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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14962-2018
Date of decision: 31.08.2023

Brij Mohan Syal

………..Petitioner

Vs.

The Punjab State Power Corporation Limited And Ors.

………..Respondents

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

Present:- Mr. Ashutosh Pandey, Advocate for
Mr. J.S. Jaidka, Advocate
for the petitioner.

Mr. Abhilaksh Grover, Advocate
for the respondent-PSPCL.

VINOD S. BHARDWAJ, J.

1. Challenge in the present petition is to the demand conveyed vide Bill dated 17.05.2017 as well as to the orders dated 13.11.2017 passed by the Chief Engineer, Consumer Grievances Redressal Forum, as well as the order dated 24.05.2018 passed by the Electricity (Ombudsman) upholding the demand.

2. Briefly summarized, the facts of the present case are that the petitioner claims to have a medium supply connection with a sanctioned load of 88.620 KW and Contract Demand of 99 KVA. An online application was submitted by the petitioner on 23.05.2014 for extension of load to 319.620 KW and Contract Demand to 330 KVA and for converting the medium supply category connection to large supply category connection. The

Application and Agreement Form No.50566 (A&A) was registered on 03.06.2014 in which the petitioner had declared 150 KW induction hardening machine and tempering furnace of 25 KW while seeking extension of load and Contract Demand. A demand notice dated 16.06.2014 was thereafter served upon the petitioner whereupon a sum of Rs.5,53,000/- was deposited towards service connection charges on 23.12.2014. The extension in load and Contract demand was also released w.e.f. 12.03.2015.

3. The respondent-Corporation, in terms of its commercial circular No.27/2014 dated 29.05.2014, held that all LS consumers with induction billet heaters/surface hardening machines would be treated under Power Intensive Unit (PIU) category w.e.f. 01.01.2014. Accordingly, a revised bill for a sum of Rs.9,82,714/- was sent to the petitioner on 07.05.2015 reciting Rs.7,05,605/- as sundry charges and Rs.2,77,115/- as arrears.

4. The above demand raised by the respondent-PSPCL, was assailed by the petitioner by filing a petition before the Consumer Grievances Redressal Forum. However, vide its order dated 13.11.2017, the above said demand was upheld. Aggrieved thereof, an appeal was preferred before the Electricity Ombudsman, however, the said appeal was also dismissed by the Ombudsman vide order dated 24.05.2018 and the demand affirmed. Hence the present petition.

5. Learned counsel for the petitioner has argued that the orders passed by the Consumer Grievances Redressal Forum as well as the Electricity Ombudsman along with the demand raised by the respondent, are unsustainable and are liable to be set aside on the ground that the petitioner

had already submitted an online application on 23.05.2014 when the Circular No.27/2014, on the basis whereof, the demand had been raised was not in effect having been issued only on 29.05.2014. The changed circumstances came with effect from coming into force of circular No.27/2014 and the said demand having never been communicated to the petitioner or having been published, could not be sought to be recovered. It is also argued that the respondent-Corporation had in fact released the extension in load to the petitioner on its own under the General LS (miscellaneous) category and it cannot, thus, be permitted to now claim that the load category of the petitioner was a PIU and it would be estopped from categorizing the petitioner at a P.I.U.

6. Reply on behalf of respondent Nos.1 to 4 was filed wherein, in addition to the facts noticed above, it was submitted that the petitioner had subsequently applied for reduction in Contract Demand by 180 KVA and without any reduction in connected load bringing total connected load to 319.620 KW with Contract Demand of 150 KVA vide A&A dated 29.03.2016. The reduction of Contract Demand was released vide SCO No.54/13910 dated 20.04.2016 effected on 27.05.2016. The following machinery however had been continued to be included in the detail of the connected load as per A&A form:-

iii) One (1) No. induction Hardening Machine = 150 KW

iv) One (1) No. Tempering Furnaces = 25 KW

7. As the above said load of induction hardening machine and tempering furnaces fall under the PIU category as per CC No.27/2014, the bill has been rightly claimed. It is further averred that the petitioner had

applied for extension in load on 03.06.2014 in which 175 KW load is PIU load, however, the same was wrongly applied under general category instead of PIU category and was wrongly approved by Assistance Executive Engineer (Commercial) notwithstanding that the Circular No.27/2014 had already been issued on 29.05.2014. Thereafter, the petitioner applied for reduction in Contract Demand of 180 KVA without seeking any reduction in connected load, thus, bringing the total connected load to 319.620 KW with 150 KVA Contract Demand as per the A&A form dated 29.03.2016. The above said error was identified by respondent-PSPCL and demand was thereafter raised in terms of the Commercial Circular No.27/2014. Learned counsel appearing on behalf of the respondent-PSPCL has further pointed out that the units having Induction Billet Heaters/Surface Hardening Machines were ordered to be treated as Power Intensive Unit category in furtherance of the order dated 28.10.2013 passed by the Appropriate Commission and that the commercial circular was made enforceable after coming into force of the order.

8. Even though, the aforesaid written statement had been filed on 24.03.2019, however, no counter was filed by the petitioner controverting the factual aspects raised therein.

9. I have heard learned counsel appearing on behalf of the parties and have gone through the documents available on record.

10. The undisputed facts which emerge from consideration of the said documents are as under:-

i) That the petitioner had applied online for extension of load to 319.620 KW and a Contract Demand of 330 KVA and for converting medium supply category connection to large supply category connection. Even though petitioner claims to be have applied on 23.05.2014, however, the stand of the respondent-PSPCL had been in fact applied on 03.06.2014 when the circular was already in force. The said claim stands unrebutted about the date of submission of application for extension of connected load.

ii) That the online application and agreement form was submitted by the petitioner in the category of general (miscellaneous).

iii) That the detailed description of the machineries as disclosed by the petitioner included the induction hardening machine as well as tempering furnaces.

iv) That the respondent-PSPCL had issued a commercial circular as per which the units where hardening machines/furnaces are installed were ordered to be treated as Power Intensive Units (PIU). The above said commercial circular was valid w.e.f. 01.01.2014.

v) That no challenge to the aforesaid commercial circular has been raised by the petitioner in any of the said proceedings.

vi) That even though a reduction in Contract Demand was sought for, however, there was no reduction sought qua the connected load. Hence, the hardening machine as well as the tempering furnace continue to be installed functionally in the unit in question. The category of the petitioner unit thus, remained as a Power Intensive Unit.

vii) That there is no allegation with respect to any wrong application of the tariff or the duration of the demand or as regards any factor of demand being inaccurate.

11. Additionally, the said aspects have already been considered by the Consumer Grievances Redressal Forum as well as the Electricity Ombudsman, while hearing the appeal of the petitioner against the said order. The findings recorded by the Electricity Ombudsman are extracted as under:-

4. Analysis:

The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner, for the period from 23.07.2015 to 11 09.2016, for the difference of Tariff and Security under PIU and General Category, due to extension in Load and CD, as per applicable regulations.

The points emerged and deliberated are analysed as under:

(i) PC contended that it had initially Medium Supply Category connection with Connected load of 88.620kW and Contract Demand as 99kVA. The Petitioner applied online on 23.05.2014 for extension in Load form 88.620kW to 319.620kW and CD from 99kVA to 330kVA and for conversion of Medium Supply into Large Supply Category connection. However, the Petitioner got its Application and Agreement Form No. 50566 registered on 03.06.2014 by depositing a sum of Rs. 53,910/- as the requisite ACD. In the said A&A Form, the Petitioner had declared 150kW- Induction Hardening Machine and 25kW

Tempering Furnace in the details of the connected load. The extension in the Load and CD vas released on 09.02.2015 effected on 12.03.2015. Subsequently, the Petitioner applied for reduction in CD from 330kVA to 150kVA without reduction in Load vide A&A Form dated 29.03.2016. This reduction was effected on 27.05.2016. The Revenue Audit Party during the course of Audit of the account of the Petitioner, detected discrepancy in the preparation of bills which were prepared under General Category instead of under PIU Category after release of extension in Load and CD. Accordingly, the Petitioner was charged the difference in Tariff (MMC) and ACD, for the period from 23.07.2015 to 11.09.2016, vide Memo No. 467 dated 02.02 2017 in view of provisions contained in CC No. 27/2014 dated 29.05.2014. PC argued that CC No.27/2014 was issued on 29.05.2014 while the Petitioner applied for extension online on 23.05.2014, as such, the said instructions were not applicable in its case at the time of application. Besides, the circular ibid was not brought to the notice of the concerned consumers individually and also was not given wide publicity immediately after its issue.

The Respondent contested that the contention of the Petitioner for quashing the demand raised by referring to the Commercial Circular (CC) No. 27/2014 which was issued on 29.05.2014 before registration of A&A Form and deposit of requisite Security (ACD) on 03.06.2014 was incorrect.

The Respondent, also submitted that considering the admission by the Petitioner about having installed the Billet Heater on 12.03.2015 and also the fact that CC No. 27/2014 was also applicable w.e.f. 01.01.2014, the PIU tariff levied to the Petitioner w.e.f. 01.01.2014 was correct and as per the rules and regulations of the PSPCL.

I observe that in compliance to order dated 21.03.2012 of the Hon'ble PSERC, PR Circular No. 03/2012 dated 09.04.2012 was issued by the PSPCL stating that:

"In accordance with Honourable PSERC orders dated 21.03.2012 it may be noted that for the purpose of Power Regulatory measures, the industrial consumers, who are using/having billet heater in their industry shall be subjected to PR measures, as are applicable to general industries, fed from Category II, till the disposal of Petition No. 03/2012. This comes into force with immediate effect".

I also find that the PSPCL subsequently issued CC no. 27/2014 dated 29.05.2014 providing that:

"In view of Hon'ble PSERC order dated 28.10.2013 in petition no. 3 of 2012, all LS consumers where the Induction Billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category with effect from 1.1.2014. This circular supersedes CC no.28/2012 dated 06.09.2012."

Thus, there is merit in the contention of the Respondent that since the extension in load having Billet Heater Load of the Petitioner was released on 12.03.2015 and as per CC no. 27/2014 dated 29.05.2014, the Petitioner is liable to be charged on the said account from the date of release of extension in load i.e. 12.03.2015 till the date, the Petitioner was charged accordingly in the regular bill.

***(ii)** PC next contended that the Respondent had neither given any notice to the Petitioner nor gave a Public Notice in the newspapers to bring the change in instruction to the knowledge of the General*

Public from the date of issuance of CC No. 27/2014 on 29.05.2014 till 16.05.2017 when a Notice to this effect appeared in the newspapers. This was clearly a violation of principle of natural justice. Besides, in case, the consumer was given to understand that on the sanctioned load of 319.620kW (which it got sanctioned by anticipating the future business plan also), such a heavy MMC of PIU will be applied, then, it might have considered to apply for lesser load of Billet Heater and might not have deposited the Service Connection Charges (SCC) of such a huge amount.

I find that the PSPCL had not implemented, for more than six months. the order dated 28.10.2013 of the Hon'ble PSERC which, in turn, held the PSPCL responsible for the inordinate delay in implementation and imposed a penalty of Rs. 25,000/- on the PSPCL, vide order dated 09.06.2014, under Section 142 of the Electricity Act-2003.

I agree with the PC that the Respondent did not take any action in the matter from the date of issuance of CC no. 27/2014 dated 29.05.2014 till the date of issuance of bill dated 17.05.2017 pursuant to the observations of the Revenue Audit Party vide Memo dated 02.02.2017 and is, thus. responsible for the delay of about three years in raising the demand.

At the same time, I agree with the contention of the Respondent that the Petitioner is a Large Supply consumer having Sanctioned Load of 319.620kW and Contract Demand of 150kVA, could not feign ignorance about the knowledge/availability of instructions issued and uploaded by the PSPCL from time to time, particularly of CC No. 27/2014 dated 29.05.2014 uploaded on the *website of PSPCL immediately after its issuance. Hon'ble PSERC's decision dated 28.10.2013, in Petition No. 3 of 2012 filed by Ludhiana Hand Tools Association, regarding treatment to be meted to Billet/Induction Heating load by PSPCL, was also up-loaded on the website of PSERC.*

I am also of the view that ignorance of Law is no excuse and merely laying the onus on the PSPCL, for not getting its instructions implemented expeditiously, is not in good taste as has been done by the Petitioner in the present case. The consumers, on their part, ought to act responsibly/ sincerely and also discharge their respective obligations in true spirit.

(iii) PC also objected to the raising of demand at a belated stage by referring to Instruction no. 93.2 of Electricity Supply Instruction Manual 2010 providing that:

"Under Section 56 (2) of the Act no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. PSPCL shall not cut off supply in all such cases, if the amount is debited after two years from the date when it became first due."

I observe that the above contention of the PC is not tenable in view of instructions contained in CC No. 05/2012 issued by the PSPCL pursuant to the order of Hon'ble Punjab and Haryana High Court in LPA No. 605 of 2009 decided on 09.09.2011.

(iv) PC also argued that the Petitioner had applied for extension in Load and CD on 23.05.2014 i.e. prior to issuance of CC No.

27/2014 dated 29.05.2014, as such, the action of the Respondent in raising the disputed demand was illegal and not binding on the Petitioner.

I observe that though the Petitioner applied online for extension in Load and CD on 23.05.2014 (when CC No. 27/2014 dated 29.05.2014 had not been issued), it actually got its A&A Form registered on 03.06.2014 after depositing the requisite ACD. Thus, the contention of the PC that it had applied for extension prior to issuance of CC No. 27/2014 is not tenable. I also observe that the Petitioner, at the time of signing Application and Agreement (A&A) Form for sanction of extension in Load/Contract Demand undertook to abide by the rules and regulations governing the connection and was, thus, bound by the instructions applicable at the relevant point of time. Accordingly, the contention of the PC questioning the validity of the demand raised is not in order.

5. Decision:

As a sequel of above discussions, it is held that the difference in Tariff and ACD, on account of release of extension in Load/Contract Demand due to change in category of connection from General Industry to Power Intensive Unit (PIU), is recoverable from the Petitioner with effect from 12.03.2015 (date of release of extension of Load/Contract Demand) till the date when the same has been charged in the regular bill in terms of provisions contained in CC No. 27/2014 dated 29.05.2014. Since the Respondent has also defaulted in ensuring implementation of its own instructions, the additional amount shall be paid by the Petitioner in ten equal instalments and no interest/surcharge shall be charged. Accordingly, *the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, and charge them in ten equal instalments without any interest/surcharge.*

12. It is evident from the perusal of the above that all the contentions of the petitioner have been duly noticed and considered by CGRF as well as Electricity Ombudsman and they have failed to convince the authorities. No circumstances have been brought before this Court on the basis whereof it can be held that the decision of the Electricity Ombudsman suffered from any misappreciation of circular and/or that any of the contentions raised by the petitioner had not been answered. It is further evident that the Electricity Ombudsman has relied upon the commercial circular as notified which are in public domain and deemed to be to the notice of all concerned. The petitioner having chosen not to raise any challenge to the above said commercial circular, if aggrieved, cannot seek an exemption from application of the said commercial circular.

13. In so far as the contention of the petitioner that the respondents also processed the case of the petitioner as LS general (miscellaneous) is concerned, hence, the unit should be considered as general instead of PIU unit, the said arguments is noticed only to be rejected. It is undisputed that when the application was approved by the competent authority in June, 2014, the commercial circular had already been notified. An error committed by any official cannot operate as a waiver or an estoppel against the respondent-authorities considering that the commercial circular had already been put into place.

14. The circular being in enforcement of the order of Punjab State Electricity Regulatory Commission is binding and enforceable. There can be no estoppal against law. Any error by the attending official, whether inadvertent or deliberate cannot be the basis to justify inapplicablitiy of the statutory tariff. Even otherwise, the demand is not for any retrospective period, prior to the notification of the commercial circular. The tariff is never static and is subject to regular revision. The revision of the demand is undisputedly for the period after 27.05.2014, hence, even for the said reason, there is no prejudice. The petitioner cannot be permitted to exonerate himself from his liability merely because some erroneous processing took place at the ends of the respondent-PSPCL and avoid his statutory liability to retain a benefit wrongly availed.

15. Finding no infirmity, illegality, impropriety or misappreciation of the documents available on record by either the CGRF or the Ombudsman, in their respective order, I find that there are no sufficient circumstances as would justify any interference or to hold that the demand raised by the respondent-PSPCL is invalid and unjustified.

16. The present petition is accordingly dismissed. The orders passed by the CGRF as well as the Electricity Ombudsman upholding the demand raised by the respondent-PSPCL, are affirmed.

31.08.2023 **(VINOD S. BHARDWAJ)**
ps-I **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes/No