IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 13487 of 2016
Date of Decision: 13.7.2016

Punjab State Power Corporation Limited through its Additional Superintending Engineer, Operation Estate Division, Punjab State Power Corporation Ltd., Ludhiana

.....Petitioner

Vs.

Satguru Pratap Singh Apollo Hospitals and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Meena Bansal, Advocate
for the petitioner.

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RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 27.1.2016 (Annexure P-10) passed by the Ombudsman, Electricity Punjab-respondent No.2.

Learned counsel for the petitioner submits that although the Ombudsman rightly deliberated on all three issues involved in the matter, yet he has wrongly granted undue relief to respondent No.1. She further submits that the impugned order is arbitrary on the face of it and runs counter to the regulations of the petitioner-Corporation. She also submits that on third issue, amount of ₹1 lac, granted as compensation to respondent No.1 by the Forum, has been illegally upheld by respondent No.2 which could not have been more than ₹5,000/-. She prays for setting aside the impugned order, by allowing the present writ petition.

Having heard the learned counsel for the petitioner at considerable length, after going through the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that respondent No.2 has discussed each and every relevant aspect of the matter in correct perspective, before recording cogent findings which deserve to be upheld. Present writ petition is without any merit and the same is liable to be dismissed.

Before proceeding further, it would be appropriate to refer to the categoric findings recorded by respondent No.2 in the impugned order. The findings recorded by respondent No.2 are duly supported by sound reasons and the same read as under:-

> "After perusal of the evidences on record and discussions held during oral arguments on 27.1.2016, I have observed that three issues are involved in this petition. 1st issue is regarding method adopted by Forum for working out the date of refund w.e.f. 26.08.2014, wherein the Forum has considered the date of 2nd application of the petitioner submitted by him on 4.8.2014 and had considered 21 days as justified period for processing of the case at various levels. Logic for fixing of time limit of 21 days is given that the time period for conversion of supply from essential service (continuous supply) to general category has not been clearly specified in Supply Code Regulation 11.3, as such the Forum opined that time period of three weeks is

enough to accord sanction to the consumers who want to surrender the continuous supply status. Forum's this viewpoint seems to be based on assumptions and surmises and I could not find any merit in it because Supply Code Regulation 11.3 (a) clearly provides a period of 14 days for transfer of title and/ or change of category in case of HT consumers in which category the case of petitioner falls. In the light of this Regulation and facts of the case, I am of the view that it would be more appropriate and justified if this part of Forum's decision is amended to the extent that 25% extra tariff charged to the consumer is refunded w.e.f. 19.8.2014 to 17.9.2014 instead of 26.8.2014 to 17.9.2014. Thus, 25% extra tariff charged from the petitioner during the period from 19.8.2014 to 25.8.2014 is also not found chargeable and accordingly it is held that extra tariff charged during this period should also be refunded in addition to the refund already allowed from 26.8.2014 to 17.9.2014.

2nd issue is regarding refund of 25% extra tariff charged from the petitioner after his request dated 8.1.2014 for withdrawal of his essential services status with immediate effect. The reasons enumerated by Forum to reject is that this claim was not made before the ZDSC; acceptance of ZDSC decision allowing refund of 25% extra tariff for the period 18.9.2014 to 21.10.2014 without any protest; non contesting for reduction of period of four days by ZDSC; remaining the continued supply status/ non-imposition of scheduled power cuts on the feeder till 18.09.2014 and moreover, in view of his request dated 16.7.2014, the system of the petitioner was not ready to surrender the continuous supply facility granted by the PSPCL before 4.8.2014, the date on which the petitioner had again given application for surrender the status of continuous supply feed with immediate effect. To investigate the reasons recorded by Forum I have gone through the available records and found that though the case of the petitioner was approved by the office of CE/PP&R, PSPCL, Patiala, vide his letter 18.9.2014, but the energy bill from 18.9.2014 to 21.10.2014 was issued with 25% extra tariff, which was represented before the ZDSC. No other issue was involved in this case. Therefore, the ZDSC has rightly decided the case vide its order dated 4.12.2014 allowing refund of 25% extra tariff for the period from 18.9.2014 to 21.10.2014 i.e. after the date of issuance of orders by CE/PP&R. It does not seem necessary for the petitioner to contest his claim for previous periods in this case. Thus, the arguments taken by the Forum for non-contesting his claim for previous period before the ZDSC or acceptance of ZDSC decision without any protest etc. does not contain any merit while deciding the claim for the disputed period from 8.1.2014 (the date of 1st application). So far as the arguments regarding availing of continued supply status/ non-imposition of scheduled power cuts on the feeder till 18.9.2014 and non-readiness of the system up to 4.8.2014 is concerned, here too I do not agree with the version of respondents as action was required to be taken by them within the scheduled time limit as per Supply Code Regulation 11.3 (a) or to seek approval of the Commission for extension of time, in case the desired scheduled time limit is not met; which evidently has not been adhered and the delay is duly admitted at all levels by the respondents. This Regulation clearly provides a time limit of 14 days for conversion of category of a consumer. As such, in my view, the status of the consumer deemed to be changed after the lapse of mandatory period of 14 days and he is entitled for all benefits thereafter. As a sequel of these discussions, it would be more fair and appropriate if the 25% extra tariff charged from the consumer for the period from 23.1.2014 (after 14 days from date of application for surrender/change of status) to 15.7.2014 (one day prior to the date of application for continuation of essential services status), is refunded to the petitioner. Accordingly, it is held that 25% extra tariff charged from the petitioner for the period from 23.1.2014 to 15.7.2014 should also be refunded.

3rd issue is regarding demand of compensation of Rs. 5,00,000/- against Rs. 1,00,000/- allowed by the Forum on account of expenditure incurred on the running of the

> DG sets for a period of 53.46 hours against avoidable shutdowns from 8.1.2014 to 25.8.2014 as per record. I have gone through the available records wherein different type of faults occurred during this period have been shown besides delay in giving permission for conversion of the status as per request of the petitioner. The compensation is payable as per Standard of Performance approved by the Commission vide notification no: PSERC/Secy/Regu.61 dated 2.12.2012 at different rates for different type of faults. The total amount of compensation is to be restricted to a maximum limit of Rs. 5,000/- as amended vide CC No. 25/2012 dated 25.8.2012 issued by PSPCL on the basis of notification dated 13/08/2012 issued by PSERC. The Forum, after considering all the facts regarding breakdowns, delay and expenses incurred by the petitioner for running for DG sets has justifiably allowed a compensation of Rs. 1,00,000/- and the petitioner has failed to justify his claim over Rs. 1,00,000/-. Accordingly, I do not find any merit for enhancing the compensation amount and the issue of enhancement of compensation is dismissed.

A bare reading of the abovesaid findings recorded by respondent No.2 would show that the same are recorded on the basis of Supply Code Regulations of the petitioner-Corporation itself. The Grievance Redressal Forum ('Forum' for short), exceeded its jurisdiction while reading into Supply Code Regulations 11.3, time period as 21 days instead of 14 days.

Once the statutory period has been specifically provided in the Supply Code Regulation itself, there was no scope for the Forum to extend the said period from 14 days to 21 days and that too, without any supporting reasons. In this view of the matter, it can be safely concluded that respondent No.2 proceeded on a correct approach while deciding issue No.1 in favour of respondent No.1, ordering refund of 25% of extra tariff charged from the consumer, for extra time which was beyond the scope of Supply Code Regulation 11.3 (a), thus, these findings deserve to be upheld.

Similarly, while deciding issue No.2, respondent No.2 referred to all the relevant official record. Once the request made by the consumer had been duly accepted by the office of Chief Engineer, vide letter dated 18.9.2014, there was no scope for the petitioner-Corporation to charge the consumer beyond the said date, i.e. 18.9.2014. In this regard, respondent No.2 committed no error of law while ordering refund of extra tariff charged from the consumer and the same also deserves to be upheld.

Coming to issue No.3, the amount of compensation awarded to the consumer by the Forum was rightly upheld by respondent No.2. Prayer made by the consumer for further enhancement of compensation was also rightly declined. Forum had allowed the compensation to the consumer to the extent of ₹1 lac whereas the consumer was claiming ₹5 lacs. Respondent No.2 has recorded sound reasons in this regard for upholding that part of the order passed by the Forum, whereby the consumer was granted compensation to the extent of ₹1 lac.

So far as maximum limit of ₹5000/-, as argued by learned counsel for the petitioner, is concerned, the same cannot be accepted for the reason that petitioner-Corporation cannot be allowed to get the benefit of its own wrong. Further, amount of compensation granted in favour of the consumer is not at all on higher side, thus, findings recorded by respondent No.2 on issue No.3 also deserve to be upheld.

During the course of hearing, learned counsel for the petitioner could not substantiate any of her arguments despite making her best efforts. In fact, the impugned order passed by respondent No.2 has not been found suffering from any patent illegality or jurisdictional error, which may warrant interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present writ petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, instant writ petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

13.7.2016
Ak Sharma