

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1990-1997 (O&M)
Date of decision : 26.04.2024

Punjab State Electricity Board & Ors. ... Appellant(s)

Versus

M/s Rasan Detergents ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Monica Chhibber Sharma, Advocate with
Ms. Priyanka Goyal, Advocate for the appellants.

Mr. Yugank Goyal, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the defendant-appellants aggrieved by the judgment and decree dated 09.08.1995 passed by the Trial Court and the judgment and decree dated 17.04.1997 passed by the First Appellate Court.
2. Brief facts relevant to the present *lis* are that the plaintiff-respondent was a consumer under the appellant-PSEB and was engaged in manufacturing of detergents, cakes, soap etc. For the purposes of running its factory, it had obtained an LS-7 electric connection. The connected load of the plaintiff-respondent was 349.723 KW. The plaintiff-respondent also has an additional connected load of 36.640 KW for lighter purposes. The appellant-PSEB imposed peak load hours restrictions from 5.00 pm to

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9.00 pm. It was the case set up that on an earlier occasion the plaintiff-respondent was found running the factory during the peak load hours restrictions and for violation of the said restriction a sum of Rs.35,000/- was imposed as a penalty on the plaintiff-respondent which he paid on 11.01.1990. It was further the case set up that on 01.08.1990 the factory of the plaintiff-respondent was again checked by a Flying Squad at 08.20 pm and it was found that the plaintiff-respondent was running the factory and load of 35.294 KW was being utilized. Since it was the second offence, a penalty to the tune of Rs.70,000/- @ Rs.200/- per KW was imposed. The plaintiff-respondent challenged the imposition of this penalty of Rs.70,000/- and also the action of the defendant-appellants in disconnecting its electricity connection. It is apt to note that during the pendency of the proceedings the connection was restored. It was further the case set up that the Sub Divisional Officer of the concerned Sub Division vide letter No.2340 dated 28.08.1986 had permitted the plaintiff-respondent to use 50% of the electricity of the contract demand during the peak load hours restrictions. It was further the pleaded case that the plaintiff-respondent was entitled to use the electricity upto 50% of the contract demand as per the Notification issued by the appellants-PSEB. It was further the case set up in the plaint that only 3/4 workers were present who were cleaning the machines. As per the report of the raiding party, the running load of the plaintiff-respondent was 35.294 KW and the plaintiff-respondent had an additional sanctioned load of 36.640 KW for lighter purposes. On notice the defendant-appellants herein appeared and took the stand that on raiding the plaintiff-respondent

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was found running the factory during the peak load hours restrictions and on an earlier occasion the premises were found running during the peak load hours restrictions and hence an amount of Rs.35,000/- was imposed as penalty which was paid on 11.01.1990 and yet again on 01.08.1990 another raid was conducted and the plaintiff-respondent was again found running the factory during the peak load hours restrictions and it was, therefore, pleaded that as per the instructions of the PSEB (Ex.DW2/A), connection of the plaintiff-respondent was liable to be disconnected and being the second offence, the connection was disconnected and a penalty of Rs.70,000/- @ Rs.200/- per KW was imposed. It was further the stand taken that the plaintiff-respondent was a habitual offender. Replication was filed denying the contents made in the written statement and reiterating those of the plaint.

3. On the basis of the pleadings the following issues were framed by the Trial Court :

1. Whether the plaintiff company is continuous process industry for the purpose of power supply and has been declared as such by the defendants ? OPP
2. Whether the memo dated 02.08.90 passed by the defendant No.3 is illegal, null and void ? OPP
3. Whether the plaintiff is entitled to the injunction prayed for ? OPP
4. Whether the suit is not maintainable ? OPD
5. Whether the suits based on false and vexatious claim and defendants are entitled special costs of Rs.5000/- ? OPD
6. Whether the suit has not been filed through an authorized person ? OPD

7. Relief.

4. The Trial Court vide judgment and decree dated 09.08.1995 decreed the suit. Aggrieved by the same, an appeal was preferred by the defendant-appellants which was also dismissed vide judgment and decree dated 17.04.1997. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellants would contend that as per the instructions (Ex.DW3/8), only 5% of the sanctioned load could be utilized during the peak load hours restrictions and since the factory was found running and was utilizing the load of 35.294 KW hence the same was in violation of the instructions and the penalty was rightly imposed.

6. Per contra, the learned counsel for the plaintiff-respondent would contend that vide letter dated 05.07.1983 (Ex.P3) written by the Superintending Engineer, DS Circle, PSEB, Patiala it was certified that factory of the plaintiff-respondent was treated as a continuous process industry for the purpose of power supply. It is further the contention of the learned counsel that the said letter was never revoked. The learned counsel for the plaintiff-respondent would further contend that as per the instructions (Ex.DW3/8), all continuous process industries and essential industries fed from independent feeders were to restrict their demand to 50% of the sanctioned contract demand during the peak load hours restrictions and that the plaintiff-respondent had LS-7 connection with a sanctioned load of 349.723 KW and an additional load of 36.640 KW for lighter purposes and hence utilization was well below the 50% of the sanctioned contract demand.

7. I have heard the learned counsel for the parties.

8. In the present case both the Courts concurrently found that the plaintiff-respondent was using only 35.294 KW. This is an admitted fact and has not been disputed by the learned counsel for the defendant-appellants. Both the Courts concurrently found that the plaintiff-respondent was not using the load more than the permissible load. In the present case the sanctioned load was 349.723 KW and an additional load of 36.640 KW was sanctioned for lighter purposes. Vide letter dated 05.07.1983 written by the Superintending Engineer, DS Circle, PSEB, Patiala, it was certified that the factory was a continuous process industry for the purpose of power supply. The learned counsel for the defendant-appellants has not been able to show a single document on the record that this letter was ever revoked. Further still, instructions (Ex.DW3/8) issued by the appellants-PSEB read as under :

“In super-session of all the previous instructions regarding Peak Load Restrictions, Evening Peak Load Hour Restrictions on industries may be imposed as under:-

- 1 All General Industries except S.P. Not allowed to run category (with load upto 20 KW) at all whether fed from Independent feeder, Mixed urban/Industrial feeders.*
- 2 All Continuous Process Industries To restrict their & Essential Industries fed from demand to 50% of Independent feeders (... Furnaces their sanctioned have been excluded from this Contract Demand category)*

The relaxations admissible during evening peak load hours hence-forth will be as under:-

- (a) *MS & LS General Industrial consumers may be allowed to use power upto 5% of their sanctioned Connected Load subject to a maximum of 5KW for office lighting and water supply.*
- (b) *Industries located at Goindwal Sahib Industrial Complex continue to be exempted from the purview of Peak Load Hour Restrictions.*
- (c) *All categories of consumers in the border districts of Amritsar, Gurdaspur and Feorzepur are also exempted from Evening Peak Load Hour Restrictions.”*

9. A perusal of the above reproduced instructions clearly reveals that for all continuous process industries, they were directed to restrict their demand to 50% of their sanctioned contract demand during the peak load hours restrictions. In the present case, the load being utilized at the time of the raid was only 35.294 KW and hence it cannot be said that the load being utilized was beyond 50% of the sanctioned contract demand. The findings recorded by the Courts thus warrant no interference.

10. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

26.04.2024

Yogesh Sharma

(ALKA SARIN)
JUDGENOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO