

CWP Nos.19662 of 2014 and 1040 of 2015

[1]

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

**(1) CWP No.19662 of 2014
Date of decision:30.11.2016**

Punjab State Power Corporation Limited ...Petitioner

Versus

The Collector/Appellate Authority and others ...Respondents

**(2) CWP No.1040 of 2015
Date of decision:30.11.2016**

The Senior Executive Engineer ...Petitioner

Versus

The Collector/Appellate Authority and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Promila Nain, Advocate,
for the petitioner(s).

Mr. Anant Kataria, DAG, Punjab.

Mr. I.S.Ratta, Advocate, for respondent No.2.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP No.19662 of 2014 and CWP No.1040 of 2015 as the issue involved in both cases is common. However, for the sake of convenience, the facts are being extracted from CWP No.19662 of 2014.

In short, the Flying Squad of the petitioner conducted a raid on the premises of respondents No.2 and 3 under the supervision of the Senior XEN (Enforcement), Ludhiana and it was found that respondents No.2 and

3 were using the electricity supply for the machines installed in the adjoining premises and were making unauthorized use beyond the sanctioned load. On the basis of the report of the Flying Squad, a provisional order of assessment was passed on 19.11.2012 under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) of an amount of ₹1,25,123/-. Respondents No.2 and 3 were called upon to file their objections. Respondent No.3 filed the reply to the order of provisional assessment/notice on 27.11.2012. They were granted opportunity of hearing on 20.12.2012 and, thereafter, final order of assessment was passed on 31.12.2012, asking them to deposit ₹1,25,123/- for the unauthorized use of electricity.

Aggrieved against the said order, respondents No.2 and 3 filed appeal under Section 127 of the Act before respondent No.1, which was allowed on 27.01.2014 and the case was remanded back for fresh assessment after taking into consideration the notification dated 21.06.2013 issued by the Punjab State Electricity Regulatory Commission (PSERC), amending the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2007 (hereinafter referred to as the “Regulations-2007”) by the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) (4th Amendment) Regulations, 2013 (hereinafter referred to as the “Regulations-2013”) in respect of the unauthorized use of electricity.

The petitioner has challenged the order of remand dated 27.01.2014 on the ground that the notification dated 21.06.2013, amending

the Regulations-2007, cannot be applied retrospectively as the amendment has come into force from the date of publication of the notification in the official gazette i.e. on 21.06.2013 and a Circular No.37 of 2013 was issued on 26.07.2013 by the petitioner notifying to the authorities concerned the amendment carried out in the Regulations-2007 by the PSERC.

Counsel for the petitioner has submitted that the amendment is silent about its retrospective application i.e. in respect of the cases in which final assessment order has already been passed and in that event the question arises as to whether respondents No.2 and 3 would be entitled to take any benefit from the amended Regulations-2013, which is stated to be a delegated legislation. In support of her submissions, counsel for the petitioner has relied upon a Division Bench judgment of the Bombay High Court in the case of **M/s Ansari Constructions Company vs. State of Maharashtra**, 2015(3) BCR 325 and two judgments of the Supreme Court in the cases of **Zile Singh vs. State of Haryana**, 2005(2) R.C.R. (Civil) 744 and **Union of India and Ors. vs. Asian Food Industries**, 2007 AIR (SC) 750.

As against this, counsel for the respondents has submitted that the amendment would apply retrospectively as it has come during the pendency of the appeal and has relied upon two decisions of the Supreme Court in the case of **M/s. Girdhar Das and ors. vs. The District Judge, Varanasi and ors.**, 1977(1) R.C.R. (Rent) 685 and **Nemi Chand vs. State of Rajasthan**, 2016(2) AICLR 479.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Respondent No.1 has remanded the case on the basis of the new guidelines were notified on 21.06.2013, amending the Regulations-2007 with the new Regulations-2013. The private respondents presumably wanted to take advantage of the amended para 1(a) of Annexure-8 but the question is as to whether this amendment in the Regulations-2007 would apply prospectively or retrospectively i.e. in the cases in which final assessment order has already been passed on the basis of the un-amended Regulations-2007.

In **M/s. Ansari Constructions Company's case (supra)**, the Bombay High Court held as under:-

“15. The law on the issue is very much clear. The powers can be conferred to make subordinate legislation in the shape of rules, bye-laws, etc., with retrospective operations. However, in absence of express powers or by necessary implications to that effect, a subordinate legislation be it rule, bye-law or a notification can not have retrospective operation. The Apex Court in the matter of **“Panchi Devi v. State of Rajasthan and others” reported in (2009) 2 SCC 589**, has observed thus:

“9. A delegated legislation, as is well known, is ordinarily prospective in nature. A right or a liability created for the first time, can not be given retrospective effect.....”

In **Asian Food Industries' case (supra)**, it has been held by the Supreme Court that the notification has only a prospective effect. It is further held that when subordinate legislation has been framed by the same authority which exercises the power under the policy, the intention of such

policy maker must be found out from the words used therein.

In **Zile Singh's case (supra)**, the Supreme Court has laid down various tests to assess as to whether the amendment is prospective or retrospective. The said tests are reproduced as under:-

“Amendment in law- Whether amendment is prospective or retrospective-Tests summed up:-

- (1) Every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation.
- (2) An amending Act which is purely declaratory to clear the meaning of a provision of the principal Act will have retrospective effect.
- (3) There is presumption against retrospectivity- It is open for the Legislature to enact laws having retrospective operation- Retrospective operation be made by express provision. – If there is no express provision, Courts may be called upon to construe the provision and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity.
- (4) Rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right.
- (5) Where a Statute is passed for the purpose of supplying an obvious omission in a former statute or to ‘explain’ a former statute, the subsequent statute has relation back to the time when the prior Act was passed- The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature.
- (6) There is no fixed formula for the expression

of legislative intent to give retrospectivity to an enactment- Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence.

(7) Retrospectivity is liable to be decided on a few touchstones such as (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision.”

On the other hand, in **M/s. Girdhar Das’s case (supra)**, relied upon by the respondents, there was an amendment in the Act as in that case a new proviso was added after third proviso in Section 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, requiring that the Prescribed Authority shall take into account the question of comparative hardship of the landlord and tenant for the purpose of deciding whether or not an order of eviction should be passed and the comparative hardship of the landlord and tenant shall be taken into consideration in the light of the factors prescribed by the Rules. Section 27 of the amending Act has retrospectively validated Rule 16 and, therefore, now in view of the amendment, the comparative hardship of the landlord and the tenant has to be taken into account in the light of the factors set out in Rule 16.

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In **Nemi Chand's case (supra)**, there was an amendment in the Act by the Central Amendment Act whereby Section 16A was added and in that Section, only fine was leviable. It was held by the Supreme Court that since the amendment is beneficial to accused persons, it can be applied even with respect to earlier cases as well which are pending in Court.

There is a difference between the substantive law and the delegated legislation. Insofar as amendment in the substantive law is concerned, the Supreme Court has held that it has to be applied to the pending cases as well but the delegated legislation, whether rules, bye-laws or notification, shall ordinarily be of prospective nature until and unless the intent or its implication speaks otherwise.

Applying the tests laid down by the Supreme Court to the facts of the present case, it would be apt to hold that the amendment in the Regulations-2007 could not have retrospective effect and would apply prospectively.

Consequently, both the writ petitions are hereby allowed and the impugned order(s) passed by respondent No.1 are set aside. However, the matter is remanded back to the Appellate Authority to decide the appeal accordingly. The parties are directed to appear before the Appellate Authority on 20.01.2017.

November 30, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No