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

139 **CWP-26725-2022**

Date of Decision:22.11.2022

Kamaljeet Kaur **.....Petitioner**

Versus

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

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

**Present: Mr. Jonny Goyal, Advocate,
for the petitioner.**

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<u>VINOD S. BHARDWAJ , J.(Oral)</u>

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 04.11.2022 (Annexure P-17) issued by respondent No.3- the Assistant Executive Engineer/Tech-II, Punjab State Power Corporation Limited (for short “the PSPCL”).

2. Briefly summarized the facts of the case are that the petitioner claims to be an MS category consumer for her industrial unit with sanctioned load of 90 KW/19 KVA and was served with an order of assessment for unauthorized use of electricity under Regulation No.36 of the Electricity Supply Code-2014 read with Section 126 of the Electricity Act, 2003. The petitioner claims that the order of assessment has been passed in violation of the Commercial Circular No.29/2021 as well as the Gazette Notification dated 26.03.2021 and that too by an officer who is not

authorized to act under the Regulations. It is averred that the petitioner had been making regular payment of bills as well as of the demanded surcharge, wherever applicable. It was not a case of unauthorized use of electricity at all. Additionally, even the calculation undertaken by the authorities is also not appropriate and violates Annexure 8 of the Electricity Supply Code of 2014.

3. It has been argued by learned counsel appearing on behalf of the petitioner that the sanctioned load of the petitioner was 90.000 KW/19.000 KVA and that the premises of the petitioner is alleged to have been inspected on 19.04.2021. The petitioner was served with a notice alleging that the load recorded was more than the sanctioned load and as against sanctioned Contract Demand of 99 KV & limit of 100 KVA under MS Category, the load exceeded the maximum load. An information is alleged to have been sent vide Notice No.1987 dated 20.04.2021. Since the increase in load had allegedly not been approved and exceeded load demand by more than 10% and changed the category, hence, the notice of provisional assessment was served upon the petitioner vide memo No.577 dated 20.05.2022 under Regulation No.36 of Electricity Supply Code-2014 and Section 126 of the Electricity Act, 2003. The respondents assessed the payable amount as ₹82,44,887/- for unauthorized use of electricity.

4. The petitioner was called upon to make good the deposit or to file her objections to the assessment so done. The petitioner thereafter submitted an application dated 01.06.2022 intimating that she has removed unauthorized load and submitted the test report after removal of the said unauthorized load. A final order of assessment was thereafter passed by the respondent-Department on 12.07.2022. The provisional assessment made

by the authorities was affirmed. The petitioner was also called upon to submit a test report to the office regarding the reduction of load. An amount of ₹1,14,082/-(wrongly mentioned) however, assessment is ₹11,40,082/- of unauthorized use of electricity (UUE) was thus calculated for the period from 02.02.2022 upto 01.06.2022 i.e. the date of submission of the test report after removal of the unauthorized load.

5. The petitioner thereafter moved an application before the authorities for relaxation of the condition of pre-deposit so as to enable the petitioner to prefer an appeal and also moved an application to the assessing officer for rectifying the calculation/method mistakes in the final order of the assessment. A reminder application was again submitted by the petitioner on 01.08.2022 for review of the order of assessment. The authority, vide Memo No.13075 dated 04.08.2022 conveyed a fresh letter of provisional assessment and submitted a comprehensive adjustment of ₹93,84,969/- (i.e. an amount of ₹82,44,887/- plus ₹11,40,082/- for the period from 02.02.2022 to 01.06.2022). The Memo was thus a provisional assessment of the composite demand. The objections to the said provisional assessment were again filed by the petitioner. Request for re-hearing was also made by the petitioner. Vide order dated 04.11.2022, the final assessment order was thereafter passed by the respondent-Department noticing the objections raised by the petitioner and conveying the composite demand of ₹93,84,969/-. Aggrieved of the same, the present petition has been filed.

6. Learned counsel appearing on behalf of the petitioner has argued that the respondent-Department has acted in an illegal and arbitrary manner thus rendering the order of assessment liable to be set aside. He contends that the initial assessment conveyed vide order dated 12.07.2022

was itself dropped by the respondents and fresh notice of provisional assessment was served upon the petitioner on 04.08.2022 and thereafter a new order of final assessment was passed without affording an opportunity of hearing even though such a request was submitted by the petitioner. He further contends that the respondent No.2 was not competent to carry out the assessment as per the Gazette Notification dated 26.03.2021 and the Commercial Circular issued by the respondents bearing No.29 of 2021 dated 02.06.2021 and that the final order of assessment is also liable to be set aside on the ground that the respondents have already been charging the Demand Surcharge for the consumption over and above the authorized sanctioned Contract Demand of 99 KVA and the petitioner had been paying the said demand as and when asked for by the respondents. He has drawn the attention to the energy bills for the period from January 2020 till October 2022 to substantiate the said submission. It is contended that the assessing officer for the consumer having the Contract Demand upto 100 KVA is in the rank of Assistant Executive Engineer and the assessment has been initiated by the Senior Executive Engineer and as such, the said assessment is contrary to the Gazette Notification as well as the Commercial Circular. It is also contended on behalf of the petitioner that as the proceedings initiated by the respondent-Department are in violation of the principles of natural justice, hence, he can approach this Court directly instead of taking recourse to the statutory remedy(ies) available to the petitioner in accordance with law.

7. It is vehemently argued that the action of the authorities is not only without jurisdiction but is also in violation of the principles of natural justice and does not afford an adequate opportunity to the petitioner to put-

forth her claim. He contends that even though the petitioner has an efficacious remedy under Section 127 of the Electricity Act, he would be required to comply with the onerous condition of making a pre-deposit in the event of approaching the appellate authority. He further contends that the Writ Court has the competence to examine an order which has been passed beyond authority for which he has referred to the judgment of the Hon'ble Apex Court in the matter of ***Executive Engineer and others Versus M/s Sri Seetaram Rice Mill*, 2012(3) RCR(Civil) 633.**

8. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended by the petitioner.

9. Even though the petitioner has seemingly raised various issues, however, challenge of the petitioner is to the order dated 04.11.2022 (Annexure P-17). Perusal of the aforesaid order shows that the premises of the petitioner was inspected by the Sr. XEN Enforcement-cum-EA & MMTS-1, Ludhaina on 19.04.2021 and during its checking, it was noticed that the recorded demand was in excess of the sanctioned demand in the contact and it also crossed the limits of MS category i.e. 100 KVA. Once the demand exceeds 100 KVA, the consumer is no more entitled to be categorized in the MS category. A provisional assessment of ₹82,44,887/- was conveyed to the petitioner to which the objections were filed. It was also noticed that the petition filed by the petitioner before the Punjab State Electricity Regulatory Commission, Chandigarh (for brevity “the PSERC”) bearing petition No.46 of 2022 has also been dismissed by the PSERC. The calculation of the charges was made in accordance with the formula as approved by the PSERC and as detailed in (Annexure A-8) of the Supply Code Regulations, 2014. It was further conveyed that in the event the

petitioner was not satisfied with the final order made as per the provisions of Regulation No.36 of the Electricity Supply Code, 2014, she may approach the appellate authority notified by the Government of Punjab, Department of Power vide Notification dated 09.07.2019. The pre-deposit has been statutorily prescribed and the statutory provisions prescribing a pre-deposit are not a subject matter of challenge. In the absence of any challenge to the same, the condition of pre-deposit cannot be relaxed or set aside. Besides, it has also not been pleaded in the present writ petition that imposition of such a condition amounts to taking away the statutory remedy of appeal from the petitioner. A mere inconvenience cannot be construed as imposition of an onerous condition. Even otherwise, in the absence of any challenge to the said Clause, there is no reason for this Court to go into the legality of such requirement.

10. Further, in so far as reference to the Commercial Circular No.39 of 2018 is concerned, the said Commercial Circular is merely an amendment to the Electricity Supply Code, 2014. The petitioner failed to refer to any specific clause of the aforesaid Circular on the basis whereof, the decision could be said to be illegal. The said Circular has to be read in consonance with the Electricity Supply Code, 2014 and the appendix attached thereto. The said Circular at best stipulates that the timeframe should be followed by the authorities concerned and does not prescribe any consequences. The said timeframe is thus *prima facie* directory in nature. The aforesaid Regulation also does not vitiate the order of final assessment, however, it may only entail action against the assessing officer, if so advised, for the delay.

11. Further, the contention of the petitioner that the assessment was

done by an officer not authorized to do so is also without much force as the final assessment order dated 04.11.2022 has been passed by the Assistant Executive Engineer who is competent in law. The Commercial Circular No.29 of 2021 empowers the Assistant Executive Engineer to be the assessing officer for all consumers having the Contract Demand/sanctioned load upto 100 KVA or 100 KW as applicable. Merely because the petitioner was using electricity beyond the contract demand, it would not change the assessing authority/assessing officer under the Regulations which prescribe the authority on the basis of Contract demand/sanctioned load. The initial order of assessment dated 12.07.2022 passed by the Senior Executive Engineer already stands superseded and would thus not give any *prima facie* cause of subsisting grievance. It was further noted that the Regulations notified by the PSERC provide for alternative statutory remedy(ies). The appellate remedy having been provided in a statutory appeal before the Senior Executive Engineer, there is no reason why the petitioner ought not to exhaust her statutory remedy(ies) available before approaching the High Court in Writ Jurisdiction.

12. In so far as reliance placed upon the judgment in the matter of ***Executive Engineer and others's case (supra)*** is concerned, the position in law laid down thereunder is not in dispute. However, merely because the High Court has the power to exercise writ jurisdiction under Articles 226/227 of the Constitution of India does not mandate that the statutory remedy available under law ought to be bypassed. The power of judicial review under the Constitution of India has to be taken recourse in exceptional circumstances where there is manifest injustice, evident abuse of authority, the order is without jurisdiction, where the order is in violation of

law, where principles of natural justice have not been complied with or where the order has been passed for evident malicious considerations. Resort to the writ jurisdiction is not to be deployed as an ordinary course to bypass the statutory procedures or the remedies prescribed therein merely because a litigant does not intend to satisfy the conditions for preferring an appeal before the appellate authorities. If such course is permitted generally and as a matter of right, the statutory object of providing for an appellate authority in the statutory framework along with the object for imposing the condition of pre-deposit would itself be defeated. The recourse to writ remedy as a way to bypass the requirement of pre-deposit has more potential of causing harm to the statutory mandate and legislative intent. Unless, compelling reasons necessitating interference by the High Court are shown by a litigant for securing ends of justice, it would, rather, be in the fitness of things that a litigant ordinarily exhausts her statutory remedy(ies).

13. It is well settled provision in law and oft reiterated and also relied by the Hon'ble Supreme Court in the matter of ***'N.P. State Agro Industries Development Cooperation Vs. Johan Khan'*** reported as ***(2007) 10 SCC 88*** that the power of the High Court under Article 226 of the Constitution of India is plenary in nature, not limited to any other provision of the Constitution. Prior exhaustion of alternate remedy is a rule of prudence and not of compulsion. In appropriate cases, the High Court may in its discretion, entertain the writ petition prior to availing alternative remedial measures. Some of the circumstances where the Hon'ble Supreme Court has upheld the maintainability of a writ petition despite existence of an alternative remedy are categorized as under:

(i) Where the petitioner seeks to highlight the violation of fundamental rights and press for enforcement of the same; or

(ii) Where there is blatant violation of principles of natural justice; or

(iii) Where the impugned order or action has been passed without jurisdiction; or

(iv) Where the vires of the concerned Act itself have been assailed; or

(v) Where the Court or the Tribunal against which the grievance is espoused lacks inherent jurisdiction; or

(vi) Where the act in question suffers from blatant arbitrariness, discrimination, abuse of authority of power or disregards settled law; or

(vii) Where the alternative remedy does not provide for the immediate, emergent or the interim relief that has been prayed for and in the absence of grant of such interim indulgence/emergent or immediate relief, the litigant suffers irreparable loss and injury or where the composition of the remedy renders it unfit for functioning.

14. In the absence of the circumstances noticed above, a writ jurisdiction would not be panacea for all the maladies which a litigant may suffer. It was also held by the Hon'ble Supreme Court in the matter of ***'Commissioner of Income Tax & Others Vs. Chhabil Dass Agarwal'*** reported as ***2014 (1) SCC 603*** that the High Court will not entertain a writ under Article 226 of the Constitution of India if an effective alternate remedy is available to the aggrieved person in the statute under which the action complained of has been taken or the statute itself contains a mechanism for a redressal of grievance and it still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The burden lies on the person approaching the Writ Court to explain as to why,

despite existence of a specialized statutory remedy, the High Court still ought to exercise its writ jurisdiction.

15. The Hon'ble Supreme Court in the matter of ***<u>Radha Krishan Industries Versus State of Himachal Pradesh and others</u>***, *reported as* ***(2021)6 SCC 771*** held as under:-

> *"27. The principles of law which emerge are that :*
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> *(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
>
> *(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
>
> *(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*
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> *(iv) <u>An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law</u>;*
>
> *(v) <u>When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and</u>*
>
> *(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the*

> *nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*
>
> (emphasis supplied)

16. The circumstances of the present case fairly establish that there are no compelling circumstances on the basis whereof it may be held that the rights of the petitioner would be gravely prejudiced or defeated in case the writ Court does not intervene into the matter. I do not find any satisfactory reasons as to why the petitioner ought not exhaust her alternative remedy(ies) and prefer an appeal before the Appellate Authority under Section 127 of the Electricity Act, 2003 and the Regulations thereunder.

17. The present writ petition is accordingly dismissed in *limine.*

18. The petitioner may, if so advised, take recourse to the statutory remedy(ies) available to her in accordance with law.

November 22, 2022 **(VINOD S. BHARDWAJ)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No