

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.10553 of 2017 (O&M)
Date of decision: September 28, 2017

Talwandi Sabo Power Limited ...Petitioner

Versus

State Grid Code Review Committee & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ashwani Kumar Chopra, Senior Advocate with
Ms. Rupa Pathania, Advocate and
Mr. Deep Rao, Advocate for the petitioner.

Mr. M.G. Ramchandran, Advocate with
Mr. Pardeep Kumar, Advocate and
Mr. Subham Arya, Advocate for respondents No.1 & 2.

Mr. Tejender Joshi, Advocate for respondent No.3.

Ms. Rubina Virmani, Advocate for respondent No.4.

Rajan Gupta, J. (oral)

Present petition has been filed seeking a writ in the nature of certiorari for quashing order dated 11.05.2017 (Annexure P-1), passed by the State Grid Code Review Committee (respondent No.1 herein) as being without jurisdiction, thus, illegal.

It has been urged before the court that the matter was disposed of by the Division Bench vide its order dated 6.4.2017 (Annexure P-2).

Operative order of the said order reads as under:-

“It is a case in which huge penalty of ₹ 159,15,58,199/- has been levied on the petitioner. The Regulations itself provide for consideration of the objections filed by either of the parties against

the Monthly State Energy Accounts, which were to be considered by the Committee. But in the case in hand, the needful has not been done by the Committee. In our opinion, at this stage without going into the controversy as to whether the petitioner has violated any of the conditions of the power purchase agreement or mis-declared its capacity, we deem it appropriate to direct the Committee to consider the objections already filed by the petitioner or which may be supplemented by it within one week from today. The objections be decided after affording opportunity of hearing to both the parties within a period of three weeks thereafter.

Out of the energy bill for the month of January, 2017, a sum of ₹ 74,27,27,159/- has already been deducted by the Corporation as penalty. Additional sum of ₹ 84,88,31,039/- is sought to be deducted in the bill for the month of February, 2017 on account of revision of bill for the month of January, 2017. As the petitioner is regularly supplying energy to the Corporation at an average of ₹ 400 crores per month, for which the bills are raised after the expiry of the period and payments made subsequently, in our opinion, it would be in the interest of justice, if deduction of ₹ 84,88,31,039/- on account of penalty for the month of January, 2017 is not made till the matter is decided by the Committee. Ordered accordingly.”

Pursuant to above, petitioner filed detailed objections dated 13.4.2017 (Annexure P-9) and further proceedings commenced. Petitioner was informed that CMC had been constituted and petitioner could participate in the proceedings. Petitioner, however, objected to the constitution of the committee on certain grounds. As its request for reconstitution thereof was rejected, he filed CWP No.8492 of 2017. Said petition was disposed of on April 25, 2017. Operative part of the order reads as under:-

“In the interest of justice, I deem it appropriate to dispose of this petition, at this stage, with a direction to respondent No.4-State

Grid Code Review Committee to consider representation Annexure P-7, in context to the observation made above, within a period of 15 days after the receipt of certified copy of this order.

It is not out of place to observe here that this Court has opted to dispose of this petition in limine without issuing notice to the respondents with an objective to avoid delay in the adjudication of the matter by CMC as the Division Bench of this Court has already deferred the recovery of any amount of penalty during pendency of the adjudication of the conflict by CMC.

It is observed that it will be obligatory for the petitioner to communicate this order to the respondents, so that the grievance of the petitioner in Annexure P-7 may be looked into by passing a speaking order within a period of 15 days from the date of receipt of copy of this order.”

As a result of above, further proceedings continued. Petitioner received a notice from respondent No.1 to appear before it. Stand of the petitioner is that matter was to be decided by the CMC and representation, which was Annexure P-8 in CWP No.8492 of 2017 was to be decided. It, thus, pressed upon respondent No.1 to take a decision in terms of the direction given by the writ court i.e. to consider representation (Annexure P-8 to said writ petition) and decide the same. It, however, appears that respondent No.1 proceeded further with the matter and took a decision on Annexure P-7. Said decision is impugned in the instant writ petition. Controversy arises for the reason that reference to Annexure P-7 in order dated 25.4.2017 was a typographical error. Admittedly, a clarification was sought by moving CM No.10204-CWP-2017. Vide its order dated September 01, 2017, necessary clarification has been made. Operative part of the order is reproduced as under:-

“Be that as it may, it is not disputed that Annexure P-7 has been inadvertently typed in order dated 25.04.2017.

The reference to Annexure P-7 at three places in order dated 25.04.2017 passed in CWP-8492-2017 shall be deemed to be to Annexure P-8 instead of Annexure P-7, for all intents and purposes without prejudice to any right of the parties in the fresh litigation which is pending pursuant to the directions passed by this court.

The aforesaid application along with other miscellaneous applications are disposed of accordingly.”

Only question, which remains to be decided is whether proceedings have been in consonance with the direction given by the Division Bench as well as subsequent order dated 25.04.2017, passed in CWP No.8492 of 2017. This court does not intend to delve into this question further, as a decision has already been taken by respondent No.1.

Without going into the aforesaid controversy, the petition can be disposed of, as parties agree that the matter can be relegated to the Punjab State Electricity Regulatory Commission, respondent No.4, for taking appropriate decision on merits. Needless to observe that petitioner would be at liberty to refer his objections, Annexure P-7 (Annexure P-9 in this petition) before respondent No.4, which shall be at liberty to take a decision thereon after affording opportunity of hearing to the parties. Ordered accordingly. This court feels it necessary to observe that the commission would not unduly swayed by the findings arrived at by respondent No.1 and take an independent decision in the matter.

Learned counsel appearing for respondent No.3 submits that amount as contemplated by the Division Bench in its order, shall not be charged till decision is taken by respondent No.4. This court hopes and

trusts that the matter shall be decided expeditiously, in any case not later than three months.

Disposed of.

(RAJAN GUPTA)
JUDGE

September 28, 2017

'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No