

CWP No.1813 of 2016 (O&M)

[1]

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

CWP No.1813 of 2016 (O&M)

Date of decision:18.09.2017

Sh. Prem Pal

...Petitioner

Versus

Punjab State Power Corporation Limited and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Shikha Jaidka, Advocate,
for the petitioner.

Mr. R.L.Sharma, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

The petitioner has an electric connection bearing Account No.E-11-MS-/32/13L in the name of Prem Paul at plot No.207, Industrial Area-A, Ludhiana, for the purpose of running the factory under the name and style of M/s S.K. Weaving Factory. He has another MS connection bearing Account No.MS/0036 at plot No.213 for running the business of textile under the name and style of M/s Vardaman Textile. It is alleged that both the connections were clubbed in October, 1997 under LS category by the Punjab State Electricity Board against the wishes of the petitioner and LT surcharge was being charged to both the above said MS connections. It is submitted that since the family division took place in the year 2011 and both the businesses were separated, therefore, the petitioner made a representation to the Senior Executive Engineer, CMC Division, Punjab State Power Corporation Limited, Ludhiana (hereinafter referred to as the "Corporation") for de-clubbing of the

above mentioned two connections. A De-clubbing Committee was formed for this purpose, which submitted its report on 23.01.2014, i.e. after 2 years and 8 months after the request was made and the Chief Engineer of the Corporation passed the order of de-clubbing of the said two connections on 11.02.2014.

The petitioner approached the Zonal Level Dispute Settlement Committee of the Corporation (hereinafter referred to as the "Committee") seeking refund of the surcharge amount of ₹4,18,806/- paid by him in the energy bills from February, 2011 to February, 2014, i.e. from the date when the request was made for de-clubbing and when the actual de-clubbing order was passed. The Committee, vide its letter dated 18.09.2014, held that the surcharge was not refundable in the absence of any provision for de-clubbing. The petitioner challenged the said order dated 18.09.2014 before the Forum for Redressal of Grievances of Consumers, Patiala (hereinafter referred to as the "Forum") but the order of the Committee was upheld by the Forum vide its order dated 23.06.2015. The petitioner, thereafter, approached the Ombudsman Electricity, Punjab (hereinafter referred to as the "Ombudsman") but both the decisions of the Committee and the Forum was upheld on the ground that there is no provision for de-clubbing but it was held that a sum of ₹1,64,977/- was not recoverable.

Thus, the petitioner has challenged all the orders of the Committee dated 18.09.2014 and 23.06.2015 passed by the Forum and the order dated 17.12.2015 passed by the Ombudsman, by which orders of the Committee and the Forum were upheld.

It requires pertinent notice that during the pendency of the present petition, the Corporation also filed a counter-claim under Order VIII Rule 6A of the Code of Civil Procedure, 1908 for quashing the order of the

Ombudsman dated 17.12.2015 by which he has held that the amount of ₹1,64,977/- is not recoverable from the petitioner.

The whole case of the petitioner is based upon the Commercial Circular No.17/2004 and Regulation 167.10 of the Electricity Supply Regulation (hereinafter referred to as the “ESR”) regarding de-clubbing of electricity connections. It is also submitted that the aforesaid Circular and the ESR are still in operation, therefore, the finding recorded by the authorities below that there is no provision for de-clubbing is not correct.

On the other hand, counsel for the respondents has submitted that the Committee has observed that there are no instructions regarding de-clubbing of a connection already clubbed before 2000 and since de-clubbing was not allowed, therefore, there is no question of refund of surcharge and further it was decided that both the connections be treated as one connection for the purpose of billing. It is further submitted that the Forum has also found that the amount of ₹1,64,977/-, charged for the period 2/2014 to 1/2015, is also recoverable from the petitioner but the Ombudsman has ordered that the amount of ₹1,64,977/- is not recoverable. It is submitted that both the connections of the petitioner, which were earlier separate, were ordered to be clubbed by the Competent Authority on the recommendations of the inspection committee. The action of clubbing as well as payment of additional tariff was challenged by the petitioner by way of Civil Suit No.513-14 on 07.04.2003 before the Civil Court, by seeking mandatory injunction directing the respondents not to realize the clubbing charges. However, the said suit was withdrawn because no injunction was granted. The petitioner, thereafter, raised a dispute before the District Consumer Disputes Redressal Forum, Ludhiana vide Complaint No.86 dated 21.01.2003. In the said complaint also,

the petitioner had challenged the action of clubbing of connections and realization of the clubbing charges. The said complaint was dismissed on 27.05.2004. The petitioner then filed an appeal against the order dated 27.05.2004 before the State Consumer Disputes Redressal Commission, Punjab, which was also dismissed on 22.09.2010. It was observed in the order dated 22.09.2010 that both the premises were purchased by Prem Pal and the electricity connections were also applied and released in his name, therefore, the intention of the petitioner was to use both connections to avoid higher tariff. The order of the State Consumer Disputes Redressal Commission was not challenged by the petitioner before the National Consumer Disputes Redressal Commission and became final.

It is also submitted that the petitioner had asked for clubbing of his two connections during October, 1997 on the basis of the policy issued by the respondents. The connections of the petitioner were checked on 27.05.2001 by the Senior Executive Engineer, Enforcement, Tarn Taran and found that the two connections were inter-linked and were being used by each other unit. There was a common passage in between both the premises and the supply used from Account No.MS 32/0013 was also being used in Account No.MS 32/0036, together with the supply use of generator set. The two connections were obtained in the name of the petitioner in order to avoid the higher tariff. The petitioner made a representation on the basis of the ESR 167.10 for de-clubbing the aforesaid two electricity connections. However, subsequently, on enactment of Electricity Act, 2003 (hereinafter referred to as the "Act"), the respondents have issued Electricity Supply Code and Related Matter Regulations, 2007 (hereinafter referred to as the "Regulations"), in which Regulation 3.1 provides that *"in case of any inconsistency between*

these Regulations and the Conditions of Supply existing on the notified date, these Regulations will prevail". It is alleged that subsequently, Electricity Supply Instructions Manual was issued and updated by the Punjab State Regulatory Commission upto 31.03.2011. It is also submitted that since the provisions of ESR 167.10, providing for procedure for de-clubbing of electricity connections, were not there either in the Regulations notified on 29.02.2007 or the Electricity Supply Instructions Manual issued upto 31.03.2011, therefore, the application of the petitioner for de-clubbing was not maintainable and the order dated 11.02.2014 passed by the Chief Engineer, Central Division of the Corporation, de-clubbing the electricity connections of the petitioner was without jurisdiction. It is also submitted that ESR 167.10 provided for preparation and submission of report by the Standing Committee on de-clubbing/clubbing is to be considered and approved by the Member in-charge of the Board/Corporation, which is a higher authority compared to that of the Chief Engineer, who issued the order of de-clubbing on 11.02.2014, though the matter could have only be decided by the Member of the Board. It is, thus, submitted that since the provisions of the Commercial Circular No.17/2004 and ESR 167.10 are inconsistent to the notified provisions of the Regulations and the Electricity Supply Instructions Manual updated till 31.03.2011, in which there is no provisions for de-clubbing, therefore, the Commercial Circular No.17/2004 and ESR 167.10 automatically stood annulled.

Learned counsel for the respondents has also submitted that the order of the Ombudsman, declining relief granted by the Committee and the Forum, is also illegal.

I have heard learned counsel for the parties and examined the

available record.

There is no dispute that the clubbing of the connections was done at the instance of the inspection committee as both the connections were practically in the same premises. The petitioner then, in order to avoid higher tariff, applied for de-clubbing, may be on the ground of division of the property by way of family settlement.

The issue involved is as to whether the petitioner is entitled to the refund of surcharge on account of Commercial Circular No.17/2004 as well as ESR 167.10. In this regard, the petitioner has invoked the provisions contained in Commercial Circular No.17/2004 as well as ESR 167.10, whereas the case of the respondents is that these have been annulled and have referred to the provisions of the Act and the Regulations, as per which Circular No.17/2004 as well as ESR 167.10 stood superseded. Therefore, there is no error on the part of the respondents in asking for the surcharge and, thus, the decisions of the Committee, Forum and the Ombudsman cannot be faulted. The decision of the Ombudsman rendered against the respondents, for which they have filed the counter-claim, is also justified.

In view of the above, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

September 18, 2017
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(Rakesh Kumar Jain)
Judge

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