

(1995) 11 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1372 of 1995

Punjab Maize Product Limited	Vs	APPELLANT
Punjab State Electricity Board		RESPONDENT

Date of Decision : 02-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 112 PLR 295

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Anant Singh Grewal, for the Appellant; Govind Goel, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—The two communications dated 16.11.1994 and 30.11.1994 (Annexure P-4) and P-5 with the writ petition) - issued by the Punjab State Electricity Board (for short, the Board) whereby it was decided that the application of the petitioner for extension of load would be considered only on the fulfilment of the conditions mentioned therein are being challenged in the writ petition filed under Article 226 of the Constitution.

2. Petitioner is a public limited company which is running its factory at Sangrur. It is a consumer of the Board and is taking power supply for running its factory under account number LS-5. It is claimed that a total load of 2662 KW has been sanctioned by the Board with a contract demand of 2353 KVA which was got reduced to 1700 KVA. It is further alleged that the company has installed its own transformer besides erecting its own line from the Grid Sub Station of the Board. The officials of the Board inspected the premises of the company on 13/14-8-1988 and on finding that it had unauthorisedly extended its load disconnected the power supply and consequently penalty to the tune of Rs. 5,17,228/- was imposed by way of load surcharge. The demand notice issued in this regard was challenged by the company in a civil suit for declaration to the

effect that the same was illegal and null and void and a mandatory injunction was sought directing the Board and its officers to reconnect the electric supply. On the basis of a temporary injunction issued by the Civil Court, the electric connection was re-connected during the pendency of the suit. The suit was subsequently decreed by the Senior Sub Judge, Sangrur on 21.1.1994 and the demand created by the Board was held to be illegal. The Board has filed an appeal against the judgment and decree of the trial Court which is said to be pending in the Court of District Judge, Sangrur. Thereafter, the petitioner company has filed a suit against the Board claiming damages to the tune of more than rupees 24 lacs on account of illegal disconnection of the power supply for the period 14.8.1988 to 3.10.1988. This suit is pending in the trial Court.

3. The petitioner company is stated to have purchased a sick unit and in order to make it operational and viable it is said to have imported additional plant and equipment worth rupees 5 crores which has been installed at the factory premises. Since the company has purchased additional plant, it applied on 5.5.1994 to the Superintending Engineer, D.S. Circle PSEB, Sangrur to increase its sanctioned load to 4570 KW with a contract demand of 4000 KVA. The earnest money was deposited and other formalities are also said to have been completed. The company also addressed a communication to the Chairman of the Board on 7.7.1994 with a request to issue necessary directions to the concerned departments for taking action in the matter of grant of necessary sanction. The Chairman of the company also filed his affidavit stating that neither the company nor any of its associate subsidiaries was involved in theft of power anywhere in the State of Punjab and that no case was pending for recovery of amounts charged for theft in any Court or before the Disputes Settlement Committee. Such an affidavit was necessary to be filed in terms of the Commercial Circular No. 47/94 issued by the Board. On receipt of the request from the petitioner for extension of its load, the Chief Engineer Commercial addressed a communication on 16.11.1994 to the Superintending Engineer, D.S. Circle PSEB, Sangrur in regard to the grant of feasibility clearance for extension of load of the company. The Superintending Engineer was informed that the request of the petitioner company for increase in its load could be considered only on the fulfilment of the conditions mentioned in the letter. At this stage, it would be relevant to reproduce this communication in extenso:-

"Reference your Memo No. 30262/SNG/SOP/-4/Vol.2 dated 9.8.94.

2. The case has been considered and it has been decided that the built up and availed load by this consumer, may be considered as 1921.156 KW with contract demand of 1700 KVA subject to the fulfilment of following conditions:-

(i) The consumer should withdraw his case for damages from the Court whereafter the appeal filed by the Board against load surcharge case may be withdrawn.

(ii) The claim of the consumer for compensation on account of disconnection of

his connection on 14.8.88 to 3.10.88 and also levy of load surcharge and ACD considered by the Dispute Settlement Committee at Zonal level and decided/recommended to the Board. The consumer should give necessary undertaking to abide by the decision of the Board.

(iii) The billing as earlier done by taking contract demand as 1700 KVA shall stand and no refund on this account shall be admissible to the consumer.

3. In case the consumer agrees/fulfils the above conditions given in para-2, the case of extension of load applied by the consumer i.e. 2288 KW and contract demand of 23 KVA shall be processed for feasibility clearance/sanction of load, thus making the total load as 4209.156 KW and contract demand as 4000 KVA.

4. In case the consumer does not agree to the above conditions, his case for grant of feasibility clearance for extension in load be kept pending till final decision of the Court case.

Sd/-

Chief Engineer/Commercial,
PSEB, Patiala."

On receipt of this communication by the Superintending Engineer, the Assistant Executive Engineer addressed a similar communication to the petitioner on 30.11.994 informing it about the conditions imposed by the Board on the fulfilment of which the request of the company for extension of load could be considered. It is these communications appended as Annexures P-4 and P-5 with the writ petition that have been impugned in the present petition.

4. In the written statement filed on behalf of the Board, the stand of the petitioner has been controverted. It is averred that the petitioner was granted electricity connection on 5.1.1979 with a contract demand of 2353 KVA and sanctioned load of 2662 KW but since the company submitted a test report for a total load of 838.456 KW which was verified by the S.D.O., the sanctioned load of the petitioner would be deemed to be 838.456 KW. The past history regarding the unauthorised extension of load by the petitioner has also been referred to in the reply and it is admitted that a demand for a sum of Rs. 5,17,228/- was created against it. It is also admitted that on the failure of the petitioner to meet this demand, the electricity connection was disconnected on 14.8.1988. The fact that the petitioner filed a suit challenging the demand and that the same was decreed by the trial Court has also been admitted. It is further alleged that the premises of the company were checked by the flying squad on 8.6.1990 and 24.6.1991 and on both the occasions the petitioners was found to be having unauthorised load over and above the sanctioned load for which the petitioner was liable to pay a sum of Rs. 10,51,347/- and Rs. 8,70,034/-, respectively. Again, when the premises of the company were checked on 11.2.1992, it was found that it was using an unauthorised load for which it was liable to deposit a sum of Rs. 10,83,631/-. On the basis of the aforesaid inspections, it is stated

that the petitioner is a defaulter though it has not been averred that any demand notice in regard to the aforesaid amounts was ever issued or served on the petitioner. It is also pleaded that being a defaulter, the petitioner is not entitled to have its load extended and that the Board has framed a policy to decline to entertain request for extension of load from those who indulge in frivolous litigation and defaults.

5. The petitioner filed a rejoinder in which the averments made by the Board were denied and it was emphatically stated that the petitioner is not a defaulter and that it has not received any notice for any of the amounts referred to in the written statement. The petitioner reiterated that the Board could not impose the condition for the withdrawal of litigation before its request for extension of load could be considered.

6. I have heard counsel for the parties. A perusal of the impugned communication as reproduced above would indicate that the Board had decided to consider the request of the petitioner for extension of load only on the fulfilment of the three conditions referred to therein, namely, (i) that it should withdraw the suit for damages filed by it in the civil Court (ii) its claim for compensation on account of disconnection of the power supply from 14.8.1988 to 3.10.1988 and also levy of load surcharge should be considered by the Disputes Settlement Committee at Zonal level who should decide/make its recommendations to the Board and that the petitioner should give an undertaking that it would abide by the decision of the Board; and (iii) that the billing would be done as was being done earlier taking the contract demand as 1700 KVA. The petitioner was also informed that in case it was ready to fulfil the conditions then alone its case for extension of load would be processed for feasibility clearance. It was further decided that in case the petitioner did not agree to the conditions imposed by the Board, the case for the grant of feasibility clearance for extension in load would be kept pending till final decision of the Court. The argument of Mr. Grewal is that the Board could not impose the aforesaid conditions as the petitioner had successfully challenged the demand of Rs. 5,17,228/- in the civil Court and that it also had a right to file a suit for damages which is still pending in the trial Court. There is merit in this contention. The Board is not considering the claim of the petitioner for extension of load merely because it has failed to withdraw the suit for damages. One wonders how such a condition could be imposed and how could the petitioner be coerced to "submit its claim to the Disputes Settlement Committee and undertake to abide by the decision taken by the Board or the Committee in that regard. The imposition of such conditions is highly improper and rather illegal. In our legal system every person has a right to approach Courts to seek justice and no individual or authority can legitimately compel him not to do so. Mr. Goel appearing for the Board strenuously urged that since the petitioner was a defaulter, its claim for extension of load could not be considered. He referred to the written statement filed by the Board in this regard. I am not impressed with this argument. Firstly, the Chief Engineer in the impugned communication did not

consider the petitioner as a defaulter and it is not for this reason that the consideration of its claim had been withheld; and secondly, the Board has not specifically stated in the written statement that any demand notice was issued or served on the petitioner when its premises were inspected on different dates and the petitioner was found using unauthorised load over and above the sanctioned load. All that has been stated as that due to unauthorised load the petitioner had become liable to pay the amounts mentioned in the written statement. This in itself would not make the petitioner a defaulter. Moreover, the petitioner in its rejoinder has emphatically asserted that no demand notice had ever been received by it on the basis of the inspections referred to in paragraph 2 of the preliminary objections taken in the written statement. It cannot, therefore, be said that the petitioner was a defaulter.

7. For the reasons recorded above, the writ petition is allowed and the impugned communications dated 16.11.1994 and 20.11.1994 (Annexures P-4 and P-5 with the writ petition) are quashed. The Board is directed to consider the request of the petitioner for extension of load in accordance with law including the various circulars issued by it from time to time. The final order should be passed within one month from the date of receipt of a copy of this order.

8. There is no order as to costs.