

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

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**CWP-19063-2019
Date of Decision: 12.10.2023**

JANTA LAND PROMOTERS PRIVATE LIMITED

... Petitioner

VERSUS

**PUNJAB STATE POWER CORPORATION LIMITED
AND OTHERS**

... Respondents

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

Present: Mr. Ranjit Singh Kalra, Advocate
for the petitioner.

Mr. Pratap Singh Gill, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order of assessment dated 23.10.2018 (Annexure P-5); final order of assessment dated 02.11.2018 as well as order dated 22.03.2019 passed by the Appellate Authority dismissing the appeal preferred by the petitioner.

Learned counsel for the petitioner contends that pursuant to the Industrial Policy notified by the State of Punjab, the petitioner applied for setting up of Super Mega Mixed-Use Integrated Industrial Park Project in Sectors 66-A, 82 and 83, S.A.S. Nagar (Mohali). The project was to be spread over an area of 290 Acres in the abovesaid Sectors with an investment of Rs.1,219/- crores including fixed capital investment of at least Rs.1,000/- crores. The said application of the petitioner was considered by the Empowered Committee for the said purpose and the same was approved in the meeting of

the Empowered Committee held on 16.03.2011. Letter of Intent was thereafter issued on 10.05.2011. The petitioner is, although, having his office at a different place, however, as the project was spread through 290 acres, the petitioner opened a temporary sales and marketing office in Sector 66-A, SAS Nagar on a temporary construction, with a motive to promote the project and to remove the said temporary sales and marketing office after the project is completed and to bring the site to its original state. Accordingly, an application for grant of temporary electricity connection was submitted by the petitioner to the respondent-PSPCL. The A&A form was submitted by the petitioner specifically disclosing the purpose of the temporary electricity connection as “sales and marketing office”. The said application disclosed the electricity requirement for the temporary sales and marketing office under the NRS category. After the submission of the A&A form on 17.04.2018, the connection was released after obtaining the wiring contractors test report. The said test report has been attached as Annexure P-3 wherein again the name of the applicant-consumer has been mentioned as ‘sales and marketing office’. The said report was duly approved by the Competent Authority i.e. AEE (Commercial) DSF-Sub Division Mohali. The electric installations were tested by the running contractor and the report having been accepted, the electric installations were approved by the Competent Authority w.e.f. 21.05.2018. The category report of the electricity connection was temporary non-residential consumer in the name of M/s Sales and Marketing Office JLPL. It is further averred that there is no concealment on the part of the petitioner and the temporary connection for the sales and marketing office of the petitioner company had been sought for and was duly inspected and approved by the respondent-Authorities before the said temporary connection was released. He contends that a *suo-motu* petition No.17

of 2018 was taken up by the Punjab State Electricity Regulatory Commission after noticing the concern of the Distribution Licensee that various developers obtain temporary connections and extend further supply to the residents within the locality and are running the residential load of the entire colony on such temporary connections. The Punjab State Electricity Regulatory Commission directed that such use of electricity, for the use by the residents in a colony, from the temporary connection obtained by the developer is impermissible in law and that action ought to be taken against the guilty officers as well as the developers who are in breach of the terms and conditions of the Electricity Act, 2003. Under the garb of the aforesaid order, which was although not applicable to the case of the petitioner since he was not extending any supply to the residents of the locality for any domestic use, the respondent-Distribution Licensee issued a provisional order of assessment for Unauthorized Use of Energy as per the provisions of Regulation 36 of the Electricity Supply Code 2014 read with Section 126 of the Electricity Act, 2003 vide memo No.772 dated 23.10.2018. It was informed in the aforesaid memo that the temporary NRS category connection for construction of the sales and marketing office was being used by the petitioner and the same amounted to Unauthorized Use of Energy. The petitioner submitted his objections to the demand being not appropriate and that all the facts had been duly disclosed by the petitioner and the connection itself had been sought for sales and marketing office by the petitioner. It was also pointed out that the tariff rate charged against the temporary connection i.e. NRS category is more than the rate which is applicable to the commercial use. The petitioner was not to draw any unfair benefit on account of using a temporary connection for running a commercial establishment as the tariff category of commercial is lower. Notwithstanding the

objections filed by the petitioner the respondent-Distribution Licensee passed a final order of assessment vide memo No.854 dated 02.11.2018 and directed the petitioner to pay the assessed amount of Rs.5,26,689/-. Aggrieved thereof, the petitioner preferred an appeal before the Appellate Authority, which was also dismissed by the Sub Divisional Magistrate-cum-Appellate Authority under the Electricity Act, 2003, SAS Nagar. Hence, the present petition.

Reply had been filed by the respondent-Distribution Licensee wherein the stand maintained by the respondent-PSPCL is that the connection issued to the petitioner was a temporary connection which is defined as per Section 2(zzk) of the Electricity Supply Instructions Manual (ESIM), 2017 and is only for temporary usage. The petitioner-Developer was found misusing the temporary supply for the purpose other than for which it was authorised. Having done so, the petitioner, in this manner, diverted the energy which was meant only for the temporary works of constructions to be carried out by the petitioner. The said sales and marketing offices are required to be given supply under the NRS tariff and not under the temporary supply. The process for seeking a regular connection has been set out in the abovesaid reply.

No replication has been filed.

Counsel for the petitioner has drawn attention of the Court towards the reasons for treating the abovesaid load as Unauthorized Use of Energy and has specifically pointed out that there was no concealment of any fact whatsoever and all facts were duly disclosed. The tariff of Temporary Category being higher, the petitioner was not to draw any advantage by seeking the said connection rather than a commercial connection. The respondents have thus, in no manner, suffered any prejudice and have rather gained by charging a higher tariff. He submitted that as a matter of fact, the said aspect was duly considered

by the office of the Engineer in Chief (Commercial), PSPCL, Patiala and vide memo No.374-79/online single window system dated 10.07.2019, the respondents have directed as under:

“Vide the office memo no 444/ 48 dated 01.08.2018 (copy enclosed), use of temporary connection as specified in Supply Code - 2014 was reiterated. Further it was clarified that as per the provisions of Supply Code-2014, use of temporary supply by developers of colonies is only meant for the purpose defined in Supply Code and not for giving temporary/permanent connections to individual consumers in Colonies. As informed by field offices, various developers of Mega/Super Mega Projects and Group Housing Society etc. are constructing Site offices, Sample flats and Sales & marketing offices for their projects. Besides construction, developers are also using their temporary connection for running of Site offices, Sample flats, Sales & marketing offices and clarifications are being sought regarding category of tariff to be levied to these developers for use of electricity in Site offices, Sample flats and Sales & marketing offices

The matter has been considered and it has been decided that since Site offices, Sample flats and Sales & marketing offices are constructions of temporary nature, the developers of colonies may be allowed to run these temporary constructions from the temporary connection allowed to any residential, commercial or industrial project. Since in sample flats there will be requirement of lighting load only, maximum 20KW connected load for all the sample flats in any one project may be allowed. However, load for Site offices and Sales & marketing offices may be allowed as per requirement of the developer

Regarding the tariff to be charged, it is clarified that since the Site offices, Sample flats and Sales & marketing offices in colonies are constructions of temporary nature; therefore temporary supply tariff being charged for temporary connection

allowed to any residential, commercial or industrial complex (as the case may be) should be charged for use of electricity in running of Site offices, Sample flats and Sales & marketing offices.

The compliance of above instructions may be ensured meticulously.”

(Emphasis supplied)

He thus submits that even the respondents acknowledge that the load for the site offices and sales and marketing offices has to be treated as a temporary connection and is not unauthorized. The aforesaid stand having been acknowledged by the respondents through the abovesaid communication, the imposition of charges for the alleged Unauthorized Use of Energy is clearly contrary to the mandate of law and also to the decision taken by them and communicated vide aforesaid memo dated 10.07.2019.

Counsel for the respondent-PSPCL is not in a position to controvert the issuance of the aforesaid memo by the office of the respondents and also the fact that the tariff applicable to a temporary connection is higher than the tariff for the NRS category. The authenticity of the documents i.e. the A&A Form, the Wiring Test Report and the specific approvals having been granted in favour of the sales and marketing office of the petitioner is also not disputed.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The following undisputed and uncontroverted facts emerge from a perusal of the documents available on record as also from the arguments advanced by the respective parties:

- (i) That the A&A form was submitted by the petitioner for release of temporary connection for the sales and marketing office.
- (ii) That the abovesaid application was duly verified by the Competent Authority of the respondent-PSPCL and Wiring Test Report was also obtained. The entire correspondence and details pertain to the release of the electricity connection in the name of the sales and marketing office of the petitioner herein. Hence, there was no concealment so far as the nature and use of the electricity connection is concerned.
- (iii) The tariff applicable to a temporary connection is higher than the tariff applicable to the NRS Category.
- (iv) That the respondents have, vide their own communication bearing Memo No.374-79 dated 10.07.2019, acknowledged that the sales and marketing offices/site offices/sample flats established by a developer at the project site are to be treated as temporary connections and the connection can be released in such category. Hence, the contention of the petitioner that it was not an Unauthorized Use of Energy resonates through the aforesaid communication dated 10.07.2019 issued by the respondents-PSPCL themselves.
- (v) There is no allegation or averment that the petitioner was extending any further supply to any domestic category and/or the residents of the vicinity. The only charge/allegation having been levelled is that the aforesaid temporary connection was being used for energizing the sales and marketing office of the petitioner. The applicability of the *suo-motu* order passed by the Punjab State Electricity Regulatory Commission in the petition No.17 of 2018 would not apply to the

facts of the present case as there is no supply being extended by the petitioner to any other consumer.

In view of the aforesaid uncontroverted facts and noticing that the supply of electricity was only to the area sales and marketing office of the petitioner, which such fact was duly disclosed by the petitioner in the A&A Form and considering that the higher tariff rate has already been paid by the petitioner for the use and consumption of the said energy and there is no further distribution/supply of the aforesaid electricity to the local residents of the colony, I am of the view that the Authorities below failed to appreciate the true intent and import of the area sales and marketing office constructed by a project developer of a large project site. The complete facts having been disclosed by the petitioner to the respondent-PSPCL, it was incumbent upon the respondent-PSPCL to have issued the electricity connection in accordance with the category applicable. Once they have taken a decision to issue a temporary connection and that too in the name of area sales and marketing office, there was no occasion for the respondents to thereafter contend that even though they may have charged higher tariff by releasing a temporary connection, yet, they would still be entitled to deem the same as an Unauthorized Use of Energy and that the connection ought to have been released under the NRS category. The respondents, in doing so, would contradict themselves since the act of release of temporary connection, after due verification by their offices and notwithstanding the disclosure made by the respondent, would be prevented from changing their own stand. It is probably in the said circumstances that the memo dated 10.07.2019 had been issued as clarificatory. The use of energy by the petitioner for running its sales and marketing office at the site as a temporary measure till final completion of the project cannot be equated to an

extension or further distribution of electricity for any domestic/private use or for any purpose other than for what it was provided. Thus, the case in question is distinguishable from the order passed by the Punjab State Electricity Regulatory Commission in *suo motu* petition No.17 of 2018.

In the facts of the present case, I am of the opinion, that the demand raised by the respondent-PSPCL for the alleged Unauthorized Use of Energy is not sustainable. Consequently, the present writ petition is allowed and the order of provisional assessment, the order of final assessment as well as the order passed by the Appellate Authority under Section 127 of the Electricity Act, 2003 are set aside. The petitioner would be entitled to the benefit of the amount already deposited by him, at the stage of preferring appeal before the Appellate Authority and/or during the pendency of the present petition or at any other stage, and the same shall be liable to be adjusted against the future electricity bills of the petitioner.

Petition stands allowed in terms as above.

OCTOBER 12, 2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No