

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

**CWP No. 7613 of 2016
Date of Decision: 24.1.2018**

M/s Wahid Sandhar Sugars Ltd.Petitioner

v.

**Punjab State Power Corporation Limited and others
.....Respondents**

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Rahul Sharma, Advocate, for the petitioner
Mr. Vinod S. Bhardwaj, Advocate, for the respondents

RAKESH KUMAR JAIN, J (Oral) :

1. The petitioner is aggrieved against the minutes dated 28.1.2016 recorded by the Zonal Level Refund Committee (for short 'the Committee'), communicated to the petitioner by the Punjab State Power Corporation Limited (for short 'the Corporation'), by which the prayer made by the petitioner to the Corporation for grant of interest @ 18% per annum on the amount of Rs.1,15,61,389/-, which has been illegally claimed and recovered from the petitioner by the Corporation, was declined.

2. The petitioner is running a sugar mill. It has an electricity connection provided by the Corporation. On 9.12.1992, the premises of the petitioner was inspected by the flying squad of the Corporation and thereafter issued notice dated 10.12.1992, asking the petitioner to deposit Rs.49,04,127/- on account of 'excess load' found attached to the turbine generator set (TGS), which was installed a day prior to the inspection. The

said notice was challenged by the petitioner by filing a writ petition bearing CWP No. 370 of 1993 titled **M/s Oswal Agro Mills Ltd. v. Punjab State Electricity Board**. The notice was set aside on 30.3.1993 by a Division Bench of this Court and liberty was granted to the Corporation to raise fresh demand after following due procedure. The Corporation served another similar demand notice dated 1.6.1993 to the petitioner to pay the same amount again. Again the petitioner challenged the said demand notice by filing a writ petition bearing CWP No. 7299 of 1993 with the same title. The said writ petition was partly allowed on 1.4.2009 as the demand raised by the Corporation from Rs.49,04,127/- was reduced to 26,77,797/-. Thereafter, the Corporation served another notice to the petitioner demanding Rs.1,10,64,233/-, in which the Corporation added a sum of Rs.81,18,656/- towards interest of 15 years 114 days in terms of (Electricity Supply Regulation) ESR 123.8.4 @ 18% p.a. The petitioner challenged the said notice by way of a writ petition bearing CWP No. 9369 of 2009 titled **M/s Wahid Sandhar Sugars Ltd. v. Punjab State Electricity Board and others**, in which the Corporation filed the reply to justify the demand of interest @ 18% p.a. on the basis of aforesaid ESR 123.8.4 and supported it by making the following observations :

“That the contents of these sub paras are wrong and denied. The respondent Board is entitled to interest and surcharge on the delayed payment as per the Rules and Regulations of the Board. It is wrong and denied that interest and surcharge could have been levied only if so directed by the Hon'ble Court. The petitioner has illegally denied respondent Board an amount of more than Rs.26 lacs for more than 16 years and in case the petitioner had deposited the same with the Board and the same was directed to be refunded, the petitioner company would have demanded that the Board is duty bound to pay

interest to them. As already submitted above, despite there being no stay of notice dated 1.6.1993, the petitioners neither paid the amount nor deposited the same, neither before the respondent Board nor before the Hon'ble Court for the last almost 16 years. The respondent Board is thus entitled to interest thereupon. As per the respondent Board, Regulation 121.3.1, the consumer is liable to make the payment along with late payment surcharge @ 10% on the total of the bill up to one year and interest @ 18% p.a. after the expiry of one year from the due date.”

3. Not only that, Advocate General, Punjab, while defending the Corporation, took the same stand, which has been noticed by this Court in the order passed on 10.2.2010. The relevant portion of the said agitation of the Advocate General, Punjab is as under :

“The justice of the demand by the electricity is sought to be explained by the learned Advocate General appearing on behalf of the respondents by the fact that the very same Regulations in para 123.8.4 states that if any additional amount had been collected by the Board and if the disputed amount is ultimately directed too be refunded, the Electricity Board itself would become liable to refund @18% interest and if a consumer could have the benefit of interest @ 18% for excess amount claimed, there is no unjustness in the demand for even recovering 18% interest from a consumer for an amount that could not immediately be collected but which had stood stayed on account of pendency of litigation before the Court.”

4. Since the learned Single Judge, while allowing CWP No. 9369 of 2009, reduced the rate of interest from 18% p.a. to 9% p.a., vide order dated 10.2.2010, therefore, the Corporation has filed an appeal, bearing LPA No. 474 of 2010 titled '**Punjab State Electricity Board and another v. M/s Wahid Sandhar Sugars Ltd.**', which was allowed by the Division Bench of this Court with the following observations :

“Once specific rates with regard to levy of surcharge and interest

have been provided in Regulation 121.3.1 of the Sales Regulations, which have admittedly statutory force, then we see no justification on the reliance being placed by the learned Single Judge on the subsequent circulars which may have prescribed lower rate of interest i.e. at the rate of 9%. Those circulars would not govern the issue which has arisen in 1992. Mr. Rahul Sharma, learned counsel for the petitioner-appellant has not been able to controvert the fact that at the relevant point of time the rates as prescribed by Regulation 121.3.1 of the Sales Regulations were in vogue. Moreover, it is settled proposition of law that the executive instructions/circulars cannot override the statutory rules and regulations. Accordingly, we see no illegality in the demand raised by the appellant-Board vide notice/order dated 12.6.2009 (P-5).

As a sequel to the above discussion, the instant appeal is allowed. The notice/order dated 12.6.2009 (P-2) passed by the appellant-Board is upheld and the impugned judgment dated 10.2.2010 rendered by the learned Single Judge is modified to the extent that the appellant-Board is within its rights to claim surcharge @ 10% p.a. and interest @ 18% p.a. throughout the period of default as prescribed by the prevalent Regulation 121.3.1 of the Sales Regulations. The appeal stands disposed of.”

5. Since the Division Bench has held that the rate of interest is statutory and it cannot be reduced, therefore, the petitioner has to deposit the amount so demanded by the Corporation on 3 dates i.e. on 9.12.2009 Rs.26,77,797/-, on 29.3.2010 Rs.26,84,473/- and on 14.12.2010 Rs.61,99,119/-, totaling to Rs.1,15,61,389/-.

6. It is pertinent to mention here that though the demand raised by the Corporation was reduced from Rs.49,04,127/- to Rs.26,77,797/-, yet the petitioner was not satisfied and had filed SLP (Civil) before the Hon'ble Supreme Court, which was converted into Civil Appeals No. 662-663 of 2013. The said Civil Appeals were allowed by the Hon'ble Supreme Court

on 23.1.2013 with the following order :-

“In the result, these appeals are allowed. The impugned orders of the learned Single Judge and the Division Bench of the High Court are set aside and the demand raised against the appellant in the demand notice dated 1.6.1993 and the demand notice dated 12.6.2009 for unauthorized load of the TG Set is quashed. The parties shall bear their own costs.”

7. Since the demand itself was set aside by the Hon'ble Supreme Court, therefore, recovery made by the Corporation from the petitioner of Rs.1,15,61,389/-, was totally unjustified. Therefore, the petitioner, who had already received the amount after a period of one year of the deposit of the amount, made an application on 12.10.2014 to the Chief Engineer North, Punjab State Power Corporation Limited, Jalandhar, for grant of interest on the amount of Rs.1,15,61,389/-. The said application was not straight away decided by the Corporation, rather it was put up before the Committee (Zonal Level Refund Committee). The said Committee, after hearing the petitioner, decided to reject the demand of interest with the following observations :

“Committee observed that the order of the Apex Court is silent regarding payment of interest to the consumer; moreover, Finance Department of PSPCL vide letter No. 167 dated 5.5.2015 has also shown its inability to agree to the proposal regarding payment of interest to the consumer.

It is also worth mentioning here that the instructions under which interest has been claimed by the consumer stands repealed by the Electricity Supply Code and Related Matters Regulations, 2014 and there is no provision in the Electricity Supply Code and Related Matters Regulations, 2014 for payment of interest.”

8. Learned counsel for the petitioner has submitted that though the demand raised by the Corporation was reduced from Rs.49,04,127/- to Rs.26,77,797/-, but the petitioner had to pay an amount of Rs.1,15,61,389/-

only because of the component of interest, which was calculated for a period of 15 years 114 days as per ESR 123.8.4. @ 18% p.a. It is submitted that when the petitioner had agitated about the enormous rate of interest being charged from it by the Corporation before this Court and the learned Single Judge had allowed its CWP No. 9369 of 2010 on 10.2.2010 by reducing the rate of interest from 18% p.a. to 9% p.a., the Corporation had gone in appeal by LPA No. 474 of 2010 and the Division Bench had held that rate of interest is statutory one and cannot be reduced and maintained the same as 18% p.a. Thus, the rate of interest being charged by the Corporation from the petitioner was settled. However, as good luck would have it, the basic demand raised by the Corporation of Rs. 26,77,797/-was set aside and the petitioner became entitled to restoration of the amount already paid and has, thus, made the demand of interest @ 18% p.a. i.e. same rate on which the Corporation had charged from it. In this regard, it would be relevant to refer to Regulation 123.8.4 of the ASC, which is as under :

“123.8.4 Litigation Cases :

123.8.4 – It has been observed that the consumers manage to obtain stay from the Court against payment of outstanding amounts in full which often includes undisputed current energy bills/arrears. Therefore, while contesting such cases, the undisputed amount should be segregated and brought to the notice of the Court on the first opportunity and all out efforts should be made to ensure that the courts do not grant stay for payment of undisputed charges. Courts should also be requested that the disposal of the case may take some time. Accordingly, the consumer should be directed to pay the disputed amount provisionally in 2 or 3 installments. The Court may also be informed that as per the rules of the Board, the consumer will be entitled to get 18% interest if the total or a part of the amount deposited by him is decided to be refunded on the conclusion of the

case.”

9. At the threshold, learned counsel appearing for the Corporation has raised the issue of jurisdiction. He has submitted that the order passed by the Committee and recorded in the minutes of the meeting conveyed to the petitioner is liable to be challenged before the Ombudsman (A statutory authority created under the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2005), who is provided the power to hear such type of disputes. It is further submitted that once a statutory authority under the Regulations is provided to look into the grievances of the consumer, the petitioner cannot be allowed to involve the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

10. In reply, learned counsel for the petitioner has submitted that the petitioner has not made the complaint though the petitioner is a consumer of the electricity which is being provided by the respondent Corporation as a licensee. He has further submitted that there are two types of complaints, which are being decided by the authorities created under the statute i.e. Monetary and Non-monetary. According to him, the monetary complaints upto Rs. 50,000/- are to be decided by the Consumer Grievance Redressal Forum, from Rs.50,000/- to Rs. 2 lac by the Circle Dispute Settlement Committee and more than Rs.2 lakhs by the Zonal Dispute Settlement Committee. If the consumer is not satisfied with the order of any aforesaid Committee, then he can go to the Consumer Grievances Redressal Forum and if still grievance is left, then he can go to the Ombudsman, Electricity. In so far as non-monetary complaints are concerned, it is submitted that those are to be dealt with by Assistant Engineer/AEE

that the petitioner is not raising any monetary complaint in regard to consumption charges of electricity rather the dispute is that respondent Corporation have to pay to him the way they charged him. It is submitted that basically the issue is of equity because the Corporation cannot have double standards. Firstly, regarding the rate of charging the interest from consumer and secondly, for not paying the interest, if the amount recovered has been held to be illegal. He has further referred to a decision of the Supreme Court rendered in the case of “**The Executive Engineer and another v. M/s Sri Seetaram Rice Mill**, 2012 AIR SC (Civil) 489', in which the Supreme Court has held as under :

“53. It is a settled canon of law that the High Court would not normally interfere in exercise of its jurisdiction under Article 226 of the Constitution of India where statutory alternative remedy is available. It is equally settled that this canon of law is not free of exceptions. The courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the Civil Courts. The High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy. This jurisdiction, the High Court would exercise with some circumspection in exceptional cases, particularly, where the cases involve a pure question of law or vires of an Act are challenged. This class of cases we are mentioning by way of illustration and should not be understood to be an exhaustive exposition of law which, in our opinion, is neither practical nor possible to state with precision. The availability of alternative statutory or other remedy by itself may not operate as an absolute bar for exercise of jurisdiction by the Courts. It will normally depend upon the facts and circumstances of a given case. The further question that would inevitably come up for consideration before the Court even in such cases would be as to what extent the jurisdiction has to be exercised.”

Besides the aforesaid, learned counsel for the Corporation has submitted that the same rate of interest cannot be granted to the petitioner because the ESR 123.8.4 has been repealed by Electricity Code and Related Matter Regulations, 2014. It is further submitted that the Supreme Court, while setting aside the demand raised by the Corporation did not pass any order regarding the grant of interest to the petitioner on the amount deposited by it.

11. In reply, learned counsel for the petitioner has submitted that the same argument was raised by the petitioner when the appeal bearing LPA No. 474 of 2010 was filed that the component of interest charged by the Corporation by Regulation 121.3.1 has been further reduced by subsequent circulars from 18% to 9% p.a.

12. But this argument was not accepted by the Division Bench of this Court while allowing the appeal of the Corporation and held that “once the specific rates with regard to levy of surcharge and interest have been provided under Regulation 121.3.1, which is admittedly statutory, then we see no justification on the subsequent circulars which may have prescribed lower rate of interest i.e. @ 9%. Those circulars would not govern the issue which has arisen in 1992.”

13. Therefore, it is submitted that Electricity Supply Code 2014, repealing the Regulations ESR 123.8.4, would have no effect as the issue involved would be governed by 123.8.4, as per which the rate of interest was charged @ 18% p.a.

14. Other argument that the Hon'ble Supreme Court had not granted any interest, it is submitted by learned counsel for the petitioner that

the petitioner had simply prayed to set aside the demand raised by the Corporation vide demand notice dated 12.6.2009 for un-authorised load of TG Set, meaning thereby the Hon'ble Supreme Court had hit the root of the issue involved as the demand was held to be totally illegal. Therefore, the Court has now to see the consequent result of the proceedings, which have taken place pursuant to the demand raised by the Corporation, under which on the amount of Rs. 26,77,797/- the petitioner had to pay a huge amount of interest @ 18% p.a. in view of ESR 123.8.4.

15. I have heard learned counsel for the parties and after perusal of the record, am of the considered opinion that this petition deserves to succeed. The objection raised by learned counsel for the Corporation that the dispute should be taken to the Ombudsmen Electricity by the petitioner is not acceptable because the petitioner had not filed any complaint as a consumer for an overcharge by the Corporation, of the electricity consumed, rather it has claimed the interest on the amount which had been illegally recovered by the Corporation from it. Moreover, there is no decision by the Committee, which could have been taken by the petitioner before the Redressal Forum rather the Corporation had referred the case of the petitioner to the Chief Engineer North, only with regard to interest @ 18% p.a., which was illegally recovered. It was the Corporation who had referred the application of the petitioner to a Committee constituted by it called Zonal Level Refund Committee. The said Committee decided on the basis of two facts, which have already mentioned herein above i.e. decision of the Hon'ble Supreme Court is silent about payment of interest and the ESR on the basis of which 18% p.a. interest was charged is repealed by the

Electricity Supply Code, 2014. Thus, in my considered opinion, the present matter was not to be taken to the Court of Ombudsman Electricity Punjab and in this regard I am fortified with the observations of the Hon'ble Supreme Court in the case of **The Executive Engineer** (supra), wherein the Supreme Court has stated that where the case involves a pure question of law or vires of an Act are challenged, the High Court can interfere despite existence of a statutory remedy.

16. In this case, there is no remedy with the petitioner, if the amount of interest is denied to him on parity or equity, therefore, the petitioner has rightly involved the jurisdiction of this Court under Article 14 of the Constitution. In so far as the merit of the case is concerned, I do not agree with the contention of the Corporation that the amount of interest should have been also awarded by the Hon'ble Supreme Court. The petitioner had basically challenged the illegality of the demand raised by the Corporation vide demand notice dated 1.6.1993 and subsequent notice dated 12.6.2009. The Supreme Court came to a conclusion that both the demand notices were per se illegal. The Supreme Court, thus, did not look into the issue of grant of interest etc. otherwise the petitioner is eligible on the same analogy on which it had to pay to the Corporation, when it was calculated on the reduced demand of Rs.26,77,797/-

17. In so far as other argument is concerned that the ESR 123.8.4, under which the rate of interest has been charged has been repealed by the Regulation 2014, the finding recorded against the petitioner by a Division Bench, referred to hereinabove, that the Regulations which were invoked at that time has to be seen and the subsequent circulars cannot be looked into

for the rate of interest. More over, it is a case where the Court feels that Corporation is not doing justice with the petitioner as it is trying to avoid the payment of interest. The Advocate General who had appeared before the learned Single Bench of this Court in CWP No. 9369 of 2009 had categorically defended the Corporation by saying that the amount of interest @ 18% p.a. has been charged and would be refunded as such at the same rate. In this regard, learned counsel for the petitioner relied upon a decision of this Court in **“Shamsher v. Anurag Aggarwal and another, 2005 (4) RCR (Civil) 381”**, in which the following observation has been made :

“16. The stand of the respondents that no statement was made cannot be accepted for the reason that the Courts cannot go behind the statements made by the Advocate General or any other State counsel in the Court. Those statements have to be accepted as correct on the face of it because if those statements are doubted then the machinery of justice would crumble and fail. Therefore, I do not find any substance in the stand taken by the respondents.

17. It is equally proved that statements were made on behalf of respondent No.1 Sh. Anurag Aggarwal and respondent No.2 Sh. Chand Ram, who are the Deputy Commissioner and Block Development and Panchayat Officer, Guhla. It is well settled that the statement made by the Advocate General or any other category of State counsel has to be considered as truthful because any other view would result into disastrous result.”

18. Thus, looking from any angle, I am of the considered opinion that the Corporation is liable to pay to the petitioner the interest @ 18% p.a. on the amount which had been recovered from it, which shall be calculated from the date it was recovered till the date of its realization. In order to ensure the payment of interest to the petitioner, it is further directed that the same shall be paid to the petitioner by the Corporation within two months

from the date of receipt of certified copy of this order.

(RAKESH KUMAR JAIN)
JUDGE

24.1.2018
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No