2024:PHHC:053101

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

214 **CWP-32393-2019**
Date of Decision: 18.04.2024

RAKESH KUMAR

... Petitioner

VERSUS

OMBUDSMAN ELECTRICITY, PUNJAB AND OTHERS

... Respondents

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

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Present: Mr. J.S. Jaidka, Advocate and
Mr. Abhishek Khullar, Advocate
for the petitioner.

Mr. H.S. Jugait, Advocate
for the respondent No.1.

Mr. Alok Mittal, Advocate and
Mr. Sylvester, Advocate for
respondents No.2 to 5.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 30.09.2019 passed by the Ombudsman Electricity, Punjab, whereby interest for a limited period has been granted to the petitioner against the excess amount charged by the respondents due to wrong application of multiplication factor of 1 instead of 0.5 in the electricity bills from the date of application i.e. from 11.07.2017 till the date of refund and not for the entire duration i.e. with effect from May, 2006 till its payment.

Learned counsel for the petitioner contends that the petitioner was having a Non-Residential Supply (NRS) category connection with sanctioned load of 35.740 KW and a contract demand of 39.710 KVA, the metering whereof was done by LT/CT operated energy meter. He got the load extended from 8.740 KW to 35.740 KW and the whole three-four phase wire, whole current energy meter was replaced by sundry job order No.92/17359 dated 03.04.2006. The main energy meter was 200/5 AMP and that of LTCT was 100/5 AMP. Thus, the overall multiplication factor (MF) was 100/200 = 0.5, however, the bills were incorrectly being raised by applying the multiplication factor of 1. The electricity connection was checked by the Addl. S.E. Enforcement-III Ludhiana vide ECR No.15/3559 dated 31.08.2017, when it was reported that as per the bill produced by the petitioner at site, the billing was being done by multiplication factor of 1 whereas the overall multiplication factor was 0.5. Hence, an excess payment was made by the petitioner due to wrong bills raised on account of the wrong application of multiplication factor. The petitioner accordingly applied for refund of the excess amount charged by the respondent-Distribution Licensee for the period from May 2006 till October 2017. The SDO concerned forwarded the case of refund of the petitioner vide memo No.47 dated 07.02.2018 for a sum of Rs.23,15,134/- pre-audited vide memo No.605 dated 15.02.2018 and it was intimated that the period of refund had already been audited and that no further action is required to be taken.

However, as the same was not released, the petitioner moved an application before the Zonal Disputes Settlement Committee, which allowed the refund of the excess amount to the petitioner vide its order dated 18.05.2018. Only the principal sum of Rs.23,15,119/- was, however, refunded to the petitioner. The petitioner, thereafter, represented before the Zonal Dispute Settlement Committee for payment of the interest on the abovesaid amount for the period commencing from May 2006 till the date of its refund. The said representation was dismissed by the Zonal Dispute Settlement Committee vide its order dated 15.03.2019.

Aggrieved thereof, a petition was preferred before the Consumer Grievances Redressal Forum. The order of the Zonal Dispute Settlement Committee was upheld by the Consumer Grievances Redressal Forum vide order dated 09.07.2019. The petitioner, thereafter, approached the Ombudsman Electricity, Punjab, who partly allowed the petition and modified the order passed by the Zonal Dispute Settlement Committee and Consumer Grievances Redressal Forum but allowed the benefit of interest to the petitioner only from the date of submission of application i.e. 11.07.2017 till the date of refund. Hence, the present petition has been filed.

Learned counsel for the petitioner contends that the petitioner is entitled to the interest for the entire period for which the respondents retained the money wrongly collected from the petitioner. He contends that the respondents have admitted that the amount was wrongly billed and multiplication factor was wrongly applied in raising the demand and that the benefit of interest could not thereafter have been restricted from the date of submission of the application and that the said benefit ought to have been given to the petitioner for the entire duration.

Counsel for the respondents have not disputed the factual aspects noticed above, however, it is contended that the present petition deserves dismissal since the refund has already been made in favour of the petitioner. He submits that the act of applying a wrong multiplication factor was only on account of an oversight and was never intended. The interest has thus rightly been confined w.e.f. the date of 11.07.2017 i.e. the date when the application for raising claim to the interest was made.

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

Since the factual aspects noticed above are not disputed, the same are not being adverted to. The issue primarily is only against the entitlement of a consumer to claim interest for the entire duration in a case where an excess amount remained deposited with the respondents on account of a wrong demand raised by them. Regulation 21.6 of the PSERC (Electricity Supply Code and the Related Matters) Regulations, 2014 states that if a consumer is entitled to refund, in consequence of an overhauling of his account in accordance with Regulation 21.5, he is entitled to refund alongwith interest at SBI base rate + 2% in case the refundable amount is more than average bill of the consumer for more than three billing cycles. The amount in excess of average bill for 3 billing cycles is required to be refunded within a period of 30 days failing which the said interest becomes payable. The relevant provision is reproduced as under:

> ***"21.6 Recovery/Refund of Charges***
>
> *If a consumer is liable to pay an amount or entitled to refund in consequence of an overhaul of his account in accordance with Regulations 21.5 above, the distribution licensee shall effect recovery or adjust the excess amount in the electricity bills of the immediately succeeding months.*
>
> *Provided that in case the refundable amount is more than average bill of the consumer for more than 3 billing cycles, the amount in excess of average bill for 3 billing cycles shall be refunded through cheque within 30 days failing which interest at SBI base rate plus*

2% shall be payable by distribution licensee to the consumer for the period of delay."

It is not the case of the respondent-Distribution Licensee that the refundable amount was less than the average bill of the consumer for more than three billing cycles or that the entire amount was paid within a period of 30 days after the same was detected. Thus, once the conditions prescribed under the proviso to absolve themselves of the liability of payment of interest have not been fulfilled, the respondent-Distribution Licensee becomes obligated to pay the interest as prescribed by the appropriate Commission. The abovesaid Regulation does not confine benefit for the period from the date of submission of application and rather it recognizes the right of a consumer to the refund itself alongwith the SBI Rate + 2% interest.

Further, I fail to find any justification or the mechanism where-under the Ombudsman Electricity, Punjab confined the release of interest to the petitioner w.e.f. the date of submission of the application instead of ensuring the said benefit for the entire duration for which the petitioner was made to deposit the higher amount due to application of a wrong multiplication factor. It is noteworthy that even the respondent-Distribution Licensee demands the entire outstanding amount alongwith interest for the entire period of default notwithstanding the circumstances of such default, hence, under similar circumstances, the respondent-Distribution Licensee cannot claim for itself to be standing on any better pedestal and to deny the admissible benefits to the consumer.

The mandate of the Electricity Act, 2003 is not just for furthering the interest of the respondent-Distribution Licensee, but is also to ensure that and efficient, effective and economical energy is made available to the consumer. The rights of the consumer are thus also held paramount in the object of The Electricity Act, 2003. The denial of a benefit can be ordered only in case where the Statute so confines or restricts the admissible benefits to a consumer. Since there is no such restriction imposed under the Regulation 21.6 restricting the time for which the benefit can be made admissible to a consumer, I find that the order passed by the Ombudsman Electricity, Punjab, confining the benefit w.e.f. 11.07.2017 till its actual refund, was not appropriate or justified from a meaningful reading of the regulations.

The present writ petition is accordingly allowed.

The order dated 30.09.2019 is modified and the respondent-Distribution Licensee is directed to refund interest to the petitioner in terms of Regulation 21.6 of the PSERC (Electricity Supply Code and the Related Matters) Regulations, 2014 as amended within a period of 30 days of the receipt of certified copy of this order, for the entire duration.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 18, 2024
rajender

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