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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

206

CWP-18053-2015 (O&M).
Date of Decision: 21.08.2024.

M/S B.P.S. ISPAT UDYOG AND ANOTHER

... Petitioners

Versus

PUNJAB STATE POWER CORPORATION LIMITED AND
OTHERS

... Respondents

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

Present: Mr. Sumeet Mahajan, Sr. Advocate, with
Mr. Saksham Mahajan, Advocate,
Mr. Shrey Sachdeva, Advocate,
Ms. Rabani Attri, Advocate and
Ms. Shruti Singla, Advocate,
for the petitioners.

Mr. Sehajbir Singh, Advocate,
(Through video conference) with
Mr. Harsh Thakur, Advocate and
Mr. Baltej Pal Singh Walia, Advocate,
for the respondents/PSPCL.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the order dated
13.04.2015 (Annexure P-11) passed by the Appellate Authority dismissing
the appeal filed by the petitioner under Section 127 of the Electricity Act,

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2003 as well as to the order dated 17.07.2012 passed by Chief Engineer/Operation, Central Zone, Sarabha Nagar, Punjab State Power Corporation Limited, Ludhiana, assessing an amount of Rs.42,97,953/- against Unauthorized Use of Electricity (hereinafter to be referred as 'UUE').

2 Tersely, the facts of the present case are that the petitioner No.2-proprietor of petitioner No.1, is the consumer of the respondent Distribution Licensee against electric connection of LS category bearing Account No.U44-LK02/0026 (hereinafter to be referred as LS-26) with sanctioned load of 1944.79 KW and a contract demand of 2000 KVA installed in the premises of the petitioners situated at Village Gill, District Ludhiana. An induction furnace having 315 KVA Transformer is installed on the aforesaid premises since 2008. The petitioner and his brother had purchased this entire land, on which electric connection and induction furnace having 315 KVA load stand installed vide three separate sale deeds. The first sale deed was registered on 28.04.2000 regarding purchase of land measuring 0 bigha 16 biswa and 6 biswansi comprised in Khasra No.3345/1 situated in village Gill, Tehsil and District Ludhiana. Vide second sale deed dated 05.12.2000 the petitioner and his brother jointly purchased the land measuring 1 bigha 2 biswa and 19½ biswansi comprised in Khasra No.3345/1 situated in village Gill, Tehsil and District Ludhiana. The third sale deed dated 30.07.2004 was executed in favour of three brothers for land measuring 0 bigha 10 biswa and 12 biswansi in the same Khasra numbers as well as revenue estate. The above said sale deeds were executed

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with an object to attain the continuity and connectivity of the land. The electric connection was thereafter installed in the aforesaid land, jointly owned by the petitioner and his brothers, and the 315 KVA transformer for the induction furnace was also installed for the said premises. The connectivity of the land is established in the site plan, attached as Annexure P-2 with the present writ petition, with the entire chunk and thus making it part of the same premises. The said access was available giving continuity and connectivity of the entire land much prior to 05.03.2012 i.e. the date on which checking of the premises was conducted. It is averred that the electric connection for the premises was sanctioned on 08.01.2008 by the erstwhile Electricity Board. It is specifically pointed out that only one induction furnace, having 315 KVA transformer, existed from day one and the electricity was supplied to the aforesaid premises through single connection and treating it as one premises to the satisfaction of the officials of the Electricity Board. The premises of the petitioner were inspected on 05.03.2012 due to political differences and bitterness created during the election between nominee of Akali Dal and petitioner No.2 and the raid was carried out with a view to harass the petitioners. A false allegation was made that the petitioners are using electricity via 11 KVA cable for the induction furnace installed at the premises other than the premises for which the electricity connection had been released. The petitioner was thus served with a provisional assessment notice, on the basis of the inspection report dated 12.03.2012, alleging that there was no connectivity of the two premises notwithstanding that the 315 KVA transformer was installed for

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functioning of the furnace installed therein since the day of initial release of connection. A demand of Rs.55,08,140/- was provisionally assessed as per the communication dated 13.03.2012. The petitioners filed their objections to the above said provisional order of assessment for Unauthorized Use of Electricity under Section 126 of the Electricity Act, 2003 and specifically appended the site plan of the premises as it existed on the date of inspection of the premises by the team of the respondent Distribution Licensee. The respondents thereafter constituted a Committee of officers to verify the objections raised and to submit a report. The operative part of the report so submitted reads thus:-

“On considering the objections raised by the consumer and in view of the request made by them, a committee comprising of two Senior Officers i.e. Dy. CE/OP Suburban Circle, Ludhiana was formed vide this office memo no.4967/68 dt.26.4.2012 and the committee was directed to visit the premises of the consumer in order to verify the correctness of the sketch submitted by the consumer now with his objection letter and to compare it with the sketch prepared by the team of Enforcement Officers at site at the time of checking, in order to address the objection of the consumer and to decide this issue judiciously. The follow up letters were issued to the committee vide this office memo no.5477/78 dt.10.5.2012, 6200/01 dated 1.6.2012 The to submit their report. The committee was reconstituted vide this office memo no.6616/17 dt.14.6.2012 due to transfer of Dy. CE/ Enf. And follow up letters were written vide memo no. 7039/40 dated 26.6.2012 and 7370/71 dt.4.7.2012 and finally the committee submitted its report vide

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Dy.CE/ Enforcement memo no.1345 dated 16.7.2012. The relevant portion of the report is reproduced as under.-

"the committee visited the site of the connections on dated 16.7.2012 along with Addl. SE Suburban Divn. Lalto Kalan and Addl.SE/Enf.3 Ludhiana, who were present at the time of original checking dated 5.3.2012.

The sketch of the site submitted by the consumer to Chief Engineer/Op Central Zone PSPCL, Ludhiana was compared with the actual site position as on today and found that the present site position is same as shown in the sketch submitted by the consumer. At the time of visit it was observed that the premises of LS 26 and the premises having additional 315 KVA t/F has connectivity through a passage as shown in the sketch submitted by the consumer. Originally, the actual site was as per the sketch shown on the ECR no.3/3272 dated 5.3.2012 and the checking at that time was carried out accordingly."

3 It is contended that the said site plan has thus not been disputed by the Committee and the status of the premises was compared with the site plan and was found to be the same. It is, however, submitted that on the date of inspection, the actual site was as per the sketch shown in ECR No.3/3272. The Committee thus reiterated the ECR sketch even while admitting that the sketch submitted by the petitioners was correct and ignoring that sale in favour of the petitioners was much prior and in the year 2004 while the connection in question was sanctioned in the year 2008 and

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inspection was done on 05.03.2012. There was no observation as to how and why would the passage be deemed as closed.

4 Ignoring the above said report, the objections filed by the petitioner were dismissed and a fresh order of final assessment was passed as per which the final assessment was made of Rs.42,97,343/-.

5 Aggrieved thereof, an appeal was filed before the Appellate Authority-cum-Divisional Commissioner, Patiala, under Section 127 of the Electricity Act, 2003. The said appeal No.3 of 2020 was dismissed by the Appellate Authority vide order dated 13.04.2015.

6 Aggrieved thereof, the present writ petition has been filed.

7 Written statement on behalf of the respondent Distribution Licensee was filed wherein they have taken the following preliminary objections:-

“2. That it is foremostly submitted that the petitioner applied for an Electricity connection and connection A/e no. LK-02/00026 originally having a sanctioned load of 349.934 KW/385 KVA was allotted to him. However the load of the connection was extended from time to time as per the request of the petitioner/consumer and in 2011 after clubbing of different accounts present on the same premises, total load of Account no LK-02/00026 came up to 1944.179 KW and the sanctioned contract demand was 2000 KVA vide Application and Agreement (A&A) Form no 44468 dated 27.06.2011. A true translated copy of the Application and Agreement (A&A) Form no 44468 dated 27.06.2011 is annexed herewith as Annexure R-1.

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3. That it is submitted that the premises of the petitioner was inspected on 05.03.2012 by a team comprising of three enforcement officers and two operation officers. It is submitted that the officers after due checking of the premises jointly recorded and prepared an elaborate report on ECR Page no 3272/1 to 3272/4 dated 05.03.2012. It is submitted that it was specifically reported therein that during the checking it was seen that the transformers installed in the premises of the petitioner had a 11 KV cable connected to it from its HT side and the said cable has been connected to an induction furnace with a 315 KVA Transformer in another premises. It was also reported that the furnace was in working condition and there was no other electricity connection in that premises. Apart from this the inspecting/checking team also prepared nentire cut a sketch in the checking report at page 3 depicting the state of facts the time of at the time of inspection. It is submitted that at inspection representatives of the petitioner were present at spot and the ECR Report was duly signed by the representative 27 JAN 2017 well.

4. That it is submitted that as per the report the petitioner/consumer had illegally extended the electric supply of the connection A/c noLK-02/00026 from the H.T. Side of the existing power transformer to another premise in which a 315 KVA transformer was being used by it to run an induction furnace. It is submitted that as per the sketch prepared on site and drawn in the ECR the entire land has been marked as I, II and III. On the date of checking it was seen that the connection which was given for premises I was being used for running a 315 KVA induction furnace situated in premise III. It is submitted that based on the report and the sketch of the site prepared by the inspecting team, approval was sought by AEE/ Operation Sub

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Division Sarinh from the Chief Engineer (Operations), Central Zone Ludhiana (he being the assessing authority as per the regulations) and a provisional assessment order for unauthorised use of electricity was issued to the petitioner vide Memo No 3097 dated 30.03.2012 (Annexure P-6).

5. That it is submitted that against the provisional assessment order, objections were filed by the petitioner upon which a personal hearing was also granted by the concerned department of the answering respondent. It is submitted that in pursuance to the objections filed by the petitioner, the Chief Engineer (Operations), Central Zone Ludhiana formed a committee comprising of two senior officers along with two officers (Additional SE Subarban Division Lalton Kalan and Additional SE/Enforcement 3 Laidhianal who had earlier visited and inspected the premises of the petitioner on 05.03.2012 as well. It is submitted that the said committee was VANDISS directed to visit the premises of the consumer in order to verify the AN 201 correctness of the sketch submitted by the consumer. It is submitted that report submitted by the reconstituted committee confirmed that the officers visited the premises of the petitioner on 16.07.2012 and the actual site position as on date was found to be same as shown in the sketch submitted by the petitioner. However it was specifically stated in the report that originally the actual site was as per the sketch shown on ECR No 3/3272 dated 05.03.2012 and the checking was carried out accordingly.

6. That it is humbly submitted that after analysing the report of the reconstituted committee and the documents on record, the assessing officer concluded that as per the record the petitioner/consumer had declared only one transformer of

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2000KVA in the A&A Form which was sanctioned at the time of clubbing of connection A/c No LK-02/00034 into LK 02/00026 in the month of July 2011. Thus it was held by the assessing officer that extending supply of electricity from LK 02/00026 to 315 KVA transformer for the purpose of running second furnace of 150 KW in the adjoining premises from the premises of connection A/c LK 02/00026 amounts to unauthorised use of electricity as per Section 126 (6) (b) (v) of the Electricity Act, 2003. The assessing officer thereafter issued the final assessment order (Annexure P-8 and P-9) assessing the penalty amount to be Rs 42,97,353/-. It is submitted that along with the final assessment order a detailed calculation table was annexed and the mode as to how the amount has been arrived at, was also provided for, in the concluding paragraphs of the detailed order of the assessing officer (Annexure B-9).

xxx xxx xxx

8. That it is submitted that Section 126 (6) (b) (v) of the Electricity Act, 2003 specifically states that usage of electricity for premises or areas other than for which the usage of electricity was authorised would amount to unauthorised use of electricity. It is submitted that in the present case as well the petitioner had been extending supply of electricity from LK 02/00026 to 315 KVA transformers for the purpose of running second furnace of 150 KW from one premise to another. It is submitted that at the time of checking the two premises were not connected and were not one contiguous piece of land as alleged by the petitioner. It is submitted that the petitioner has changed the position on site after the checking of the connection by the inspecting team in order to avoid the penalty and thereafter raised the objections before the assessing officer. It is submitted that the affidavits of the inspecting officers who inspected the premises on 05. 03,

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2012 inter alia stating that there was separation between the premise no I and premise no III on the date of checking i.e. 05.03.2012 are annexed herewith as Annexure R-2 (Colly).

9. That it is humbly submitted that the connection Account no LK-02/00026 was applied for and granted for premise no I belonging to the petitioner and no other premises. Thus the said connection could not have been used for any other premises no matter even if the other said premises belonged to the petitioner himself. As stated by the officers and even the Assessing Officer and the One Appellate Authority, premise no I and premise No III (as depicted in the sketch on the ECR) were separate and two different premises. Thus use of one connection for two different premises amounted to unauthorised use of electricity as per Section 126 (6) (b) (v) of the Electricity Act, 2003 as has been rightly held by the Appellate Authority also.”

8 Replication to the said written statement was filed by the petitioner. The relevant extract of the replication reads as under:-

“2. That the contents of para 2 of the Preliminary Submissions are matter of record. It is further submitted that Agreement (A&A) Form No. 4468 dated 27.6.2011 shows that the connection was for Induction Furnace of the petitioner namely B.P.S. Ispat Udyog, Ludhiana. The Induction Furnace is also situated in the same Khasra No. 3354/1. Petitioner is owner of the entire premises by sale deeds dated 28.4.2000, 5.12.2000 and sale deed dated 30.7.2004. The clubbing of various connections had taken place on 27.6.2011. The connections LS-34 and LS-35 were clubbed with LS-26. Prior to the clubbing also, the electricity used to be supplied to Furnace

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with 315 KVA Transformer from LS-26 and after clubbing of other twoconnections into LS-26, the electricity is being supplied to the Induction Furnace in question which is wrongly being described by respondent Corporation as located in premises III. Actually, the so- called two premises namely premises I and III are part of the same Khasra number and on the spot, there is no bifurcation into premises I and III and are one premises namely premises of B.P.S. Ispat Udyog, Village Gill, Ludhiana. Thus, it is reiterated that electricity being consumed by the Furnace in question is the premises for which the load was sanctioned after clubbing of connections on 27.6.2011 i.e. from LS-26.

It is worth mentioning that there is no allegation against the petitioner of having exceeded the sanctioned load. There is no allegation against the petitioner of having committed theft of electricity.

3. That in reply to para 3 of the Preliminary Submissions, it is submitted that premises of the petitioner were inspected malafide at the instance of the then Deputy Chief Minister, Punjab S. Sukhbir Singh Badal in order to browbeat the petitioner Into submission for political support to the then ruling party on the day of counting of votes so that their support after election could be ensured. Petitioner has been framed by the respondents in order to please the then political masters.

The malafide intention of the officials, who visited the site on 5.3.2012, is apparent from the sketch prepared at the spot. The sketch prepared at the spot is erroneous on two

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counts. The premises called premises 1 and premises III has been shown as separate whereas they are one common premises. The depth of so-called premises III is not same as premises II, then belonging to Smt. Kirandeep Kaur. The so-called premises III of the petitioner is deeper by 15 feet and touches the so-called premises I in a contiguity. The so-called premises 1 and premises II is one composite premises. Thus, the said premises III is connected with rest of the premises/land of the petitioner comprised in Khasra No. 3354/1. Thus, there is running contiguity of alleged premises I and III which has not been depicted at the spot. Petitioner has already made aforesaid position clear by placing on record sketches (Annexures P-3 and P-4). The same position was also stated in the representation dated 9.4.2012 made by the petitioner to the respondents which was accompanied by the site plan. The site plan which was annexed with the representation was found to be correct by the Committee constituted to visit the site which actually visited the site on 16.7.2012. The relevant observation of the Committee is as under:-

".....The sketch of the site submitted by the consumer to Chief Engineer/Op., Central Zone, PSPCL Ludhiana was compared with the actual site position as on today and found that the present site position is same as shown in the sketch submitted by the consumer....."

(emphasis supplied)

One fails to understand that even after the observation of the Committee, the Corporation continues to maintain that the so- called premises III is separate from the premises I of the petitioner and therefore, wrongly accused the petitioner for

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consuming electricity which was allegedly meant for another premises namely premises 1. It is vehemently denied that cable had been connected to an Induction Furnace with 315 KVA Transformer from another premises. There is no other premises. The premises is one comprised in Khasra No. 3354/1 which belonged to the petitioner vide aforesaid sale deeds and there is contiguity of the premises. There is no physical separation between the two premises and therefore, petitioner was and is legally entitled to run his Furnace with 315 KVA Transformer by consuming power from LS-26 and that there is no question of there being an Unauthorized Use of Electricity (UUE). The charge of unauthorized use of electricity against the petitioner is false, illegal, malafide and the penalty imposed on the petitioner on account of the same is liable to be set aside. The signatures of the petitioner on the site plan were only intended to show that the same was prepared in the presence of the petitioner and not about the correctness of the same. Moreover, the Committee itself has come to the conclusion that physical connectivity of two premises does not exist at the spot. The sketch is, therefore, incorrect.

4. That the contents of para 4 of Preliminary Submissions are denied being incorrect. The report in question is incorrect and does not depict the correct factual position. It is vehemently denied that petitioner had illegally extended the supply of electricity of connection Account no. LK-02/00026 from the H.T. Side of the existing power transformer to another premises in which 315 KVA transformer was being used by it to run an induction furnace. It is reiterated that premises of the petitioner is common and there exists physical contiguity between alleged premises I and alleged premises III. The cable

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can easily be drawn from LS-26 for running Induction Furnace where 315 KVA Transformer is installed due to physical contiguity. Otherwise laying of cable was not possible. It is worth noticing that petitioner has been owner of the land which is situated in the so-called premises III since 30.7.2004 whereas the clubbing of three connections had taken place nearly after 7 years of petitioner having become owner of the land. Thus, it is unnatural that at the time of clubbing, petitioner would not intend to use the premises purchased by sale deed dated 30.7.2004 for running Induction Furnace from LS-26. In fact, no material has been placed on the record by the respondent Corporation to show that Induction Furnace is situated in a premises not belonging to the petitioner or the same is not physically part of the alleged premises I. To the contrary, the fact that two premises i.e. premises I and III is contiguous, homogeneous premises with no physical obstruction is admitted by the Committee in its report dated 16.7.2012. In the sketch prepared and drawn in ECR, the marking of the land as I, II and III is erroneous. The so-called premises I and III are physically one premises. If the premises I and III were separate, it was not physically possible to lay down the cable from Account No. LS-26 to premises III without passing the cable through premises II which was neither possible nor has been claimed to be so because premises II belonged to a their person namely Smt. Kirandeep Kaur It is denied that on the date of checking, it was seen that the connection which was allegedly given for premises I was being used for running a 315 KVA Induction Furnace situated in so-called premises III. There is no physical separation from so-called premises I and so-called premises III. Therefore, petitioner was very much within his right to use electricity from

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LS-26 for running Induction Furnace having 315 KVA Transformer. It is worth noticing that Induction Furnace with 315 KVA Transformer is in operation since 2008 and even prior to the clubbing the electricity to the said Furnace was being supplied from LS-26. All the three connections i.e. LS-26, LS-34 and LS-35 were clubbed on 27.6.2011. Thus, the stand taken by the respondent Corporation that electricity was only meant for so- called premises I is totally false and untenable. The provisional Assessment order for unauthorized use of electricity (UUE) is, therefore, unjustified, untenable, actuated by malafide and the same is liable to be set aside.

5. That the contents of para 5 of Preliminary Submissions are denied being Incorrect. It is denied that the report submitted by the reconstituted committee confirmed that the actual site position as on date was found to be same as shown in the sketch submitted by the petitioner. Thus, the physical position as observed by the committee on their revisit on 16.7.2012 is diametrically opposed to what has been reported by the earller officials on 5.3.2012. It is obvious that report prepared on 5.3.2012 is false and the same is result of political vendetta. It is denied that it is specifically stated in the report that originally the actual site was as per the sketch shown on ECR No. 3/3272 dated 5.3.2012 and that checking was carried out accordingly.

6. That the contents of para 6 of Preliminary Submissions are denied being incorrect. The finding of the Assessing Authority that petitioner/consumer has declared only one transformer of 2000 KVA in the A&A Form. In A&A form, contract demand sanctioned by the Corporation to the

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petitioner is 2000 KVA and it does not relate to a particular Furnace. The respondents are trying to confuse the issue. Petitioner is entitled to use as many Furnaces as he wishes though within the sanctioned load/contract demand within its premises. It is worth noticing that the contract demand of the petitioner has never exceeded the sanctioned loan and therefore, there is no question of petitioner being guilty of Unauthorized Use of Electricity (UUE). It is vehemently denied that petitioner has used the electricity from LK-02/00026 of 150 KW situated in the adjoining premises. It is reiterated that the so-called premises I and premises III belonged to the petitioner and there is physical contiguity of alleged two premises. In fact, there is only one common premises. As such, the consumption of electricity by the petitioner for Induction Furnace having 315 KVA Transformer is not unauthorized in any manner whatsoever. The case of the petitioner does not fall under Section 126 (6) (b) (v) of the Electricity Act, 2003. The demand against the petitioner is, therefore, totally unjustified and liable to be quashed. The assessment orders (Annexures P-8 and P-9) are liable to be quashed and respondents are not liable to charge any amount as penalty from the petitioner much less Rs. 42,97,353/-. Respondents are liable to refund an amount of Rs. 21,48,700/- alongwith 18% interest annually compounded to the petitioner,”

9 Learned Senior counsel appearing for the petitioner has further argued that the entire case of assessment of unauthorized use of electricity has been framed against the petitioners by treating that the premises, where the electricity supply was being consumed, was a separate premises. He contends that the said assertion of the respondents is factually incorrect

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since the land in question had been purchased in the year 2004 and that the electricity connection was sanctioned in the year 2008. At the time of sanction of the electricity connection by the erstwhile Punjab State Electricity Board, the single supply was made after carrying out physical inspection of the premises and a transformer was installed to cater to the induction furnace with a sanctioned load of 315 KVA in the premises which are now claimed to be separate premises. Thereafter, there has been enhancement of the sanctioned load in the year 2011. At no point of time, there was any concealment or any addition to the premises as it originally existed when the electricity supply was released. Hence, the respondents cannot now contend that the premises where the electricity was consumed as separate premises and was not contiguous or had no connectivity with the major chunk of the land which fell on the other side. He contends that the site plan produced by the petitioners is not being disputed by the respondents and that they are only relying on the report bearing ECR No.3/3272 dated 05.03.2012 without disputing any of the factual claims that have been raised by the petitioners.

10 There would be no reason or occasion for the petitioners to block the narrow strip of land which was bought solely to provide connectivity to the entire land. There is no means narrated by the Committee vide which the passage was closed and how it would serve any purpose for the petitioner to block the internal connectivity when the entire unit is one integral part.

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11 Learned counsel appearing for the respondents/PSPCL, on the other hand, contends that the report ECR No.3/3272 was filed by the officials of the checking team as per which the premises had no connectivity at the time when the inspection was carried out.

12 He, however, does not dispute the fact that the Committee comprising of officials nominated by the respondent/ PSPCL had reported about the existence of passage as on 16.07.2012. He also does not dispute the fact that the electricity supply was sanctioned much after the sale deeds already stood executed in favour of the petitioners and they were the owners of the entire premises. He is also not in a position to dispute that the A&A Form that has been appended or was required to be submitted by the petitioners, the description of the site plan was neither asked for by the respondents nor it is mandated. He has also not been able to dispute that enhancement of the load was sanctioned in the year 2011 and that at no point prior to the checking on 15.03.2012, any lateral connectivity was ever reported by any of the staff of the respondents. It is also not in dispute that the induction furnace, to which the supply was being consumed, was installed later in point of time and did not exist at the time when the electricity supply was released or was shifted from an original point at the other premises.

13 No other argument has been raised.

14 I have heard learned counsel appearing for the respective parties and have also gone paper book and the documents appended therewith.

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15 From a careful consideration of the same and the undisputed facts which emerge from the pleadings brought before this Court as also the arguments advanced by the learned counsel for both the sides, it remains undisputed that the sale deeds pertaining to the entire portion of the land as described in the site plan appended show that the premises are contiguous and have an internal connectivity. The narrow stretch of the land connecting the entire area could not have been used for any purpose other than the connectivity to the parcels of the land. Further, the induction furnace was in existence and installed at the time of the initial sanction of the load itself and it is not an addition carried out later in point of time or having been shifted. Besides, there is nothing on record other than a mere ECR report and the affidavit filed by the officials in support thereof whereas the contemporaneous documentary evidence overwhelmingly suggests that the land parcels were duly connected at the time of sanction of the load and also at the time of checking of the premises. The sale deeds as also the lay out plans are not the subject matter of dispute. It is also not the projected or suggested case that (a) the induction furnace was never installed at the time of initial release of load and also did not exist at the time when load was enhanced in the year 2011 and was installed only later; or (b) that the induction furnace was originally at the premises other than while it was located at the time of checking and has been shifted to another location, or (c) the land parcel with connectivity was acquired at any later point in time, or (d) transformer of 315 KVA had not been installed for the furnace at the same point where furnace existed at the time of checking. Once the

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transformer was installed solely for the furnace and has been in existence at the same spot ever since, it hardly leads any scope for doubting that the furnace has also been in existence since the release of load. The admission of the site plan to be correct and as per site is an unimpeachable admission by the respondents. Even otherwise, on a plain rationale and objectivity, there is no reason why the respondents would have purchased this narrow strip of land for giving connectivity in case they never intended to use the same as a passage to get connectivity and continuity to both the parcels of land especially when the land in question had already been purchased by them more than four years prior to the electricity load being sanctioned. Hence, the premises remained the same all over the years. The overwhelming documentary evidence about the above said land, the validity whereof along with the site plan has not been disputed, cannot be impeached merely on the basis of a self-serving affidavit filed by the respondents. The preponderance of probabilities rather establishes the case of the petitioner that connectivity to the premises existed at the time of release of the electricity connection and was also in existence at the time when the physical inspection of the premises was conducted on 05.03.2012 but has been chosen to be ignored and not reflected in the report.

16 Under the given circumstances, I am of the opinion that the order passed by the authorities demanding charges for the unauthorized use of electricity on the ground that electricity was being used for premises other than for which connection was released is bad and liable to be set aside.

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17 The present writ petition is accordingly allowed and the order of assessment passed by the respondents is set aside.

18 At this stage, it has been pointed out by the learned senior counsel appearing on behalf of the petitioner that statutory payments were already made by the petitioners to the respondents and that the same may be ordered to be refunded. Since the payment is not disputed, the respondents are directed to give benefit to the petitioners of the deposited amount along with interest as approved by the Appropriate Commission to be admissible to a consumer on such deposits to which he is not liable and is held entitled to the refund.

19 Let the entire exercise be undertaken by the respondents within a period of 02 months of a receipt of the certified copy of the order and amount that accrues in favour of the petitioners be adjusted in the future consumption bills.

20 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

August 21, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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