

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

247

CWP-11446-2020 (O&M).
Date of Decision: 20.04.2023.

M/S MOTIA REAL ESTATE

.. Petitioner

Versus

PUNJAB STATE POWER CORPORATION LIMITED AND
OTHERS

... Respondents

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

Present: Mr. Kewal Singh, Advocate,
for the petitioner.

Mr. Arav Gupta, Advocate,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition raises a challenge to the final order of assessment dated 19.02.2020 (Annexure P-4) passed by respondent No.3 as well as the order dated 24.07.2020 (Annexure P-5) passed on the appeal under Section 127 of the Electricity Act, 2003, whereby an appeal preferred by the petitioner against the order has been dismissed on the ground of limitation by the Appellate Authority.

Learned counsel appearing on behalf of the petitioner contends that the petitioner-firm is having a permanent electricity connection in its name of the Capacity of 8.98 KWs under the 'NRS' Category at village Chhajju Majra bearing Account No.3000318496 falling under Technical-I, Sub Division of DS Division PSPCL, Mohali. The aforesaid connection is being used for water supply to the residents of the Colony developed by the petitioner-firm. The bills as raised were being duly paid to the Department regularly against consumption of energy. The premises in question are stated to have been checked by the Senior Executive Engineer (Sr.Xen) Enforcement on 07.02.2020. It was alleged by the Senior Executive Engineer that the petitioner-firm has taken the said connection for supply of water, however, a sub meter was installed from this meter wherefrom electricity was being used for the constructions purposes as well. The petitioner-firm was asked to apply for a separate temporary electricity connection and for not having done so, proceedings under Section 126 of the Electricity Act, 2003, for unauthorized use of energy were initiated. A notice conveying provisional order of assessment dated 07.02.2020 was served upon the petitioner-firm in which after assessment, a fine of Rs.5,57,215/- was informed to the petitioner-firm. Objections on the aforesaid notice were submitted by the petitioner-firm on 18.02.2020 to the Sub Divisional Officer, PSPCL, Mohali, with a specific averment that the NRS connection issued to the petitioner-firm for supply of water at site was not being diverted for construction purposes and that there was yet another water pump at the site of inspection which is approximately 40 meters away and that the electric connection in question was never used for any construction activity. However, notwithstanding the objections filed, final

order of assessment was passed on 19.05.2020 and the fine of Rs.5,57,217/- was computed to have been correctly assessed.

Aggrieved of the aforesaid final assessment, the petitioner filed an appeal under Section 127 of the Electricity Act, 2003 after depositing 50% of the amount as per rules. The above said appeal was filed on 24.07.2020 and it was dismissed on the same day vide impugned order bearing Memo No.1317 on account of delay and by stating that the appeal was required to be filed within a period of 30 days from the receipt of the final order and that the lockdown in question was imposed only on 23.3.2020. As such, there was sufficient period available to the petitioner-firm, after the passing of the order of final assessment, to prefer an appeal.

Learned counsel for the petitioner-firm contends that the dismissal of the appeal of the petitioner-firm was only on the ground of limitation without condoning the delay. He submits that the provisions of the Electricity Act, 2003 do not prohibit condonation of delay in preferring an appeal. He contends that after the receipt of the copy of the order of final assessment, the amount was deposited by the petitioner-firm and that the lock down was imposed w.e.f. 23.03.2020 as a result whereof, the appeal could not be preferred within the stipulated time. Notwithstanding that a period of 30 days was available from the date of passing of the order, however, on account of intervening circumstances, the petitioner-firm faced hardships in instituting the same. He further contends that the respondents are in error in failing to appreciate the order passed by the Hon'ble Supreme Court in the matter of **Writ Petition (Civil) No.3 of 2020, decided on 23.03.2020 titled as "Suo Moto Vs. In Re Cognizance for Extension of Limitation, reported as 2020 (3) RCR (Civil) 1**, which specifically states

that the exemption from operation of the period of limitation would extend to the persons w.e.f. 15.03.2020. Since the period of 30 days available to the petitioner-firm was to come to an end after 15.03.2023, hence, the appeal in question could not be said to be barred by limitation by observing that appeal could be filed upto 23.03.2020.

Learned counsel for the respondent-PSPCL is not in a position to controvert the order passed by the Hon'ble Supreme Court in the matter **Suo Moto Vs. In Re Cognizance for Extension of Limitation** (supra) which extended limitation w.e.f. 15.03.2020

Taking into consideration the circumstances noticed above and the peculiar circumstances as well as the order passed by the Hon'ble Supreme Court on extending the limitation w.e.f. 15.03.2023 and was valid even on filing of the appeal, I am of the opinion that dismissal of the appeal only on the technical ground of having been filed after a delay was improper.

The impugned order dated 24.07.2020 (Annexure P-5) is accordingly set aside. The parties are relegated to the Appellate Authority for fresh adjudication of the appeal on merits. They shall appear before the Appellate Authority for fresh adjudication of the appeal on merits on 25.05.2023 whereupon the Appellate Authority shall proceed in the matter and adjudicate the *lis* on merits after hearing the respective parties.

The petition is accordingly allowed.

April 20, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No