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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2667 of 2018
Date of decision:06.02.2018

Punjab State Power Corporation Limited and others …Petitioners

Versus

Ombudsman Electricity Punjab and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Abhilaksh Grover, Advocate,
for the petitioners.

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Rakesh Kumar Jain, J.

The petitioners have challenged the order dated 09.03.2016 passed by respondent no.1 by which appeal filed by respondent no.4 against the order dated 11.08.2015 passed by respondent no.2 has been partly allowed.

In brief, respondent no.4 is an industrial unit of respondent no.3, which is provided energy from Guru Nanak Dev Thermal Power Plant through double circuit 132 KVA Line Incomer I and II (at NFL Bhatinda unit end) and electric meters bearing No.04180271 and 04180274 are installed on both the circuits I and II. It is alleged that the Additional Superintending Engineer (MMTS), Bhatinda took DDL (Data Download Report) of both the meters and found 22 violations committed during Peak Load Hours (PLHR). Accordingly, a penalty of ₹1,20,03,665/- was recommended. It is further alleged that the Additional Superintending Engineer (MMTS) had intimated the Assistant Executive Engineer (Commercial-I), Sub-Division, PSPCL, Power House Road, Bhatinda regarding the violations committed by respondent no.4 during the period from 15.07.2013 to 08.09.2013 vide memo no.173/777 of dated 28.10.2013 and asked respondent no.4 to deposit the penalty amount within a period of 10 days. Respondent no.4 made a representation to petitioner no.4 alleging that special permissions have been obtained for drawing power during Peak Load Hours from the Chief Engineer, Power Purchase Regulator, Patiala. Thereafter, the matter was referred to the Additional Superintending Engineer (MMTS), Bhatinda for scrutiny and it was found that the permissions were granted to respondent no.4 for various dates against the representation made for drawing the power during Peak Load Hours. After scrutiny, the Additional Superintending Engineer (MMTS), Bhatinda revised the penalty to ₹83,79,435/- by giving benefit of the dates for which prior permissions were obtained for drawing the power during Peak Load Hours.

When respondent no.4 did not deposit the penalty amount, petitioner no.4 issued a supplementary bill on 07.05.2014, in which it was specifically mentioned that in default or non-payment in stipulated time, surcharge of ₹8,37,944/- would be levied on the total bill amount. The matter was referred to the Zonal Disputes Settlement Committee (hereinafter referred to as the "Committee"). The Committee, vide order dated 27.01.2015, directed petitioner no.4 to issue revised bill of ₹79,61,435/-. Respondent no.4 then challenged the decision of the Committee before the Forum for Redressal of Grievances of Consumers (hereinafter referred to as the "Forum"), which was dismissed on 11.08.2015 and the order of the Committee was upheld. Respondent no.4 then challenged both the orders of the Committee and the Forum before respondent no.1, who had allowed the appeal partly on 09.03.2016. Aggrieved against the said orders, the present petition has been filed.

Learned counsel for the petitioners has vehemently argued that the order of the Ombudsman is patently erroneous and has reiterated the stand taken before the Forum and has referred to its finding also because the order of the Committee was not challenged by the petitioners before the Forum rather it was respondent no.4 who had challenged the order of the Committee before the Forum but remained unsuccessful but respondent no.1 has decided the matter against the petitioners after thoroughly taking into consideration the written submissions as well as after hearing the parties. Respondent no.1 has decided the controversy by framing the proper issues. The issues framed by respondent no.1 and the findings recorded thereunder are as under:-

> "Issue No.1: Whether the Petitioner is entitled to run his load after submission of request for PLE in anticipation of its approval and whether running of such load is violation of PLRHs?
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> The petitioner argued that PLE is being applied to the Competent Authority on day-to-day basis in advance. Sometimes PLE approval is conveyed in time and sometimes ex-facto approval is conveyed after use of PLE. On the basis of same precedence and in anticipation of ex-facto approval, the power was used during PLHR, but the Respondents refused approval in writing vide letter dated 19.12.2013, which is after thought and thus is illegal. On the basis of ex-facto approvals granted earlier, the petitioner was well within his jurisdiction to use power during the disputed period and thus no PLV charges can be levied.
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> The Respondents did not agree to the version of Petitioner and claimed that the PLE is being granted to the Petitioner on day-to-day basis and surely information was being conveyed to him through telephonic or fax massage on the day of application or before the user of power during PLHR and confirmed in writing thereafter. No ex-facto approval has ever been granted. In case, no information was received by the Petitioner for grant of PLE during the disputed period, it was his responsibility to verify and confirm

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the grant of PLE before use of power during PLHR period. Mere submission of request does not entitle the petitioner to put his load on the system during restriction hours. The letter dated 19.12.2013 was not rejection of their requests for PLE, but was written in response to Petitioner's letter dated 09.12.2013 intimating that due to non-availability of power, PLE for 19.07.2013 & 28.07.2013 to 05.08.2013 could not be granted. Evidently, the permission was not granted due to system constraints for which the consumer was telephonically informed on the dame day and no confirmation letter was required to be sent for rejection. When asked to submit documentary proof to prove its version, the Respondents sought week's time which was granted. Thereafter, the respondents vide their letter dated 9.3.2016 submitted the copy of Memo No. 546 dated 8.3.2016 of CE / PP&R addressed to S.E./DS Circle, PSPCL, Bathinda alongwith copies of Memo No. 8227 dated 16.7.2013, 8295 dated 18.7.2013 No. 22154 dated 18.11.2013 and No. 8896 dated 08.08.2013 of CE/PP&R, which shows that through these letters of CE/ PP&R has granted approval of enhancement of load during Peak Load Hours on the same day thorough fax and confirmation letters are sent thereafter.

I have gone through all the documents put on record and observed that in none of letter issued by CE/ PP&R, ex-facto approval has been conveyed; most of the letters are issued on the same day or next day but in continuation of telephonic/ fax massages which shows that PLE approvals are being conveyed prior to use of load, one way or the other. The onus was on the Petitioner to confirm the grant of PLE from the Competent Authority before use of load during PLHR period and he was not authorized to put load straightway without getting confirmation. I have also observed that PR circular No. 06/2010 dated 31.5.2010, provides that the consumers who are running their TG/ DG sets with synchronization of PSPCL system will continue to give PLE on day to day basis in case of breakdown of their TG/ DG sets subject to availability of power on Real Time Basis which proves that PLE is to be granted only in case the sufficient power supply is available to meet with the demand and the consumer have no legitimate right to get PLE exemption, as per their requirement, on submission of request.

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As per above discussions, it is held that mere submission of request for grant of PLE does not make the Petitioner entitled to run/ put his load on system during Peak Load Restriction Hours till grant of exemption from the Competent Authority and any excess load beyond exemption limit put on system during Restriction Hours is violation and chargeable in accordance with applicable Rules.

ISSUE NO.2: Whether the data downloaded on 18.09.2013 by MMTS from energy meter installed on incomer-2 (132 KV circuit no.:1) which was declared defective on 08.08.2012, is valid?

The petitioner argued that the MMTS declared the meter bearing S. No. 04180274 of L&T Make, installed at consumer's end on 132 KV circuit No. I as defective on dated 8.8.2012, and issued instructions for its replacement wherein it was also pointed out that there is low voltage and internal defect in software/hardware of the meter and thus the DDL was not taken. Thereafter, the Respondents started taking readings of energy meter installed at sending end for monthly bills. All of sudden, the MMTS downloaded data of this meter on 18.9.2013 and intimated the Peak Load Violations treating the working of this meter as correct. A defective meter cannot be considered as correct until and unless the meter is rechecked by a Competent Authority and its results are found within the permissible limits. Moreover, this meter was replaced vide MCO dated 31.01.2014 on the basis of earlier report dated 08.08.2012 wherein this meter software/ hardware was declared as defective. In case, this meter was correct then there was no necessity to replace it in January 2014. The replacement of meter after the date of downloading of data shows that the data has been downloaded from a defective meter which cannot be considered as reliable and thus no violation charges can be demanded on the basis of this unreliable data.

The Respondents argued that this meter was never declared defective in MMTS report dated 08.08.2012 wherein the data from the circuit no: 1 was not downloaded due to low voltage. The MMTS had checked the parameters with multimeter which were found within the permissible limit. Denying the contention of Petitioner, he aruged that the data downloaded on 18.09.2013 was

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from a correct meter and is valid for all intents and purposes. The violation found as per data are correct and actual as is proved from the data downloaded from the meter installed on incomer-1 (Circuit no:2) during the same period. The running of factory during restriction hours is duly proved from the reading of both meters. Moreover, the readings of the disputed meter are matching with the readings of sending end meter which also proves that the working of the disputed meter was correct during that period. The meter was replaced, not due to defect in the meter but on the basis of report of MMTS dated 08.08.2012. The calculation of PLVs is correct and the violation charges are valid and recoverable.

I have perused the MMTS report dated 8.8.2012 and observed that no DDL was taken on that date due to low voltage and defective software/ Hardware of energy meter. I have also found from the report that the meter was declared defective and instructed to replace of meter and thereafter readings from the meter installed at sending end were started to be taken for billing purposes but the data was never downloaded from this meter to check the other parameters.

Suddenly MMTS took meter reading and DDL of this meter on 18.09.2013. On the basis of this DDL, the Peak Load Violations (PLVs) were found committed and PLV charges were imposed on the petitioner. Thereafter, the respondents replaced the meter as per MCO of dated 31.1.2014 on the report of MMTS dated 8.8.2012 which also proves the version of the Petitioner that the meter was declared defective on 08.08.2012. The respondents could not justify the replacement of the meter on 31.01.2014 after the MMTS had taken DDL and monthly readings from this meter on 18.9.2013. Moreover, taking readings from the meter installed at sending end for a period of around one year also proves that the meter's working was not within the stipulated norms.

As per above discussions, I find merit in the arguments of the Petitioner that the data downloaded from the defective meter installed at income-II (circuit no: 1) at NFL end is not legally valid and cannot be counted for levy of any kind charges.

It is accordingly held that the DDL dated 18.09.2013 taken from the meter installed on income-II (132 KV Circuit No.I) at N.F.L. end is not valid and thus is quashed. Thus levy of PLV

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charges, on the basis of this DDL, is neither justified nor recoverable so far as this circuit is concerned. Deciding the issue no.1, it is held that the PLV charges levied on the basis of DDL dated 18.09.2013 taken from the meter installed at income-1 (Circuit No.2) at NFL end is justified and recoverable, as per applicable rules.

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 EXIM-114.

The appeal is partly allowed."

After perusal of the aforesaid findings, I do not find any error in it for the purpose of interference by this Court and hence, the present petition is hereby dismissed being denuded of any merit, though without any order as to costs.

February 06, 2018 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No