*****

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17698 of 2012 (O&M)
Date of decision: 02 .08.2017

Punjab State Power Corporation Ltd. …Petitioner

Versus

M/s Guru Nanak Agro Products Ltd. and another …Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Ritam Aggarwal, Advocate,
for the petitioner.

Mr. Sandeep Khunger, Advocate,
for the respondents.

*****

Rakesh Kumar Jain, J.

In this petition, the Punjab State Power Corporation Ltd. (hereinafter referred to as the "Corporation") has challenged the order dated 26.04.2012 passed by the Ombudsman, Electricity, Punjab.

In brief, respondent no.1 was having a LS category connection bearing A/c No.LS-30, with sanctioned load of 139.919KW with CD-124 KVA, which was released on 06.10.2010 from UPS Feeder, namely, Chak Nidhana. The estimate for release of connection was prepared and got sanctioned from the competent authority for ₹2,68,772/- and demand notice no.308 dated 03.06.2010 was issued to respondent no.1 and consequently, it deposited ₹2,17,000/- vide BA-16 No.179/398 dated 01.09.2010 and ₹51,772/- vide BA-16 No.313/398 dated 24.09.2010, totaling ₹2,68,772/-. The case of the petitioner is that the audit party of AO/Field, Faridkot, during inspection of the Sub Division, raised objection that since the connection of respondent no.1

falls on UPS feeder and is beyond 500 meters of the phirni, therefore, the applicant-respondent no.1 was required to pay the normal service connection charges or actual cost whichever is higher and in this case, normal service connection charges comes to ₹5,11,600/-, whereas the cost of estimate is ₹2,68,772/- and, thus, ₹2,42,828/- were recoverable from respondent no.1.

Respondent no.1, who had already deposited ₹2,68,772/-, challenged the demand of ₹2,42,828/- by filing an appeal before the Zonal Dispute Settlement Committee by depositing 20% of the disputed amount. The Zonal Dispute Settlement Committee held the meeting on 29.09.2011 and decided to recover the amount from respondent no.1.

Aggrieved against the said order, appeal was filed before the Forum for Redressal of Grievances of Consumers (hereinafter referred to as the "Forum"). The case set up by respondent no.1 was that the connection was released on 06.10.2010 from UPS feeder, namely, Chak Nidhana, for which the estimate was prepared under ESIM Clause 38.3(ii) and got sanctioned from the Sr. Xen/Op., Jalalabad. It is also its case that had this amount also being demanded through the demand notice, then it would have preferred to get the connection from City feeder because the supply position of City feeder is better than the UPS feeder and the cost of connection was almost same, whereas the case of the Corporation was that as per the audit party objection, the assessment has to be made as per the Electricity Supply Code-2007 Sec. 9.1.1 and CC No.68/2008, as per which the normal service connection charges are required to be recovered. The amount charged as per ESR 45.8 is correct and recoverable, whereas the estimate prepared for release of connection was wrong because total service line for release of connection was 1500 meters, whereas the estimate was prepared for 876 meters line only. Ultimately, the Forum upheld the order of the Zonal Disputes Settlement Committee dated 29.09.2011.

Respondent no.1 then filed appeal before the Ombudsman, Electricity, Punjab, which has been allowed vide order dated 26.04.2012. The observations made by the Ombudsman are as under:-

> "6. Written submissions made in the petition, written reply of the respondents as well as other material brought on record have been perused and carefully considered. The limited question for consideration in this petition is whether the respondents were justified in revising the Demand Notice after release of the connection of the petitioner and demanding a further amount of Rs.2,42,828/-. It is observed that the demand was raised on the basis of Audit Note intimating that further amount of Rs.2,42,828/- is recoverable because SCC works out to Rs.5,11,600/- whereas petitioner deposited Rs.2,68,772/- based on estimate of actual cost whereas higher of the two amounts was to be deposited. It is further observed that there is no mention of any Regulation under which the amount is considered recoverable after the release of connection. The Sr. Xen attending the proceedings was asked to bring on record the Demand Notice after the release of connection and recover any further amount. He was unable to point out any such Regulation either in the Supply Code or in the `Conditions of Supply' or in the ESR. During the course of proceedings, the attention of the Sr. Xen was drawn to Regulation 6.1 of the Supply Code which prescribes procedure for release of connections etc. It was pointed out that the last para of the Regulation reads:
>
> > "The terms and conditions specified in the Demand Notice once issued will not be altered except when necessitated by change in applicable laws."
>
> He was asked to clarify whether Demand Notice issued and complied with could be revised after release of connection in view of this Regulation or was there any change in applicable laws on the basis of which Demand Notice was revised after the release of connection. He conceded that Demand Notice cannot be revised

*****

> after release of connection in view of the specific provision in the Supply Code and also there was no change in applicable laws after the issue of Demand Notice so far as the case of the petitioner was concerned. In view of the above discussion, without going into the merit of the demand for additional charges, it is held that the respondents were not justified in revising the Demand Notice after the release of connection in view of Regulation 6.1 of the Supply Code. Hence, the amount charged is held not recoverable from the petitioner. Accordingly, the respondents are directed that the amount excess/short, after adjustment, if any, may be recovered/refunded from/to the petitioner with interest under the provisions of ESR-147."

Counsel for the petitioner has submitted that the Ombudsman has failed to appreciate that the expenditure for release of new connection is recoverable as per Clause 9.1 of the Electricity Supply Code and Related Matters Regulation, 2007 and Clause 45.8 of the Sales Regulation. She has relied upon Clause 38.3 of the Electricity Supply Instructions Manual. In this regard, she has referred to Clause 48.5 of the SR, which reads that *"the applicant of all categories (except AP) of new connections falling beyond 500 meters of phirni shall be required to pay normal service connection charges or actual cost which is higher"*.

According to the petitioner, the cost deposited by respondent no.1 of ₹2,68,772/- is less than the normal service connection charges of ₹5,11,600/- and if the amount is charged less, it can be recovered in terms of Clause 35.2 of the Electricity Supply Code, 2007.

On the other hand,counsel for respondent no.1 has submitted that the Ombudsman has allowed the appeal while taking into consideration the Regulation 6.1 of the Supply Code, which provides that *"the terms and conditions specified in the Demand Notice once issued will not be altered* *except when necessitated by change in applicable laws".* It is further submitted that the petitioner had failed to point out any change in the applicable laws after issuance of the demand notice and, therefore, the appeal filed by respondent no.1 has been allowed by the Ombudsman.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the petitioner has not been able to find fault with the order of the Ombudsman, who had applied Regulation 6.1 of the Supply Code and has recorded a positive finding that the Corporation had conceded before her that the demand notice cannot be revised after release of connection in view of the specific provision in the Supply Code and also there was no change in applicable laws after the issue of demand notice so far as the case of respondent no.1 was concerned.

In view of the aforesaid positive finding recorded by the Ombudsman, the revised demand raised by the petitioner is not justified.

No other point has been raised.

Consequently, the present writ petition is hereby dismissed being denuded of any merit, though without any order as to costs.

August 02, 2017 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No