IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-9490-2017
Date of decision: 27.02.2024

M/S NAHAR INDUSTRIAL ENTERPRISES LTD.

......Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION LTD. AND ANR.

.......Respondents

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

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Present: - Mr. Aalok Jagga, Advocate
for the petitioner.

Ms. Sunnit Kaur, Advocate
for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the impugned office order No.64 dated 20.03.2017 (Annexure P-19) whereby the respondents have declined to give the benefit of interest on the excess amount deposited by the petitioner w.e.f. the date of deposit by the petitioner and have instead confined the said benefit only w.e.f. the date of dismissal of the writ petition filed by the respondent-PSPCL.

2. Briefly summarized the case of the petitioner is that the premises of the petitioner company were checked by the officials of the

Punjab State Electricity Board, as it was then, on 07.01.1987 and a bill for a sum of Rs. 11,15,342/- was raised against the petitioner on 22.01.1987 on a premise that the meter was running slow. The said demand was raised for the preceding period of 06 months from July, 1986 to December, 1986. It was also communicated that in the event of the petitioner failing to deposit the amount as demanded, the electricity supply to the factory of the petitioner would be disconnected. Aggrieved of the above said illegal demand, the petitioner preferred a Civil Suit in the year 1987. The matter was referred to the Chief Electrical Inspector, Punjab for adjudication as per Section 26 (6) of the Electricity Act, 1910 vide order dated 09.06.1987.

3. The petitioner thereafter, filed an application before the Chief Electrical Inspector raising a challenge to the demand. After hearing the respective parties, an award was passed by the Chief Electrical Inspector on 10.08.1989 whereby the demand raised by the respondent Electricity Board was set aside and the matter was decided in favour of the petitioner. It was directed that the meter be got tested at ME Lab, Ludhiana and that as the respondents were themselves in lapse in installation of the new meter, the surcharge could not have been levied by them. Aggrieved of the said award, the respondent Punjab State Electricity Board preferred an appeal wherein the award was set aside and the matter was remanded. However, during the pendency of the said proceedings, the petitioner received a letter from the Electricity Board raising a demand of Rs. 19,81,627/- being the tentative amount. The said demand was raised by the respondent Electricity Board despite the award dated 10.08.1989. The Appellate Authority i.e. Commission (Appeals), Patiala Division, Patiala however allowed the appeal and remanded the case to the Chief Electrical Inspector for a fresh decision.

4. Since the respondents were threatening disconnection of the electricity connection, the petitioner deposited the amount of Rs.11,81,627/- on different dates to avoid disconnection of the electricity supply to his premises. The details have already been tabulated in the writ petition and the same are extracted as under:-

Date	No.	Receipt	Amount
11.11.1989	055463	247/037107/15.11.1989	4,95,407/-
18.03.1993	015897	537/3683/19.03.1993	2,97,244/-
11.03.1995	148654	10840/186/13.03.1995	11,88,976/-
		Total	19,81,627/-

5. The Chief Electrical Inspector reconsidered the issue after the order of remand and the award was allowed again in favour of the petitioner against which, a fresh Appeal No. 40 of 2005 was preferred by the respondents before the Appellate Authority i.e. the Commissioner (Appeals), Patiala on 11.03.2005. The matter was yet again remanded for a fresh/decision to the Chief Electrical Inspector vide order dated 29.03.2007.

6. On consideration of the matter from the Chief Electrical Inspector passed an award on 11.12.2007 in favour of the petitioner holding that the respondents can raise a supplementary bill as excess demand charges for the period not exceeding six months and that any supplementary bill raised by the respondent the Electricity Department beyond the period of 06 months on its part was in violation of the instructions issued by the erstwhile Board. The respondents-distribution licensee again preferred an Appeal bearing MAB No. 30 of 2008 before the appellate authority. Vide order dated 02.04.2009, the said appeal was dismissed. It was held that the demand raised by the respondent the

Electricity Department on the average consumption during previous 06 months was perfectly legal. The award dated 11.02.2007 passed by the Chief Electrical Inspector was held valid.

7. Thereafter, the respondent-distribution licensee challenge both the said orders before the High Court in CWP-7178 of 2013. The said petition was also dismissed vide order dated 30.05.2014. It was noticed by the High Court that the checking was done on 07.01.1987 and as per the instructions applicable to them, meter should have been replaced within a period of one month. As against the said statutory requirement, the meter was replaced only on 03.03.1989 i.e. after more than 25 months. Hence, they could not have levied the surcharge to cover up their own wrong and burden the consumer with the liability of the delay caused by them in not adhering to the schedule prescribed under the statute. After passing of the above said order, the respondents recalculated the amount and determined the demand at Rs. 11,15,342/- for the period from July 1986 to December, 1986. Since the petitioner had already deposited an amount of Rs.19,81,627/-, which was much above the amount that the petitioner was liable to pay, hence, the petitioner was to be given benefit of Rs.8,66,285/- alongwith interest as prescribed under the Regulations. The petitioner claims that he is entitled to interest @ 15% p.a. on the excess amount deposited by him as per regulation 35 of the Electricity Supply Code, 2007. The said demand was accordingly raised by the petitioner from the respondent. The petitioner submitted numerous reminders and representations for being given the refund of Rs. 8,66,285/- alongwith interest thereupon, however, the respondents only refunded principal amount but did not extend the benefit of the interest. The same is now subject matter of a fresh grievance. As request of the petitioner was not being determined, Civil Writ Petition No. 23707-2016 titled as “M/s Nahar Industries Enterprises Ltd. versus

Punjab State Power Corporation Ltd. " was filed by the petitioner claiming interest @ 18% p.a. on the excess amount deposited by him, from the date of its deposit till its final adjustment/refund. The said writ petition came up for hearing on 17.11.2016 when the above said writ petition was disposed of after noticing the contention of the petitioner and by directing respondent No.2-PSPCL to look into the matter and to consider the grievance of the petitioner raised in the his representation dated 24.05.2016 and takes a decision thereupon. Pursuant to the above direction, impugned order passed has been passed by the respondents on 20.03.2017 as per which they have held that the petitioner is not entitled to the interest from the date of deposit and instead the interest is payable to the petitioner w.e.f. 13.05.2014 i.e. when the writ petition filed by the petitioner was dismissed.

8. Counsel contends that the said order suffers from the misappreciation of the statutory provision as contained in the Electricity Supply Code, 2007. Attention is drawn to Regulation 35 which is extracted as hereinafter below:-

> *"35. **Disputed electricity bills 35.1:-** A consumer will effect full payment of the billed amount even if it is disputed failing which the Licensee may initiate action treating it as a case of non- payment. Provided that no action will be initiated if such a consumer deposits, under protest, (a) an amount equal to the sum claimed from him, or (b) the electricity charges for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the Licensee.*
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> *35.2 Notwithstanding anything contained in any other law for the time being in force, no sum due from any*

consumer, under this Regulation shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.

35.3 The Licensee will after the receipt of a complaint from a consumer in its notified office, decide on the billing dispute within twenty four hours if no additional information is required and within seven days if additional information is required.

35.4 if on examination of a complaint, the Licensee finds a bill to be erroneous, a revised bill will be issued to the consumer indicating a revised due date of payment, which will not be earlier than seven days from the date of delivery of the revised bill to the consumer. If the amount paid by the consumer under Regulation 35.1 is in excess of the revised bill, such excess amount will be refunded through adjustment first against any outstanding amount due to the Licensee and then against the amount becoming due to the Licensee immediately thereafter. The Licensee will pay to such consumer interest on the excess amount at twice the SBI's Short Term PLR prevalent on first of April of the relevant year from the date of payment till such time the excess amount is adjusted.

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36.3 Appeal to appellate authority

(c) In case the Appellate Authority holds that no case of unauthorized use of electricity is established, no further proceedings will be initiated by the Licensee and the amount deposited by the appellant refunded alongwith interest for the period from the date of deposit till the amount recovered is adjusted, at the

> *SBI's Short Term PLR prevalent on first of April of the relevant year, through adjustment in the electricity bills of the immediately succeeding months."*

9. Referring to the above, it is argued that as the petitioner had been made to deposit an excess amount as a safeguard against disconnection of the electricity supply, the refund through adjustment has to be made as per Clause 35.4 i.e. alongwith interest on the excess amount at twice the SBI's Short Term PLR prevalent on first of April of the relevant year from the date of deposit till such time the excess amount is adjusted. He thus contends that the regulation 35.4 provides entitlement w.e.f. date of payment and not w.e.f. the date when any litigation is decided amongst the parties. It is thus argued that the impugned award fails to take into consideration the Electricity Supply Code, 2007.

10. Counsel appearing on behalf of the respondents, however, contends that the petitioner cannot claim that benefit of interest on the excess amount w.e.f. date of such deposit since the demand was yet to be determined and the same was sub-judice. The entitlement of the petitioner to interest on excess amount would become only when the amount is determined to be excess which event occurred pursuant to the orders passed by the competent Court.

11. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition and also the regulation 35 of the Electricity Supply Code, 2007.

12. I fail to find myself in agreement with the argument advanced by the counsel for the respondent that the liability to pay interest in terms of

Regulation 35.4 would commence with effect from the date of adjudication of the litigation. A plain language of the regulation clearly shows that the entitlement of the interest is at the rate of twice the SBI's Short Term PLR prevalent on first of April 'from the date of payment' till such time the excess amount is adjusted. It is clear from a plain reading that the same is applicable with effect from date of deposit of such payment. The pendency of litigation *ipso facto* is not a ground to the respondent to seek exemption from the liability, where the respondents have collected an amount which the consumer was not liable to pay. If such a contention of the respondent is to be accepted, it would amount to giving premium to a violator and would be mis-reading of the statutory provision by conferring a benefit, which was never intended to be conferred in favour of the distribution licensee. After the notification of the Electricity Reforms, 1997 and the Electricity Act, 2003, the Distribution licensee can only collect or retain an amount/tariff which is approved by an Appropriate Commission and as authorized.

13. Any demand raised by the respondent-Distribution licensee, which is not supported by the appropriate regulation, is unjustified. Any unjust demand on the basis of mis-interpretation of the provision cannot be the basis for the respondent-distribution licensee to stake its entitlement over the excess amount recovered by them and to disown any liability for such illegal collection and thus deprive the right that accrues in favour of a consumer under Regulation. Such an interpretation of the respondents runs contrary to the letter and spirit of law. Thus, the stand of respondents is accordingly declined.

14. The impugned order dated 20.03.2017 (Annexure P-19) hereby, is set aside. The respondents are directed to give the benefit of interest on the

excess amount deposited by the petitioner w.e.f. date of such deposit. Let the appropriate adjustment be carried out and the admissible benefit be adjusted by the respondents within a period of four months of receipt of certified copy of this order.

15. Since the impugned order was passed by the respondent-authority in complete disregard to the bare statutory provision, it seems that the adjudicatory authority preferred to act in a ministerial manner instead of discharging its quasi judicial function as per the legislative intent requiring impartial and meritorious determination of the issue. The same also caused unnecessary litigation not only to the consumer but also for the Court. A cost of Rs. 10,000/- is accordingly imposed upon the Additional Superintending Engineer of Punjab State Power Corporation Limited for failing to apply the statutory provision, while passing an order in a quasi judicial capacity. Let the above cost be deposited with High Court Legal Services Committee within the period as specified above.

The writ petition is accordingly allowed.

(VINOD S. BHARDWAJ)

FEBRUARY 27, 2024 **JUDGE**

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No