IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

215 **CWP-20035-2018**
Date of decision: 15.04.2024

M.G. Stone Crusher **…Petitioner**

Versus

Punjab State Power Corporation Limited & ors. **…Respondents**

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

Present : Ms. Arzoo Modi, Advocate for
Mr. R.S. Modi, Advocate,
for the petitioner.

Ms. Khushboo Garg, Advocate for
Mr. Abhilaksh Grover, Advocate,
for respondents No.1 and 2.

Mr. H.S. Jugait, Advocate and
Mr. Lalit Sharma, Advocate,
for respondent No.3.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to order dated 24.11.2017(Annexure P-7) passed by respondent No.1-Punjab State Power Corporation Limited (for short 'PSPCL') as well as against the order dated 17.04.2018 (Annexure P-9) passed by respondent No.3-Lokpal (Ombudsman), Electricity, whereby the appeal of the petitioner was dismissed and the claim of the petitioner for seeking refund of the excess amount deposited by it was declined.

2. Learned counsel for the petitioner has argued that the petitioner firm had set up a stone crusher and for the said purpose, he applied to the respondent-PSPCL for release of load of 498KW/498KVA under LS category, on 29.09.2014. A demand notice

was issued to the petitioner on 30.09.2014 for depositing service connection charges of Rs.10,95,600/- calculated @ Rs.2200/- per KVA on total load of 498KVA. As per the condition of this demand notice, the petitioner was required to deposit the demanded amount on or before 29.03.2015. Due to certain personal exigencies, the petitioner was not in a position to deposit the same before the due date. Hence, an application was submitted by the petitioner to the respondent-department for seeking extension of time to deposit the dues. On consideration of the said application sent by the petitioner, the time for depositing the said amount was extended upto 26.06.2015. The amount was, thereafter, deposited by the petitioner on 05.05.2015 for release of electricity connection.

3. Learned counsel for the petitioner contends that the respondent-department in the meantime issued circular No.60/2014 relating to Standard Cost Data and as per this circular, it was ordered that it would be applicable in relation to the demand notices issued on or after 01.01.2015 to the consumers requiring supply of electricity or additional load/demand. She further contends that the service connection charges were reduced as per the said circular and that the petitioner became entitled to a refund of the excess amount deposited. A request was, accordingly, made by the petitioner that the respondents cannot retain any charges beyond what it is entitled to as per the said circular and that the petitioner being entitled to make a payment upto 29.03.2015 even as per the original circular, any accrued subsequent benefit has to enure in favour of the petitioner. A reference is also

made to the sanction granted by the respondents on 29.09.2014 as per which the Board had promised to supply the electricity connection, subject to the condition to deposit the expenses at the present rate and in the event of any change, the consumer was required to pay the difference. She contends that the above said condition imbibes that in the event of any change in dues, the difference in the expenses are to enure in favour of or are to be dishcarged by a consumer. Hence every accrued benefit also ought to be transferred to the consumer. Only a liability could not have been fastened to prejudice the consumer and respondent-PSPCL could not have denied the benefits that would have accrued in terms of the said clause.

4. Learned counsel for the contesting respondents No.1 and 2 contends that the petitioner cannot take benefit of the circular No.60/2014 since the said circular was applicable only with respect to the demand notices issued on or after 01.01.2015. Since the demand notice in the present case was issued on 29.09.2014, hence the liability as per the first demand notice was to be discharged by the petitioner. The authorities below have rightly considered the applicability of the provisions, which is not a subject matter of the challenge in the present writ petition, and have upheld the demand.

5. Rebutting the above, learned counsel for the petitioner vehemently argues that even the Lok Pal (Ombudsman), Electricity notices that there is an ambiguity in the demand notice but it did not provide any provision of refund. Hence, the claim of the appellant/petitioner was rejected on account of such ambiguity. She

thus contends that a benefit of an ambiguity has to be constructed against the author of the document and the respondent-PSPCL cannot be allowed to keep the extra amount deposited and the benefit of subsequent notification ought to be given to the consumer as per the mandate of the Electricity Act, 2003.

6. I have heard learned counsel for the respective parties and have gone through the documents on record with their help.

7. The factual aspects as regard the raising of the demand vide communication dated 29.09.2014 is not in dispute. It is also undisputed that the demand amount was deposited by the petitioner on 05.05.2015 after having been granted extension of time to deposit the same. Even as per the original sanction letter, the demanded amount could be deposited on or before 29.03.2015 i.e. after 01.01.2015. A perusal of the letter of approval issued by the respondents undisputedly provides that the consumer is liable to pay any difference of the charges that may be so determined by the appropriate authority prevalent at the time of issuance of connection. As the period for making the deposit of the demand was extended till after 01.01.2015, thus, it is required to be seen by this Court as to whether the benefit that accrued in favour of the consumer even as per the original sanction letter could be denied solely because the demand was conveyed prior to 01.01.2015 even though the consumer was to make the deposit much after 01.01.2015. It has also remained undisputed that the service connection charges which were to be demanded have undergone a deduction thereafter.

8. Circular No.60/2014 makes a reference to the Standard

Cost Data approved by the Commission, to be applicable with effect from the demand notices issued after 01.01.2015. However, it is noted that the said circular is silent with respect to the issue where demand notice may have been issued on or before 01.01.2015, but where the said demand notice is valid even after 01.01.2015 when revised rate became applicable. The mandate of the said circular is hence required to be read in accordance with the conditions incorporated in the letter of approval. The relevant clause reads thus:-

> "2. Board promises to supply subject to the condition that you deposit the given below expenses which are present rate. If there is any change in the expenses at the time of issuance of connection/load then you have to pay the differences."

9. The reading of the clause only in favour of the respondent-distribution licensee would be incongruent and would confine the benefits only to a distribution licensee and will increase the costs of the consumer even though the Electricity Act also mandates that the Commission and the Courts are required to watch out for the interest of the consumer.

10. An element of continuity of the letter of sanction in the demand was, thus, prescribed in condition No.2 and the circular also mandates that in the event any unrevised demand is raised in a demand notice issued after 01.01.2015, in such eventuality the revised demand amount is to be released. Another crucial fact which is noticed by this Court is that an application was submitted by the petitioner for seeking extension of time for depositing the demanded amount which was

accepted by the respondents and the payment was made on 05.05.2015. This element of continuity in the demand being raised has to be seen in the context of the sanction granted. The consumer has been held liable to pay higher charge. I see no reason as to why the benefit of reduced service connection charges ought not to be conferred on such consumer.

11. It is necessary also at this junction to refer to the analysis report by the Electricity Ombudsman, which reads as under:-

> "**5. Analysis:**
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> The issue requiring adjudication is the legitimacy of the plea of the petitioner for refund of the Service Connection Charges deposited (on 05.05.2015) against Demand Notice issued (on 30.09.2014) before their revision in respect of Demand Notices issued on or after 01.01.2015 as per provisions of Commercial Circular (CC) No.60/2014 issued by the Chief Engineer/Commercial PSPCL, Patiala.
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> The points emerged are analysed and deliberated as under:
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> (i) The petitioner applied on 29.09.2014 for release of new connection under Large Supply Category for load of 498 KW and Contract Demand of 498KVA. The Demand Notice was issued to the petitioner by the respondent on 30.09.2014, which was valid for six months i.e. upto 29.03.2015. The petitioner did not deposit the SCC, within the stipulated period, statedly due to personal reasons and requested on 20.03.2015 for extension of validity of the Demand Notice by depositing the requisite fee. Accordingly, the extension in demand notice

was granted to the petitioner upto 26.06.2015 by the respondent.

I find that the petitioner, in its petition and also during oral submissions, referred to the Clause 2 of the demand notice dated 30.09.2014, which reads as under:

"Board promises to supply subject to the condition that you deposit the given below expenses which are at present rate. If there is any change in the expenses at the time of issuance of connection/load then you have to pay the difference."

I observe that the aforesaid clause mentioned about the liability of the petitioner to pay the difference on account of SCC at the time of actual installation but nothing was mentioned therein about the obligation of the PSPCL to refund the difference, if any, on account of reduced Service Connection Charges (SCC) applicable at the time of release of Load/installation of the connection.

(ii) I have gone through the approval of the Standard Cost Data, conveyed by the PSERC, vide Memo. No.13579/PSERC/DTJ-50/Vol-IV dated 18.12.2014, on the basis of which, the CC No.60/2014 dated 30.12.2014 was issued by the Chief Engineer/Commercial, PSPCL, Patiala. In the approval ibid, it has been mentioned that:

"The Standard Cost Data approved by the Commission shall be applicable to the demand notices to be issued on or after 1.1.2015 to the applicants requiring supply of electricity or additional load/demand. The Cost Data shall continue to be in force till it is revised or modified by the Commission."

In the present case, the demand notice was issued on 30.09.2014 in view of the petitioner's requirement and the same was valid upto 29.03.2015 as per normal rules. Further extension was allowed, on the request of the petitioner upto on 26.06.2015. I observe that new Connection/Load was actually required by the petitioner at the time of applying for it i.e. on 29.09.2014. It is another matter that the petitioner did not deposit the Service Connection Charges (SCC) after issuance of demand notice on 30.09.2014 and deposited the same on 05.05.2015. The above directions of Hon'ble PSERC make it amply clear that the Standard Cost Data approved by the Commission shall be applicable to the demand notices issued on or after 01.01.2015 while demand notice to the petitioner was issued on 30.09.2014.

From the above analysis, it is concluded that the petitioner is liable to pay SCC as per demand notice dated 30.09.2014, which was issued in accordance with the provisions contained in Supply Code-2007.

6. **Decisions:**

As a sequel of above discussions, it is held that the petitioner is not entitled to relief claimed as its case is covered under the applicable Regulations prevailing at the time of issue of demand notice (30.09.2014), accordingly, the petitioner has to pay per KW/KVA charges or actual expenditure incurred, whichever is higher, as per provisions contained in Regulation 9.1.1(i) (b) of Supply Code-2007.

12. It is a well settled principle in law that "equity follows the

law". The above said legal maxim "aequitas sequitur legem" emphasizes that equity or fairness should be applied in accordance with law. Equity should thus compliment established legal principles. In legal terms, it would mean that if a contract or agreement includes clauses that establish liability or obligations for one party, those clauses could potentially extend benefits to that party; if circumstances arise where they are entitled to benefits under the agreement.

13. Hence, if a contract specifies that a Company is liable for damages caused by its actions it would also likely be entitled to any benefit afforded under the same contract.

14. It is evident from a perusal of the clause and the judgment that the Electricity Ombudsman has restricted its award and the benefit due to the petitioner only on the ground that the said circular does not talk about the obligation of PSPCL to refund the difference, if any, on account of reduced service connection charges applicable at the time of release of load/installation of the connection.

15. I am of the view that even if the contention of the respondent licensee that circular No.60/2014 does not enure in favour of the petitioner is accepted, however, the respondents cannot wriggle out of the obligation enshrined in the sanction granted on 30.09.2014, which fastens the ultimate liability on a consumer, is as applicable on the date of release of service connection charges. Thus, where a consumer is liable to pay the charge which becomes applicable as on the date of release of service connection, it cannot be said that the said clause was to be read only for paying additional liability and no benefit

can be claimed by the consumer for reduced charges, on a meaningful reading of the said clause.

16. Considering it from any of the said prospective, the present petition deserves to be allowed. The impugned order dated 24.11.2017(Annexure P-7) as well as order dated 17.04.2018 (Annexure P-9) are set aside. The petitioner is held entitled to the benefit of reduced service connection charges as on the date when the electricity connection was released to it. The respondent-PSPCL is directed that the benefit be recalculated and be credited in favour of the petitioner within a period of three months from the date of receipt of certified copy of this order.

15.04.2024 **(VINOD S. BHARDWAJ)**
monika **JUDGE**

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