2024:PHHC:165797

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

101

CWP-1787-1997 (O&M)
Date of decision: 12.12.2024

JCT Limited ...Petitioner

VERSUS

The Punjab State Electricity Board and another ...Respondents

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

Present :- Mr. Vikas Singh, Advocate for the petitioner.

Mr. R.L. Sharma, Advocate for the respondent(s).

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VINOD S. BHARDWAJ, J. (Oral)

CM-19858-CWP-2024

Application is **allowed** as prayed for. The cost of Rs.5000/- is waived of.

Main case:

1. Challenge in the present petition is to the order dated 22.03.1996 whereby a demand of Rs.13,19,611/- was raised as arrears on account of short payment towards extension of load which was highlighted during the audit report.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner is a public limited company and is a consumer of electricity of the erstwhile-Punjab State Electricity Board. All the bill payments were being made regularly. The petitioner-Company had applied for extension/increase in the sanctioned load from 10632.860 KW to 14132.741 KW on 12.10.1995 with an increase in contract demand from

8350 KVA to 10820 KVA. The same was registered by the respondents vide A&A No.30698/LU dated 12.10.1995. The requisition form CS-1(a) was submitted directly to the Chief Engineer (Commercial), Tariff division of the erstwhile Electricity Board, vide Assistant Executive Engineer (AEE), City Sub-Division, Phagwara memo No. 4094 dated 14.10.1995. The approval for allowing extension to the consumer-petitioner was accorded by the Chief Engineer (Commercial), Patiala vide memo No.165345/C-45/Indl./Ja.II dated 13.11.1995 addressed to Superintending Engineer (SE), Operation Circle, Jalandhar with a copy to Chief Engineer Distribution North Zone, Jalandhar and XEN/Op. Divn. Punjab State Electricity Board, Phagwara. It was specifically stated in the above mentioned sanction that the compliance of Commercial Circulars No.45 of 1991 and 35 of 1993 should be ensured before the sanction. He contends that the respondents issued a demand notice to the petitioner on 14.11.1995 and that the payment as demanded, was accordingly paid by the petitioner. Nonetheless, a communication was received by the petitioner-Company vide memo No.661 dated 22.03.1996 to the effect that during the course of checking done by the Audit, it was observed that an amount of Rs.13,19,611/- had been deposited less on account towards service connection charges. The said amount had been assessed on the basis of the difference between per kilowatt service connection charges and the service connection charges deposited by the petitioner-Company.

3. A reply to the above said memo was sent by the petitioner on 25.03.1996, disputing the said demand and seeking details thereof. In

response to the said letter, the respondent-Punjab State Electricity Board made a reference to Para 2(b) of Commercial Circular No.35 of 1993. It was informed that the demand was being made because the respondent-Distribution Licensee had submitted a demand of lesser amount, whereas the same should have been at an enhanced rate, as had been notified by the respondents-department.

4. Disputing the said demand, the petitioner approached this Court claiming that there was no error on its part and that the lapse, if any, was on the part of the respondents in calculating the correct rates of service connection and that the same could only be claimed within three years i.e. the maximum period for recovery of amount under the Indian Limitation Act. Since the details had not been furnished, hence, the demand could not be raised.

5. The petitioner-Company also sent a cheque of Rs.300/- for challenging the action of the respondents but the same was returned by the Board vide letter dated 20.01.1997 with the remark that the petitioner could not challenge the bill. Hence, the present writ petition has been filed.

6. Learned counsel appearing on behalf of the petitioner has argued that the demand raised by the respondents is on an objection raised by the Audit and it was not on account of any error detected by the respondents themselves. Hence, there was deficiency in assessment of the amount by the respondents-Board, as it was then. The detailed break-up of the demand had not been furnished about the quantum of alleged recovery conveyed to the petitioner-Company. He further contends that as per the

Commercial Circular No.91 of 1995 dated 13.11.1995 issued by the respondents, on the basis whereof the demand has been raised, it is clear that the revised rates of service connection charges were to become applicable in cases where the demand notice were issued after 15.11.1995. Since the demand notice in the present case was issued on 14.11.1995, hence, the demand relying on the Commercial Circular No. 91 of 1995 dated 13.11.1995 was not sustainable being not covered under the said circular. Hence, the deposit already made by the petitioner was valid and in accordance with the Circulars that were in force then and that any revision in demand, on the basis of a Circular, that was not in force or applicable against the petitioner, would be *non-est* and liable to be set aside.

7. Learned counsel appearing on behalf of the respondent-Punjab State Electricity Board (as it was) does not dispute that the petitioner had applied for an extension of load and submitted Form A & A with the Board on 12.10.1995 after depositing the security of Rs.17,66,000/-. The extended load was sanctioned to the petitioner-consumer by the Board on 14.11.1995 and a test report was received on 28.11.1995, which was sent to the sanctioning authority, after due verification on 29.11.1995. The Board had revised vide notification dated 13.11.1995 and the Commercial Circular No.91/95 was also issued on 13.11.1995. The petitioner-Consumer was liable to deposit the service connection charges of 3500 KW @ Rs.750/- per KW, yet the petitioner had deposited only a sum of Rs.5,25,000/- on 28.11.1995 and Rs.2,25,000/- on 08.01.1996 @Rs.150/- per KW i.e. as per the instructions applicable prior to 13.11.1995.

8. Learned counsel appearing on behalf of the respondent-Board does not dispute the fact that the petitioner was a consumer and an application for extension of electricity load was submitted on 12.10.1995 and a deposit of Rs.17,66,000/- was also made towards the same. He, however, refers to the Commercial Circular No. 91 of 1995 dated 13.11.1995 as per which the service connection charges in respect of domestic/NRS and Industrial/Bulk Supply category connection had been revised. He contends that the said revision of service connection charges was to become effective from 15.11.1995 also in relation the consumers where the demand notices are to be issued on or after the above date. It is submitted by him that the Chief Engineer had sanctioned the extended load in favour the petitioner vide approval dated 13.11.1995 wherein it was clearly stated that the compliance of Commercial Circulars No.45 of 1991 as well as Commercial Circular No. 35 of 1993 should be made before raising the demand. The Commercial Circular No. 35 of 1993 Para 2(b) clearly laid down as under:-

> "*Where a disputed case is before the D.S.C. and consumer has deposited 33/50% or less amount with PSEB as decided by the competent authority, his case for feasibility clearance/ sanctioned of load may be processed. However, in such cases, the demand notice shall not be issued till final decision by the D.S.C./competent authority and deposit of total amount by the consumer as per decision.*"

9. Since the said condition clearly prescribed that a demand notice

is not to be issued till a final decision is taken by the Dispute Settlement Committee/competent authority and deposit of total amount as per the said decision, however, notwithstanding the aforesaid Commercial Circulars, the Assistant Executive Engineer issued the demand notice No. 117 dated 14.11.2015 on the same date without insuring that the requisite outstanding disputed amount is duly deposited as contained in Commercial Circular No. 35 of 1993. Thus, there was a hasty action on the part of Assistant Executive Engineer in issuing the demand notice so as to defeat the operation of the sanction accorded by the Chief Engineer on 14.11.1995, more so when the revision connection charges had already been notified vide Commercial Circular No. 91 of 1995 dated 13.11.1995. The authority was thus in the knowledge of the revision of rates and the action taken by the Sub-Division in issuing demand notice, that too without being compliance of the instructions contained in the instruction, was in violation of Commercial Circular. The disputed amount was later deposited by the petitioner. He contends that the hasty action was taken to avoid recovery of enhanced service connection charges and as such, the petitioner cannot take benefit of any mischief/fraud played upon public funds by the petitioner in connivance some officer.

10. Neither the sanction order contained the terms & conditions prescribed thereunder nor the Commercial Circular No. 91 of 1995 dated 13.11.1995 have been placed on record by either of the parties.

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

with their able assistance.

12. The facts establish that a conditional sanction subject to fulfillment of the conditions mentioned therein was granted to the petitioner. The condition as per Commercial Circular No. 35/93 showed that where a disputed case was before the Dispute Settlement Committee and consumer disputed 33/50% or less amount as per the assessment of competent authority, the case for feasibility could be processed but the demand notice was not to be issued. In the case of the petitioner, the disputed amount of Rs.7,12,396/- was deposited on 18.12.1995 (wrongly typed as 18.12.1993) vide B.A.16 Nos 98/18461 i.e. after the issue of demand notice on 14.11.1995. The demand notice was also given by hand where as the normal procedure was by way of dispatch through registered post. So much so, a separate register for dispatch was maintained in the present case.

13. It was also noticed that as per Commercial Circular No. 55/91, the per KW charges on the basis of prevalent rates was required to be compared with the amount actually deposited earlier, but no such comparison was done in the case of the petitioner, at the time of issuance of demand notice resulting in short recovery of Rs.13,19,611/-. A detailed calculation of recovery was duly conveyed vide order bearing endorsement No.2416/17 dated 20.03.1996 establishing that the SDO, City Sub-Divn. was not in a position to issue demand notice on 14.11.1995 for non-compliance of the stipulation. The calculation is, however, not being extracted but the same had been attached as Annexure R-2 with the written statement.

14. Even though, the replication was filed by the petitioner, but a

conspicuous silence was maintained so far as reasons about conditional sanction and its non-compliance is concerned. The petitioner even though had claimed that a detailed calculation of the assessment had not been supplied but chose to remain non-responsive to the order and the detailed calculation given therein. No objection was raised to the calculation as well. Besides, nothing was referred to establish that the petitioner was compliant of the terms of the sanction order and Commercial Circular No. 35/1993. An inference thus flows to the adverse of the petitioner.

15. The case put up by the petitioner before this Court is solely on the ground that the demand notice was already issued to him on 14.11.1995 and the Commercial Circular No. 91 of 1995 dated 13.11.1995 was to apply against the consumers to whom the demand notices were issued after 15.11.1995, hence, the enhanced rates of service connection could not be recovered from the petitioner. The said argument, however, fails to convince this Court into accepting the same, when considered in light of the complete circumstances.

16. Further, the question as to whether the conditions raised in the sanction order were pre-requisite to be fulfilled before a demand is issued or not, could have only been discerned, from the sanction order, however, the parties have chosen not to append the same. The specific stand of the respondents to the said effect has not been disputed or denied by the petitioner as to whether any such condition was incorporated in the order or not.

17. Under the said totality of circumstances and the documents as

well the orders appended, this Court has no option but to infer that the condition as contained in Commercial Circular No. 35 of 1993 was a mandatory pre-requisite condition. Further, this Court also takes a note of the Commercial Circular No. 91 of 1995, that had been issued vide memo dated 13.11.1995 and notification had also been issued specifying that the revised rates would be applicable where the demand notices are to be issued after 15.11.1995. Undisputedly, the SDO, Sub-Division, issued the demand notice on the same day and on receipt of the sanction from the office of the Chief Engineer, Commercial, Patiala and ignoring the conditions prescribed thereunder. The action was questionable and reflective of an undue haste on the part of the official in not ensuring compliance of the instructions and raising a demand notice in violation thereof. Since the Commercial Circular was already issued by the authorities, it has to be presumed that the Assistant Executive Engineer was fully aware of the rates that were to become effective on the following day i.e. on 15.11.1995. Seemingly, the issuance of said demand notice No.117 on 14.11.1995 was only to defeat the operation of the Commercial Circular No. 91 of 1995 which was to become effective from 15.11.1995. Even though there is no action taken by the respondents against the authorities, however, this Court has to take into consideration that any *per se* malicious act on the part of the official respondents cannot create binding obligations against the Public Exchequer. Such windfall gain cannot be claimed to be retained by the petitioner by being an unlawful beneficiary thereof, at the expenses of Public Exchequer. Thus, where such a lapse/fraud come to the notice of an Audit and the same was pointed out, the revision of demand on the basis of assessment and identification of any such loss cannot be held to be bad.

18. The demand order was raised in March-1996 while the deposit was made on 14.11.1995, hence, it was not barred by limitation. Additionally, the detailed calculation was furnished and also appended with the instant reply and no objection has been filed thereto. Hence, the said arguments are also declined as they lack in merit.

19. For the foregoing reasons, I find that the present writ petition deserves dismissal. The demand raised by the respondent-Punjab State Electricity Board, is affirmed.

20. Ordered accordingly.

21. All pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

12.12.2024

Mangal Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No