

CWP No.2055 of 2014

[1]

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

**CWP No.2055 of 2014
Date of decision:05.09.2017**

Punjab State Power Corporation Ltd.

...Petitioner

Versus

M/s Hotel Bahia Fort and another

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Parminder Singh-I, Advocate,
for the petitioner.

Respondent no.1 already ex-parte.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 31.03.2012 passed by respondent no.2 by which appeal filed by respondent no.1 has been allowed and the demand raised by the petitioner, after disallowing the rebate of 7.5% for the period from October 2006 to December 2009, has been held not recoverable and the petitioner has been directed to overhaul the account of respondent no.1 and in case of excess deposit, if any, the same has been ordered to be refunded with interest as per the instructions of the Punjab State Power Corporation Limited (hereinafter referred to as the "Corporation").

In short, respondent no.1-hotel holds an HT electricity connection bearing No.GC-13/109 under non-residential supply with a sanctioned load of 272.980 KW. It was allowed rebate of 7.5% on the consumption bill for the period from 10/2006 to 12/2009. The said rebate was withdrawn in January 2010 as it was found to have been given due to mistake and a sum of

₹4,92,077/- was found due, which was sought to be recovered and was put in the bill issued on 12.10.2011. Respondent no.1 challenged the recovery before the Zonal Level Dispute Settlement Committee, Bathinda (hereinafter referred to as the "Committee") after depositing ₹98,420/- on 02.11.2011, being 20% of the disputed amount. The Committee, in its meeting held on 11.05.2012, dismissed the application of respondent no.1 and held that in view of commercial circular no.36 of 2006 dated 14.07.2006, rebate of 7.5% was not admissible to respondent no.1 and the amount charged by the audit party was correct.

Respondent no.1 challenged the order of the Committee before the Forum for Redressal of Grievances of Consumers, Patiala (hereinafter referred to as the "Forum") by way of an appeal. The Forum also observed that the rebate of 7.5% was wrongly allowed to respondent no.1 and referred to Clause 13.5 of the General Conditions of Tariff and Schedules of Tariff, effected from April 1, 2006, issued by the Punjab State Electricity Regulatory Commission, Chandigarh, which provides that *"medium supply, small power, domestic supply and non-residential supply consumers shall be allowed a rebate of 7.5% on their consumption charges including demand charges, if any, or monthly minimum charges where supply is catered at 11 KV or higher voltage against the supply voltage of 400 volt specified in the character of service"*. It was observed by the Forum that the sanctioned load of respondent no.1 was more than 100 KW which was being catered from 11 KV, as specified in the character of service, therefore, respondent no.1 was not entitled to get the rebate of 7.5%.

Aggrieved against the order of the Forum, respondent no.1

approached the Ombudsman, Electricity Punjab, by way of an appeal, which has been allowed in favour of respondent no.1. The relevant observations of the Ombudsman are as under:-

“.....The counsel brought on record order of the PSERC in petition No.37/2012 wherein, it has been clarified that rebate of 7.5% is admissible to NRS consumers having connected load of more than 100 KW and supplied at 11 KV upto 31.03.2010. This order of the PSERC was brought to the notice of the Sr. Xen attending the proceedings. He submitted that he was aware of this order and rebate of 7.5% has been held admissible to NRS consumers having load of more than 100 KW and supplied at 11 KV upto 31.03.2010. However, he submitted that PSPCL has decided to file a Writ Petition against this decision of the PSERC and had also given directions not to issue any refund in view of the said order. The Sr. Xen was asked to bring evidence on record to substantiate the submissions. No such evidence was brought on record inspite of opportunity having been allowed. Even otherwise, it is observed that the demand was raised after withdrawing rebate of 7.5% for the period 10/2006 to 12/2009 in view of clause 13.5 of the 'General Conditions of Tariff' and CC 36/2006. In this context, it is observed that 'General Conditions of Tariff' were issued with the approval of the PSERC. Similarly, tariff was issued in pursuance of tariff order issued by the PSERC. Therefore, in case of any ambiguity, actual or perceived, the PSERC is the only competent authority to decide the issue. The issue of allowing rebate of 7.5% to NRS consumers having connected load of more than 100 KW being supplied at 11 KV came up for the consideration of the PSERC in petition No.37/2012. The PSERC in its order dated 01.08.2012 decided that Schedule of Tariff for Non-Residential Supply, approved by the commission also has a provision for 7.5% rebate on consumption charges or monthly minimum charges if the supply is catered at 11 KV. The Commission has nowhere, in the General Conditions of Tariff and Schedule of Tariff denied the rebate of 7.5% to NRS consumers catered at 11 KV. In view of the above, the Commission decides that a rebate of 7.5% is admissible to

Bharat Sanchar Nigam Limited having connected load of more than 100 KW and supplied at 11 KV upto 31.03.2010. The Commission further decides that this order shall be applicable to all similarly placed consumers.

Since similar issue is involved in the case of the petitioner, in accordance with the decision of the PSERC discussed above, it is held that demand raised after disallowing rebate of 7.5% for the period from October, 2006 to December, 2009 is not recoverable. Accordingly, the respondents are directed to overhaul the account of the petitioner and in case of excess deposits, if any, be refunded, with interest as per instructions of PSPCL.”

Counsel for the petitioner has submitted that the impugned order of the Ombudsman is patently erroneous being contrary to Clause 13.5 of the aforesaid General Conditions of Tariff and Schedules of Tariff as respondent no.1 was being catered from 11KV and was not eligible for the rebate of 7.5% but he could not dispute that there is no finding recorded that it is against the supply of voltage of 400 volts.

After hearing learned counsel for the parties and keeping in view the aforesaid facts and circumstances, I am of the considered opinion that there is no error in the order of the Ombudsman which calls for any interference by this Court.

Dismissed.

September 05, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No