

**LPA-619-2024 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(105)****LPA-619-2024 (O&M)****Date of decision: - 02.07.2024****Punjab State Power Corporation Limited and others****.....Appellants****Versus****M/s Jai Narain Alloys****.....Respondent****CORAM : HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKAS BAHL****Present:- Mr. Ashish Verma, Advocate, for the appellants.************VIKAS BAHL, J.****CM-1516-LPA-2024**

1. This is an application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 203 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the application, the same is allowed. Delay of 203 days in filing the present appeal is hereby condoned.

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1. Challenge in the present Letters Patent Appeal is to the judgment dated 15.05.2023, passed by the learned Single Judge vide which CWP-25507-2014 filed by the respondent has been allowed and the orders passed by the authorities have been set aside and the 10%

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amount i.e., Rs.3,78,375/- deducted by the respondents/present appellants has been directed to be refunded to the present respondent and further a direction has been given that the interest due on the security amount, for the period for which the said amount remained deposited with the present appellants, shall also be paid, at the rate of interest, approved by the appropriate commission.

2. Undisputed facts which have been noticed in the judgment of the learned Single Judge are as follows: -

- (i) The respondent herein had applied for an electricity connection in LS category of 2500 KW/2500 KVA for setting up an induction furnace.
- (ii) On 08.12.2009, an earnest money of Rs.3,75,000/- was deposited by the respondent as per the demand raised by the present appellants.
- (iii) On 12.10.2011, sanction of technical feasibility for release of new Large Supply Induction Furnace connection was granted and the same was subject to seven conditions which have been reproduced in para 12 of the judgment of the learned Single Judge and have also been mentioned in the letter dated 12.10.2011 (Annexure P-2) annexed along with the writ petition.
- (iv) On 09.12.2011 (Annexure P-3), an agreement was entered into between the present appellants and the respondent and a

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sum of Rs.34,08,750/-, as demanded by the present appellants, was also deposited by the respondent, vide receipt dated 09.12.2011.

- (v) On 30.03.2012 (i.e. after a period of more than three months), the demand notice towards the connection charges was conveyed to the respondent.
- (vi) On 26.07.2013, the respondent moved an application for seeking refund of the security deposited by him as in spite of lapse of almost two years, the present appellants had failed to take any effective steps for release of the electricity connection and had rather raised a further demand, in addition to the amount of Rs.37,83,750/ already deposited.
- (v) On 26.08.2013, the present appellants refunded a sum of Rs.34,05,375/- against the deposit of Rs.37,83,750/-.
- (vi) On 23.09.2013, the respondent submitted a request to the present appellants to release the interest on the security deposited, which remained with them along with the illegal deduction of 10% of the amount deposited by the respondent.
- (vii) On 11.12.2013, the claim filed by the respondent before the Circle Level District Consumer Disputes Redressal Forum was rejected.
- (viii) On 24.02.2014, the appeal filed by the respondent before the the Circle Level Disputes Settlement Committee was also



rejected.

- (ix) Vide order dated 24.03.2014, the petitioner preferred an appeal before the Ombudsman, Electricity, Punjab.
- (x) On 15.05.2014, the appeal filed before the Ombudsman, Electricity Punjab, by the appellants was also rejected.
- (xi) It has been specifically recorded in para 13 of the judgment by the learned Single Judge that the present appellants had not controverted the fact that the conditions for release of the connection were satisfied by the present appellants only in September, 2013 i.e. after the date on which the application for refund had been filed by the respondent. The said aspect and the abovesaid facts have not been disputed before this Court.

3. The regulation which governs the issue of refund is admittedly Regulation 18.1.1 of the Electricity Supply Code Regulations 2007. The said regulation which has been reproduced in para 5 of the judgment passed by the learned Single Judge is also reproduced herein below for ready reference: -

*“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.”

4. The applicability of the said regulation has not been disputed before us and rather, a perusal of the orders passed by the authorities including the order dated 11.12.2013 (Annexure P-10) would show that it is the said regulation which has been invoked by the authorities to deduct 10% of the amount deposited of the respondent which amounted to Rs.3,78,375/-.

5. A perusal of the above-said regulation shows that in case an applicant is not issued a Demand Notice within three months of submission of his application and the applicant withdraws the same, then, initial security/additional initial security, as the case may be, is required to be refunded in full with interest for the period the initial security/additional security remained with the Licensee. Learned Single Judge after considering the admitted fact that the demand notice was not issued to the respondent within three months of the submission of his application as the said notice was issued on 30.03.2012, whereas the application was made by the respondent on 09.12.2011, observed that the respondent was entitled to the relief prayed for and allowed the writ petition in the above-said terms. It was observed that the above-said regulation had not been duly appreciated by the authorities and the regulations were unambiguous and a right had accrued to the respondent on expiry of the said period and thus, the respondent was entitled to the relief prayed for. This Court has also considered the above-said regulation



in the light of the admitted facts which have been stated herein-above and finds that the said view taken by the learned Single Judge is absolutely legal and calls for no interference.

6. The sole argument raised by learned counsel for the appellants before us to challenge the judgment of the learned Single Judge is the same as has been raised and noticed in para 8 by the learned Single Judge and it is to the effect that since the respondent at one stage, when a further demand on 30.03.2011 was raised by the present appellants, before making the application for refund, had asked for extension of time for depositing the amount which was allowed and the extension was granted. It is the argument of the present appellants that once an extension has been sought by the respondent, then, the respondent has waived his right under Regulation 18.1.1 of the Electricity Supply Code Regulations 2007.

7. The said argument of learned counsel for the appellants has been dealt with by the learned Single Judge by observing that merely because the respondent was hopeful of getting the electricity connection shortly and had moved the said application for extension of time, it could not be a ground to absolve the present appellants of their obligation to have complied with the conditions as mentioned in letter dated 12.10.2011 which admittedly had not been complied with by the present appellants till September, 2013, nor would the same give a right to the present appellants to not comply with the mandatory provisions

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prescribed in the regulations and that the application for refund was moved on account of frustration caused on account of delay in the release of electricity connection. It was further observed that the respondent who was a consumer, did not have equal bargaining power and that the present appellants were taking benefit of their monopoly status and that mere moving of an application for extension could not be stated to be an act of volition or be intended to waive off an accrued right in favour of the respondent and moreover, there was no correspondence by the respondent expressing that he would not seek enforcement of his right to seek refund along with interest at a later stage.

8. This Court is in full agreement with the observations made by the learned Single Judge. It could not be disputed before this Court that a bare reading of the Regulation 18.1.1 of the Electricity Supply Code Regulations 2007 on the basis of admitted facts shows that the respondent was entitled to the refund of the amount deducted as well as the interest. It is not in dispute that it was the appellant authorities who had delayed in complying with the conditions for release of the connection and even till the date the application for refund and interest was filed by the respondent i.e. 26.07.2013, the said conditions had not been fulfilled. In the said circumstances, to deny the respondent the full refund of his money alongwith interest for the period, the said money was lying with the present appellants, would apart from being against the said Regulation 18.1.1 of the Electricity Supply Code Regulations 2007,

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would also amount to undue enrichment to the present appellants at the expense of the respondent and due to the inaction of the appellants. The Regulation 18.1.1 of the Electricity Supply Code Regulations 2007 does not curtail the right of the respondent/applicant from seeking refund along with interest in a situation where an extension as has been sought in the present case, is sought by the respondent. Thus, once the demand notice had not been issued by the present appellants within three months of the submission of the application by the respondent and deposit of the amount, then, upon an application for withdrawal, a vested right accrued in favour of the respondent for refund of the full amount along with interest. Moreover, no law has been cited by the learned counsel for the appellants in support of the sole submission made before this Court.

9. Keeping in view the above-said facts and circumstances, we find no reason to interfere with the judgment of the learned Single Judge and the present appeal, being meritless, deserves to be dismissed and is accordingly dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(VIKAS BAHL)
JUDGE

July 02, 2024
naresh.k

Whether reasoned/speaking?
Whether reportable?

Yes
No