

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

243

CWP-29840-2022

Date of decision: 29.01.2024

M/S ISHWAR SINGH ENGINEERINGPetitioner

VERSUS

THE APPELLATE AUTHORITY CUM SUPERINTENDING ENGINEER
AND OTHERS

.....Respondents

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

Present: - Ms. Saachi Mahajan, Advocate for
Mr. Shailendra Jain, Sr. Advocate
for the petitioner.

Mr. Vivek Saini, Advocate
for respondents No.2 and 3-DHBVN.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 05.12.2022 passed by the respondent No.1-Appellate Authority-cum-Superintending Engineer/TS Circle, Haryana Vidyut Parasan Nigam Ltd. on an appeal under Section 127 of the Electricity Act, 2003 and dismissed the same by a non-speaking order.
2. Ms. Saachi Mahajan, Advocate has vehemently argued that the petitioner is running an industry under the name and style of M/s Ishwar Singh Engineering, at Plot No. 322/11, Udhyog Vihar, Dundahera,

Gurugram. An electric connection Account No. UMS-11 was installed by the respondent-distribution licensee in the aforesaid premises after getting the meter duly checked from M & P Lab. It is contended that the industrial premises of the petitioner was inspected on 22.11.2004 by Vigilance Wing of the respondent-distribution licensee for checking of the electric meter. Certain abnormalities were allegedly noticed by the respondents and that by placing reliance upon them, they raised an illegal demand by treating the same as a case of unauthorized use of energy. The provisional order of assessment was sent vide Memo No. 2523/24 dated 23.11.2004 assessing the demand to the tune of Rs. 8,05,090. Objections against the provisional assessment were filed by the petitioner on 24.11.2004.

3. It is further contended that the petitioner had also filed a Civil Suit for seeking declaration alongwith the consequential relief of mandatory injunction bearing C.S. No. 163/29.11.2004 against order of provisional assessment which was dismissed vide judgment and decree dated 30.01.2009. Aggrieved thereof an appeal had been preferred. The said appeal was also dismissed vide judgment and decree dated 15.06.2009 passed by the Additional District Judge, Gurugram. A final order of assessment was thereafter passed by the respondents on 08.09.2009 upholding the order of provisional assessment.

4. Against the said cryptic order of final assessment, the petitioner preferred an appeal under Section 127 of the Electricity Act, 2003 before the Appellate Authority. As no decision was taken on the said appeal, the petitioner approached this Court by way of CWP-16839 of 2022 praying for issuance of directions to the respondents to decide the statutory appeal in a time bound manner. The said appeal was disposed of by this Court vide

order dated 05.09.2022, directing the respondents to decide the appeal within a period of three months. Pursuant thereto the impugned order dated 05.12.2022 (Annexure P-9) has been passed by the respondents. Hence, the present writ petition.

5. Learned counsel appearing on behalf of the petitioner vehemently contends that the order has been passed by the Appellate Authority is a non-speaking order and does not refer to any of the objections raised and arguments advanced by the petitioner. Such an order is bad and is liable to be set aside.

6. Counsel for the respondents-distribution licensee is not in a position to controvert that the operative part of the order passed by the Appellate Authority is non-speaking and there is no discussion of the objections raised or about the arguments advanced.

7. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

8. In order to appreciate the argument, it is necessary to look into the reasoning and consideration of the appeal by the appellate authority. The relevant extract of the impugned appellate order reads thus:-

It is therefore, humbly prayed that the appeal for the appellant may kindly be dismissed special cost.

In view of the above the following issues are required to be addressed by the Assessing Authority.

1. Whether to give the decision in respect of genuinity of the theft cases falls in the preview of the Appellate Authority or not.

2. Whether the assessment made by the Assessing Authority is as per the instruction or not.

In view of the foregoing deliberations, submission of oral and written pleadings by the appellant & respondent and the

prevailing instructions notified by State Government vide Notification No. 16/6/2017-3P dated 10th August, 2017, the Appellate Authority has come to the conclusion and orders as under:-

"Keeping in view the observations above, it is made clear to the appellant that the calculation of penalty for theft of energy has been assessed by DHBVN rightly.

Therefore, the competent authority do not find any reason to intervene the assessment order accordingly, the appeal is dismissed.

9. A perusal of the extract of the impugned order passed by the Appellate Authority-cum-Superintending Engineer/TS Circle, Gurugram shows that the impugned order is non-speaking and does not deal with any of the issues/objections that had been highlighted or raised in the arguments advanced on behalf of the petitioner.

10. The remedy being in the nature of a statutory appeal, the authority is required to consider and return finding on issues raised even if the reasons are not elaborate, given that the authority comprises of technical experts who may not have fine judicial interpretation but there should be some reasoning dealing with the issues and why they are being over-ruled. The impugned order does not satisfy the said requirement.

11. Consequently, the said order is accordingly set aside. The matter is remanded to the Appellate Authority to pass a fresh order in accordance with law and after granting an opportunity of hearing to the respective parties by passing a reasoned and speaking order. The parties shall appear before the Appellate Authority on 19.02.2024 whereafter the Appellate Authority shall proceed further in the matter and pass a speaking order expeditiously and preferably within a period of three months.

12. The present writ petition stands disposed of.

13. The interim protection already extended by this Court vide its order dated 22.12.2022 shall remain in force till adjudication of the appeal by the respondent-authorities.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 29, 2024
Vishal Sharma

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