IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

226

CWP-16800-2020
Date of decision: 11.07.2024

PUNJAB STATE POWER CORPORATION LIMITED AND ANOTHER

......Petitioners

VERSUS

LD DIVISIONAL COMMISSIONER AND ANOTHER

.......Respondents

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

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Present: - Mr. Rishabh Gupta, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. J.S. Jaidka, Advocate and
Mr. Abhishek Khullar, Advocate for respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 18.03.2020 passed by the Divisional Commissioner, Patiala Division, Patiala exercising the powers of the Appellate Authority whereby the appeal of respondent-Consumer has been allowed and the order of assessment dated

22.05.2018 passed by the petitioner-PSPCL assessing a penalty of Rs.21,94,109/- has been set aside.

2. The facts in brief are that respondent had obtained an electricity connection under the NS Category with a sanctioned load of 39.780 KW for the work of “Zindi.” He sought extension in load by 210 KW to the already existing load. A&A form was submitted on 21.05.2015 for manufacturing of nuts and bolts. The complete break up of load included heaters of 100 KW and 50 KW in the test report. The same was released under the General Category in May 2016 and billing for a total load of 249.780 KW with contract demand of 277 KVA was started with nature of industry being indicated in the bill as “Cotton Spinning & Weaving.”

3. It is the case of the respondent that the increase in load was applied for and was released after the issue of Commercial Circular No.27/2014 dated 29.05.2014. It was also alleged that the PSPCL was satisfied about the load of heaters not being in the nature of Induction heaters/surface hardening machines which were covered under the Power Intensive Units (for short ‘P.I.U.’) w.e.f. 01.01.2014. There had been no concealment of the load or break up, as such, it could not have been charged as a case of Unauthorized Use of Electricity (UUE).

4. The case of the petitioner-PSPCL, on the other hand, is that the consumer had declared the heaters as normal whereas he had actually installed the ‘billet heaters’ which fell in the tariff category of P.I.U. as declared and notified. The mis-declaration was detected at the time of a later spot inspection. Videography of the inspection was also done and the same

was duly signed by the Consumer. All the proceeding were undertaken as per due process of law and after affording due opportunity of hearing. Being a clear case of UUE, a final order of assessment was passed as per law and after granting due opportunity of hearing. The nature of the heaters installed was also never objected to by the consumer as well.

5. Learned Counsel appearing on behalf of the petitioner further contends that the PSPCL had inspected the premises of the respondent-Consumer on 26.04.2018 when he was found using two induction Heaters make 'Suhal' (capacity: name plate was not present). The Heater No.1 was attached with sub-energy meter make Bentac, S.No. P11162798, -/5A, R-754 while the second heater was attached with sub-energy meter Sr.No.133102, -/5A, R-00531 MAKE HPL. Both the energy meters are LTCT and were got recorded by the Consumer by submitting a test report in the office of SDO, while seeking increase of his load from MS to LS category, having a capacity of 50 KW, 100KW respectively. Even though both these Heaters were induction type/direct current passing and having a higher frequency (KHZ) and would fall under the category of a 'power intensive unit' (PIU) as per Commercial Circular No.27 of 2014, however, the respondent-consumer concealed the said factum of the Heaters being induction heaters. Having noticed the non-disclosure of installation of the induction heater, proceedings under Section 126 of the Electricity Act, 2003 was undertaken against the respondent-Consumer and the notice of the provisional assessment dated 01.05.2018 was served upon him.

6. Counsel for the petitioner further contends that the category of a general heater and induction heaters are altogether different products. It is submitted that the consumer had sought extension in load through single window system (on-line) under the general category concealing about the unit falling under the P.I.U. Even while submitting test report, it was not disclosed that the heater is in fact a billet/induction heater as per Commercial Circular 27 of 2014. Heater load may be resistive or inductive. He submits that the connection was checked in a routine manner but the respondent-Consumer made a mis-declaration in his A&A Form. He contends that as per policies of the PSPCL, the said A&A form requiring declaration of increase in load is not required to be verified by the officials of the PSPCL. There was no occasion for the petitioner-PSPCL to raise any objection and its non-verification thereof cannot be construed as an estoppel against the PSPCL for imposing penalty on the Consumer for a deliberate mis-declaration. He contends that the Divisional Commissioner miserably failed to understand the distinction and has merely gone by the total declaration of load instead of the nature of the machine installed and understanding that the specific category of heaters had been carved out from the general load and had been brought in the fold of power intensive units w.e.f. 01.01.2014. He contends that it cannot be said that the respondent-applicant was not aware of the specific nature of the heater being installed, the circulars being in public domain were hence fully known to the respondent-Consumer.

7. Reply was filed by the respondent-Consumer specifically denying the allegations. It was averred that the assessing Officer passed an order on 22.05.2018 wrongly holding the respondent-Consumer liable to pay Rs.21,94,109/- on account of unauthorized use of the electricity. Aggrieved thereof, an appeal had also been preferred under Section 127 of the Electricity Act, 2003 before the Divisional Commissioner-the Appellate Authority. The said appeal was allowed by the Appellate Authority by recording that the respondent-Consumer had made a specific declaration with respect to the installation of two heaters with the capacity of 100 KW and 50 KW. It is also recorded that the PSPCL-authorities had accepted the same and extended the load without raising any objection that the heaters installed by the Consumer fell under PIU category and as such they cannot now hold the respondent-Consumer liable for unauthorized use of electricity.

8. Learned Counsel also contends that the consumer had made a disclosure with respect to the heater load at the time of seeking enhancement of the load and that there was no concealment of any information. He contends that there is no conclusive material available on record on the basis whereof he may make a statement that the heater installed was in the nature of induction heater.

9. I have heard learned counsel for the parties and have also gone through the documents available on record.

10. Considering the appellate order from any of the perspectives, it was incumbent upon the Appellate Authority to have examined the nature of the heaters installed in the category of tariff that was applicable. The

Appellate Authority has apparently failed to take into consideration the policy of the PSPCL and the obligation of a consumer to make a declaration. It has also failed to take note that the PSPCL does not carry out a verification of the load and that the principles of estoppel may ex-facie be not applicable to the PSPCL and rather it creates an estoppel against the Consumer who has made such a declaration. If the nature of heaters is specific and the same are in a different line of product, the burden lies on a consumer to make a correct declaration. Further, Counsel for the respondent-Consumer has submitted that he cannot conclusively say as to whether the nature of the heater installed was an induction heater or a general heater and that no finding in this regard has been returned by the Divisional Commissioner. It is undisputed that the hallmark of the assessment was the nature of the heater and the entire case would depend upon the determination of the nature of character of the heater that had been installed and the category of tariff that was applicable. The Divisional Commissioner was thus required to examine the said issue.

11. The order under challenge is silent on those material aspects and does not take into consideration the respective policies of the PSPCL as also commercial circulars issued after approval of the statutory authority.

12. I find that the order passed by the Appellate Authority suffers from non-consideration of material facts involved in the present case leading to an error in the final judgment.

13. The present writ petition is accordingly allowed. The impugned order dated 18.03.2020 passed in Case No. PSEB-02/2018 is set aside. The

matter is remanded to the Appellate Authority for fresh consideration on merits after granting an opportunity of hearing to the respective parties. The parties shall appear before the Appellate Authority on **22.08.2024** whereafter further proceedings shall be initiated by the Appellate Authority.

(VINOD S. BHARDWAJ)
JUDGE

JULY 11, 2024
raajarora/vishal

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