

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision : 18.10.2023

1. CWP-20776-2019

M/s Ramal Industries

....Petitioner

Versus

Punjab State Power Corporation Ltd. & Ors.

....Respondents

2. CWP-31364-2019

M/s Mahaluxmi Processing

....Petitioner

Versus

Punjab State Power Corporation Ltd. & Ors.

....Respondents

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

Present :- Mr. Jivtesh Singh Nagi, Advocate and
Mr. Ullas Mahajan, Advocate for the petitioner(s).

Mr. Angad Chahal, Advocate for respondents-PSPCL.

Mr. Babbar Bhan, Advocate for respondent Nos.1 to 3 in
CWP No.31364 of 2019.

VINOD S. BHARDWAJ, J. (ORAL)

By this common order, this Court shall dispose of aforesaid two writ petitions as identical facts and questions of law are involved in the same. Facts are being extracted from CWP No.20776 of 2019 for the sake of convenience.

Challenge in the abovesaid petition is to order dated 10.10.2017 (Annexure P-4) passed by the LokPal (Ombudsman) Electricity, Punjab to the extent whereby the interest on the delayed payment of rebate has been denied

without assigning any reasons.

It is the case of the petitioner that being the consumer of the respondent-distribution licensee, the petitioner was running an electric connection bearing account No.3002809631 under the jurisdiction of Focal Point Division (Special) PSPCL, Ludhiana. A commercial circular (CC) N.49/2014 dated 16.10.2014 was issued by Punjab State Power Corporation Ltd., in compliance to the order dated 22.08.2014 passed by the Punjab State Electricity Regulatory Commission (for short "PSERC") whereby the Commission had approved rebate of Rs.1/kwh (or kVAh) for consumption of power beyond the threshold i.e. the average consumption (including purchase of power under open access) for the preceding three years as per the circular. The petitioner claimed that the actual power consumption of the petitioner was 2,34,407 units more than the average power consumption for the preceding three years as contained in the revised bill statements. Hence, the petitioner was entitled to claim rebate on the excess consumption in terms of the above circular. The said rebate was to be released in favour of the petitioner and the due amount was to be adjusted in the subsequent energy consumption bills raised by the respondents. The said benefit was not released in favour of the petitioner even though an obligation was cast upon the respondents to comply with the circular issued by them. The petitioner was, thus, constrained to submit an application to the respondent on 03.12.2016 which was processed and the revised bill statement was prepared vide endorsement No.1198 dated 12.04.2017. As the revised bill was subject to pre-audit, the petitioner approached the officials of the respondent-distribution licensee for getting the same pre-audited but was advised to present his grievance to the Dispute Settlement Committee/the Consumer Grievance Redressal Forum (hereinafter referred to as CGRF) as the audit for the financial year 2015-2016 had already been completed. Consequently, the petitioner preferred a complaint

before the CGRF on 05.07.2017, however, the same was not registered on the ground that there was no record to prove that the petitioner had moved any application for release of the abovesaid rebate and the period of two years had elapsed from the date of cause of action. Being aggrieved, the petitioner moved a petition before the Ombudsman for redressal of his grievance. Cognizance of the matter was taken by the Ombudsman by observing that as the petitioner had submitted the application for grant of rebate on 03.12.2016 and the revised billing statement was prepared by the Central Billing Cell, thereafter, the petitioner would be deemed to have approached the Dispute Resolution Mechanism within the prescribed schedule as per provisions contained in Regulation 2.25 of PSERC (Forum & Ombudsman) Regulations-2016.

After considering the case on merits, the Ombudsman held that the the petitioner is well entitled to get the rebate as per the circular issued on 16.10.2014 and the petitioner had been denied his rightful claim due on account of lapses attributable to the respondents in not complying with its own instructions/circulars. Hence, the order passed by the CGRF was set aside. The rebate was allowed in favour of the petitioner vide order dated 10.10.2017. However, the interest on delayed credit of the rebate was not extended to the petitioner notwithstanding Regulation 35.1.3 of the Electricity Supply Code 2014 which stipulates interest to be provided by the distribution licensee on the excess bill charged by it.

Feeling dissatisfied, the petitioner has preferred the instant writ petition.

Reply by way of short affidavit of Er. Jagdeep Singh, Sr. XEN, Focal Point, PSPCL, Ludhiana, has been filed on behalf of respondents No.1 to 3, wherein the factum of release of electricity connection as also the consumption

details referred to above including the subsequent proceedings that transpired before the CGRF as well as Electricity Ombudsman are not denied. It is, however, submitted that the petitioner is misinterpreting the Regulation 35.1.3 of the Supply Code for payment of interest on the rebate given to the petitioner and that the Electricity Ombudsman has given due consideration to the facts of the present case and has rightly held that no interest is payable to the petitioner. The said interest cannot be granted on a rebate given to the consumer as per CC No.49/2014 dated 16.10.2014 as the billing at the reduced rates was to be done only when the consumer crosses the target consumption as worked out and that there is no provision of interest on rebate as per the said circular. Secondly, the interest is payable only on disputed bills under Clause 35.1.3 of the Supply Code, 2014. When the payment was made towards electricity bill, the bill was not subject matter of dispute and the rebate was given subsequently after adjusting the amount of rebate in the electricity bills. Hence, it cannot be labelled as a disputed bill. The above said factors were thus rightly noticed and taken into consideration by the Electricity Ombudsman.

Counsel for the petitioner has argued that petitioner was entitled to the rebate in terms of the circular dated 16.10.2014 and the criteria for rebate has been specifically prescribed thereunder. The above said circular does not stipulate any application to be moved by a consumer. The rebate was to be automatically credited in favour of the consumer as per the above said circular and the same was to be allowed once the target consumption as worked out as per the procedure prescribed thereunder was crossed. The respondents wrongly withheld the same and collected the amount. Merely that the petitioner deposited the said amount cannot be construed as there being no dispute at all. A dispute came into being immediately upon the respondents collecting/retaining the

amount or not releasing the benefit in favour of a consumer when it became due.

It is further contended that the revised billing statement was generated by the respondents themselves and the entitlement of the petitioner was upheld by them.

The Electricity Ombudsman also affirmed the claim of the petitioner and without discussing the provisions as regards Regulation 35.1.3, the claim qua interest was denied for no valid reason and without any consideration.

Learned counsel for the respondents on the other hand, reiterated their submissions noticed above and have contended that there is no error apparent or any patent defect in the order passed by the Electricity Ombudsman and that due benefit already stand released in favour of the petitioner.

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

Before proceeding any further, it would be apt to reproduce the contents of the circular dated 16.10.2014, the relevant extracts of Definitions of the Notification issued by The Punjab State Electricity Regulatory Commission and the Regulation 35.1.3 of the Electricity Supply Code 2014, which read as under:-

“In compliance to Punjab State Electricity Regulatory Commission (PSERC) order dated 22.8.2014 for determining the annual Revenue Requirement (ARR) with reference to petition No.63 of 2013, wherein the Hon'ble Commission has approved rebate of Rs. 1/kWh(or kVAh) on the category-wise tariff for all categories, except Street Lighting and AP categories w.e.f. 01.04.2014 for FY 2014-15 as under:-

The criterion for allowing the rebate shall be as under:-

(1) The rebate shall be allowed for any consumption during the financial year exceeding the consumption worked out on the following methodology:

The average consumption (including purchase of power under open access) of three years shall be taken as threshold for allowing rebate. In case, period is less than three years or there is reduction or

extension in load/demand, average consumption shall be worked out on prorata basis.

(ii) The billing at the reduced rates after allowing the rebate shall be done once the consumer crosses the target consumption as worked out under Step (i), e.g. if a consumer has average consumption of three years as 10000 units, the consumer shall be entitled for billing at the reduced rate for any consumption exceeding the threshold consumption of 10000 units during FY 2014-15. The rebate shall be allowed to the consumer as and when the consumption of the consumer exceeds 10000 units.

(iii) In case of consumers to whom Kvah tariff has been made applicable, their consumption threshold shall be worked out by using conversion factors as mentioned in Tariff order as under:-

Sr. No.	Category	Conversion Factor
1	Large Supply (General Industry)	0.95
2	Large Supply (PIU/Arc Furnace)	0.98
3	Bulk Supply (HT/LT)	0.95
4	Railway Traction	0.97
5	Medium Supply	0.92
6	DS (load more than 100 kW)	0.92
7	NRS (load more than 100 Kw)	0.92

$$\text{Tariff in kVAh} = \text{Tariff in kWh} \times \text{Conversion Factor}$$

This issues with the approval of competent authority.”

***“The Punjab State Electricity Regulatory Commission
notification date 26.12.2016.***

1. *SHORT TITLE, EXTENT AND COMMENCEMENT*

1.1 to 1.4 xxxxx xxxxxx

1.5 (a) to (d) xxxx xxxxx

(e) “complaint” means any grievance in writing made by a complainant that – (i) an unfair trade practice or a restrictive trade practice has been adopted by the licensee in providing electricity service; (ii) the electricity services hired or availed

(f) $xxxx$ $xxxxxx$ $xxxxxx$

(h) & (I) xxxxxx xxxxxxxx

(j) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or under any licence or has been undertaken to be performed by distribution licensee in pursuance of a contract or otherwise in relation to electricity service or performance standard; viz interruption/ failure of

“ Regulation 35.1.3 of the Electricity Supply Code 2014

35.1 Current Energy Bills

35.1.3 *If on examination of a complaint, the distribution licensee finds a bill to be erroneous, a revised bill shall be issued to the consumer indicating a revised due date of payment, which shall not be earlier than seven days from the date of delivery of the revised bill to the consumer. If the amount paid by the consumer under Regulation 35.1.1 is in excess of the revised bill, such excess amount shall be refunded through adjustment first against any outstanding amount due to the distribution licensee and then against the amount becoming due to the distribution licensee immediately thereafter. The distribution licensee shall pay to such consumer interest on the excess amount at Twice the SBI's Base Rate prevalent on first of April of the relevant year plus 2% from the date of payment till such time the excess amount is adjusted."*

A perusal of the aforesaid Regulation 35.1.3 of the Electricity Supply Code 2014 shows that the complainant may submit a complaint espousing any of the grievances as defined under Regulation 1.5 (e), as per which even a breach of any obligations by the Licensee, which adversely affects any consumer would fall within the domain of a complaint. The “consumer grievance” means & includes any complaint relating to any fault, imperfection,

shortcoming, defect or deficiency in the quality, and also includes the payment of compensation or billing disputes of any nature or recovery of charges by the licensee. Further, the “defects” such as any fault, imperfection, shortcoming or inadequacy in relation to charges/payments (billing problems) have already been defined as deficiency. Consequently where a distribution licensee commits a breach of its obligation, the same is a complaint which is amenable to the jurisdiction of Consumer Grievance Forum and that any such retention of money or failure to give credit or recovery of any charge/amount for which they were not entitled to would amount to illegal retention of an amount, the benefit whereof ought to have been extended to a consumer. Since the respondent-distribution licensee does not dispute that the Electricity Ombudsman had returned an award in favour of the petitioner and held him entitled to the benefit of rebate which such order has attained finality, the respondent-distribution licensee has not raised any challenge thereto. Further, the revised billing statement was generated by the respondents themselves which establishes that the petitioner was entitled to the rebate in terms of the circular dated 16.10.2014 and notwithstanding that the obligation was cast upon the respondent-PSPCL itself as per the aforesaid regulations to extend the said benefits, initiative was not taken. The same amounts to a failure by the respondent-distribution licensee to perform obligation imposed upon it under the Electricity Act, 2003. The liability having been fastened upon the respondents, there was no occasion or reason for the respondents to have withheld the amount and/or not release the said benefit immediately and without any undue delay. Ignoring the aforesaid obligation, the respondents delayed release of the said benefit of rebate as a result whereof, the petitioner had to continue paying the bill and/or pay the amount to which he was not liable.

It cannot be construed that merely because the petitioner deposited the bill and that no dispute was raised with respect to electricity consumption raised therein, hence, the bills cannot be interpreted as 'disputed bill' as per Regulation 35.1.3. Any dispute pertaining to the amount collected by the respondents and in relation to the charges for consumption which does not give benefit to a consumer when such benefit accrues in his favour would create a dispute as regards the amount so collected. Any such restrictive interpretation as is offered by the respondent would run contrary to the ethos of the Electricity Act, 2003 and defeat the object of the Electricity Act which also intends to protect the interest of the consumers.

Further insofar as the issue of element of interest having not been stipulated in circular dated 16.10.2014 is concerned, said argument stem illegality for two reasons, firstly, the circular assumes that the respondent-distribution licensee shall discharge its obligation in the manner as prescribed and that there is no default in extending the benefits, wherever due and secondly, Regulation 35.1.3 of the Electricity Supply Code 2003 being part of the delegated legislation under Electricity supply Code would override the said Circular.

Consequently, even if there is no express provisions for extending the benefit of interest in terms of the Regulation, the same cannot be construed or interpreted as denial of interest since rights of interest flows from Regulation notified by the Regulatory Commission.

For the reasons mentioned above, I find that the order passed by the Ombudsman fell short of granting the benefit to the petitioner for the interest on the delayed credit of the rebate when the same was undisputedly due to the petitioner. Thus, both the petitions are accordingly allowed and order dated

10.10.2017 passed by the Electricity Ombudsman is modified to the extent whereby the interest on the rebate amount is denied to the petitioner.

The petitioner would, thus, be held entitled to the interest in terms of Regulation 35.1.3 of the Electricity Supply Code from the date when the same fell due till the credit of the amount was given to the petitioner. The aforesaid amount would be assessed by the respondents Distribution Licensee and the benefit thereof be adjusted in the subsequent energy consumption charges in terms of energy charges as notified.

All the pending application(s), if any, shall stand disposed of.

18.10.2023
manoj

(VINOD S. BHARDWAJ,)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : Yes