

CWP No.22256 of 2012

#1# KUMAR MANOJ
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

1. CWP No.22256 of 2012

M/s Victor Forgings

....Petitioner

Versus

Punjab State Power Corporation Ltd. And Ors.

...Respondents

And

2. CWP No.18588 of 2013

M/s Presto Forgings

....Petitioner

Versus

Punjab State Power Corporation Ltd. And Ors.

...Respondents

And

3. CWP No.18513 of 2013

Nakul Gupta

....Petitioner

Versus

Punjab State Power Corporation Ltd. And Ors.

...Respondents

Date of Order: 18.01.2016

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Pankaj Gupta, Advocate for the petitioner (s).

Ms. Radhika Suri, Sr. Advocate with
Ms. Raini Paul, Advocate for PSPCL and
Mr. Rohan Mittal, Advocate.

Mr. T.K. Joshi, Advocate for respondent No.5.

RAKESH KUMAR JAIN, J (ORAL)

This order shall dispose of three writ petitions
bearing CWP No.22256 of 2012, CWP No.18588 of 2013 and

CWP No.18513 of 2013 as the issue involved in all is the same. However, for the sake of convenience, the facts are being extracted from CWP No.22256 of 2012.

In short, the petitioner-firm is in the business of manufacturing, trading and sale of hand tools. It has been provided an electric connection bearing Account No.LS-69 by the Punjab State Power Corporation Limited (earlier known as Punjab State Electricity Board) with sanctioned load of 1860.530 KW under Industrial Supply (LS) Category and the electric connection of the petitioner was classified as 'General Industry'. The petitioner applied for extension of load of 482.05 KW to the Corporation which included electric heater (Billet Heater) of 200 KW for modernizing the unit and saving pollution. This load was sanctioned by the Corporation on February 04, 2009 and the extended load was released on October 26, 2009. The electric connection of the petitioner was checked by the flying squad of the Corporation headed by Senior XEN (Enforcement) on 20.05.2010 and thereafter the Assistant Executive Engineer of the Corporation issued demand notice on 24.05.2010 in which it was stated that as the petitioner had installed a billet heater, the electricity connection of the petitioner comes under the category of 'Power Intensive Unit' (PIU). A sum of Rs.2.40 lacs towards the Advance Consumption Deposit (ACD) and Rs.90,786/- towards Power Factor Surcharge, totalling Rs.3,30,786/- was payable by the petitioner.

After receipt of the demand notice, the petitioner filed

reply on 03.6.2010 to the Zonal Level Dispute Committee (for short "ZLDC") stating that the petitioner is ready to deposit 20% of the disputed amount. The petitioner deposited a sum of Rs.66,158/- being 20% of the disputed amount but the prayer made by the petitioner was rejected by the ZLDC on 28.11.2011 thereby directing it to pay the amount as assessed.

Ultimately, in pursuance to the decision given by the ZLDC, the Corporation raised a demand of Rs.42,316/- from the petitioner vide its letter dated 18.1.2012 and the said amount was deposited by the petitioner on 08.2.2012. Accordingly, the petitioner has paid the entire amount as calculated by the Corporation on the basis of checking report and dismantled the heating furnace.

On the basis of checking report dated 20.5.2010, respondent No.4 issued provisional assessment order after a period of two years on March 20, 2012. Said order was issued under Section 126 of the Electricity Act (for short "the Act") stating therein that the petitioner had installed the billet heater and it is because of unauthorized use of electricity, the petitioner is liable to pay a sum of Rs.93,91,328/-. In the provisional assessment order, respondent No.4 had relied upon Commercial Circular No.38 of 2009 dated 29.10.2009 and Clause 36 of that Supply Code. The petitioner was asked to pay the said amount within seven days or submit objections. The petitioner submitted his reply on 23.5.2012 alleging that the issue regarding categorization of industries using the billet heater is

pending before the Punjab State Electricity Regulatory Commission (for short "the Commission") and, therefore, the case of the petitioner may be kept pending till the matter is decided by the Commission. However, on 23.5.2012, respondent No.3 passed final order of assessment under Section 126 of the Act holding the petitioner liable to pay a sum of Rs.93,91328/-.

Aggrieved against both the provisional assessment order and final assessment order, the petitioner has filed this petition assailing the validity of the Commercial Circular No.38 of 2009 dated 29.10.2009 and Commercial Circular No.28 of 2012 dated 06.09.2012 to the extent that circular has been made applicable w.e.f 24.12.2011 and also for issuance of a writ in the nature of Mandamus directing the respondents to treat the electricity connection of the petitioner under category of General Industry for all intents and purposes.

Learned counsel for the petitioner has submitted that the case of the petitioner is similar to the case of one M/s Samrat Forgings Limited, whose writ petition bearing CWP No.5222 of 2010 has been allowed by this Court on 21.12.2011, and has been accepted as such by the Corporation as mentioned in the order dated 04.7.2012 (Annexure P.13). It is further submitted that the respondents are not inclined to apply the Circular of 2009 in the case of the petitioner because their premises was inspected by the Flying Squad on 20.5.2010 whereas in the case of M/s Samrat Forgings Ltd, checking by the flying squad was

conducted in March 2010, which was after the 2009 Instructions were issued. It is also submitted that as per Clause 101.1 of the Electricity Supply Instruction Manual, it is obligatory upon the respondents to serve the provisional assessment within 48 hours of the checking and pass the final order within 30 days of filing of the objection, which is conspicuously absent in the present case as per the facts narrated hereinabove. It is also submitted that no circular can be issued without prior approval of the Regulatory Commission under Section 181 of the Act.

Learned counsel for the respondents, however, have stated in unison that the present petition is not maintainable in the wake of alternative effective opportunity of appeal available to the petitioner under Section 127 of the Act. The respondents have also denied the allegations on merit but at this stage, it is submitted that once effective alternative remedy is available, which is also admitted by the petitioner in the mandatory paragraphs of the writ petition, where the petitioner has to mention as to whether any alternative remedy is available or not, the writ petition is not maintainable and the petitioner may be relegated to the remedy of appeal. The petitioner has relied upon two judgments of Hon'ble Supreme in the cases of **Harbans Lal Sahnia and Another Vs. Indian Oil Corp. Ltd and Ors (2003) 2 Supreme Court Cases 107** and **Dr. Bal Krishna Agarwal Vs. State of U.P and Others (1995) 1 Supreme Court Cases 614** to contend that the High Court can still exercise writ

jurisdiction in the case where writ petition seeks enforcement of any fundamental right including principle of natural justice. It is also submitted that if the writ petition is pending for a long time, the plea of alternative remedy cannot be accepted.

Learned counsel for the respondents have submitted that if the petitioner himself is relying on Section 181 of the Act to contend that circular cannot be issued without prior sanction of the Regulatory Commission, then the order passed in the case of M/s Samrat Forgings Ltd, which is basically relied upon by the petitioner, would not have been passed, had it been brought to the notice of the Court.

Be that as it may, it is well settled that the appeal is the creation of statute. All pleas whether factual or legal can always be taken in appeal if it is provided in statute. Petitioner has admitted the availability of right of appeal under Section 127 of the Act. The only reason for which the petitioner has not availed the remedy, is stated to be an onerous condition of depositing half of the amount before passing the final order before his appeal could be heard.

To my mind, this cannot be allowed to be a reason for challenging the order of assessment, may be that of provisional or final, by way of writ petition, circumventing remedy of appeal otherwise the very purpose for providing remedy in the Act would be frustrated.

Although there is no dispute about the law laid down by Hon'ble Apex Court but here the Judgments relied upon by

learned counsel for the petitioner are not applicable to the present case, as such the petitioner, who is basically aggrieved against the provisional and final assessment, which has been passed under Section 126 of the Act, has remedy of appeal under Section 127 of the Act, which he has to first resort to, if so advised. Now, question would arise as to whether the petitioner can deposit half/40% of the amount as provided in the said provision. The petitioner may, if so advised, file an application in this regard before the Appellate Authority, which may be considered in accordance with law. So far as limitation to file the appeal is concerned, the petitioner may also file application in terms of provisions of Limitation Act for preferring appeal and any such application for condonation of delay, may be considered by the Appellate Court sympathetically. The petitioner may file the appeal, if so advised within 30 days from today. It is needless to mention here that all questions of facts and law shall remain open to be decided by the Appellate Authority.

With the aforesaid discussion, present petition stands disposed of.

January 18, 2016
manoj

(RAKESH KUMAR JAIN)
JUDGE