

CWP No.9834 of 2011

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

CWP No.9834 of 2011

Date of Decision: June 29, 2015

M/s Jalandhar Ice Factory, Khera Road, Phagwara

...Petitioner

Versus

Punjab State Power Corporation Ltd. & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajesh K. Sharma, Advocate
for the petitioner.

Ms. Madhu Daryal, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J. (Oral):

Counsel for the petitioner submits that while passing the impugned order dated 22.12.2010 (Annexure P-5), no personal hearing was given to the petitioner despite the petitioner having asked for the same in the objections which were filed by it on 10.12.2010 (Annexure P-4).

This contention of the counsel for the petitioner cannot be accepted in the light of the specific reply filed by the respondents and in para 7, it has been specifically stated that personal hearing was duly given to the petitioner and thereafter the final assessment order was passed and conveyed. There is no replication to the written statement filed by the respondents.

Next contention which has been raised by the counsel for the petitioner is that as per the Electricity Supply Regulations,

Regulation 84 thereof, the tariff which has to be charged from the ice factories and ice candies as per clause 84.6.2 which is common for the ice factories and ice candies, no undue benefit has been taken by the petitioner nor has the respondent-Corporation being put to any financial loss and therefore, the ground that the petitioner has unauthorizedly used the electricity for the purpose of running an ice candy plant alongwith the ice factory, cannot sustain.

This contention of the counsel for the petitioner cannot be accepted in the light of the provisions as contained under Section 126 (6) and explanation (b) (iv) of the Electricity Act, 2003 which reads as follows:-

“126. Assessment.-

- (1) xx xx xx xx
- (2) xx xx xx xx
- (3) xx xx xx xx
- (4) xx xx xx xx
- (5) xx xx xx xx

(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) xx xx xx xx
- (b) *“unauthorized use of electricity” means the usage of electricity-*

- (i) xx xx xx xx
- (ii) xx xx xx xx
- (iii) xx xx xx xx
- (iv) *for the purpose other than for which the usage of electricity was authorised; or*
- (v) xx xx xx xx”

The explanation for unauthorized use of electricity leaves no manner of doubt that the petitioner, if wanted to use the ice factory for ice candy plant, should have sought permission from the respondent-Corporation as the connection was issued for the purpose of running an ice factory only. Since it was used for different purpose i.e. for running the ice candy factory, although, for which the machines and other equipments may be the same except the containers, it would not justify the use of the connection for the said purpose.

At this stage, counsel for the petitioners, on instructions from Shri Manish Sharma who has been authorized to file the present petition, has stated that the petitioners are facing a financial crunch and since they have already paid the 50% dues as per the orders passed by this Court on 30.05.2011, the remaining amount may be permitted to be deposited in installments. He further states that the remaining amount due to the petitioners shall be deposited within a period of nine months from today.

In view of the statement made by the counsel for the petitioner, on instructions from Shri Manish Sharma who is present in Court, the present writ petition is dismissed being without any merit but granting the petitioner nine months' time to clear the dues. In case, the amount due as on today alongwith other regular dues in equal monthly installments is paid in time, interim order dated 30.05.2011 passed in this writ petition will continue. The first installment shall be deposited on or before 01.08.2015. If there is

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any default in deposit of monthly installments by the petitioner-firm, interim order dated 30.05.2011 shall automatically stand vacated and stand in-operative qua the petitioner.

Copy of this order be given *dasti* to the counsel for the petitioner under the signatures of Special Secretary of this Court.

June 29, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**