of establishment charges on the works other than deposit works carried out at the cost of consumer. It was decided to recover 16% as establishment charges including audit and accounts and cost of T&P articles. Such charges would be levied on the works which were in hand on 01.04.1988 or to be taken up afterwards.

Since the independent feeder was being set up at the request of the plaintiff, therefore, the establishment charges are the charges for providing services of independent feeder and are not by way of penalty. Since the establishment charges are not by way of penalty but is on account of service provided, therefore, the same could be levied if the work of providing service line was being carried out after 01.04.1988. As per the evidence of record, the work of service line was completed in June 1988 that is after the period of claiming such charges. The demand of the establishment charges has been wrongly interfered with by learned trial Court and affirmed by learned first Appellate Court. Thus the question of law is answered to the effect that the establishment charges can be claimed being the charges for services as the same is not penalty.

Consequently, the present Regular Second Appeal is allowed; the judgment and decree of both the Courts below is set aside and the suit is dismissed.

(HEMANT GUPTA)
JUDGE

MAY 1, 2015
'D. Gulati'