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

CWP No.23523 of 2018

Date of decision:October 04, 2018

Shreyans Industries Ltd.

...Petitioner

Versus

Punjab State Power Corporation Ltd. and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Jindal, Senior Advocate, with
Mr. Amandeep Singh Meho, Advocate, and
Mr. Raghav Kakkar, Advocate, for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has assailed the validity of the Supplementary Bill/Memo No.509 dated 28.08.2018 by which demand of ₹1,61,09,456/- has been made on account of interest w.e.f. 09.09.2011 to 20.05.2017 qua the unit/industry situated at Ahmedgarh, District Sangrur and Supplementary Bill/Memo No.1509 dated 27.08.2018, by which the demand of ₹2,79,08,946/- has been raised on account of interest w.e.f. 09.09.2011 to 05.09.2017 in respect of the unit/industry situated at Banah, Ropar on the revised amount of voltage surcharge claimed by the Punjab State Power Corporation Limited (hereinafter referred to as the "Corporation").

In brief, the petitioner is engaged in the manufacturing of paper from the agricultural waste in its two plants at Ahmedgarh, District Sangrur and Banah, Ropar, District SBS Nagar. The Ahmedgarh unit has sanctioned load of 5241.358 KW with a contract demand of 4000 KVA, sanctioned load of 5974.45 KW with contract demand of 3995 KVA for its Ropar unit. The respondents had earlier issued Sales Manual Instructions, vide which large

supply industrial consumers were regulated for loads on 11KV/33KV/66KV connections. The Sales Manual Instruction No.39 was amended/clarified, providing for power intensive units, such as Arc Furnace Loads, for which connections above 2500 KVA is to be given only on higher voltage, i.e. 33 kv/66kv, so as to avoid losses to the Corporation. As per the Commercial Circular No.95 of 1995 dated 24.11.1995, for extension in load/demand applied upto 01.01.1995, the limit for 11 KV supply is to be 5950KW/4200 KVA for general industry and 2500 KVA for power intensive loads.

For the first time, the concept of increase of 10% energy was introduced by Commercial Circular No.44 of 2003, issued by memo dated 24.06.2003, as per which the energy recorded at 11 KV is to be increased 10% and then billed at the prevalent tariff in those cases where the connection is at 11KV supply and load is more than 2500 KVA. Lateron, Commercial Circular No.52 of 2004 was issued by the Corporation in the nature of clarification of Commercial Circular No.44 of 2003, as per which the consumption recorded at 11 KV corresponding to the demand recorded over and above 2500 KVA is to be increased by 10% and not the total energy consumption.

It is alleged that the petitioner had made the entire payment of electricity consumed from April 2004 to March 2007 and no amount was pending. However, on 04.05.2007, the petitioner received the consumption bill of April 2007, payable by 14.05.2007 through cheque and by 16.05.2007 through demand draft, in which the respondents had claimed sundry charges of ₹8,50,202/-. On enquiry, the petitioner came to know that the said sundry charges were of high voltage surcharge. The petitioner challenged the said

high voltage surcharge before this Court by way of CWP Nos.7275 and 7276 of 2007 and prayed for quashing the bill dated 04.05.2007. In the said case, notice of motion was issued and disconnection was stayed. During the pendency of the writ petition, the respondents issued a Commercial Circular No.66 of 2007 and decided to recover voltage surcharge w.e.f. 01.04.2004 to 13.04.2007. Various other consumers also challenged the said demand of voltage surcharge but all the writ petitions were dismissed by this Court by a common order dated 27.04.2009. This led to the filing of intra-court appeals bearing LPA Nos.755 and 756 of 2009 by the petitioner. The said appeals were also dismissed upholding the recovery of high voltage surcharge but it was held that it would be recoverable w.e.f. 01.10.2004 instead of 01.04.2004. The Corporation raised the supplementary demand dated 14.09.2011 after the decision in the aforesaid appeals on 09.09.2011 and asked the petitioner to pay ₹6,31,56,062/- and ₹3,90,70,088/- in respect of both the units situated at Ahmedgarh and Banah, demanding the arrears of voltage surcharge from 01.10.2004 till January 2011. The petitioner filed the Review Application Nos.49 and 50 of 2011 in LPA Nos.755 & 756 of 2009, which were dismissed on 14.10.2011.

Thereafter, the petitioner filed SLP (C) Nos.182-185 of 2012 before the Supreme Court to challenge the order dated 09.09.2011 passed in the LPAs by this Court. It is alleged that there were two types of consumers, i.e. 'general industry consumers' like the petitioner and the consumers having 'PIU/Furnace Industries'. During the pendency of the SLPs before the Supreme Court, disconnection of the petitioner was stayed. Ultimately, the Supreme Court partly allowed the SLPs filed by the petitioners vide order dated

01.03.2017 holding that the demand raised by the Corporation on account of voltage surcharge for the year 2004-2005 was wrong but the demand of voltage surcharge for the period 2005 to 2007 was upheld. However, the SLPs filed by the other consumers having PIU/Furnace Industries were dismissed by the Supreme Court on 09.06.2017. After the decision of the Supreme Court on 01.03.2017, the Corporation issued a Supplementary Bill No.714 dated 16.05.2017 amounting to ₹3,24,56,834/- for Ahmedgarh unit and Supplementary Bill No.702 dated 15.05.2017 for an amount of ₹5,68,05,843/- for Banah unit on account of voltage surcharge for the financial years 2005 to 2011. The petitioner had allegedly paid the entire amount in lump sum.

The petitioner, thereafter, received another Supplementary Bill No.1509 dated 27.08.2018 for an amount of ₹2,79,08,946/- for Ropar unit and Supplementary Bill No.509 dated 28.08.2018 for an amount of ₹1,61,09,456/- for Ahmedgarh unit allegedly on account of interest accrued on the voltage surcharge from 09.09.2011 to 05.09.2017. The petitioner has challenged the validity of these two Supplementary Bills No.509 and 1509 in this writ petition.

Learned counsel for the petitioner has vehemently argued that the respondents cannot recover the amount of interest as according to him, the amount was determined on 15.05.2017 and 16.05.2017. It is submitted that the interest can be charged only after the assessment is made. In this regard, he has relied upon two decisions of the Supreme Court rendered in the cases of **J.K.Synthetics Limited vs. Commercial Taxes Officer**, 1994 AIR (SC) 2393 and **E.I.D. Parry India Ltd. vs. Asstt. Commissioner of Commercial Taxes**, 2005 AIR (SC) 2645. It is further submitted that as soon as the

Supreme Court dismissed the SLPs filed by the petitioner, the principal amount was immediately deposited. The petitioner has also relied upon a decision of the Allahabad High Court rendered in the case of **Hindalco Industries Ltd. and Ors. vs. State of U.P. and Ors.**, MANU/UP/1611/1996 wherein it has been held that the liability to pay interest will not accrue during the period of operation of an interim order.

During the course of hearing, counsel for the petitioner has also submitted that in a somewhat similar case, a Coordinate Bench has issued notice of motion. However, issuance of notice of motion in a similar case is not a binding precedent to be followed by this Court.

I have heard learned counsel for the petitioner and examined the available record with their able assistance.

The facts are not much in dispute. The liability to pay voltage surcharge has been continuously challenged by the petitioner and remained unsuccessful. The writ petitions were dismissed by the Single Bench of this Court on 27.04.2009 with costs. The LPAs filed by the petitioner were also dismissed except slight modification by changing the date of recovery of voltage surcharge from 01.04.2004 to 01.10.2004. Review Applications filed by the petitioner in the LPAs were also dismissed. SLPs filed by the petitioner before the Supreme Court were dismissed upholding the voltage surcharge again with slight modification that the respondents can not recover the voltage surcharge for the year 2004-2005 but the recovery for the years 2005 to 2007 remained un-affected. The totality of the circumstances is that the liability of the petitioner to pay voltage surcharge has been continuously upheld upto the Supreme Court and there was no stay on the recovery of the voltage surcharge

rather the disconnection of the petitioner was stayed. There is no doubt that the petitioner has paid the component of principal amount of the voltage surcharge after the requisite bill(s) was/were raised.

Now, the only dispute is as to whether the petitioner is also liable to pay interest on the amount of voltage surcharge which he had used for its own benefit during the pendency of the litigation?

The judgments relied upon by the petitioners in **J.K.Synthetics Limited's case (supra)** and **E.I.D. Parry India Ltd.'s case (supra)** are not applicable to the facts and circumstances of the present case. Insofar as the judgment relied upon by the petitioner in **Hindalco Industries Ltd.'s case (supra)** is concerned, in that case, it has been held that once the principal duty is made not realisable by a stay order, then it is impossible to hold that liability to pay interest has accrued due to said non-payment but in the present case, recovery of the voltage surcharge was never stayed and only disconnection of the electricity connection(s) of the petitioner was stayed.

In this regard, the decisions rendered by the Supreme Court in the cases of **Kanoria Chemicals and Industries Ltd. and others vs. U.P. State Electricity Board and others**, MANU/SC/1213/1997 and **Nava Bharat Ferro Alloys Ltd. vs. Transmission Corporation of A.P. Ltd. and Ors.**, MANU/SC/0959/2010 may be referred to. In the aforesaid two cases, argument was raised by the respondents therein was that the amount which the appellant had not paid would have been utilized by it in its commercial ventures to make profits and non-payment of the dues recoverable from the appellant would, therefore, expose the Board to serious financial prejudice and loss. It was also observed that the restitution of the benefit drawn by a party

during legal proceedings that eventually fail as also on the general principle that a party who fails in the main proceedings cannot benefit from the interim order issued during the pendency of such proceedings. The Supreme Court ultimately decided against the consumer and upheld the demand for payment of additional charges recoverable on account of the delay in the payment of the outstanding dues.

On another analogy, had the petitioner deposited the entire amount as demanded by the Corporation which was not otherwise found due, in that eventuality, the petitioner would have definitely claimed the refund of the said amount with interest.

Thus, keeping in view the aforesaid facts and circumstances, I am of the considered opinion that there is no error on the part of the respondents in raising the supplementary bill(s) for the payment of interest because the money belonging to them, has been used by the petitioner for its own benefit, on which the component of interest has always been there which has rightly been sought to be recovered by the respondents.

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

October 04, 2018
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(Rakesh Kumar Jain)
Judge

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