

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

Civil Writ Petition No.27236 of 2013

Date of decision: **24.02.2015**

Punjab State Power Corporation Limited, The Mall, Patiala, through
Kanwalpreet Singh Sidhu son of S. Gurtej Singh Sidhu, Sr. Xen, OP
Division, PSPCPL (Ghulal), Samrala.

... Petitioner

versus

M/s Malwa Cotton Spinning Mills Limited, Village Harian, Kohara-
Machhiwara Road, Tehsil Machhiwara, District Ludhiana (worsted
Division & Processing House), through its Chairman, and others.

.... Respondents

II. Civil Writ Petition No.2925 of 2014

M/s Malwa Cotton Spinning Mills Limited, Village Harian, Kohara-
Machhiwara Road, Tehsil Machhiwara, District Ludhiana, through
its Senior Manager (Commercial) for itself and also on behalf of its
Sister Company M/s Malwa Industries Limited.

... Petitioner

versus

Punjab State Power Corporation Limited, through its Chairman-
cum-Managing Director, The Mall, Patiala. Residential Address Shri
K.D.Chaudhary, Kothi No.1, Power Colony No.1, near Model
Town, Patiala (Punjab) Pin 147 001, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sapan Dhir, Advocate,
for the petitioner in CWP No.27236 of 2013 and
for respondents 1, 3 and 4 in CWP No.2925 of 2014.

Mr. Puneet Jindal, Senior Advocate, with
Mr. Parambir Singh, Advocate,
for the petitioner in CWP No.2925 of 2014 and
for respondents 1 and 2 in CWP No.27236 of 2013.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J.

1. The writ petition in CWP No.27236 of 2013 is by the Punjab State Power Corporation (hereinafter called, 'the Power Corporation') challenging the order of the Ombudsman in so far as it has found that the demand made on the respondents 1 and 2 requiring them to pay the Monthly Minimum Charges (MMC) for the respective supply through 11 kVA electricity supply is not tenable. The same order has allowed at the same time such charges to be levied to individual members on 11 KV meter reading after 14.12.2009. This latter part of the order of the Ombudsman is a subject of challenge by the petitioner-Corporation in CWP No.2925 of 2014.

2. The controversy revolves on the tenability or otherwise of the levy of MMC levied on M/s Malwa Cotton Spinning Mills Limited and sister companies. This arises by the fact that the Power Corporation has allowed for a scheme of supply of electricity by 66 KV line including towers and allowing for the consumer industries to set up Cluster Sub-Stations at their own cost having 11 KV supply. Agreements have been entered between parties that provide for the manner of installations of electric meters and the liability that

will arise to each one of the consumer industries commensurate with the contract demand (CD) and the actual electricity consumed. While the Power Corporation's contention is that the MMC is leviable against each consumer for the respective consumption through which the electricity supply was delivered to their units, the consumer industries would contend that MMC will be levied only on the CD and the meter installed at the 66 KV supply point. The dispute was brought before the Ombudsman, Electricity Punjab, Mohali, whose decision is a subject of challenge in the two writ petitions, referred to above.

3. The Power Corporation has brought out the terms of agreement while allowing for the Cluster Sub-Stations. The clauses that are relevant are reproduced as follows:-

“(iii) We undertake that we are jointly and separately responsible, subject to other conditions, for the payment of charges for the supply of electricity and other chargers as amended by PSEB from time to time and Malwa Cotton and Spinning Mills (Worsted Divn.) shall be our leader who will deal with PSEB for all matter including payment of energy bills.

(iv) Metering-

(a) xxx xxx xxx

(b) The metering at 66 KV shall be done by

providing electronic meters of approved make in a separate metering room freely accessible to PSEB. 11 KV meters/metering equipment and CTs/PTs shall be installed in 11 KV vacuum circuit breakers for each individual consumer of the cluster in the main 66 KV substation control room. All outgoing 11 KV cables for feeding individual loads shall pass through these vacuum circuit breakers, 11 KV meters/metering equipment shall be approved by PSEB all the time to approval of total layout of the 66 KV substation prior to construction of sub-station and erection of equipment.

(c) Reading of 66 KV & 11 KV meters installed on individual feeders will be taken by PSEB along with representatives of cluster of consumer/CDC. Energy charges worked out on the basis of meter installed on 66 KV supply point will be apportioned in the ratio of consumption recorded on individual 11 KV supply points. Maximum demand surcharge and power factor surcharge if any shall be levied to individual consumers on the basis of readings recorded on 11 KV feeders.”

The counsel for the Power Corporation would submit that the very idea of setting up separate electric meters in 11 KV vacuum circuit breakers for each individual consumer was to assess the CD as well as the MMC leviable in case the power consumed by any individual consumer was less than the CD for each unit. Admittedly, the CD for all the 4 individual consumer was 7450 kVA and this is the aggregate of individually assigned CDs for each one of the individual consumers. The counsel for the respondents, who is the petitioner in CWP No.2925 of 2014, would submit that there is only a liability to pay the maximum demand surcharge and power factor surcharge which are in the nature of a penalty for consumption above CD on the aggregate of 7450 kVA and since there was no mention of MMC for each of the individual consumers, the demand made by the Corporation was unjustified. The counsel would refer me to Clause 82.7.8 of Electricity Supply Regulation (for short, ESR) of 2005 and would submit that there is no provision for MMC for each of the consumers, for, the agreement itself did not provide for the same.

4. This reasoning has been actually accepted by the Ombudsman. She has rejected the contention on behalf of the Power Corporation that the members of the cluster were individual consumers of PSEB and the provision relating to levy of MMC on the basis of reading of 11 KV meter were in the knowledge of

individual consumers. According to the Ombudsman, only combined bills had been issued in the name of one single entity M/s Malwa Cotton Spinning Mills Limited and no bill either for energy charges or for MMC was ever issued to the individual member based on the readings of 11 KV meters.

5. I find the reasoning of the Ombudsman to beg the question of what is required to be decided. The Power Corporation's right to make a demand or the liability of the individual consumers as per MMC cannot be decided on whether the past bills provided for such levy or not. In fact the learned senior counsel appearing on behalf of Industrial Consumers makes such a plea, as well, that the past conduct of the Power Corporation itself did not allow for such a levy. We are deciding the case on the validity of a demand made that casts a liability for MMC for each of the individual consumers of 11 kVA. The tenability has to be examined from the point of view of what the agreement stipulates and what the Electricity Supply Regulations admit of. It cannot be merely a cosmetic exercise to allow separate meters of 11 KV circuit to be installed. The learned counsel for the respondents argued that it was merely to regulate the rights of individual consumers inter se and the separate meters had no relevance or otherwise. This argument, I will hold to be untenable considering the term in the agreement that provided for energy charges to be worked out on the basis of meter installed

at every 11 KV supply point, which were required to be apportioned in the ratio of consumption recorded on individual 11 KV supply points. Further, the fact that the maximum demand surcharge and power factor surcharge would also be levied to individual consumers on the basis of reading recorded in 11 KV feeders would only allow for a corollary to be projected that such individual consumers who will make themselves liable for maximum demand surcharge and power factor surcharge would also be liable for MMC. The individual liability for excess consumption over CD itself shows that separate meters were not merely to regulate inter se rights and obligations. It is only because that the liability is qua individual consumer to the Power Corporation that it finds a place in T&C as well. If the respondents' arguments were to be accepted, the maximum demand surcharge and power factor surcharge ought to have been leviable only on the overall CD permissible for the 66 KV feeder point on the 'lead consumer' only. The fact that the surcharges were leviable on individual consumers would lead to an obvious inference of the fact that such individual consumers would become liable also for MMC.

6. Even an argument that the agreement did not stipulate a MMC while it made reference to the surcharges is equally meaningless. The MMC is the minimum guarantee for distribution licensee and brought through ESR. The MMC had a particular rate

specified and it was leviable for every consumer where a separate meter had been installed for assessing the CD and the actual consumers of energy. It could be no argument that the bills raised did not allow for such a course. The counsel for the Power Corporation made reference to the bill raised for the period November 2006 under Annexure P3/1 that provided for MMC against each consumers. The respondent denied that Annexure P3/1 could be understood in such a fashion. I cannot assess by examining this document to make reference to MMC for each consumer or if it was meant to be a conjoint assessment of MMC for the reading at 66 KV feeder point. I will rest my decision on the fact that the MMC is provided under the Regulations and the agreement provided for installation of meter for each of the sub-stations and MMC is bound to be collected from each of the industrial consumer, if their own respective consumption was less than the minimum, the same way as they would also become liable for the surcharge, if their consumption was above CD.

7. The learned senior counsel wanted to place an alternative argument that one of the industrial units was a co-generator. Clause 82.7.8 of the ESR provides that MMC could be levied only on the total load minus TG set capacity. This issue has not been considered by the Ombudsman since she had accepted the respondent's contention that MMC was not leviable before

December, 2009. The relevant provisions reads thus:-

“For industrial units having co-generation facility, MMC shall be levied on the total connected loads minus TG set capacity in KW or MMC on sanctioned load to be exclusively fed from the PSEB system or the actual demand in KW (KVA x p.f.) recorded during the month, whichever is highest. For working out the capacity of TG set the KVA rating shall be multiplied by Power Factor of the TG set. In case power factor is not mentioned on the TG set, the same shall be taken as 0.8 (0.90 w.e.f. 1.7.05).”

8. The ground is well taken but this Regulation will only require a reappraisal to a limited extent. As per clause extracted above, the finding already rendered that MMC is bound to be collected from every individual consumer whose consumption was less than the load assigned to it, will not be in any way interfered with, since Clause 82.7.8 of ESR operates to make possible a deduction only on the total connected load in the hands of the lead consumer. The deduction cannot be out of the CD from the individual consumers. So reckoned, the lead consumer alone can take the benefit of co-generation facility. The petitioner is at liberty to point out to any situation where the deduction, if it is made from the total connected load, the liability of MMC would require to be

revised. The respondents will consider such a plea in the light of the relevant clause and levy only such sums as it is reckoned, otherwise the demand already made would be tenable and will not be restricted only to demands made after 14.12.2009 as found by the Ombudsman.

9. The learned senior counsel, after the conclusion of arguments, circulated, after making a mention in the court, a notification by Punjab State Electricity Regulatory Commission dated 05.11.2014 to be effective from 01.01.2015 the manner of levies for cluster sub-stations. I will not find this to be relevant, for, this is stated to be effective only from January 2015 and it could therefore be operative only prospectively. For any dispute arising for a period subsequent to 01.01.2015, the petitioner will have independent remedy and I will not test this judgment that I have rendered, in the light of the new Regulations of 2014 that is notified on 05.11.2014.

10. The order of the Ombudsman is modified and the writ petitions are ordered upholding the contentions of the Electricity Board as regards its entitlement to levy MMC for each of the individual industrial consumers.

(K.KANNAN)
JUDGE

24.02.2015
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