

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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CWP-25855-2018 (O&M).
Date of Decision: 05.02.2024.

M/S ESSEN AUTO FORGE PVT. LIMITED

... Petitioner(s)

Versus

**PUNJAB STATE POWER CORPORATION LIMITED AND
OTHERS**

... Respondent(s)

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

Present: Mr. Rajiv Kawatra, Advocate, for the petitioner.

Mr. Alok Mittal, Advocate,
for the respondents No.1 to 3.

Mr. Arihant Goyal, Advocate,
for respondent No.4.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the notice dated 30.05.2017 (Annexure P-1) vide which a demand of Rs.24,87,613/- has been raised by respondent No.2-the Superintending Engineer, Commercial, Focal Point, Ludhiana by treating the Unit of the petitioner as a Power Intensive Unit (hereinafter referred to as 'PIU') w.e.f. 01.01.2014 along with a sum of Rs.1,76,000/- for difference of Advance Consumption Deposit (hereinafter referred to as 'ACD'). A further challenge is raised to

the order dated 27.11.2017 (Annexure P-3) passed by respondent No.3-the Chief Engineer-cum-Chairman, office of Chief Engineer, Consumer Grievances Redressal Forum and the subsequent dismissal of the appeal by the Electricity Ombudsman-respondent No.4 vide his order dated 07.06.2018 (Annexure P-4).

Learned counsel for the petitioner contends that the petitioner is a forging Unit to which an electricity connection of LS category bearing Account No.3002809567 of 2250 KW with Contract demand of 1650 KVA had been sanctioned at 11 KVA. Initially, the petitioner was having a load of 700 KW and thereafter, applied for extension of load from 700 KW to 2250 KW on 11.11.2013 and the same was also released. The electricity bills were being paid regularly. A demand notice was, however, thereafter served upon the petitioner Unit on 30.05.2017 and a demand of Rs.24,87,613/- was raised against the petitioner Unit allegedly on account of difference of tariff of PIU and general industry. The petitioner was treated as PIU w.e.f. 01.01.2014. The change of tariff category had been initiated on account of usage of 'Billet Heaters' of 550 KW by the petitioner in its industrial Unit. It was noticed that the petitioner had submitted a declaration in its A&A Form proposing installation of two number of Billet Heaters of 300 KW and 250 KW (total 550 KW) in the load details. He contends that notwithstanding said declaration in the A&A Form, no Billet Heaters of 550 KW were installed by the petitioner. He, however, acknowledges that such a declaration had although been made, however, the petitioner did not carry out any actual installation. He also

refers to the consumption bill of the petitioner (Annexure P-2) to prove the absence of the installation of the Billet Heaters.

The respondents authorities, however, supported the raising of the bills and imposing charges as per the tariff applicable to a PIU. The petitioner thus preferred a petition before the Consumer Grievances Redressal Forum (hereinafter referred to as 'CGRF'). Vide order dated 27.11.2017, the CGRF dismissed the application and upheld the demand raised by the respondents. The above said order of the CGRF was challenged by the petitioner by preferring an appeal before the Electricity Ombudsman under Section 42 (7) of the Electricity Act, 2003. Vide its order dated 07.06.2018, the Electricity Ombudsman also dismissed the appeal.

Aggrieved thereof, the present writ petition has been filed.

The petition came up for hearing on 09.10.2018 when the following order was passed:-

“Learned counsel for the petitioner has submitted that the petitioner is having electricity connection of LS category. It was initially having load of 700 KW. It had applied for extension of load from 700 KW to 2250 KW by way of filing an application on A&A form which was sanctioned and released. The petitioner wanted to set up billet heaters but later on changed its mind. The dispute started when the respondent billed the petitioner on 30.5.2017 in terms of commercial circular No.24/2014 on account of difference of Power Intensive Unit (PIU) & general tariff and asked to pay Rs.24,87,623/- w.e.f. 1.1.2014. The petitioner took up the matter before the Forum for Redressal of Grievances of Consumers, Punjab [for short 'the Forum'] but remained

unsuccessful and filed the appeal against the order of the Forum dated 24.11.2017 before the Lokpal (Ombudsman), Punjab which has also been dismissed on 7.6.2018. The basic grievance of the petitioner is that it had never installed the billet heaters though had applied for the extension of load for the same and the respondents have billed the petitioner on account of difference of Power Intensive Unit (PIU) & general tariff and for Advance Consumption Deposit (ACD) on account of release of extension of load and consumption data much less for the change of category from general tariff to PIU.

Learned counsel for the petitioner has submitted that the petitioner cannot be charged for the electricity which has never been consumed by it and the Ombudsman has not dealt with the factual matrix arising from the consumption data (Annexure P-2) and the inspection report (Annexure P-6) which would itself show that the petitioner has never installed the billet heaters much less to run the same on power. It is also submitted by the petitioner that out of the total demand, the petitioner has deposited Rs.19 lakh (approximately) but the petitioner is afraid that till the matter is decided by this Court about its eligibility to pay, the respondents may not disconnect its electricity.

Notice of motion for 23.10.2018.

Dasti.

To be shown in urgent list.

Till then, the respondents are restrained from taking coercive steps in regard to disconnection of the electricity of the petitioner.”

The respondents No.1 to 3 have also filed their reply wherein the following pleas had been taken:-

'PRELIMINARY OBJECTIONS'

1. That the electricity connection of the petitioner is running under 'LS' category in the name of M/s Essen Auto Forge Pvt. Ltd. Ludhiana, A/c no. E32FP5300690 (Old) 3002809567(new) and the sanctioned load/CD of the connection is 2250 KW/1600 KVA. That the petitioner had applied for extension of load from 700 KW to 2250 KW on 11.11.2013 and the same was duly released by the respondents. That in the said application the petitioner had declared two billet heaters of 300 KW and 250 KW load in his application for the extension of load. That as per Commercial Circular No. 27/2014 dated 29.05.2014 issued by Chief Engineer, Commercial, PSPCL, provided that connections wherein Induction Billet Heaters/Surface Hardening Machines are installed shall be treated under Power Intensive Unit (PIU) Category and not in the General Industry category. The copy of the circular is attached herewith as Annexure R/1.

2. That it was only in view of the abovementioned commercial circular, the petitioner was issued a notice bearing Memo No. 776 dated 30.05.2017 for Rs. 24,87,613/- on account of for difference of PIU Tarrif and General Tarrif and Rs. 1,76,000/- for difference of Advanced Consumption Deposit (ACD) of PIU and General Load. That the petitioner alleges that the billet heaters were never installed at his premises, however, the petitioner never approached the answering respondents to inform about the same or file a new Application & Agreement ('A&A') form. In such circumstances, the respondents in view of the Commercial Circular No. 27/2014 dated 29.05.2014 are entitled to charge as per the load declared by the petitioner. The petitioner entered into Agreement vide Application & Agreement ('A&A') form wherein he has specifically mentioned

to install two nos, Billet Heaters. Therefore, he has to pay Billet Heater(PIU) Tariff as per Agreement.

3. The petitioner's complaint before the Forum for Redressal of Grievances of Consumers was dismissed vide order dated 24.11.2017 and thereafter the appeal preferred by the petitioner before the Lokpal (Ombudsman), Electricity Punjab was also dismissed vide order dated 07.06.2018. In the meanwhile, before the appeal was filed, in compliance to the order of Consumer Grievance Redressal Forum the answering respondents issued Notice No. 3113 dated 14.12.2017 to the petitioner for depositing Rs. 2123426/- after adding the interest and deducting the amount already deposited by the petitioner. The copy of the notice is attached herewith as Annexure R/2.

4. That the amount charged by the respondent regarding difference of tariff under PIU & General Category amounting to Rs. 2487613/- and difference of security PIU & General Category amounting to Rs. 176000/- are correct and recoverable from the petitioner.

5. That in compliance to the decision of Ombudsman Electricity Punjab, in the appeal preferred by the petitioner, the office of respondents has been charging the installment through monthly bills. In view of the submissions made, the present petition being devoid of merit deserves to be dismissed by this Hon'ble Court.

ON MERITS

xxx xxx xxx

7. That in response to the contents of this paragraph it is submitted that petitioner's connection was checked on its request vide LCR no. 04/902 dated 23.06.2017 and no Billet Heater was found installed. The connection was also checked by Addl. SE, Enforcement PSPCL Batala vide ECR No.

96/2031 dated 16.08.2017 and it was observed that six oil furnaces were installed and rest of the load was of general category. Thereafter, connection of petitioner was also checked by Addl. SE, Enforcement PSPCL Ludhiana vide ECR No. 29/472 dated 09.11.2017 as per the orders of forum and only five oil furnace were found and rest of load was general. The petitioner being a large supply' category consumer ought to be aware of the implications of giving details of the load of Billet Heater in the connected load in Application & Agreement ('A&A') forms while applying for release of extension in load/CD and subsequently submission of test report. If the petitioner intended to change its mind not to install Billet Heater then it should have informed the respondent in writing about the same and with revised Application & Agreement ('A&A') form and test report. So the mentioning of Billet heater load in load detail of test report and Application & Agreement ('A&A') forms is itself proof of installation of billet heaters. It is pertinent to mention here that test report is submitted after the installation of machinery / equipments. It is also pertinent to mention here that test report is submitted by the consumer and the utility goes by its declaration. As per CC No. 36/2012 dated 26/10/2012 respondent had already decided not to verify the test report. The load and machinery indicated in test report was considered to be correct being issued by a licensed contractor of Punjab Government."

Learned counsel for the petitioner argues that the respondents have not disputed that the premises of the petitioner were inspected by the Additional Superintending Engineer (Enforcement) PSPCL and he has specifically reported that that Billet Heaters were not found installed and only five Oil Furnaces were found. The load in question was hence found

general as claimed by the petitioner. He also contends that the tariff applicable to a PIU would be applicable only in case the billet heaters had been installed. The respondents have changed that category of the tariff charged against the petitioner solely on the basis of a declaration made by him in the A&A form proposing to install two billet heaters of total capacity of 550 KW. It is contended that in the absence of an actual installation and consumption of electricity as a PIU, the levy of charges and demand of such arrears were unjustified.

Learned counsel for the respondents, however, defends the orders passed by the concerned authorities and contends that the declaration in question had been given by the petitioner himself and as per the Regulations such declaration made in A&A Form has laid the basis for applicability of the tariff. He contends that a Unit where Billet Heaters/Induction furnaces etc. are installed, falls within the definition of PIU, as per the Regulations notified by the Punjab State Electricity Regulatory Commission (for short 'PSERC') and there was thus no error on the part of the respondents in raising the demand as per the specific declaration by the petitioner of installation of the Billet Heaters. He further contends that even though the order was passed by the PSERC creating a different tariff for the PIU on 29.05.2014, however, the petitioner never claimed any change of the category and connection thereunder.

He, however, could not dispute the fact that the report of the Additional Superintending Engineer (Enforcement) PSPCL, who had, on physical inspection, specifically recorded that no Billet Heaters had been installed.

No other argument has been raised.

I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

The fact that no Billet Heaters were installed in premises of the petitioner remains undisputed. The only basis for raising the above said demand is that the declaration for installation of the Billet Heaters had actually been made by the petitioner himself in its A&A Form. Hence, the tariff under the PIU was levied upon the petitioner and the arrears were demanded.

It is also not in dispute that as on the date when the A&A Form was submitted by the petitioner making such declaration, the industries/Units having any Billet Heaters did not fall under any separate classification of PIU and that such categorization was undertaken by the PSERC only vide order dated 29.05.2014. The respondents, however, continued to charge/raise bills of general industry from the petitioner and therefore, there was no occasion for the petitioner to have realized the mistake and sought correction. The awareness about a differential tariff came only after the instant demand was raised. It is also not in dispute that the orders passed by the CGRF as well as by the Electricity Ombudsman were subsequent to the furnishing of report by the Additional S.E. which categorically reported that there were no Billet Heaters installed in the premises in question.

Even though an A&A Form is a voluntary declaration by a consumer with respect to the load to be installed by him, however, the said

declaration cannot be read to the prejudice of a person concerned especially when a specific finding is recorded by the respondent authorities that Billet Heaters, as declared, had actually never been installed. The petitioner cannot be subjected to pay a higher tariff merely on account of the above said declaration which was never acted upon.

The mandate of Electricity Act, 2003 is also to protect the best interests of a consumer and to provide him competitive, efficient and economical power. The levy of a demand on a higher tariff cannot be raised even when the petitioner does not actually fall in the said tariff category on the consumption undertaken by him. A mere declaration, without corresponding consumption of the electricity for the said purpose, would not attract the tariff mandate of a PIU.

I find that the authorities below i.e. the CGRF as well as the Electricity Ombudsman acted in a ministerial manner by simpliciter relying upon the order passed by the PSERC, without considering the report furnished by the Additional S.E. and noticing that there was no actual consumption by the petitioner as a PIU. Once there is no dispute qua the nature of consumption recorded, any such bona fide error in mis-declaration or a subsequent change of the plan by a consumer and non-installation of Billet Heaters cannot still be inferred against a consumer and he be compelled to face a tariff higher than what he is statutorily liable to pay.

The present writ petition is accordingly allowed. The notice dated 30.05.2017 (Annexure P-1); the order dated 27.11.2017 (Annexure P-3) as well as the order dated 07.06.2018 (Annexure P-4) are set aside. The amount, if any, pursuant to the demand raised by the respondents,

deposited by the petitioner, shall be adjusted in the subsequent consumption charges of the petitioner in terms of applicable rules and regulations.

February 05, 2024

raj arora

Whether speaking/reasoned

Whether reportable

(VINOD S. BHARDWAJ

JUDGE

: Yes/No

: Yes/No