

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

CWP-12744-1997 (O&M)
Date of decision: 18.01.2024

M/s Adinath Textiles Limited

...Petitioner

VERSUS

Punjab State Electricity Board and others

...Respondents

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

Present :- Mr. Yugank Goyal, Advocate for the petitioner.

Mr. R.L. Sharma, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 19.08.1997 (Annexure P-5) whereby a penalty of Rs. 1,97,626/- has been levied on the petitioner on account of violation of Peak Load Hours Restrictions.

Learned counsel of the petitioner contends that the petitioner-Company is a manufacturer of Acrylic Yarn at Ludhiana and is a continuous process industry, hence, it cannot bear any power failure for a long duration. The petitioner-Company is a large-scale consumer having sanctioned load of 1967.360 KW with a contract demand of 1500 KV. The Board has installed a meter, which is duly calibrated, for recording the consumption of energy. It is contended that the respondent-Punjab State

Electricity Board (as it was then) had imposed Peak Hours Restrictions in the evening and the petitioner had been allowed to use energy upto 425 KW in the Peak Load Hours. The said time of peak load hours was subject to change, from time to time, as per instructions issued by the Board. The petitioner was thus free to use the energy upto the sanctioned load at all time, however, during the peak load hours; it was permitted to use the same upto 425 KW on payment of certain additional charges. It is argued that the petitioner had not been exceeding the peak load hour restrictions at any point of time and had been keeping the energy consumption within its sanctioned limit, hence, the demand raised was not justified. The respondents vide memo No.4583 dated 19.08.1997 directed the petitioner to pay an amount of Rs.1,97,626/- by a non-speaking order and without assigning any reason or recording any finding.

A written statement has been filed on behalf of the respondents wherein the factual aspects as regards the petitioner being a consumer, the sanctioned load and contract demand etc. are not disputed. It is, however, submitted that the Peak Load Hours Restrictions had been ordered by the Distribution Licensee over all large supply consumers in the State and the petitioner had been permitted to use energy only upto 425 KW during the restricted time. The respondent-department had issued instructions vide circular No.6/86 to curb violation/infringement of Peak Load Hours Restrictions. In the event of any violation, the charges as notified by the respondent-Distribution Licensee were applicable against the violating company.

I have heard the learned counsel appearing on behalf of the

respective parties and have gone through the documents appended along with the present petition.

Challenge in the present petition is to the memo No.4583 dated 19.08.1997, which reads as under:-

“

Memo No.4583 PSEB Dated 19.8.1997

From

Assistant Executive Engineer (Commercial)
Focal Point Division (Special),
Ludhiana.

To

M/s Adinath Textiles,
Chandigarh road, Ludhiana.

Sub: Infringement of peak load.

Your case was considered in the general meeting of the Dispute Settlement Committee on 30.7.97. It has been decided that you have committed infringement of peak load. Therefore, you deposit Rs.1,97,626/-. You have already deposited 1/3rd of the aforesaid amount totalling to Rs.65870/- vide BA-16 No.193/31411-27.6.97 and you will deposit the balance amount of Rs. 1,31,756/-. In case you fail to deposit the said amount your connection will be disconnected for seven days.

Encl: Bill.

Sd/-

Asstt. Executive Engineer,
Focal Point Divn. (Special)
Ludhiana. ”

It is apparent from a perusal of above said memo that the above letter is actually a communication of decision taken by the Dispute Settlement Committee on 30.07.1997. The above said communication

cannot be deemed or be held as a decision taken by the competent authority levying the penalty and that the decision as regards the said dispute had been taken by the Dispute Settlement Committee on 30.07.1997. For in-explicable reasons, the petitioner has chosen not to impugn the decision taken by the Dispute Settlement Committee or to challenge the same. A decision cannot be impugned solely on the strength of a communication sent for raising a demand in terms of the said decision. Still further, it is evident from a perusal of memo No.3356 dated 26.06.1997 sent by the Punjab State Electricity Board to the petitioner that there was a detailed reference about the contravention of the permitted load of 425 KW. Details of the same are extracted as under:-

“ PUNJAB STATE ELECTRICITY BOARD

MEMO NO. 3356

Dated : 26.6.97

From

Asstt. Executive Engineer
Focal Point Division (Special)
Ludhiana.

To

M/s Adinath Textiles,
A/c No. FPI-75
Chandigarh, Road, Ludhiana.

Sub: Infringement of peal load restrictions.

On 66 KV Sub-station Dhandari Kalan, a Duke Cornics solid state meter has been affixed on 11 KV Adinath's Feeder Panel. The load date was taken from the said point by the Asst. Executive Engineer, MMTS-II on 12.2.97. During the peak load hours, you are permitted to run 425 kilowatt load, but in contravention to the permitted load of 425 kilowatt, you were

found running load during the peak load as mentioned below:-

<u>Date</u>	<u>Time</u>	<u>Running load.</u>
31.1.97	18.00	511.33 KW
31.1.97	18.30	484.66 KW
„	19.00	490.00 KW
„	19.30	466.00 KW
„	20.00	505.33 KW
„	20.30	484.00 KW
1.2.97	18.0	450.00 KW
„	18.30	445.33 KW
2.2.97	19.30	426.66 KW
„	20.00	431.33 KW
„	20.30	433.33 KW
5.2.97	18.0	448.66 KW
6.2.97	19.00	430.66 KW
6.2.97	21.00	438.00 KW
7.2.97	18.30	438.00 KW
„	19.00	428.00 KW
„	20.30	438.00 KW
„	21.00	427.33 KW
8.2.97	18.30	442 KW
„	19.00	446 KW
„	20.00	440.66 KW
„	21.00	442.00 KW

According to the above, you had been committing infringement of the peak load restrictions. Therefore, you are called upon to deposit Rs.1,97,626/ @ Rs.100/- per kilowatt. In case you fail to deposit the amount, your connection will be disconnected for a week.

xxxx ”.

The entire claim of the petitioner is based on the submission that the meter allows variations to the extent of 2.99% whereas the specific stand of the respondents is that the accuracy of the meter is 100%. The said content of the written statement was never controverted or disputed by filing any rejoinder/replication. Hence, the accuracy of the meter cannot be doubted at this stage. The petitioner has also failed to refer to any instruction/circular issued by the respondents to substantiate his submission as regards its claim regarding the accuracy of the meter and the benefit of a variation to the extension of 2.99% as claimed by him. In the absence of reference to any such instructions/provisions, the said self-serving contention of the petitioner cannot be accepted at this juncture. The sanction load of the petitioner was 425 KW and even though it was contended that the petitioner had confined its electricity consumption within the limit of the sanctioned load, however, the said contention is apparently falsified in view of the details mentioned in memo No.3356 dated 26.06.1997 which establishes that the petitioner had been running a load beyond the sanctioned load at the time and the period mentioned thereunder. The order of assessment was conveyed by the Assistant Executive Engineer, Focal Point Division against which the petitioner had preferred a dispute before the Dispute Settlement Committee. Surprisingly, neither the order of the Assistant Executive Engineer nor the decision of the Dispute Settlement Committee is impugned herein. The petitioner has also not referred to any pleadings/material on the basis whereof the data specified by the respondent in the above said memo dated 26.06.1997 can be held to be incorrect or wrong. A mere assertion that it was compliant of the load sanction

requirements and was using the same within its sanctioned capacity cannot be accepted at this juncture in the wake of the specific record submitted by the respondent-Distribution Licensee.

Even during the course of arguments before this Court, there is no reference to any statutory provisions/regulations/circulars issued by the competent authority on the basis whereof the details of the electricity usage as mentioned in Annexure P-2 can be held to be erroneous. The factual aspect as noticed in the above said communication dated 26.06.1997 clearly establishes the consumption of electricity beyond the sanctioned load, thus subjecting the petitioner liable to pay for the violation of peak load charges restrictions. Further, it is also not the case of the petitioner that at the time during which the consumption was recorded to have exceeded the sanctioned load, the same was not notified as a peak load by the respondent-Distribution Licensee. Since there is no dispute to the factual aspects noticed by the authorities concerned i.e. in relation to the notification of the Peak Load Hours Restrictions; duration, the time of excess energy withdrawal as well as the recording of the meter and absence of any instruction/circular to the contrary and on account of non-impugning the decision taken by the Dispute Settlement Committee, the present petition deserves dismissal. The impugned Annexure P-5 is a mere communication of a demand after a decision taken by the Dispute Settlement Committee on 30.07.1997. It is thus a consequential communication and not the cause. Once the cause is not a subject matter of challenge, the consequential communication cannot vest a right on the petition to seek setting aside of the cause.

The present petition is accordingly **dismissed**.

All other pending criminal misc. applications, if any, stands disposed of.

18.01.2024
Mangal Singh

(VINOD S. BHARDWAJ)
JUDGE

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