

2024:PHHC:118505



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

225

CWP-4857-2021

Date of decision: 10.09.2024

M/S ASIAN BIKES PVT LTD

.....Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION LTD AND OTHERS

.....Respondents

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

Present: - Mr. Jivtesh Singh Nagi, Advocate
for the petitioner.

Mr. Saksham Dudeja, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

The principal challenge in the present writ petition is to the order passed by the Consumer Grievances Redressal Forum as well as the Electricity Ombudsman whereby the contention of the petitioner has been rejected and the petitioner has been held liable to pay the surcharge as well as the interest amount on the unpaid dues of Rs.5,15,061/-. The said interest amount worked out to the tune of Rs. 1,59,514/-.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner is a consumer having a large supply connection bearing



Account No. 3003018071 with a sanctioned load of 990 KW and contract demand of 995 KVA. The electricity connection to the petitioner was released on 20.08.2009 against an initial sanctioned load of 420 KW/KVA which was extended to the sanctioned load of 990 KW/contract demand of 995 KVA on 11.06.2016. The petitioner had been paying all the bills regularly and without any default. A bill for sum of Rs. 7,54,830/- dated 18.07.2016 for the period of 31.05.2016 to 30.06.2016 was issued which also included a sum of Rs. 21,090/- as a demand surcharge and the minimum monthly charges alongwith peak load violation charges. The said charges having been wrongly levied upon the petitioner, the matter was brought to the notice of the respondents on 25.07.2016. The said bill was revised and corrected to a sum of Rs. 6,48,030/- which was deposited by the petitioner vide cheque No. 733439 dated 28.07.2016. Thereafter, in the subsequent bill for the period of 01.07.2016 to 31.08.2016, another bill dated 03.09.2016 for a sum of Rs. 14,00,200/- which included the peak load violation charges as well as arrears was issued to the petitioner. The charges having been wrongly levied, the matter was brought to the notice of the respondent No.3 i.e. the Assistant Executive Engineer, once again. The bill was again got corrected and the revised amount was Rs. 12,37,014/- which was again deposited by the petitioner on 12.09.2016. The mistake continued in the next bill dated 04.10.2016 for the period from 01.09.2016 to 30.09.2016 for a sum of Rs. 5,19,620/- showing a wrong credit of Rs. 5,15,314/-. The matter was again brought to the notice of the respondents and the bill was revised to an enhanced amount of Rs. 10,34,680/-. The said amount was also deposited by the petitioner on 12.10.2016. An assurance

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was given by the respondent No. 3 that henceforth correct bills shall be issued. The next bill dated 02.11.2016 for the period from 01.10.2016 to 31.10.2016 was issued for a sum of Rs. 2,69,670/- and a credit of Rs. 5,15,314/- was again reflected in the bill. The said amount was deposited by the petitioner. It is submitted that all the bills were being regularly deposited and notwithstanding the same, a notice vide memo No. 9297 dated 06.08.2018 was received by him for depositing an amount of Rs. 8,78,728/- on account of the discrepancies observed by the respondents in the above said bills. The said amount was deposited online, under protest, vide receipt No. 123206883 to avoid any disconnection and a letter dated 28.09.2018 expressing the protest and discontent of the petitioner was sent to the respondent-distribution licensee. It filed a petition before the Consumer Grievances Redressal Forum on 09.11.2018 wherein it was pleaded that the demand surcharge and peak load violation charges amounting to Rs. 1,13,328/- initially charged in the bill dated 18.07.2016 and Rs. 17,255/- in the bill dated 03.09.2016 were corrected in the same respective bills itself but they were charged again vide Memo No. 9297 dated 06.08.2018. The same was agreed to by the respondents but they never set the house in order and continued to raise the said demands in an illegal and wrongful manner.

3. The respondent-distribution licensee submitted a revised calculation sheet for the arrears of Rs. 8,78,728/- and agreed that only an amount of Rs.7,01,012/- was recoverable which included principal amount of Rs. 5,15,061/- and the balance amount of Rs. 1,85,951/- being the interest and the surcharge calculated on the said amount. The same was accepted by



the petitioner in Consumer Grievances Redressal Forum under protest in its order dated 14.12.2018 and accordingly, a notice for the revised demand was issued which was deposited by the petitioner as per the decision of the Consumer Grievances Redressal Forum. The petitioner filed an appeal before the Electricity Ombudsman, Punjab which such appeal was dismissed and the petitioner was directed to pay the surcharge for the said period and held that the same was recoverable from it. Aggrieved thereof, the present writ petition has been filed.

4. Learned Counsel appearing on behalf of the petitioner contends that the petitioner has no objection to the demand of principal amount of Rs. 5,15,061/- that had been inadvertently credited twice to the Account of the petitioner but insofar as the demand with respect to the surcharge interest on the said amount is concerned, it cannot be held liable since there was no lapse on the part of the petitioner. The error, if any, was on account of the negligence/failure of the respondents themselves and that there is no provision for demanding interest surcharge especially when the said discrepancy was never pointed out to the petitioner and that on the first available opportunity, the requisite deposit was made good. He further submits that the petitioner had always been pointing out the errors and depositing the differential amounts and seeking correction of its bills and that it was the failure of the respondents to not correct their own log book. An assurance was actually given by the respondent No.3 that they would ensure that no errors would creep in the subsequent bills, however, despite



the same, such errors continued to reflect, the liability thereof cannot be fastened upon the petitioner-Company.

5. Learned Counsel appearing on behalf of the respondents refers to the written statement filed on behalf of the respondent-PSPCL. The relevant extract thereof reads thus:-

“1. That present petition is liable to be dismissed as petitioner has not approached this Hon'ble High Court with clean hands as the petitioner has knowingly kept silent. The facts in brief necessary to understand the matrix of the case are that that the petitioner had got extended its contract demand (CD) from 420 KVA to 995 KVA and deposited Rs 6,78,500 as advance consumption deposit (ACD) in SAP system on dated 26.09.2016 in chronology list, cash security deposit was charged for Rs 6,78,500/- which was not to be charged as it was already deposited by the petitioner. This amount of Rs 6,78,500/- was credited to the petitioner's account by the Revenue Accountant (RA) through two check lots for Rs 6,75,500/- each had been posted by the Revenue Accountant in SAP chronology on 15.10.2016 despite that the fact that only check lot was to be entered in SAP system Accordingly the unpaid amount to the tune of Rs 5,15,061/- shown in the bill dated 02.11.2016 along with surcharge and interest thereon for the period from 16.11.2016 to 06.08.2018, since the amount of But 6,78,500/- was refunded twice in inadeptly by check lot hence this extra refunded amount was adjusted in bill of consumer/petitioner in month of November 2016. It is submitted that supplementary bill issued as on dated 06.08.2018 has been raised to consumer for 8,78,278/-



(principal amount 6,45,636 + interest 2,32,642) for the period of Nov 2016 to Aug 2018.

2. That upon the petitioner having challenged against supplementary notice in Consumer Grievance Redressal Forum 09.11.2018. and then the account of petitioner has been rechecked as per direction issued by Hon'ble Forum and the revised amount came to 7,01,012/- (principal amount 5,15,061 + interest 1.85.951. It is also pertinent to mention here that

"Amount of Rs. 515060/- is payable by the Consumer along with Interest and surcharge as contained in PSPCL Tariff order 2016-17 after pre-audit."

*3. That still dissatisfied the petitioner had approached the Hon'ble Ombudsman Mohali on dated 15.01.2019 and the Hon'ble Forum had rightly held that the unpaid amount **"It is held that the unpaid amount of Rs. 5,15,061/- on account of actual energy consumption charges as per bill dated 02.11.2016 plus surcharge and interest there on from 16.11.2018 to 06.08.2018 is payable in terms of provision contained in the Tariff order for F.Y. 2016-17, 2017-18,2018-19. Accordingly, Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any after adjustment"**.*

4. That pursuant to the decision of Hon'ble Ombudsman, demand amount was recalculated which ultimately came to be the Principle Amount of 5,15,061 and Interest of Rs. 1,59,514 for the period of 16.11.16 to 06.08.2018 totaling 6,74,575 was/is recoverable. Petitioner already deposited the amount of Rs. 8,78,278/- as per the decision of



Ombudsman, (8,78,278-6,74,575) = 2,03,703/- was refunded to consumer and duly intimated by the officials of the department to petitioner by memo no. 132 dated 03.05.2019. Instead of complying with the order of Ombudsman the petitioner has filed this present petition.

6. Learned Counsel contends that the petitioner was inadvertently refunded the amount twice over and that it continued to enjoy the same. Once the said error was detected, the demand was raised. Since the amount was enjoyed by the petitioner, it becomes liable to pay the interest surcharge thereupon for the period of default.

7. I have heard learned Counsel appearing on behalf of the respective parties and have gone the documents available on record.

8. So far as the liability with respect to payment of Rs. 5,15,061/- i.e. the principal amount on account of actual energy consumption charges as per the Bill dated 02.11.2016 is concerned, there is no dispute with respect to the same. The dispute remains on the bill with respect to the surcharge and interest for the period from 16.11.2016 to 06.08.2018. The respondents have not disputed that in the disputed bills (Annexures P-1 to P-4), the petitioner had been approaching them and pointing out the mistakes which were being rectified on the said mistakes being pointed out. It is also not in dispute that the credit entry was wrongly reflected in the accounts by the respondents themselves on account of negligence by the Revenue Accountant. It is further undisputed that the demand in question was raised only in the year 2018 when the lapse was so detected. Once the demand was



raised only for the first time in August, 2018, the Consumer cannot be held liable to pay the interest and surcharge for delayed payment of the said amount since the communication of such arrears was never made to the petitioner. The liability of the lapses on the part of the distribution licensee cannot translate to penalizing the petitioner when it is apparently not at fault and had been duly and diligently pursuing the respondent authorities about carrying out the rectification in their account and making good the timely deposits. The question of surcharge and arrears to be levied upon a consumer could arise only once a demand is conveyed to it and there is a default/delay in payment of such a demand. Once the demand with respect to the period itself has been raised later in point of time, the respondent-distribution licensee would not be entitled to seek levy of surcharge and delayed payment interest on such demand that was never raised.

9. Counsel for the respondent is also not able to point out any provision under the regulations wherein such a surcharge or interest could be demanded despite the bill/arrears having not been raised from the petitioner.

10. In view of the above, the present writ petition is partly allowed. The directions given by the authorities to the extent of the petitioner being held liable to pay the amount of Rs. 5,15,061/- is upheld, however, the demand for the surcharge on the outstanding arrears of Rs. 5,15,061/- and interest to the tune of Rs. 1,59,514/- is set aside. Since the entire amount has already been deposited by the petitioner under protest, hence, the respondents are directed to adjust the excess amount of surcharge and interest of Rs. 1,59,514/- already deposited by the petitioner with the



respondent-distribution licensee towards the subsequent energy consumption bills.

11. Let the necessary exercise be undertaken by the respondents within a period of three months of the receipt of certified copy of this order, failing which the petitioner shall be entitled to adjustment alongwith interest @ 6% per annum from the date of filing of the present writ petition.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 10, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No