

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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CWP-13347-2018 (O&M).
Date of Decision: 05.03.2024.

SUKHNA ENCLAVE RESIDENTS WELFARE ASSOCIATION AND
ANOTHER

... Petitioner(s)

Versus

PUNJAB STATE POWER CORPORATION LIMITED AND
OTHERS

... Respondent(s)

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

Present: Mr. Hemant Bassi, Advocate, for the petitioners.
Ms. Niharika Sharma, AAG, Punjab, for respondent No.2.
Mr. Rishabh Gupta, Advocate, for respondents No.1 and 3.
Mr. Jugansh Goyal, Advocate, for Mr. Denesh Goyal, Advocate,
for the applicant in CM-12518-CWP-2018.

VINOD S. BHARDWAJ, J. (ORAL)

CM-12518-CWP-2018.

Learned counsel appearing for the applicant submits that he has
no more instructions from the applicant.

The application is dismissed for want of prosecution.

Main case

Prayer in the instant writ petition is for seeking quashing of order dated 26.03.2018 passed by respondent No.2 and orders dated 16.04.2015 and 26.06.2015 passed by respondent No.3-Assessing Officer (DS)-cum-Assistant Engineer, Operations, Punjab State Power Corporation Limited, Mullanpur Garibdass, District Mohali, whereby a penalty of Rs.4,99,781/- has been imposed upon the petitioner under Section 126 of the Electricity Act, 2003.

2 The following contentions were noticed by this Court while issuing notice of motion on 24.05.2018:-

“Counsel for the petitioners submits that the final assessment order under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) was passed on 27.01.2014, against which the appeal was filed on 26.02.2014 under Section 127 of the Act, which was allowed on 28.07.2014 and the order dated 27.01.2014 passed under Section 126 of the Act was set aside. However, the matter was remanded back to the Assessing Authority to pass a fresh order in terms of Section 126 of the Act. Thereafter, the fresh order was passed on 26.06.2015 under Section 126 of the Act, against which the petitioner filed the appeal on 27.07.2015 but the Appellate Authority has observed that the appeal is time barred as it has been filed after a period of one year.

Counsel for the petitioners submits that the appeal was filed within the stipulated period of 30 days and not after a period of one year. It is submitted that there is a patent error

on the part of the Appellate Authority in observing that the appeal is time barred and perhaps the Appellate Authority is counting the limitation from the date of first order, i.e. 27.01.2014, passed under Section 126 of the Act.

Notice of motion for 30.07.2018.

Till then, recovery of the remaining 50% amount, assessed in terms of Section 126 of the Act, shall remain stayed.”

3 Learned counsel appearing for the petitioner contends that the final order of assessment was passed on 27.01.2014 against which an appeal was filed on 26.02.2014 under Section 127 of the Electricity Act, 2003. The same was allowed vide order dated 28.07.2014 and while setting aside the order of final assessment, the matter was remanded to the Assessing Authority to pass a fresh order in terms of Section 126 of the Electricity Act, 2003. A fresh order was thereafter passed on 26.06.2015 against which the appeal was filed on 27.07.2015, however, it was dismissed by observing that the same is time barred.

4 Learned counsel appearing for the petitioners contends that the Appellate Authority has dismissed the said appeal under an impression and by observing that the appeal has been filed after a delay of one year whereas the said finding was incorrect. The appeal had been filed on 27.07.2015 and at best, it could have been said to be barred by one day and not one year. He contends that even the said contention would not be tenable since the date on which the order is passed is to be excluded from computing the period of limitation. The said order dated 26.06.2015 was served upon the petitioner

on 29.06.2015, which such fact has remained undisputed, and as such, in computing the period of limitation, the same would expire on 28.07.2015. Hence, the appeal had been filed well in time.

5 Learned counsel for the respondents is not in a position to controvert the above said timelines as specified and submitted before this Court by the counsel for the petitioner.

6 Taking into consideration the facts noticed above, I deem it appropriate to allow the present writ petition. The impugned order dated 26.03.2018 (Annexure P-22) passed by the Appellate Authority is accordingly set aside. The matter is remanded to the Appellate Authority for passing a fresh order on merits. The parties are directed to appear before the Appellate Authority on 03.04.2024 whereafter the adjudication of the appeal shall be undertaken by the Appellate Authority in a manner known to law and after affording an opportunity of hearing to the respective parties.

7 The interim protection granted vide order dated 24.05.2018 shall enure in favour of the respective parties till the adjudication of the appeal by the Appellate Authority.

March 05, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE

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