IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No. 1799 of 2014 (O&M) in
CWP No. 16261 of 2011
Date of decision: 20.9.2016

Punjab State Power Corporation Limited and another
.. Appellants

v.
M/s Induction Furnace Association of North India and another
.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vinod S. Bhardwaj, Advocate for the appellants.

Mr. Puneet Jindal, Senior Advocate with
Mr. Siddhant Kant, Advocate for respondent No. 1.

Mr. Tajender K. Joshi, Advocate for respondent No. 2.

...

Rajesh Bindal J.

1. This order will dispose of two appeals bearing LPA Nos. 1799 and 1800 of 2014, as the issue involved in both the appeals is common.

2. However, the facts have been extracted from LPA No. 1799 of 2014. .

3. The order dated 17.5.2012, passed by the learned Single Judge, granting interest to respondent No. 1 on security/advance consumption deposit for the years from 2003 to 2008, has been impugned in the present appeal.

4. Learned counsel for the appellants submitted that Section 47 of the Electricity Act, 2003 (for short, 'the Act') entitles a consumer of

electricity, to payment of interest on security/advance consumption deposit. The Act was enforced in the State of Punjab w.e.f. 10.12.2003. Section 47 (4) of the Act provided for framing of Regulations by State Electricity Regulatory Commission (for short, 'the Commission') specifying the rate of interest. The Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters), Regulations, 2007 (for short, 'the 2007 Regulations') were notified on 29.6.2007, effective from 1.1.2008, providing for rate of interest. Thereafter, the same is being paid to the consumers including respondent No. 1. For claiming interest for the period from 2003 to 2008, first time the claim was made by respondent No. 1 by filing application to the Commission on 29.12.2010. The same was disposed of vide order dated 12.1.2011 giving liberty to the petitioner therein (respondent No.1 herein) to approach the appropriate forum. Thereafter, respondent No. 1 filed CWP No. 8225 of 2011 in this court, which was disposed of on 10.5.2011 directing Chairman-cum-Managing Director of Punjab State Power Corporation Limited to decide the representation made by respondent No. 1 by passing a speaking order. The claim was rejected by the Chairman-cum-Managing Director vide order dated 16.6.2011. The same was challenged by respondent No. 1 by filing CWP No. 16261 of 2011 —M/s Induction Furnace Association, Ludhiana v. Punjab State Power Corporation Ltd. and others, and connected petition, which were disposed of on 17.5.2012, as corrected on 7.8.2012, directing payment of interest for the period from 2003 to 2008.

5. Impugning the aforesaid order passed by the learned Single Judge, the short contention raised by learned counsel for the appellants was that claim for interest having been made for the years from 2003 to 2008 by

filing application for the first time before the Commission on 29.12.2010, was time-barred. Respondent No. 1 could not enforce the right in court of law. If three years period is taken from the date the application was filed before the Commission, it will go to 29.12.2007. Undisputedly, interest is being paid on advance consumption deposit w.e.f. 1.1.2008, in terms of the 2007 Regulations, hence, the appeal deserves to be allowed.

6. On the other hand, learned counsel for respondent No. 1 submitted that the claim made by respondent No. 1 is not time-barred as it is a recurring cause of action. For every month, respondent No. 1 is entitled to interest on advance consumption deposit. It was the duty of the Commission to have specified the rate of interest under Section 47(4) of the Act. Unless that was specified, there was no cause of action to claim the same. The 2007 Regulations were notified on 29.6.2007 and thereafter the claim for interest was made. Even the Regulations framed subsequently in the year 2014, applicable w.e.f. 1.1.2015, as notified on 5.11.2014, provided for payment of interest from the date of deposit. It was further submitted that in the year 2010, additional security/ advance consumption deposit was claimed by the appellants. Even at that time, the interest due on advance consumption deposit already deposited, should have been adjusted. It was the duty of the appellants to have paid interest. No claim by the consumers was required.

7. Learned counsel for the Commission submitted that after the Act came into force, there were no Regulations framed by the Commission till such time the 2007 Regulations were notified, which were effective from 1.1.2008. The power to determine the rate of interest was on the Commission. The claim could be made by the consumers only after the rates

were determined. If there is any violation, the complaint could be filed with the Commission under Section 142 of the Act.

8. In response, learned counsel for the appellants submitted that the Commission had framed the 2007 Regulations, vide notification dated 29.6.2007, which were published in the official gazette on 27.7.2007, whereas claim for the first time for payment of interest for the period from 2003 to 2008 was made by respondent No. 1 in December, 2010. The interest from 1.1.2008 is being granted.

9. Heard learned counsel for the parties and perused the paper book.

10. Section 47(4) of the Act provides for payment of interest equivalent to the bank rate or more, as may be specified by the concerned Commission on the security deposited by a consumer. The 2007 Regulations were framed by the Commission in the year 2007, as notified on 29.6.2007 and published in the official gazette on 27.7.2007. These Regulations were effective from 1.1.2008. The rate of interest was provided in Regulation 17 of the 2007 Regulations. From 1.1.2008 onwards, interest on advance consumption deposit/security is being paid to all the consumers. The Act was enforced in the State of Punjab w.e.f. 10.12.2003, as is evident from notification dated 8.12.2003 (Annexure R-2).

11. For the first time, respondent No. 1 made claim for payment of interest before the Commission by filing application on 29.12.2010. That was more than three years and five months after the 2007 Regulations were published in the official gazette. The application filed by respondent No. 1 was disposed of by the Commission vide order dated 12.1.2011 with liberty to approach the appropriate forum. Thereafter, respondent No. 1 filed CWP

No. 8225 of 2011, which was disposed of on 10.5.2011 with a direction to the Chairman-cum-Managing Director of Punjab State Power Corporation Ltd. to dispose of the representation filed by respondent No. 1 within one month. The same was rejected by the Chairman-cum-Managing Director vide order dated 16.6.2011. The order was set aside vide order impugned in the present appeal. If taken from the date when respondent No. 1 first availed of its remedy for seeking payment of interest for the period from 2003 to 2008, the period of three years backward, which is the period of limitation for enforcing any right for recovery of any amount in terms of Article 25 of the Limitation Act, 1963, it will go to 29.12.2007. Meaning thereby any claim for the period prior thereto cannot be enforced in the court of law.

12. Regulation 17.3 of the 2007 Regulations is reproduced hereunder:

> "17.3 The interest will be credited to the account of a consumer annually on first day of April each year and will be adjusted on first May of every year against the outstanding dues and/or any amount become due to the Licensee thereafter."

13. In terms of the provisions of Regulation 17.3 of the 2007 Regulations, interest on security/advance consumption deposit is to be credited in the account of the consumer annually on 1st day of April each year and is to be adjusted on 1st day of May every year against the amount outstanding from the consumer. Meaning thereby, annual interest was to be credited in the account of the consumer in April every year. For the year 2007, interest was to be credited in April, 2008. The right to receive that amount of interest accrued to respondent No. 1 in April, 2008. No doubt, the

interest from 1.1.2008 has been paid by the appellant to respondent No. 1, however, in terms of the provisions of Regulation 17.3 of the 2007 Regulations, the annual interest for the previous year was to be credited in the account of respondent No. 1 in April next year and claim to that extent is within limitation.

14. In view of our aforesaid discussions, the impugned order passed by the learned Single Judge is modified to the extent that the appellants shall be liable to pay interest on the security/advance consumption deposit to respondent No. 1 for the year 2007 and not for the period prior thereof.

15. If the amount of interest already paid to respondent No. 1 is more than the amount due, in terms of the present judgment, the same shall be recovered in instalments spread over a period of six months.

16. The appeals stand disposed of, accordingly.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

20.9.2016
mk

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No