

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

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**CWP-25861-2022 (O&M).
Date of decision: November 14, 2022.**

Punjab State Power Corporation Limited

...Petitioner

Versus

M/s Hero Cycles Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Sanjeev Majra, Advocate for the petitioner.

VINOD S. BHARDWAJ. J.

The present writ petition has been filed under Article 226 of the Constitution of India, 1950 seeking issuance of a writ in the nature of certiorari for setting aside the order 22.03.2022 (Annexure P-9) passed by respondent No.2 in Appeal No.158/SPS/D(T) against the order of assessment for alleged Unauthorised Use Of Electricity passed by the Assessing Officer vide Memo No.9617 dated 22.11.2021.

The petitioner-PSPCL avers that respondent No.1-M/s Hero Cycles Ltd. is a large supply consumer having Account No.3002809432 and it had applied for reduction in the contract demand from 2490 kVA to 1600 kVA vide Application and Agreement Form (A&A Form) No.5709567 dated

09.04.2018 (Annexure P-1). The aforesaid reduction in the load was undertaken by the petitioner-PSPCL under its General Category. The petitioner-PSPCL had issued Memo No. 861/66/DD/SR-62 dated 09.12.2020 to all officials that P.S.E.R.C. has issued Tariff order/instructions from time to time declaring different types of load as Power Intensive Units (P.I.U.). It was conveyed that if any general category L.S. consumer is found using P.I.U. load, then the same be treated as Unauthorised Use Of Electricity as per Regulation 36 of the Supply Code, 2014 of Section 126 of the Electricity Act, 2003. It was thus advised to issue notice to all P.I.U.s to get the load regularized. The unit was thus a Power Intensive Unit but classified as General Industry. It is further averred that respondent No.1 was served notice vide Memo No.4771 dated 22.12.2020 informing that P.S.E.R.C. had declared various types of loads as Power Intensive Units and the petitioner must get the power intensive load regularized, if any. A response thereto was filed by the respondents wherein it was conveyed that the rectifiers were being used for the Electrolytic Process and that the same cannot by itself be construed as a Power Intensive Unit (PIU). The aforesaid process was later graded as a Power Intensive Unit. It was also duly conveyed that the factum of installation of 13 Nos. rectifiers was duly mentioned in the A & A form and the entire load had been duly declared in the load detail/test reports submitted on 09.04.2018. The contract demand was reduced from 2480 kVA to 1600 kVA after noticing the complete disclosures and petitioner-PSPCL was never kept in dark. Hence, the submissions raised by the petitioner in the reply were never considered and the Assessing Authority proceeded with the matter. An order of assessment under Section 126 of the Electricity Act, 2003 was however passed holding the respondent No.1 liable to pay an

additional amount of Rs.1,87,64,552/- without appreciating the reply and the fact that the Electrolytic Process was not then categorized as P.I.U. on 09.04.2018.

Aggrieved of the aforesaid order of assessment, respondent No.1 preferred an appeal before the Appellate Authority under Regulation 36 of the Supply Code of 2014 read with Section 126/127 of the Electricity Act, 2003.

Upon consideration of the submissions advanced by the respective parties, the Appellate Authority allowed the appeal and held that the petitioner could not have demanded penalty from respondent No.1 who was held liable only to pay differential tariff applicable for PIU Industrial Load and General Industrial Load w.e.f. 27.05.2019 without any penalty. Aggrieved thereof the present petition has been filed.

Learned counsel for the petitioner contends that the Appellate Authority had committed an illegality in allowing the aforesaid appeal to the above said extent and thereby setting aside the order of assessment passed by the competent authority. The Appellate Authority failed to appreciate the fact that the rectifiers have been installed by respondent No.1 for Electrolytic Process. The same was not disclosed by the respondent No.1/applicant and it continued to pay the tariff as applicable to the General Industrial Unit instead of the tariff rate applicable for Power Intensive Unit. Consequently, the assessment of the unauthorized utilization of energy done by the Assessing Officer, PSPCL was appropriate and the levy of penalty was in consonance with the applicable regulations and tariff as approved by P.S.E.R.C.

I have heard the learned counsel on behalf of the petitioner and gone through the documents appended along with the present petition.

The entire case of the petitioner is based on an alleged concealment of 13 number of rectifiers installed by the respondent No.1 which is categorised as PIU. It is, however, not in dispute that A and A form had been submitted by the respondent No.1 on 09.04.2018. A perusal of the load disclosure and test report along with A and A form clearly mentions the details of all the 13 number of rectifiers at Sr. No.44. Accordingly, it is not a case of concealment of installation of 13 number of rectifiers by the respondent No.1. It is also noticed that the Electrolytic Processing industries were categorized as Power Intensive Units only after the tariff order dated 27.05.2019. Hence, prior to the aforesaid tariff order by the P.S.E.R.C. installation of the rectifiers would not be categorised as a Power Intensive Unit.

When the notice was issued by the petitioner to the respondent No.1, the same was replied to by the respondent No.1 clarifying that the details of the rectifiers and the entire load had already been submitted by the respondent No.1 along with the A & A form in the load detail along with test results on 09.04.2018, hence, there was no concealment. It was also pointed out that the reduction of the load from 2480 kVA to 1600 kVA had already been approved by the Chief Engineer, PSPCL and as such, there was no legitimate basis for levy of any penalty under Section 126/127 of the Electricity Act, 2003 by treating the aforesaid consumption as Unauthorised Use of Electricity.

In its reasoning given in the order, the Appellate Authority under Section 127 of the Electricity Act, 2003 held as under:-

“The dispute between the parties is regarding the 13 No. rectifiers used for Electrolytic process having 690 kW load. The appellant has represented that these rectifiers were installed since 2002 and that when reduction in Contract Demand was applied in 09.04.2018, the details of these rectifiers were again mentioned in the test reports and A&A form (Exhibit A-1). The respondent authority also agreed upon these. Prior to the issue of schedule of tariff (2019-20) issued by PSERC on 27.05.2019 and reiterated by PSPCL Commercial circular 25/2019 (Exhibit B-2), these rectifiers were not declared as PIU but were part of the general industry load. It was only after tariff order dated: 27.05.2019 that the Electrolytic process industries were declared as PIU.

On dated 22.12.2020, respondent authority served Notice No. 4771 to the appellant regarding regularisation of PIU load (Exhibit C-3). The notice was replied by the appellant on 01.01.2021 (Exhibit D-4) that they had already declared the detail of their rectifier load on Test report submitted with A&A form for reduction in Contract demand from 2480 KVA to 1600 kVA on dated 09.04.2018 and supplied the copy of already sanctioned A&A form and test report but did not submit fresh A&A form for bifurcating PIU and General Industrial load.

With respect to the PSERC tariff order FY 2019-20 dated: 27.05.2019, Chief Engineer/Commercial, PSPCL issued Memo No. 1961/65 dated: 10.12.2019 to all EIC/CES DS (Exhibit E-5). As per the Memo, all existing Industrial connection A&A forms were to be scrutinised by the field offices to look for the process/ technology similar to PIU. Respondents served notice to the consumer to get its PIU load regularised immediately. The respondent replied with the notice that they had already declared their

rectifier load at the time of submission of A&A form for reduction in Contract demand on 09.04.2018.

The connection of the respondent was checked on 17.06.2021 and 18.06.2021 during which 13 No. rectifiers having 690 kW load were found to be installed for Electroplating process based on which, final assessment order dated: 22.11.2021 (Exhibit F-6) was issued on account of UUE for 690 kW power intensive load for the period 18.05.2021 to 18.06.2020. On scrutinising the documents/ arguments presented in the case by both the parties, it is ascertained that 13.No. rectifiers having 690 kW load were installed in the appellant's premise well before the date of implementation of tariff order FY 2019-20 dated: 27.05.2019 wherein these rectifiers used for electroplating were declared as PIUs.

Since, the appellant has categorically mentioned that they had declared the installation of 13 No. rectifiers with 690 kW load and have never concealed/ denied the use of these rectifiers nor they have been adverse to paying PIU tariff. Assessment order on account of UUE needs to be reviewed, considering it as a case of wrong application of tariff for 690 kW load of rectifiers. As the appellant has been using 690 kW rectifier load well before 27.05.2019 i.e the date of issue of tariff order for 2019-20 wherein Electrolytic process industry (rectifiers) was declared PIU, appellant is liable to pay difference of tariff applicable for PIU industrial load and General Industrial load w.e.f. 27.05.2019 without any penalty. The rectifiers are presently also stand installed and in use, so the account of the appellant with respect to correction in tariff on the basis of this decision be overhauled till date and the levy of PIU tariff for 690 kW shall continue.

The appeal against the final assessment order for unauthorised use of electricity is decided with the directions

to the respondent authority to revise the assessment as per this order.

Issued under Section 127 of EA 2003.”

It is evident from above that the Appellate Authority returned a finding that there had been no concealment by respondent No.1 and a complete disclosure had been made by it. It is also noticed that the Electrolytic Process was declared as a PIU after the tariff order dated 27.05.2019. Respondent No.1 thus cannot be attributed concealment of vital information or for having diverting the energy for any unauthorised use. It was for the said reason that the penalty was not fastened against respondent No.1 and it has been held liable to pay difference of tariff applicable for PIU and General Industrial Load w.e.f. 27.05.2019 without any penalty.

There is no material to show that rectifiers were categorized as a P.I.U. before 27.05.2019 or that the finding recorded by the Appellate Authority is factually or legally incorrect. The respondent had disclosed all information and had been paying the energy bills as raised by the petitioner-PSPCL and a mere change of tariff would not make it a case of Unauthorised Use Of Electricity. Regulation 36 of the Punjab Electricity Supply Code 2014 defines Unauthorised Use Of Electricity as under:-

“36. UNAUTHORIZED USE OF ELECTRICITY

Under Section 126 of the Act, the unauthorized use of electricity means usage of electricity:-

(a) by any artificial means; or

(b) by a means not authorized by the concerned person or authority or licensee; or

(c) through a tampered meter; or

(d) for the purpose other than for which the usage of electricity was authorized; or

(e) for the premises or areas other than those for which the supply of electricity was authorized.”

Evident from above, in the event the electricity is not used for the purpose or in the manner above, it may not be possible to classify the same as Unauthorised Use Of Electricity. The facts of the present case would at best suggest that the PSPCL raised a wrong energy consumption bill after the new tariff order and the respondent no.1 ought to have been billed as P.I.U. but was billed as a General Industry, for no fault of the respondent no.1.

Law does not fasten penalty without fault and hold the consumer liable despite no fault.

There is, hence no evident illegality, perversity or impropriety or mis-appreciation of any statutory circular/regulation pointed out by the learned counsel for the petitioner. In the absence of any such impugning circumstances that would render the order passed by the appellate authority liable to be set aside, I do not find myself in agreement with the objections raised by the learned counsel for the petitioner.

It is also evident from the order that the respondent No.1 has already submitted that it is not averse to payment of the actual consumption charges already recorded by the petitioner on the basis of

the applicable tariff. Hence, interest of justice and equity have been thoroughly balanced by the Appellate Authority.

The High Court in exercise of its power under Articles 226/227 of the Constitution of India, does not substitute its own opinion for that of the Appellate Authority. A discretion exercised on sound reasons and objectivity would not be set aside merely because any other view is probable. The present petition is accordingly, dismissed in limine.

November 14, 2022
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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