IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

214 **CWP-32615-2018**
Date of Decision: 22.02.2024

DR. AVINASH SURI **…..** Petitioner

VERSUS

STATE OF HARYANA AND OTHERS **...** Respondents

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

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Present: Dr. Surya Prakash, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. R.S. Longia, Advocate, for respondents No.2 to 4.

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VINOD S. BHARDWAJ, J. (ORAL)

1. Challenge in the present writ petition is to the bills dated 22.08.2018 and 11.10.2018 as well as to the order dated 23.08.2018 alongwith calculation sheet, whereby the respondents have charged interest @ 16% per annum, for the period commencing from 06.03.2013 till September 2016, in contravention of the order dated 01.08.2018 passed by the Ombudsman as per which the petitioner was ordered to be charged interest w.e.f. 23.03.2017.

2. Learned counsel for the petitioner contends that the dispute in the present case is confined to the violation committed by the respondent-authorities in issuing the bill, notwithstanding the order passed by the

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electricity ombudsman in the matter of the petitioner. He has drawn attention of this Court to the operative part of the order passed by the Electricity Ombudsman which reads thus:-

> *"Keeping in view the above, material made available on record and written /oral submissions made by both the parties, the appeal is disposed of with the following directions:*
>
> 1. *The Appellant be charged for 100000 kwh for the energy consumed alongwith the surcharge as per SMI 7.6 and MDI penalty as per the Departmental instructions.*
> 2. *The Appellant be charged the interest w.e.f. 23.03.2017.*
> 3. *The account of the Appellant be overhauled in terms of the above and the bill be issued within 15 days from the issue of this order. Also, refund if any, due to the Appellant, keeping in view the amount already deposited by her with the Respondent Department, should be refunded within a month from the issue of bill.*
> 4. *Any loss to the Nigam should be recovered from the delinquent officers/officials for negligence of duty on their part as per the instructions of the Respondent Department of the Nigam."*

3. Referring to the above, counsel for the petitioner contends that the surcharge could have been levied/collected against the petitioner on the 100000 kwh energy as per SMI 7.6 and the petitioner was also held entitled to refund as approved by the PSERC i.e. @ 2% per month as per instruction No. 6.10 appended as Annexure P-3.

4. Counsel for the respondents, however, contends that the case is distinct and Clause 7.6 and the said instructions are not applicable.

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5. I have heard learned counsel appearing on behalf of the parties and have gone through the documents appended alongwith the present writ petition with their able assistance.

6. There is no dispute as regards the order passed by the Electricity Ombudsman and also that the respondent distribution licensee is not in challenge to the said order passed by the Electricity Ombudsman. Hence, it may not be appropriate on the part of the respondent to contend that notwithstanding a specific direction incorporated in the order passed by the Electricity Ombudsman, the requisite benefit as regards determination of the charges and/refund would not be done as per SMI 7.6. In the event, the respondent had any objection to the applicability of SMI 7.6, such challenge/clarification is required to be obtained from the Electricity Ombudsman and till such time that the appropriate clarification/challenge is not made to the order so passed, the respondent-department is required to implement the said order.

7. Further, counsel for the respondent contends that the petitioner would not be entitled to interest since no such interest component has been awarded by the electricity ombudsman and that the deposit of the amount was made pursuant to an interim order passed by this Court and the respondent-department cannot be put to any prejudice on account of such deposit.

8. The said contention cannot be accepted at this juncture since the Electricity Act, 2003 specifically postulates that in the event any excess amount is collected by the respondents or claimed by them, in the event of any adjustment is granted in favour of the consumer later in point of time, the consumer is entitled to interest thereupon.

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9. Further, the above said contention of the respondent is not in consonance with instructions 6.10 issued by the competent authority. The entitlement of a consumer to interest, on an excess amount deposited, has to be determined as per the statutory provision. It seems that both the above said aspects have not been set out or explained by the respondents either in the reply or at the stage of issuing the bill.

10. Without commenting any further on the merits, to avoid causing prejudice on the respective rights of the parties, the present writ petition is allowed and the impugned refund or/adjustment and calculation sheet are set aside at this juncture.

11. The matter is remanded to the respondent authorities to recalculate the refund in terms of the directions given by the Electricity Ombudsman in his order and to refund the same as per the applicable instructions.

12. The parties shall appear before the Sub Divisional Officer, DLF-City, Sub Division-DHBVNL, Gurugram on **18.03.2024** whereupon an order shall be passed, after re-considering the requisite regulation and instruction issued by the respondents and on granting of opportunity of hearing to the respective parties, in a time bound manner, preferably within a period of 04 months thereafter.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 22, 2024
Vishal sharma

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

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