IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

207 **CWP-1149-2017**
Date of Decision: 15.01.2024

PUNJAB STATE POWER CORPORATION LIMITED
... Petitioner

VERSUS

OMBUDSMAN ELECTRICITY PUNJAB & ANOTHER
... Respondents

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

****

Present: Mr. Abhimanyu Jangra, Advocate for
Mr. Karan Kaushal, Advocate for the petitioner.

Mr. H.S. Jugait, Advocate for respondent No.1.

None for respondent No.2-(ex-parte).

****

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 08.07.2016 passed by the Electricity Ombudsman, Punjab, whereby the demand of bill raised by the PSPCL has been set aside.

Notice of the present petition had been issued to the respondents including contesting respondent No.2. Appearance on behalf of the said respondent had been entered on 20.09.2019 and the matter was adjourned repeatedly to enable the said respondent to file reply, however, the same was not done despite grant of more than six opportunities. On the previous date i.e. 21.08.2023, counsel appearing on behalf of respondent No.2 made a statement before this Court that the said respondent is no more in his contact and is not responding to the request for submission of reply and thus prayed for withdrawal of his power of attorney.

The defence of respondent No.2 was accordingly struck off and the matter was adjourned for today to afford an opportunity to the said respondent to make appropriate arrangements. However, no one has entered appearance on behalf of respondent No.2 today as well. The respondent No.2 is accordingly proceeded against *ex- parte.* The matter is pending for last 6 years and sufficient opportunity has already been granted to respondent No. 2, who is fully aware of the present case. Further wait is thus not justified and the case has been heard on merits.

Learned counsel for the petitioner contends that the respondent No.2-Company was a consumer of electricity supply by the petitioner under the LS category connection of mixed load (seasonal as well as non-seasonal) with sanctioned load of 977.588 KW (652.138 KW non-seasonal + 325.450 KW seasonal) with a contract demand of 990 KVA. The respondent No.2-Company had been consuming electricity for the seasonal requirements of running its factory as per the PSPCL instructions. The season is deemed to range for a period of 09 months commencing from 1st of September every year to 31st of May of the following year. As per instruction 18.3(b) of the Electricity Supply Instructions Manual, the billing for mixed load type industries comprising load of seasonal and general industry is done on the basis of MMC (Minimum Monthly Charges) levied on full sanctioned load or demand for the period for which the seasonal industry runs. The minimum charges for full sanctioned load are applicable to all such industries during the season. For the non-seasonal period i.e. when the seasonal load is disconnected, the MMC is on the basis of general industrial load or demand actually utilized by the consumer, whichever is higher. It is contended that the petitioner-PSPCL had raised a bill of Rs.5,28,360/- for May 2015 (billing period from 01.05.2015 to 01.06.2015) against respondent No.2-Company, which was disputed by the respondent No.2-Company before the Zonal Level Dispute Settlement Committee, however, the said claim was dismissed by the West Zone Bathinda vide order dated 23.10.2015. Aggrieved of the said order, the respondent No.2-Company preferred an appeal before the Forum for Redressal of Grievances of Consumers, Patiala constituted under Section 42(5) of Electricity Act, 2003. The said appeal was also dismissed by the said Forum on 19.01.2016. The said order was challenged by the respondent No.2-Company before the Electricity Ombudsman and vide the impugned order dated 08.07.2016, the Electricity Ombudsman allowed the appeal and set aside the orders passed by the Authorities below by recording as under:

> *"I have gone through Instruction no: 18.3 (b) and 18.5 of ESIM. Provisions of these instruction are more or less similar to Regulation 18.5 (iii) and 18.5 (v) of Schedule of Tariff approved for the year 2014-15 by PSERC. Regulation 18.5 (iii) of Schedule of Tariff applicable to mixed load industries provides:-*
>
> > *"For mixed load industries, comprising load of seasonal industries and general industry, billing shall be done / MMC levied on full sanctioned load / demand for the period seasonal industry runs. MMC on full sanctioned load/demand as applicable to seasonal industries shall be applicable during the seasonal period as specified in condition 18.1, subject to minimum of 4½ months. For the remaining period when seasonal load is disconnected, MMC on the basis of general industrial load/demand actually being utilized by the consumer (above 100KVA in case of LS consumers) shall be leviable. Industries found running seasonal load after having got disconnected the*

> *same and intimation having been given to distribution licensee or during off season period, shall be liable to pay MMC as applicable to seasonal industries units for full period of 12 months. If the load / demand actually being utilized during off seasonal period is found to have exceeded the load / demand fixed for off seasonal period, the load/demand surcharge, as applicable, shall be leviable. For LS/MS consumers, if the actual demand recorded during off seasonal period exceeds the prorata demand fixed for off seasonal period, only demand surcharge shall be leviable.*

Regulation 18.5 (v) of Schedule of Tariff for the year 2014-15, approved by PSERC provides:

> *"The seasonal industry consumers covered under Para 18.5 (i) and (iii) shall be required to serve advance notice before starting / closing of the unit. Also such consumers shall give an undertaking not to run seasonal load during off season. These provisions shall not be applicable in case of seasonal industry consumers who opt to be covered under general industry category.*

Since the petitioner is covered under Regulation 18.5 (iii), hence, he was required to serve advance notice before start / close of the seasonal load The petitioner claimed that the intimation to start of seasonal load is given vide his letter dated 15.09 2015, which has been denied by the Respondents saying the produced document as manipulated one. Scrutiny of this letter reveals that it bears initial of some person but without name or diary number. The Petitioner has failed to prove that this document was actually submitted in the concerned office. Thus I agree with the arguments of the Respondents regarding non-receipt of this letter by them meaning thereby that the seasonal period was not started on 15.09.2014, as claimed by the Petitioner and the seasonal *load, during this entire period, remained disconnected. I also do not find any merit in the arguments of Petitioner that the Respondents were required to serve registered notice under the provisions of CC no: 69/1990 in case the consumer failed to give notice for starting of seasonal period being CC no: 69/1990, an outdated circular with the revised provisions made applicable for mixed load industries vide Regulation no: 18.5 (v) of Schedule of Tariff. Thus it is held that the petitioner has not connected his seasonal load during the entire seasonal period from 01.09.2014 to 31.05.2015.*

As a sequel of above discussions, it is surely established that the Respondents are misinterpreting the provisions of Instruction 18.3 (b) of ESIM and have failed to place on record any such instructions / Regulations / Circulars which provide charging of MMC for a minimum period of 4½ months before the end of seasonal period from the mixed load industries where seasonal load was not got connected during the entire seasonal period. I have not noticed any such provision in any Instruction / Regulation referred / brought to record by Respondents. Moreover, the Regulations provide for charging of MMC on the basis of General Industrial Load / demand, actually being utilized, from mixed load Industries during the off-season period, as such the Petitioner is liable to pay energy charges / MMC on actual demand during the entire disputed period, when the seasonal load was not got connected.

Accordingly, the MMC for seasonal load, charged in the bill for 05/2015 (period 01.05.2015 to 01.06.2015, bill Rs. 5,28,360/-) is set aside and the Respondents are amount directed to charge the MMC on actual demand, treating the whole demand as general industry demand during the entire seasonal / off-seasonal period from 01.09.2014 to 31.08.2015 (12 months). The excess / short amount, after adjustment, if any, may be recovered /

refunded from / to the petitioner with interest under the relevant provisions of ESIM 114."

Learned counsel appearing on behalf of the petitioner contends that the Electricity Ombudsman has allowed the appeal preferred by respondent No.2-Company holding that no advance notice for commencement of the season, as stipulated in Instruction No.18.3(b) of the Electricity Supply Instructions Manual, was issued by the consumer and that there was no proof about the respondent No.2-Company having commenced the season. Accordingly, the raising of bill of Rs.5,28,360/- was held bad and liable to be set aside. The petitioner-PSPCL was directed to charge the MMC on actual demand, treating the whole demand as general industry demand, during the entire season/off seasonal period commencing from 01.09.2014 to 31.08.2015. The excess/short amount, after adjustment, if any, was ordered to be refunded to the respondent No.2-Company with interest under the Instruction No.114 of the Electricity Supply Instructions Manual. It is contended by him that the aforesaid direction is based upon misinterpretation of the instructions issued by the appropriate Authority. Relevant Instructions of the Electricity Supply Instructions Manual is extracted as under:

"18.3 Billing of Seasonal Industries:

a) *For exclusive seasonal industries mentioned above, billing shall be done monthly. Monthly Minimum Charges as applicable in respective schedule of tariff shall be levied on full sanctioned load / demand for the period these industries work during seasonal period of 9 months (from 1st September to 31st May next year). However, this working period shall be taken as minimum of 4½ months for the purpose of billing/levy of MMC on month to Month* *basis. Industries which work for more than 9 months and up to 12 months billing shall be done/monthly minimum charges levied on full sanctioned load / demand as mentioned above for the seasonal period of 9 months and for the remaining 3 months (i.e. Ist June to 31th Aug.) billing shall be done as per tariff applicable to general industrial consumers. Tariff rate/rate of monthly minimum charges shall be as given in schedule of tariff for large supply/medium supply/small power and as applicable depending upon the sanctioned load.*

b) For Mixed type of load industries, comprising load of seasonal industry and general industry, billing shall be done/Monthly Minimum Charges levied on full sanctioned load / demand for the period seasonal industry runs, MMC on full sanctioned load as applicable to rice shellers/cotton ginning/rice bran stabilization units shall be applicable during the seasonal period, subject to minimum of 4 1/2 months. For the remaining period when seasonal load is disconnected, MMC on the basis of general industrial load / demand actually being utilized by the consumer (not less than 100 KVA in case of LS consumers) shall be leviable in case of SP / MS consumers. Industries found running seasonal load after having got disconnected the same and Intimation having been given to AE/AEE/XEN (DS) shall be liable to pay Monthly Minimum Charges as applicable to rice shellers/ cotton ginning/rice bran stabilization units for full period of 12 months If the load actually being utilized during off seasonal period is found to have exceeded the load fixed for off seasonal period, the load surcharge shall be leviable. For L.S consumers if the actual demand recorded during off-seasonal period exceeds the prorata demand fixed for off-seasonal period, demand surcharge *shall be leviable as applicable but no load surcharge is leviable in their case.*

c) Consumption by exclusive seasonal industry during the off-season shall be charged as per off-seasonal rates under the relevant Schedule of Tariff.

18.5 Advance notice by consumer:

The consumer having exclusive seasonal load/mixed type load shall serve an advance notice of 10 days before closing/starting of the seasonal industry/load to local office.

18.6 *The consumer shall give an undertaking not to run his seasonal installation (load) during off-season.*

[Emphasis Supplied]

It is contended by the petitioner that even though Instruction No.18.5 of the Electricity Supply Instructions Manual mandates that an advance notice of ten days has to be served by the consumer before closing/ commencing of a seasonal industry/load to the local office, however, Instruction No.18.3(b) of the Electricity Supply Instructions Manual mandates that for mixed load industries comprising of seasonal and general industries, the billing is to be done on the MMC levied on full sanctioned load/demand. The MMC on full sanctioned load as applicable to rice shellers/cotton/general industries shall be applicable during the seasonal period subject to a minimum period of four and a half months. He contends that as no advance notice was received, the petitioner-Distribution Licensee has raised the bill on the basis of MMC for the minimum period of four and a half months in terms of the abovesaid instructions. He contends that the respondent No.2-Company had been paying the earlier demand, without any objection or protest, and thus acknowledges his liability to pay the MMC.

He further makes a reference to the consumption pertaining to the years 2014 and 2015 to contend that there is an increase in consumption during the months of September, October, November, December of 2014 and January, February, March of 2015. The relevant consumption table shows as under:

Year Month	**2013 MDI**	**Consump.**	**2014 MDI**	**Consump.**	**2015 MDI**	**Consump.**
January	730.367	318187	588.060	293862	634.995	210659
February	349.700	206536	558.620	269462	627.765	225459
March	457.020	251288	532.300	300128	562.850	241383
		XXX	XXX	XXX		
July	307.000	052638	422.980	035462	052.793	015073
August	050.010	010296	044.580	010818	043.170	057043
September	026.800	009312	282.335	053802	042.300	021045
October	247.460	063544	474.015	159402	-	-
November	369.580	123302	554.940	265152	-	-
December	638.420	239832	679.995	325569	-	-

It is contended that the abovesaid consumption pattern clearly shows that as against the non-seasonal consumption of 35462; 10818 and 53802 units, there has been a hike in the consumption from October onwards. It clearly shows that the respondent No.2-Company had initiated the functioning of his factory/Unit. He contends that the failure of a unit to work on optimum basis cannot be a ground for seeking exemption from payment of MMC as per the statutory instructions. It is thus averred that the demand was rightly raised by the petitioner and the Electricity Ombudsman failed to appreciate the instructions as well as the consumption pattern which duly established that the respondent No.2-Company had commenced commercial operations during the seasonal period. Notwithstanding the absence of mandatory notice as per the Instruction No.18.5 of the Electricity Supply Instructions Manual, the petitioner-PSPCL had given due concession of the said failure and had levied the MMC only for the minimum period of four and a half months as stipulated in Instruction No.18.3(b) of the Electricity Supply Instructions Manual, extracted above.

The respondent No.2-Company has, however, chosen to remain absent from the proceedings and not to contest the present petition.

A perusal of the Electricity Supply Instructions Manual shows that the minimum period of four and a half months has been prescribed under Instruction No.18.3(b) of the Electricity Supply Instructions Manual being the period for which the MMC on full sanctioned load is to be claimed from the mixed/seasonal industries. The petitioner-PSPCL has levied the demand and claimed the same in terms of the aforesaid instructions. The Electricity Ombudsman has failed to refer either to the consumption pattern or to the applicable import of the aforesaid Instruction. The stand of the petitioner-PCPCL has been declined only on the ground that there was no intimation sent by the respondent No.2-Company for seeking connection of the load during the seasonal period and as such, the demand could not have been raised. The reading of Instruction No.18.3(b) of the Electricity Supply Instructions Manual, however, does not provide any such exemption that in the event of failure to send an advance notice under Instruction No.18.5 of the Electricity Supply Instructions Manual; the Instruction No.18.3(b) of the Electricity Supply Instructions Manual would not be applicable. The mandate of Instruction No.18.3(b) of the Electricity Supply Instructions Manual is not dependent upon issuance of advance notice and rather prescribes that the abovesaid MMC on full sanctioned load would be leviable against the consumer for the said period. In the absence of any exemption and/or subjecting applicability of the abovesaid demand to issuance of notice under Instruction No.18.5 of the Electricity Supply Instructions Manual, the interpretation given by the Electricity Ombudsman would not be validly drawn from a conjoint reading of the said Instructions.

In view of the above, the present petition is allowed.

The order dated 08.07.2016 passed by the Electricity Ombudsman is accordingly set aside.

(VINOD S. BHARDWAJ)
JANUARY 15, 2024 **JUDGE**
rajender

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