

2024:PHHC:144266-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

LPA-2223-2024 (O&M)
Decided on: 05.11.2024

Punjab State Power Corporation Ltd. & othersAppellant(s)

Versus

M/s Essen Auto Forge Pvt. Ltd. & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE DEEPAK MANCHANDA**

Present:- Ms.Deepali Puri, Advocate, for the appellant (s).

G.S. Sandhawalia, J. (Oral) :

CM-6170-LPA-2024

Application for placing on record the test report dated 03.10.2013 as Annexure A-1, is allowed, in view of the averments made in the application, duly supported by affidavit of the official. Same is taken on record. Office to append the same at appropriate place.

CM stand disposed of.

CM-5290-LPA-2024

Application for condoning the delay of 152 days in filing the appeal is allowed, in view of the averments made in the application duly supported by affidavit of the official. Delay of 152 days in filing the appeal is hereby condoned.

CM stands disposed of.

CM-5291-LPA-2024

Exemption application is allowed, as prayed for.

CM stands disposed of.

LPA-2223-2024 (O&M)

1. Consideration in the present appeal is to the judgment dated 05.02.2024, passed by the Learned Single Judge in CWP-25855-2018 titled *M/s Essen Auto Forge Pvt. Ltd. Vs. Punjab State Power Corporation Ltd. & others.*

2. Vide the said judgment, the Learned Single Judge allowed the writ petition and set aside the notice dated 30.05.2017 (Annexure P-1) wherein a demand of Rs.24,87,613/- had been raised along with deposit of Rs.1,76,000/- on account of the fact that the consumer was liable to pay the difference of the general tariff and the Power Intensive Unit (PIU) from 01.01.2014, as per the commercial circular No.28/2012 dated 06.09.2012 (Annexure R-1). The said demand was on account of the fact that Billet Heaters had been installed as per the A&A Form submitted by the respondent herein. The consumer thereafter approached the Redressal Forum set up by the Corporation for the consumers against the said notice which was rejected vide order dated 27.11.2017 (Annexure P-3) and further upheld by the Ombudsman on 07.06.2018 (Annexure P-4). The said orders have been set aside by the Learned Single Judge by holding that if any amounts has been deposited, the same shall be adjusted in the subsequent consumption charges of the consumer in terms of applicable rules and regulations.

3. The factual matrix on the basis of which the writ petition had been allowed by the Learned Single Judge is that factually no Billet Heaters were installed in the premises of the consumer and the demand had been raised on account of the declaration given in the A&A form and thus, the arrears demanded were not justified. On account of the subsequent circular issued, the difference had been charged between the general industry and the PIU on account of the fact that PSERC order dated 28.10.2023 in the petition filed and thus, superseding the commercial circular No.28/2012 dated 06.09.2012. It was also noticed that the bill was being raised for general industry of the consumer and there was no occasion to realize the mistake and seek the correction and the awareness only came after the demand had been raised on account of the difference in tariff. There was also report of the Additional Superintending Engineer (Enforcement), PSPCL that there was no Billet Heaters installed by the consumer and therefore, only on account of the declaration in the A&A form, the consumer could not be subjected to pay a higher tariff. It was, thus, noticed that the authorities below had acted in a ministerial manner without considering the factual matrix of the report that there was no installation of the Billet Heaters and the consumer could not be compelled to pay higher tariff.

4. We have examined the paperbook and it transpires that apparently at one point of time, the consumer wanted the Billet Heaters to be installed. It was, in such circumstances, the test report was given on 03.10.2013 (Annexure A-1), which is now placed on record. After the demand had been raised, it was its case that the Billet Heaters were never purchased and neither installed and the connection had been checked on

various occasions but the Billet Heaters were never installed at any point of time though the appellant had submitted in his A&A form that two number of Billet Heaters of 300 KW & 250 KW had been installed. The feasibility of installation the same was dropped and it was decided to use the oil fired furnace and even at this point of time, the heating work was done by the fire furnace and therefore, the consumption never exceeded 500 KVA except some marginal increase. It is thus its case that the demand was on the basis of the Billet Heaters installed and as per the circular, in view of the order of PSERC, it had to be treated as PIU and once the Billet Heaters were not there, the demand on the basis of the PIU had wrongly been raised.

5. The issue, thus, lies in a very narrow controversy that for the non-installation of the Billet Heaters and in the absence of any findings that they were actually installed, the charge by the appellant-Corporation has rightly been held to be not leviable. It is, in such circumstances, the Learned Single Judge had allowed the writ petition, upholding the orders of the authorities below, only on the principle that he had given a declaration that he had installed Billet Heaters and in the absence of any factual finding that the Billet Heaters had actually been installed since there is nothing on record to show that after the test report dated 03.10.2013, the officials of the Corporation had visited the premises and found that the Billet Heaters had been installed.

6. Accordingly, in view of the above discussion, we are of the considered opinion that the view taken by the Learned Single Judge is based on pragmatic principle that a person cannot be charged for

said usage and submitted his A&A form. It is in such circumstances, the Learned Single Judge had exercised his extraordinary writ jurisdiction and set aside the demand notice and the orders passed by the authorities. We do not find that the said judgment of the Learned Single Judge suffers from any infirmity which would warrant interference as nothing could be pointed out that the consumer had benefitted in any manner by projecting the fact that on account of the higher load, he had gained any benefit of electricity at a subsidized rate or its usage in the peak hours in preference to the general load consumers. Since there is no such attempt by the consumer to take any benefit on account of the declaration which had been given of the alleged installation of the Billet Heaters which was never done, there is no ground to interfere in the well reasoned order.

7. Resultantly, in view of the above discussion, the present appeal is hereby dismissed. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

05.11.2024
Sailesh

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	