

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.26073 of 2016 (O & M)

Date of Decision: *October 16th, 2020*

M/s Meera Foods

.... PETITIONER

VERSUS

Punjab State Power Corporation Ltd. & another

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

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PRESENT: - Mr. Ankit Goel, Advocate, for the petitioner.

Mr. Ashok Kumar Sharma, Advocate, for respondent
No.1.

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Sant Parkash, J

1. By virtue of the instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought a writ in the nature of certiorari, quashing order dated 22.11.2016/30.11.2016 passed by the Ombudsman, Electricity, Punjab in Appeal No.62 of 2016 thereby restoring the Demand Surcharge levied by respondent No.1, which had been reduced by respondent No.2, in its order dated 31.03.2014 despite the identical action of the Ombudsman having been set aside by this Court vide judgment dated 15.09.2016 passed in Civil Writ Petition No.16487 of 2014.

Further prayer made in the petition is for quashing Order dated 31.03.2014 passed by the Forum for Redressal of Grievances of Consumers, Patiala, in CG-19-2014 (Annexure P-5), whereby the levy of Demand Surcharge on the petitioner to the tune of ₹ 7,32,239/- has been sustained in part and also for quashing the entire Demand Surcharge of

2010 to June 2012. The petitioner has also sought for issuance of a writ in the nature of Mandamus to refund the amount deposited on account of the Demand Surcharge alongwith interest @ 18% per annum.

The petitioner is a proprietorship firm engaged in manufacturing of fruit and vegetables and electricity connection thereof bears Account No.KK1/04, sanctioned for 141.62 KW and a Contract Demand (CD) of 140 KVA. The petitioner has been consuming electricity from respondent No.1 at the aforesaid load since 07.08.2009 and the reading from the meter remained well within the Contract Demand till April 2010.

However, on 05.05.2010, when the electricity meter was checked, it emerged that Maximum Demand Indicator (MDI) of the meter had jumped to 228.6 KVA against the sanctioned Contract Demand of 140 KVA and thus, a demand of surcharge amounting to ₹ 66,450/- was levied upon the petitioner. After depositing the said amount, petitioner applied for meter testing, however, no action was taken in terms of Regulation 21.4 of the Electricity Supply Code, wherein it is stipulated that such meter testing should be got done within 7 days by the licensee. Due to anomalous functioning of the meter, it recorded false MDIs as per readings taken on 01.01.2011, 05.04.2011 and 04.06.2011. The petitioner approached the respondents repeatedly for meter testing. Besides, it deposited ₹ 4,07,209/- under protest, on account of Demand Surcharge which was levied.

In February 2012, once again the petitioner approached the respondents to conduct meter testing which was due to the last more than a year and a half, and deposited meter testing fee on 05.03.2012. Thereafter, on 18.04.2012, meter was tested by Sr. Xen, MMTS, Bathinda, who checked the meter on the spot, inspected the connected load, downloaded the date from the meter on 04.04.2012 and recommended change of meter forthwith

vide letter dated 18.04.2012. The meter was got replaced on 22.06.2012. Thereafter, at no occasion, MDI had exceeded the Contract Demand of 140 KVA but still a Demand Surcharge was unnecessarily swelled up to ₹ 7,32,239/- by respondent No.1 and the petitioner was compelled to approached the Consumer Complaint Handling Procedure, prescribed by the Punjab State Electricity Regulatory Commission.

The Zonal Disputes Settlement Committee, Bathinda, vide its order dated 26.12.2013 upheld the charges levied against it. Aggrieved by the said order, petitioner approached the Consumer Grievance Redressal Forum under the Punjab State Electricity Regulatory Commission (Forum & Ombudsman) Regulations, 2005. Vide order dated 31.03.2014, it was held by the Forum that Demand Surcharge for the period May 2010 to June 2012 be recalculated by restricting the maximum recorded demand upto 164.740 KVA. Additionally, the Forum also ordered disciplinary action against the officials of respondent No.1.

Though, petitioner complied with Order dated 31.03.2014 passed by the Forum, but simultaneously, he challenged it before the Ombudsman, Punjab on 05.05.2014. Respondent No.1 also recalculated the amount and refunded the balance to the petitioner alongwith interest, totaling ₹ 6,33,484/-, vide letter dated 08.05.2014.

Even a writ petition viz. CWP no.16487 of 2014 was preferred by the petitioner, which was allowed by a Coordinate Bench of this Court, vide judgment dated 15.09.2016 (Annexure P-10), setting aside the order passed by the Ombudsman and remanding the matter back to him to decide the same afresh in accordance with law, after granting opportunity of hearing to both the parties. Despite the said judgment, respondent No.2, vide

the order of Zonal Disputes Settlement Committee, by taking away the partial relief granted by the Forum.

Learned counsel for the petitioner has contended that in the absence of any appeal by respondent No.1 against order dated 31.03.2014 passed by the Consumer Grievance Redressal Forum, Ombudsman could not have granted any relief to respondent No.1 in the appeal filed by the petitioner. Respondent No.1 itself complied with order dated 31.03.2014 by refunding the amounts on 08.04.2014, which itself shows that respondent never intended to challenge the Forum's order. The reason for remanding the matter to the Ombudsman, vide order dated 15.09.2016 passed by this Court, was that there had been no justification for the Ombudsman to take away the limited relief granted to the petitioner in the absence of any appeal filed by respondent No.1. Thus, impugned order dated 22.11.2016/30.11.2016 passed by the Ombudsman is liable to be set aside.

Learned counsel for respondent No.1 has vehemently argued that petitioner – consumer is having sanctioned load of 141 KW but to the contrary, he was found using 177.097 KW load. Thus, as per rules, surcharge for use of excess load was levied to the tune of ₹ 7,32,229/-. Though, petitioner had deposited ₹ 4,07,209/- on 04.06.2011, but an amount of ₹ 10,78,177/- (including interest on unpaid amount of surcharge) is still pending towards the petitioner.

The meter was replaced on 22.06.2012. The old meter was sent to ME lab on 16.11.2012, which was checked in the presence of representative of petitioner and as per report accuracy of the meter was found within limit. As per direction of Consumer Grievance Redressal Forum, load of petitioner was checked by AEE, PSPCL, Khui Khera on

on the spot against the sanctioned load of 141 KW. The demand of surcharge was rightly calculated by the answering respondent. The Zonal Dispute Settlement Committee, Bathinda has rightly upheld the charges due to the petitioner.

Learned counsel has further contended that petitioner approached Consumer Grievance Redressal Forum, who vide its order dated 31.03.2014 held that the demand surcharge for the period from May 2010 to June 2012 be re-calculated by restricting the maximum recorded demand upto 164.740 KVA and to refund the demand surcharge levied for the MDI above 164.740 KVA. The Ombudsman, vide its order dated 22.11.2016 gave finding that *Forum has not properly analyzed the demand vis-à-vis consumption of petitioner on the affected dates and the increased maximum demand is only due to the reason of actual running of load at that times which stands proved from DDL report dated 04.04.2012 and accordingly, the demand surcharge levied on the petitioner for the excess demand recorded over and above the sanctioned demand is correct and justified.*

Learned counsel for the parties were also directed vide order dated 06.10.2020 to submit their written submissions which they have placed on the record. Those written submissions are on the same line as learned counsel have argued in the virtual court.

I have heard learned counsel for the parties and perused the record but find force in the submissions made by learned counsel for the petitioner.

Admittedly, in compliance of order dated 31.03.2014 passed by the Forum, respondent No.1 had refunded the amount on 08.05.2014, without subjecting it to any higher Forum. This itself shows that respondent

who presented a representation before the Ombudsman. In the impugned order, the Ombudsman has restored earlier order dated 31.03.2014 passed by Consumer Redressal Forum, Patiala, despite the fact that there was no cross appeal filed by the licensee. Now, the question before this Court is with regard to the power and competence of the Ombudsman with regard to passing of the impugned order when there was no representation/appeal before him filed by respondent No.1.

Regulation 19 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulation, 2005 restricts the right of filing representation/appeal against the order of Forum to the complainant, who can only be the consumer such as petitioner.

This provision of law nowhere empowers or stipulates that the licensee can also approach the Forum of Ombudsman by way of filing the appeal or representation. Regulation No.9 has the binding effect upon the consumer and licensee to the orders of the Forum subject to right of representation before the Ombudsman under Regulation 18.

In the light of aforesaid circumstances, it has to be seen whether the order passed by the Ombudsman on the basis of the averments in the written reply filed on behalf of respondent No.1 does confirm to the statutory enactment and the guidelines. As discussed earlier, there is no provision for filing of appeal/representation by the licensee/ respondent No.1 and in the absence of any such statutory provision, the granting of relief to the licensee/ respondent No.1, in a case where representation has been made by the petitioner, is totally unsustainable in the eyes of law. If there was no provision for licensee to invoke the jurisdiction of the Ombudsman, licensee/ respondent No.1 was well within its right to approach this Court under

Learned Ombudsman while dealing with the submissions of non-filing of representation/appeal by the licensee/ respondent No.1, was mis-guided by the prayer made by respondent No.1 in Appeal No.14 of 2014 which is reproduced as below:-

“It is requested that keeping in view all the above said reasons and circumstances, the instant appeal may kindly be dismissed in the interest of justice by way of setting aside even the orders of CGRF, Patiala.”

Learned Ombudsman, considering it to be an appeal/ cross-objection, accepted the prayer as reproduced above. This approach of the Ombudsman was totally against the canons of justice and settled principles of law. From the fact of it, it can be gathered that the aforesaid prayer was made in routine and had the licensee/ respondent No.1 been sincere in taking recourse to the remedy, it would not have implemented the order by refunding the excess amount to the present petitioner. This prayer clause cannot by *ipso facto* take the place of appeal, representation or cross appeal and this Court has no hesitation in concluding that learned Ombudsman exceeded the jurisdiction vested in him when there was no statutory provision for filing the appeal/ representation by respondent No.1.

In the light of aforesaid discussion, impugned order dated 22.11.2016/30.11.2016 passed by the Ombudsman is set aside and order dated 31.03.2014 stands affirmed. Consequently, the petition is allowed.

CM Nos.8926 & 10164 of 2020

These are the applications for restraining the contesting respondent from implementing order dated 22.11.2016/30.11.2016 impugned in the writ petition, as also to stay the contesting respondent from adopting coercive measures for realizing the demand in question, including by directing suspension of letter dated 28.09.2020.

Since the main writ petition has already been allowed, vide order of even date, while setting aside the impugned order, the instant applications have been rendered infructuous and are dismissed as such.

October 16th, 2020
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(Sant Parkash)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No