

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23818-2011 (O&M)
Date of Decision:-04.02.2019.

M/s JCT Limited

.....Petitioner

Versus

Punjab State Power Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Anand Chhibbar, Senior Advocate with
Ms. Ateevraj Sandhu, Advocate for the petitioner.

Mr. A.A. Pathak, Advocate for respondent Nos.1, 3 and 4.

None for respondent No.2.

ARUN MONGA, J. (Oral)

The present writ petition has been filed for issuance of a writ in the nature of certiorari to quash the impugned order dated 14.07.2011 (Annexure P-11). Vide the said impugned order, respondent No.2 has declined the claim of the petitioner to grant interest on the refund of surcharge which was paid to the petitioner as an out of court settlement.

2.) In order to settle the dispute amicably, the respondent-Punjab State Power Corporation Limited (PSPCL) vide its letter dated 05.02.2008 (Annexure P-4) requested the petitioner to seek an undertaking that if it does not claim any interest or damages, the case of refund of the voltage surcharge would be processed further. The petitioner promptly accepted the said offer vide its letter dated 05.02.2008 (Annexure P-5) and conveyed that it was agreeable to not claim any interest or damages from the PSEB (predecessor-in-interest of PSPCL). In view of the said undertaking, the principal amount towards the refund of the

thereafter, filed a writ petition before this Court for issuance of a *mandamus* to direct the respondent-PSPCL to pay interest on the amount illegally charged from it. The same was dismissed as withdrawn by a Division Bench order dated 12.09.2008 (Annexure P-7) with liberty to seek alternative remedy. The petitioner was then advised to pursue its remedy before the competent authority of the respondent No.1-PSPCL, who rejected the claim of petitioner, eventually leading to the Ombudsman proceedings. Vide impugned order dated 14.07.2011 the Ombudsman dismissed the claim of the petitioner and declined to grant any interest to the petitioner on the amount already refunded.

3.) I have gone through the pleadings as also the record appended thereto and having heard the rival contentions of learned Senior counsel for the petitioner as also the learned counsel for the respondents-PSPCL, I am of the opinion that there are no grounds to interfere with the detailed reasons given in the impugned order passed by the Ombudsman. I am in agreement with the finding as rendered in the impugned order that the petitioner and respondents having once mutually opted to give quietus to the matter, agreed to an out of court settlement, the petitioner then ought not to have pursued its case for grant of interest.

4.) The petitioner clearly had the option to keep its legal channel open seeking refund along with the interest, for which, at the relevant time, it had preferred a writ petition bearing CWP No.8796 of 2000 before this Court, wherein, it had claimed not only the refund towards the voltage surcharge (principal amount) but also the interest on the same. However, in view of the PSPCL having agreed to refund the surcharge, albeit, on the undertaking to be given, the said writ petition was dismissed as withdrawn.

5.) Having accepted the offer of the respondent-PSPCL, it was not open to the petitioner to re-agitate the same cause of action. Accordingly, a subsequent writ petition bearing CWP No.16261 of 2008 filed before this Court was dismissed

remedy. It is not open to once again seek recourse to the writ jurisdiction of this Court under extra ordinary writ jurisdiction. In any case, it was/is open to the petitioner to seek recourse to general remedy available under the law for refund of its interest. This Court is not inclined to interfere under Article 226 of the Constitution of India for grant of interest in the present case.

6.) Learned Senior counsel for the petitioner places reliance on a judgment rendered by the Supreme Court in the case titled as **Aditya Mass Communications (P) Ltd. Vs. A.P. SRTC** reported in **(2003) 11 SCC 17**, wherein it has been held that if a court comes to the conclusion on a given set of facts that a party has been wrongly denied the use of its own money, it is the duty of the court to see that the said party is appropriately compensated. I am afraid, the said judgment is not applicable to the present case, as already observed, that present case is an out of court settlement preferred between the two parties herein. The same arose owing to installation of 132 KV sub-station by PSPCL on the asking of the petitioner, which was a commercial requirement for captive usage of the petitioner alone. Being completely commercial transaction, it was up to the petitioner to accept or reject the offer given by the respondent-PSPCL. Having once led the Corporation to refund the money on mutually agreed terms, petitioner cannot re-agitate the issue.

7.) Petition stands dismissed. No order as to costs.

(ARUN MONGA)
JUDGE

February 04, 2019.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.