

2024:PHHC:154701



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

CWP-25518-2024

Judgment Reserved on: 23.10.2024

Judgment Pronounced on: 20.11.2024

**RELIANCE EMINENT TRADING AND COMMERCIAL
PRIVATE LIMITED.**

... Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION AND ANOTHER

... Respondents

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

Present: Ms. Neeru Bansal, Advocate for the petitioner.

Mr. Sachit Khurana, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the impugned order dated 22.03.2024 (Annexure P-7) passed under Section 127 of the Electricity Act, 2003 by the Appellate Authority, Punjab State Transmission Corporation Limited, Office of Director Technical, Patiala, Punjab, the petitioner has approached this Court seeking a further relief of declaring the requirement of entering into a franchisee agreement with the respondent-Distribution Licensee before supplying electricity to the tenants as unconstitutional and illegal.

The petitioner (earlier known as the Amazon Enterprises Private Ltd.) was allotted multiplex site at Chotti Baradari, Part 2, PUDA, Jalandhar vide Punjab Urban Development Authority Allotment Letter dated 03.12.2007. The construction of building was allowed by the Punjab Urban Development

Authority vide approval dated 25.04.2013 and A&A was signed between the petitioner and the PSPCL on 31.05.2017 with the following specifications: -

Connected Load	1178.210 KW
Contract Demand	1240 MVA
Transformer Rating	1800 KVA
Supply Voltage	11 KV
Type of Industry	NRS

The demand notice was thereafter issued vide letter No.448 dated 23.06.2017. The SCO was later issued vide letter No.73 dated 19.09.2017, whereupon the connection was released. An electricity connection under the NRS category for the multiplex bearing Account No.3004726284 is running in the name of the petitioner since then, with a sanctioned load of 1178.210 KW and a sanctioned contract demand is 1240 KVA. The said connection was eventually checked by the Addl. SE/Enforcement-cum-EA & MMTW-3, Jalandhar vide ECR No.15/358, 16/359 and 17/359 dated 10.10.2023. Following irregularities were pointed in the said ECR: -

- i.

On the first floor of the premises a saloon named Studio Aesthetics and on third floor various businesses viz., M/s Food Bazar, M/s Chicking, M/s Fun-Zone and M/s Inox Theatre were utilizing electricity via sub meters but without any franchise agreement with the department.
- ii.

Indoor and outdoor lighting of the premises is using electricity produced by Roof Top Solar System but the solar plant has been installed without any prior approval from the department.”

Accordingly, a provisional assessment demand for Unauthorized Use of Electricity was issued by the Superintendent Engineer vide memo No.19221 dated 20.10.2023 calling upon the petitioner to deposit an amount of

Rs.2,19,07,721/-. Objections were filed by the petitioner against the said provisional order of assessment, which were considered and an opportunity of hearing was also granted to the representatives of the consumer on 02.11.2023. It was submitted by the consumer representatives that the amount already paid by the consumer during its regular electricity bills for the proportionate unauthorized load needs to be adjusted against the amount charged and also that as the solar roof top plant has been disconnected from the PSPCL supply at the consumer premises, the amount charged in respect of the solar units so generated be not charged. On consideration of the said objections, a revised assessment was accordingly made at Rs.1,02,62,709/-.

Aggrieved thereof, the petitioner preferred an appeal before the Appellate Authority under Section 127 of the Electricity Act, 2003 by making a pre-deposit of 50% to tune of Rs.51,31,355/- alongwith Court fee @ 0.5% i.e. an amount of Rs.60,550/-.

The Appellate Authority considered the arguments advanced by the petitioner and dismissed the said appeal after recording a finding that the petitioner had obtained the electricity supply under the NRS category and resorted to supplying the same to different tenants and has thus indulged in distribution of the electricity supply, through sub-metering, without any authority. The petitioner has thus indulged in the business of sale/re-distribution of the electricity in violation of Section 12 of the Electricity Act, 2003. It was also pointed out that the same being impermissible and in violation of the regulations notified by the respondent-Distribution Licensee, the assessment has been done rightly. The appeal was accordingly dismissed vide order dated 22.03.2024 against which the instant writ petition has been filed.

Counsel for the petitioner has argued that the Authorities under the Electricity Act, 2003 have misapplied the provisions of Section 12 of the 14 of the Electricity Act, 2003 in presuming sub-metering to different consumers as sale of electricity or sub-distribution thereof. It is contended that the prohibition contained under Section 12 of the Electricity Act, 2003 is to the transmission distribution or trading of the electricity and that as no transmission, distribution or sale of electricity has happened in the present case, hence, it would not be presumed as a violation of the provisions of Sections 12 and 14 of the Electricity Act, 2003. She contends that in case the impugned order is allowed to sustain, it shall result into creating a parallel registration prohibiting the owners of any of the premises in the country to make supply to the tenants through an independent sub-metering. She contends that the assessment of the penalty on account of Unauthorized Use of Electricity is thus wrong and liable to be set aside.

She placed reliance on the Draft Punjab State Electricity Regulatory Commission Supply Code 2024 and claims that there is no provision for levy of penalty for supply of electricity to the tenants through sub-metering. She was, however, confronted with the fact that the abovementioned Supply Code is of 2024, whereas the incident in question pertains to the year 2023 and as to how the provisions of the said Draft Supply Code of 2024 may be relied upon for advancing her case, she concedes that the same cannot be read in favour of the petitioner.

No other argument has either been raised or judgment cited by the petitioner during the course of the arguments.

Counsel for the respondent-Distribution Licensee, on the other hand, submits that the act of the petitioner in sub-distributing the electricity to its

tenants, despite having availed the connection under the NRS category, is in violation of the regulation 36 contained in the Supply Code of 2014. The same is also in violation of Sections 12 and 14 of the Electricity Act, 2003 and it would amount to a further distribution and/or sale of electricity by the petitioner to its tenants. The same being impermissible in law, the penalty in question has rightly been levied. It is also submitted that the PSERC, in order to regulate Single Point Supply connections to the residential colonies/building complexes/shopping malls/commercial complexes/industrial estates and Single Point connections released to the Universities and private educational institutions/medical colleges etc. under 'Bulk Supply' Schedule of Tariff had initiated a *suo-motu* petition No.61 of 2014 in light of the judgment of Appellate Tribunal of Electricity. In its order dated 09.06.2015, the PSERC held as under:

“PSPCL is directed to draft Model Distribution Franchisee Agreement in accordance with the position brought out in para 10.1 to 10.8 above within 3 months of the issue of this Order and put it on its website for the information of all the stakeholders. Individual notices shall also be issued to consumers who have been granted single point supply under clause 8.1 to 8.4 of the repealed Conditions of Supply. It shall be ensured that Terms & Conditions offered to the existing single point supply consumers for continuing as ‘franchisee’ for the area/colony/complex for which Agreement (A&A form) has already been signed under clause 8 of the ‘Condition of Supply’ shall not be changed to the disadvantage of the consumer/developer of such colony/complex provided the provisions of Franchisee agreement are in conformity with the Electricity Act, 2003. However, the parties are free to negotiate the Terms & Conditions of the franchise agreement which are mutually acceptable to both the parties in accordance with the Act and the regulations framed under the Act.

The existing single point supply consumers who have been released connections under clause 8.1 to 8.4 of the repealed Conditions of Supply shall sign the franchisee agreement within 3 months of receipt of Model Distribution Franchisee Agreement from PSPCL.”

In compliance to the said order, PSPCL circulated Model Distribution Franchisee Agreement to be signed by all single point supply consumers of residential colonies/building complexes/shopping malls/commercial complexes/industrial estates etc. vide CC No.58/2016 dated 14.12.2016.

Regulation 36.3 of the Electricity Supply Instructions Manual (Single Point Supply to a Franchisee), authorizes PSPCL to appoint a franchisee for a particular area as per the 7th proviso to Section 14 of the Electricity Act, 2003 and PSPCL could provide single point supply on an application by the franchisee for making electricity available within the particular area to various categories including the commercial complexes. The said appointed franchisee alone was competent to supply electricity to individual consumers in its area of supply. It is further submitted that there is a complete bar for all/any person(s) to indulge in any of the activities of transmission, generation and supply/trading of electricity without a licence under Section 14 of the Electricity Act, 2003. Hence, after the commencement of the Electricity Act, 2003 and the Rules and Regulations framed thereunder, a sub-consumer and a consumer having availed himself of a single point supply is required to apply separately to the Distribution Licensee and in the absence thereof, the supply/distribution of electricity is an illegal activity as there is no provision for maintaining sub-distribution of electricity without licence.

It was also alleged that no explanation has been put forth by the petitioner as to why the instructions issued under CC No.58 of 2016 have not been followed in the present case. It is thus prayed that the petition deserves to be dismissed.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

In the said context, the distinction between a Single Point Supply and a Commercial Connection has to be understood. A 'Single Point Supply' (hereinafter referred to as 'SPS') is a bulk supply to a single entity for distribution within its premises. The entity to whom the bill is issued is responsible for its internal distribution and billing. In a commercial connection, however, a direct supply is made to the said entity for its own uses for commercial purposes and tariff as applicable.

The Punjab State Electricity Regulatory Commission (hereinafter referred to as 'PSERC') had notified the PSERC (Electricity Supply Code and Related Matters) Regulation, 2014 (hereinafter referred to as 'Supply Code of 2014') to be applicable to the licensees in their respective areas and to the consumers in the State of Punjab.

Regulation 42-A of the Supply Code of 2014 deals with supply voltage for connectivity at Single Point under Regulation 6.6. thereof. Regulation 6.5 of the Supply Code (as upto 11th Amendment) prescribed "one Connection in One premises". Regulation 6.5.4 thereof reads thus:-

"A tenant/lawful occupier of the premises, in which an NRS/Industrial/domestic connection already exists, shall have to seek a separate connection, with the consent of the owner, to carry

out any commercial/industrial activity permitted under law, by duly separating the portion of the premises. While giving its consent, the owner shall undertake in the form of an affidavit duly attested by a Notary Public that the owner shall clear all the liabilities in case the tenant leaves the premises without paying the distribution licensee’s fee.”

Hence, it was mandated that a tenant in a premises has to obtain a separate connection for his use and occupation.

In other categories, a “Single Point Supply” was stipulated under Regulation 6.6 of the Supply Code of 2014 (upto 11th Amendment). An ‘SPS’ has to be made available on an application by the franchisee for making electricity available to the residential colonies as well as commercial complexes etc. under Regulation 6.6.2 which is extracted as under:

“6.6 Single Point Supply

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6.6.2 Notwithstanding anything contained in Regulation 6.6.1, the licensee may appoint a franchisee for a particular area in its area of supply as per 7th proviso to Section 14 of the Act. The licensee may provide single point supply on an application by the franchisee for making electricity available within the particular area to the following categories:

- (i) residential colonies
- (ii) commercial complexes
- (iii) industrial complexes
- (iv) IT parks
- (v) other single point supply consumers.

XXX XXX XXX XXX”

A separate type of supply i.e. to Individual Consumers in colonies/ complexes etc. is provided for under Regulation 6.7 of the Supply Code, 2014 (upto 11th Amendment). The said Regulation, however, need not be extracted since reference of the said Regulation has been made to point out that the Regulations mandate each tenant to obtain a separate meter. A special procedure for individual consumer was provided in Regulation 6.7, whereas an SPS through franchisee was to be made available in commercial complexes as well as other SPS consumers. The decision of PSERC in this regard and followed by a Commercial Circular duly existed before the supply was sought by the petitioner in the year 2017. It thus needed to make an appropriate disclosure in the A&A form and seek release of supply under the applicable category. It is not open to the petitioner, a juristic entity engaged in heavy commercial investments, to contend that it was not aware of the Regulations. Even otherwise, position in law is well settled that ignorance of law cannot be used as a defence.

The aforesaid provision under the Regulation is in consonance with the 7th Proviso to Section 14 of the Electricity Act, 2003.

Hence, if a tenant is being supplied electricity by the owner of a premises, without due authorization, it amounts to a sale of electricity by a person not authorized and would be liable to be penalized under Section 126 of the Electricity Act, 2003.

It does not lie with the owner to contend that he has not derived any benefit or profit in the said transaction since profit earning may not be an essence of sale. Even if a product/supply is sold at par or below the purchase price, it may still have all the elements of sale. The unit in lieu thereof having been consumed for own benefit, by the tenant, and the price is being collected for the

same, it is a complete sale and would thus fall in the definition of “supply” as per Section 2(70) of Electricity Act, 2003 read with Section 2(15). The same are extracted as under:

“Section 2. (Definitions): - In this Act, unless the context otherwise requires-

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(15) *"consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;*

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(17) *"distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;*

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(27) *“franchisee means a persons authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;*

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(38) *“licence” means a licence granted under section 14;*

(39) *“licensee” means a person who has been granted a licence under section 14;*

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(70) *"supply", in relation to electricity, means the sale of electricity to a licensee or consumer;*

Section 12. (Authorised persons to transmit, supply, etc., electricity):

No person shall

- (a) transmit electricity; or*
- (b) distribute electricity; or*
- (c) undertake trading in electricity,*

unless he is authorised to do so by a licence issued under Section 14, or is exempt under section 13.

Section 13. (Power to exempt):

The Appropriate Commission may, on the recommendations, of the Appropriate Government, in accordance with the national policy formulated under section 5 and in the public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, non-governmental organizations, or franchisees:

Section 14. (Grant of licence):

The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person –

- (a) to transmit electricity as a transmission licensee; or*
- (b) to distribute electricity as a distribution licensee; or*
- (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:*

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act

specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements relating to the capital adequacy, creditworthiness, or

code of conduct as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

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The Regulations under the Supply Code of 2014 thus lay down a complete mechanism for SPS and mandate owner of the premises to make a correct declaration. In a case of a complex, despite a large variety of product sold, it may still be a bulk commercial consumer. It is usually in circumstances where the identity of the end consumer is distinct and separate from the recipient consumer that the issue of S.P.S. gains significance and requires compliance and disclosure. It is not for the distribution licensee to know the true nature of relationship and such aspect is within the domain of the consumer.

The respondent-PSPCL is authorized and duty bound as per the Supply Code of 2014 to appoint a franchisee for a particular area, in its area of supply, as per 7th proviso of Section 14 of the Electricity Act, 2003 and to provide Single Point Supply on an application by the franchisee for making the electricity available within a particular area to the categories including commercial complexes. The franchisee is required to abide by the terms and conditions of the Franchisee Agreement (Annexure P-45 to the Instructions Manual, 2014), to be signed by PSPCL alongwith the franchisee for supply of electricity to independent consumer. Needless to mention that definition of "consumer" includes a sub-consumer as well.

Further, the CC No.58 of 2016 was issued by the PSPCL vide Memo No.803-807/SR-75 dated 14.12.2016, as per which, all the consumers,

who had been granted Single Point Supply under Clause 8.1 to 8.4 of the Conditions of Supply were required to sign a Distribution Franchisee Agreement within a period of three month of receipt of Model Distribution Franchisee Agreement of PSPCL and individual notices were required to be issued. It was also pointed out that in the event of non-compliance of the said instructions, any of the consumers that have been provided Single Point Supply within the stipulated period as per the notice, the same was liable to be disconnected. The said circular had been issued in the year 2016 while the electricity supply to the petitioner herein has been released in the year 2017 and as such, the said circular was in force at that point of time. He cannot thus claim that he was not aware of the commercial circular issued or the orders passed by the respondent-Distribution Licensee.

Despite a specific regulation requiring the release of Single Point Supply in commercial complexes for further distribution to the consumers/tenants carrying on business in the said premises, the petitioner chose not to comply with the same. Hence, the distribution of electricity to the tenants/consumers would be in violation of the regulations framed and without any authority in law.

Even though the petitioner emphatically argued that there was no sale of electricity, however, the obligation of the distribution has to be seen in the context of Section 2(17) of the Electricity Act, 2003. The construction of area of supply has to be seen in the context of the premises as notified and has to be read accordingly in light of the distribution system as defined under Section 2(19) of the Electricity Act, 2003. Further, Section 2(71) defines trading which deals with purchase of electricity for resale thereof. A sub-distribution of electricity for

which separate payment is being made is invariably a re-sale of electricity. The definition of trading does not mandate that there has to be profitability in the said operation. The element of sale has to be seen in the context of supply of electricity and the payment being made.

Undisputedly, the petitioner received electricity supply at his own end and has thereafter further supplied it to the different tenants and has collected money from them. Since the definition of "trading" under the Electricity Act, 2003 does not inhere earning of a profit in the said transaction, the same cannot be read as an integral part into the definition. The act being technical and specific, any such interpretation would amount to legislation, which is beyond the sphere of Constitutional Court. Hence, the supply of such electricity to different consumers would amount to distribution in terms of Sections 12 and 14 of the Electricity Act, 2003. Before distributing the electricity, a person is required to obtain a licence issued under Section 14 or be exempted in terms of the said Section under the Electricity Act, 2003.

It is not in dispute that no such licence under Section 14 of the Electricity Act, 2003 has been obtained by the petitioner. The activity undertaken by the petitioner would thus fall within the definition of distribution of electricity as can be inferred from a joint reading of Section 2(15), 2(17) and 2(19) of the Electricity Act, 2003. The sub-tenants become consumers under Section 2(15) of the Electricity Act, 2003 on being supplied with electricity for their own use and include any person whose premises are connected for the purpose of receiving electricity with the works of a licensee. Hence, the petitioner was required to have an authorization to operate and maintain a distribution system within the

premises i.e. the commercial complex. He has undisputedly not followed the said procedure.

The next issue would infact be about the calculation of demand and as to whether the same is as per Annexure 8 of the Supply Code, 2014 or not. No argument pointing out any error in applying the formula has been raised. The benefit of solar power has already been given in the final assessment. Hence, the said aspect is not being gone into any further.

Hence, I am of the view that there is no illegality or perversity pointed out by the petitioner in the impugned order passed by the Appellate Authority under Section 127 of the Electricity Act, 2003.

So far as the prayer of petitioner for seeking declaration that the requirement of entering into a Franchisee Agreement should be held unconstitutional and illegal is concerned, the same would require the petitioner to challenge the Regulations framed in this regard by the appropriate Commission, in a manner known to law. The same having not been done in the manner prescribed by law and as per the High Court Rules and Orders before this Court, it would not be appropriate for this Court to venture into the said aspect. The petitioner is, however, at liberty to take recourse to filing of an appropriate petition, if so advised, in accordance with law.

The instant petition is accordingly dismissed at this stage.

20.11.2024.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No