

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

CWP No.4820 of 1995 (O&M)

Date of decision: 13.01.2016

S.P. Garg

.....Petitioner

Versus

Haryana State Electricity Board

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mukand Gupta, Advocate,
for the petitioner.

None for the respondent.

Ritu Bahri, J.

The petitioner is seeking quashing of the order dated 14.09.1992 (Annexure P-4), whereby punishment of recovery of Rs.38,500/- by downgrading his ACR has been imposed upon him. He is also seeking quashing of the order dated 13.12.1994 (Annexure P-7), vide which, appeal against the aforesaid order has been rejected.

In the year 1987, the petitioner had worked as S.D.O., New Colony (Operation), Sub Division, Gurgaon. He remained posted as S.D.O. at Gurgaon from September, 1987 to June, 1989. In the year 1988, Haryana State Electricity Board had forwarded a scheme called as Voluntary Disclosure Scheme. Under this scheme, the Board had allowed regularization of unauthorized extension of load with no change in contract demand without imposing any penalty provided that the disclosure was

made by consumer voluntarily within two months from 01.05.1988 to

30.06.1988. Copy of sales circular No.9/88 issued vide letter dated 25.04.1988 has been annexed as Annexure P-1. As per the said circular, the consumer would have to deposit the requisite security as per revised load and would have to submit a revised test report for the extended load to the authorities concerned. Pursuant to this scheme, one consumer namely M/s Cosco India Private Ltd., Gurgaon had applied on 13.06.1988 for extension of load from 402.176 K.W. to 512.158 K.W. in the office of S.D.O. (Operation), New Colony, Haryana State Electricity Board, Gurgaon (petitioner). The said consumer had deposited the requisite security amount of Rs.41,740/- on the extended load as per guideline laid down in circular letter dated 25.04.1988 (Annexure P-1). Test report and other relevant papers were also submitted by the said firm on 13.06.1988 in the office of S.D.O., where the petitioner was incharge. Last date for submitting the test report was 27.09.1988 and M/s Cosco India Private Ltd. had submitted their test report on 13.06.1988 along with security amounting to Rs.41,740/-. However, the test report could not be checked by the petitioner and the relevant documents were forwarded to the higher authorities for regularization of extended load. Ultimately, the extended load had been regularized.

On 27.09.1988, Vigilance Wing of Haryana State Electricity Board checked the electricity load of the consumer and found that the connected load was 508.192 K.W. A show cause notice dated 26.09.1989 (Annexure P-2) was issued to the petitioner under Regulation 10 of HSEB Employees (P&A) Regulations, 1980, on the ground that he did not verify the physically the report submitted by the consumer till 27.09.1988 and the Electricity Board had suffered a loss of Rs.38,500/-. On receipt of said

Thereafter, vide impugned order dated 14.09.1992 (Annexure P-4), a sum of Rs.38,500/- were ordered to be recovered from the petitioner. Besides this, his Annual Q.R. for relevant period was also downgraded by one step below. Against the said order, the petitioner filed an appeal on 15.10.1992 (Annexure P-5), which was dismissed vide order dated 13.12.1994 (Annexure P-7).

The petitioner is seeking quashing of the aforesaid orders on the ground that the extended load of the consumer namely M/s Casco India Pvt. Ltd. from 402.176 K.W. to 512.158 K.W., which they had applied on 13.06.1988 had been regularized by the department. The penalty, which was sought to be imposed, was waived off by the Arbitrator Sh. O.P. Kakkar vide order dated 05.01.1991, whereby it was decided that the disclosure load of the consumer M/S Casco India Pvt. Ltd. from 402.176 K.W. to 512.158 K.W., which was applied by the firm on 13.06.1988, may be treated as regularized and the penalty imposed be waived off as no loss had been suffered by the Board. As per Sale Circular Nos.18/90 dated 16.04.1990 and 27/91 dated 28.10.1991, no penalty was leviable upon the firm.

Upon notice, written statement has been filed by the respondent-Board, whereby the impugned recovery order (Annexure P-4) has been supported on the ground that the consumer had applied for extension of load on 13.06.1988. Vide letter dated 13.10.1988, the petitioner had confirmed that the consumer had submitted the test report on 09.09.1988, which was verified by him on 28.09.1988. However, there was no entry of submission of test report by the consumer in the test report maintained in the Sub Division. In the absence of any entry regarding the test report, the letter dated 13.10.1988 confirming that the test report had been submitted on

submission of application and revised test report under the Voluntary Disclosure Scheme was 30.06.1988. In view of this, the manoeuvred revised test report came to the notice of the Vigilance Squad on 27.09.1988, which had not been verified physically by the petitioner. It has been stated that on this ground the show cause notice has been rightly issued and the penalty order(s) do not required any interference.

Undated revised test report placed on record was sufficient proof that it was procured at a later stage i.e. after the expiry of the Scheme, so as to regularize the extended load of the consumer from the back date by treating it to have been covered under the Scheme. On the date of checking by the Vigilance Squad i.e. 27.09.1988, the revised test report of the extended load was not available in the case file of the consumer.

Heard, counsel for the parties.

A perusal of the order dated 14.09.1992 (Annexure P-4) shows that the petitioner has been found responsible for showing negligence in dealing with the case for ignoring the aspect of test report and even later on, accepting the undated test report as per his own letter dated 13.10.1988. The undated test report had been submitted by the consumer on 09.09.1988. Subsequently, it was clarified that the test report was received on 13.06.1988. The expiry date of the Voluntarily Disclosure Scheme was 30.06.1988. The petitioner was negligent in checking this fact and hence, the case should not have been considered under the aforesaid Scheme. The impugned order dated 14.09.1992 (Annexure P-4) imposing penalty to recover Rs.38,500/- has been passed because the Board has suffered financial loss on account of lapse on the part of the petitioner. The petitioner has specifically stated that as per Award dated 05.01.1991 passed

been waived of as a finding has been given that no loss was suffered by the Board. The said Award has attained finality. Even though, the petitioner was not a party to the proceedings before the Arbitrator, since the department/Board has not suffered any financial loss, the reasoning given in the impugned orders that the recovery was being effected on account of the loss suffered by the State/Board, requires to be set aside.

In view of the above, the impugned orders dated 14.09.1992 and 13.12.1994 (Annexures P-4 and P-7) are set aside and the respondent is directed to refund the recovery effected from the petitioner along with interest at the rate of 9% per annum.

Allowed accordingly.

13.01.2016
ajp

(RITU BAHRI)
JUDGE