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

**CWP No.25507 of 2014**
**Date of decision: 15.05.2023**

**M/s Jai Narain Alloys**

**..... Petitioner**

**versus**

**Punjab State Power Corporation Limited and others**

**..... Respondents**

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

Present:- Mr. Vishal Gupta, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Advocate
for the respondents.

**VINOD S. BHARDWAJ, J. (Oral)**

1. Challenge in the present petition is to the order dated 15.05.2014 (Annexure P-15) passed by the Ombudsman, Electricity Punjab, Mohali whereby the appeal preferred by the petitioner has been dismissed.

2. Briefly summarized the facts of the present case are that the petitioner firm had applied for an electricity connection in LS category of 2500 KW/2500 KVA for setting up an induction furnace. He deposited an earnest money of Rs.3,75,000/- on 08.12.2009 as per the demand raised by the respondent-Punjab State Power Corporation Limited. The feasibility clearance was eventually given by the Chief Engineer Commercial on 12.10.2011 whereby the petitioner was required to fulfill certain terms and conditions including submission of A&A form. The aforesaid agreement was also duly executed by the petitioner on

09.12.2011 and a sum of Rs.34,08,750/-, as demanded by the respondent-Punjab State Power Corporation Limited, was also deposited vide receipt dated 09.12.2011.

3. It is contended that the respondent-Distribution Licensee, however failed to take any effective steps for release of the electricity connection from 09.12.2011 to 30.03.2012 (wrongly written as 30.03.2011 in the writ petition). Vide letter dated 30.03.2011, the respondent-PSPCL raised a further demand towards line charges for a sum of Rs.22,50,000/- along with the test report. As a period of more than 2½ years had already elapsed and the petitioner had already invested a sum of Rs.37 lakhs approximately and was not willing to invest any further amount, the petitioner asked for an extension of time for depositing the amount, which was allowed and extension was granted upto 29.12.2012.

4. The contention of the petitioner is that the aforesaid extension was sought by it since the work of 66 KV Sub Station at Mandi Gobindgarh and 220 KV Sub Station at Bassi Pathana was still under progress and was not likely to be completed soon. In any case the security had already been furnished by the petitioner. The period to deposit the amount as per the demand notice was thus extended voluntarily by the respondents on the request of the petitioner, since the infrastructure mentioned in the feasibility clearance letter for release of the connection had not been fulfilled by the respondent- Punjab State Power Corporation Limited itself. Even though the demand had been raised, however, the respondent-PSPCL was non committal about release

of the connection. Being unsure about the time to release the connection, the petitioner eventually submitted an application for seeking a refund of the security deposited by him on 26.07.2013. However, the Corporation refunded only a sum of Rs.34,05,375/- as against the deposit of Rs.37,83,750/-, vide the demand draft dated 26.08.2013. The petitioner immediately submit a request to the respondents on 23.09.2013 calling upon them to release the interest on the security deposited, which remained with them for a period of more than 02 years, along with the illegal deduction of 10% amount. Failing to receive the response from the respondents, the petitioner approached the Circle Level District Consumer Disputes Redressal Forum for the aforesaid claim. Vide order dated 11.12.2013, the above said claim was rejected by the Circle Level District Consumer Disputes Redressal Forum by holding that the claim is covered by the decision of the Punjab State Electricity Regulatory Commission, Chandigarh dated 01.04.2013. The above said order of the Circle Level District Consumer Disputes Redressal Forum was challenged before the Circle Level Disputes Settlement Committee, Khanna Circle on 26.12.2013. The above said appeal was also rejected by the Circle Level Disputes Settlement Committee vide order dated 24.02.2014. The petitioner preferred an appeal before the Ombudsman Electricity Punjab on 24.03.2014 and even the said appeal has been rejected. Hence the present petition.

5. Learned counsel for the petitioner contends that the authorities below have erred in interpreting Regulation 18.1.1 of the Supply Code 2007 and have wrongly deducted 10% of the initial

security/additional initial security at the time of the refund. The said clause is extracted as under:

> "*In case the applicant, after submitting his application, for supply for electricity/extension of load etc. withdraws the same, 10% of the initial security/additional initial security will be deducted by the Licensee and the balance refunded to the applicant without payment of any interest by the Licensee on these deposits. However, if the applicant is not issued a Demand Notice within three months of submission of his application and he withdraws the same, the initial security/additional initial security, as the case may be, will be refunded in full with interest for the period the initial security/additional initial security remained with, the Licensee.*"

6. He submits that A&A form was undisputedly signed between the parties on 09.12.2011 and the Demand Notice was issued only on 30.03.2012 i.e., after a gap of more than 03 months. It is clearly stipulated in the Regulation that if an applicant is not issued a Demand Notice within a period of 03 months with the submission of the application and seeks withdrawal of the same, the initial security/additional security, as the case may be, has to be refunded in full with interest for the period it remained with the Licensee.

7. It is further argued that a mere submission of the representation by the petitioner for seeking extension of time to deposit the additional Demand would not amount to waiver or acquiescence. It is contended that the respondents had not fulfilled the requisite infrastructure necessary for release of connection as per the sanction even till September, 2013 and in such view of the matter, the petitioner

cannot prejudiced for the delays attributed solely to the respondents-Distribution licensee.

The respondents, per contra relied upon the following:

*"5. That the contents of para No.5 are wrong and hence denied. After the submission of A&A forms, these were sent to the Chief Engineer for approval and for release of connection required estimate was prepared. The estimate was sanctioned with estimate No.13278/2011-12 with Additional S.E. memo No.1835 dated 29.03.2012 and A&A forms approved vide C.E. memo no.4225 dated 3.4.2012. Demand Notice no.1100 dated 30.03.2012 was issued for deposit of service connection charges of Rs,22,50,000/- and submission of test report of installations of consumer works and for making other necessary formulations as per rules. The initial validity of Demand Notice was for six months i.e. upto 29.9.2012. It is stated that the petitioner did not make the compliance upto the validity period. He took extension and extensions. His demand notice was first extended upto 29.09.2012, thereafter extended upto 29.12.2012 and lastly extended upto 29.03.2013 by making requests and by depositing extension fee of Rs.2500/- per interval. Even after availing so many extensions, the petitioner did not make the compliance of demand notice by depositing service connection charges and by submitting test report of his installations and by fulfilling other formalities.*

*It is also worth while to mention here that the answering respondent completed 3 conditions out of 4 mentioned above during this period and work of condition no.2 was in progress (see S.E. memo no.2435 dated 13.02.2013 and 16193 dated 4.10.2012). The answering respondent executed this work out of its funds as the petitioner had not paid any amount in this regard. The amount deposited as security is an asset of the consumer which earn interest on it if the applicant succeeds to receive the connection. The petitioner had many investment or* *not is a not a matter of record as he had not submitted Test report and only by making statements will not serve any purpose. The application for refund of security was made on 26.07.2013 i.e. after the lapse of demand notice period i.e. 29.03.2013 when the answering respondent had completed all his works and making a refund claim of security amount by stating that he is not willing to take the connection shows that he is making an excuse.*

*6. That the contents of para no.6 are wrong and hence denied, except that he applied for the refund of security deposit on 26.07.2013.*

*7. That in reply to para no.7, it is stated that 10% deduction was made to the extent of Rs.3,78,375/- from ACD as per Electricity Supply Code & Related Matters regulations 2007 18.1 which is being reproduced hereunder:*

*18. **REFUND OF SECURITY (CONSUMPTION)***

*18.1 On withdrawal of Application*

*18.1.1. In case the applicant after submitting his application for supply of electricity/extension of load etc. withdraws the same, 10% of the Security (consumption) / additional Security (consumption) shall be deducted by the distribution licensee and the balance refunded within thirty (30) days to the applicant without payment of any interest by the distribution licensee.*

*Balance of his security i.e. Rs.37,50,000/- + 33750/- meter security less Rs.3,78,375/- = Rs.34,05,375/- were refunded to the petitioner vide cheque No.13330 Dt. 26.08.2013 as per rules."*

8. Learned counsel appearing on behalf of the respondents contends that since the petitioner had himself sought extension of time for making with the deposits as demanded by the respondents vide the demand notice dated 30.03.2012, hence, he cannot claim that the

deduction could not be made. Extension having been granted on his request, the respondents-Distribution Licensee is entitled to deduct 10% security and cannot be held to be in default.

9. It was also noticed that the Regulation 18.1 as extracted in the reply was at variance with Regulation 18.1.1 as noticed by the authorities below in the impugned orders.

10. Learned counsel for the petitioner has referred to the Electricity Supply Code as updated by the Electricity Regulatory Commission to contend that the Regulation 18.1.1 as extracted in the written statement was in fact incorrect reproduction and that the extract as noticed in the impugned order is the correct provision.

11. I have heard learned counsel appearing for the parties and have gone through the documents available on the record.

12. Certain uncontroverted facts which emerge are that the respondents-Distribution licensee had granted sanction of technical feasibility for release of new large supply induction furnace connection vide memo no.24401 dated 12.10.2011. The above said sanction had been granted subject to the following conditions:

*i) After the installation/commissioning of 220 KV S/s G-4 Mandi Gobindgarh.*

*ii) After the installation/commissioning of 220 KV Sub Station Bassi Pathana.*

*iii) After shifting of load of 220 KV Sub Station G-1 Mandi Gobindgarh of approximately 700 Ampere/ 80 M.V.A. Load 220 KV S/S G-4/220 KV S/S Bassi Pathana.*

*iv) After installation commissioning of third M.V.A. 66/11 KV Transformer at 66 KV Sub Station Focal Point.*

*v) An undertaking duly notarized will be furnished by you that PSPCL will not be responsible for any financial or other loss/damages to you if load of the applicant has to be restricted by PSPCL on account of Grids/system constraints.*

*vi) You can be asked to restrict your demand to the extent required in case of overloading of the feeding 66 KV/220 KV Sub Station or Grid/System constraints. Further you may not even be allowed to avail peak load exemptions in case of System/Grid constraints. A duly notarized undertaking in this regard shall be submitted by you.*

*vii) If any problem arises regarding right of way in the construction of 11/66 KV line, then PSPCL will not be responsible for any financial or other loss/damages to the consumer due to any delay in the construction of line.*"

13. The respondents do not controvert the fact that the aforesaid conditions for release of the connection were satisfied by the respondent-Distribution Licensee only in September, 2013. Further, it is not in dispute that the initial security had been deposited by the petitioner on 09.12.2011 along with the A&A form executed between the parties. The Demand Notice towards service connection charges was thereafter conveyed to the petitioner on 30.03.2012, i.e. after a period of more than 03 months. It is also not in dispute that the application for seeking refund of the security was submitted by the petitioner in July, 2013.

14. The Regulation extracted above clearly shows that if an applicant is not issued a Demand Notice within a period of 03 months from the submission of the application and he seeks withdrawal of his money, the same has to be refunded with full interest for the period of the initial security remained with the Licensee. Hence, the obligation is twin

fold, i.e. refund of the entire amount without any deduction and also to reimburse interest as compensatory cost. The aforesaid clause is not qualified and is not subject to any other satisfactory reason that may be so furnished by the Distribution Licensee giving reasons for failure to release the connection. The obligation being absolute, the Distribution Licensee, which also enjoys a monopoly status in the State, cannot capitalize on its own default and still claim that it is entitled to impose a deduction and/or forfeiture of 10% of the security amount deposited and is also not liable to pay interest for the amount that was retained by it.

15. The mere fact that the consumer, hopeful that the electricity connection shall be released to him shortly, submits an application for an extension of time for him to deposit the service connection charges cannot be a ground to absolve the respondents of their obligation and/or the mandatory provisions prescribed in the Regulations especially when it has come forth that the conditions stipulated in the sanction granted vide memo dated 12.10.2011 had not been fulfilled till September, 2013. The application for seeking refund had been moved in July, 2013 on account of frustration due to delay in the release of electricity connection. It cannot be said that the petitioner-consumer had an equal bargaining power. In doing so, the respondents-Distribution licensee is taking benefit of its monopoly status and its status as a State controlled entity.

16. The circumstances under which the extension to deposit the service connection charges was sought cannot be said to be an act of volition or intended to waive off an accrued right in favour of the

petitioner. Even otherwise, the said letter submitted by the petitioner nowhere expresses that the petitioner shall not seek enforcement of his right to seek refund along with interest at any later stage. The respondent being sole distribution licensee raised a demand of service connection charges (notwithstanding that the demand was raised after expiry of the statutory period of 03 months) even when it was aware that the condition of technical feasibility had not been fulfilled and that it was not in a position to release the electricity connection. The regulations have provided a period for raising the demand which seemed reasonable. It is expected that the distribution licensee lays down the necessary infrastructure and is all geared up to release the connection when demand for service connection charges is made. The respondent cannot seek to avoid their liability of refund with interest merely by generating a paper correspondence.

17. An agency and instrumentality of state is not expected to indulge in such hide and seek to cover up its failure and to wrongly retain monies of the consumers by restoring to such methodology. The respondents were fully aware that the infrastructure necessary for release of connection was not in place. Writing of such demand notice is clearly mischievous and malicious. The respondent is the sole distribution licensee and a consumer hardly has any choice. The submission of letter for seeking extension under the above circumstances can hardly be said to a voluntary act.

18. Undisputedly, the respondents continued to be in default and it failed to provide the electricity connection even till the date of

submission of the application by the petitioner for seeking the refund. It is not the case that the electricity connection in question could not be released for failure to deposit of the service connection charges but the said non deposit was due to failure of the respondent-Distribution Licensee to fulfill the terms and conditions of the sanction and to have adequate infrastructure for release of connection to the petitioner-consumer.

19. Under the given circumstances and taking into consideration, the import of the statutory Regulation 18.1 of the Electricity Supply Code Regulations 2007, I find that the orders passed by the authorities below suffer from infirmity and failure to appreciate the notified regulations. The respondents – Distribution Licensee having defaulted in ensuring demand notice within a period of 03 months from the receipt of an application and agreement form along with the security money, a right stood accrued in favour of the petitioner to claim refund of the entire money along with interest and no deduction could have been ordered by the respondent - Distribution licensee. The regulations being unambiguous, the right of the consumer accrues on expiry of the prescribed period. A mere submission of application for extension of time to deposit the service connection charges cannot be construed as waiver of his right to seek refund of his money. Waiver has to be express or by necessary inference. Any connect or inference cannot be interpreted as a waiver.

20. The present petition is accordingly allowed. The order passed by the authorities below are set aside. The 10% amount i.e.,

Rs.3,78,375/- deducted by the respondent is directed to be refunded. The interest due on the security amount, for the period during which it remained deposited with the respondents, shall also be paid after the date, at the rate of interest, approved by the appropriate commission.

**(VINOD S. BHARDWAJ)**
**JUDGE**

**15.05.2023**
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No