

(2008) 01 P&H CK 0192
In the Punjab And Haryana At Chandigarh

Sada Shiv Castings Ltd.

APPELLANT

Vs

Punjab State Electricity Board and Others

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Citation : (2008) 151 PLR 11 : (2008) 2 RCR(Civil) 524

Hon'ble Judges : Tej Pratap Singh Mann, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—The petitioner-company has prayed for quashing order dated 15.3.2007 (Annexure P.6) passed by the Ombudsman, Electricity Punjab belonging to the Punjab State Electricity Board-respondent No. 2. By the aforementioned order, respondent No. 2 has granted interest @ 12 percent p.a on the refund of Rs. 50,00,000/-deposited by the petitioner w.e.f. the order passed by the Dispute Settlement Authority - respondent No. 3 whereas interest was payable w.e.f. 4.10.2001 as per the directions issued by this Court.

2. The petitioner-company has been granted a LS Connection having S.I. of 8836.880 KW/10215 KVA on 66 KV since 26.2.2001. The petitioner-company since 24.02.2001 was having S.I. of 1989.862 KW on 11 KV Duke make meter having Sr. No. 17217 which was operating at the petitioner's premises and was a duly calibrated meter drawn from ME Lab. On 4.10.2001 the premises of the petitioner company was checked by the Enforcement Staff and on the allegation that lead seal fixed on the secondary terminal junction box was fake, a case of theft of energy was registered. On 7.11.2001, the petitioner company was issued a show cause notice for compensation of Rs. 4,13,74,538/-and the electricity connection of the petitioner company was also disconnected. The petitioner filed CWP No. 17932 of 2001 before this Court against the afore-mentioned show cause notice. The petitioner was ordered to deposit Rs. 50,00,000/-subject to final decision of the writ petition and the electricity connection was restored.

3. Accordingly, on 4.12.2001, the petitioner deposited a sum of Rs. 50,00,000/ as is evident from the receipt (Annexure P.2). In the meanwhile the Dispute Settlement Authority was constituted and the writ petition was disposed of by this Court on 13.1.2003 (Annexure P.3). While disposing of the writ petition, the Division Bench made it clear that Rs. 50,00,000/-deposited by the petitioner under the interim orders of this Court would be taken into account by the Dispute Settlement Authority while considering the dispute raised by the petitioner. The Dispute Settlement Authority held that theft of energy against the petitioner has not been established and Rs. 50,00,000/ deposited by the petitioner may be treated as part of additional advance consumption deposit (Annexure P.4). Feeling aggrieved the petitioner filed Appeal No. 4 of 2007 before the Board Level Review Committee headed by Ombudsman of the Electricity Board against the order dated 27.6.2005 (Annexure P.4). The Review Committee on 15.3.2007 (Annexure P.6) held that the petitioner-company was eligible for refund of Rs. 50,00,000/ with interest @ 12 percent p.a. from the date of decision of the Dispute Settlement Authority i.e. 27.6.2005 (Annexure P.4). Further aggrieved by the afore-mentioned order dated 15.3.2007, the petitioner-company has approached this Court with the prayer that the company was eligible for interest @ 12 percent from 4.12.2001 when the amount of Rs. 50,00,000/ was deposited in pursuance of directions issued by a Division Bench of this Court in CWP No. 17932 of 2001.

4. In the short written statement filed by the respondents, the stand taken is that the interim order dated 4.12.2001 would not govern the issue and that the order dated 13.1.2003 disposing of the writ petition by the Division Bench was to govern the issue as the interim order dated 4.12.2001 would merge in the final order. The respondent has also placed reliance on Regulation 147 of the Conditions of Supply and Sales Regulation (for brevity "the Regulation") dealing with the interest on refund of amount deposited by the consumers and it has been urged that the rate of interest is 9 percent.

5. After hearing learned Counsel for the parties, we are of the considered view that this petition deserves to succeed. When the matter came up for consideration before the Division, the following order was passed on 4.12.2001:

After hearing the learned Counsel for the parties, we direct that in case the petitioner deposits an amount of Rs. 50 lacs, the supply of power shall be restored without any delay.

This deposit would, however, be subject to the final decision of the case. In case the demand, as raised is found to be untenable, the petitioner shall be entitled to refund alongwith interest at the rate of 12% p.a.

Counsel for the parties are also directed to obtain instructions if the dispute can be settled through mutual negotiations or arbitration. Counsel pray for a day's time to enable them to obtain instructions.

To come on December 6, 2001.

6. A perusal of the afore-mentioned order shows that a categorical direction has been issued that deposit of Rs. 50,00,000/-by the petitioner was subject to the final decision of the case and in case the demand was found to be untenable then the petitioner was entitled to refund alongwith interest @ 12% p.a. Eventually, the writ petition was disposed of on 13.1.2003 and the Division Bench made it clear that the interim order dated 4.12.2001 passed by this Court was to be taken into account by the Dispute Settlement Authority while considering the dispute raised by the petitioner. For the purpose of granting interest the date of order passed by Dispute Settlement Committee has no relevance The order of the Committee headed by Ombudsman cannot be sustained to the extent that it has granted interest @ 12 % p.a. w.e.f. the date of order passed by the Dispute Settlement Authority i.e. 27.6.2005. Firstly, there is no logic to grant interest from the date of the order passed by the Dispute Settlement Authority nor there is any legal justification to sustain the afore-mentioned decision. When the Division Bench of this Court passed interim order on 4.12.2001 (Annexure P.1) in CWP No. 17932 of 2001 then a categorical direction was issued in the presence of the counsel for the respondent that in case the demand raised by respondent is found to be untenable then the petitioner would be entitled to grant of refund alongwith interest @ 12 %. The petitioner deposited Rs. 50,00,000/-on 4.12.2001 and interest is to be given from the date of deposit as the petitioner-company has been deprived of the use of the afore-mentioned amount got deposited on the basis of illegal demand. The Division Bench which finally disposed of the writ petition did not modify the afore-mentioned direction but only asked the Dispute Settlement Authority to take into account the interim order passed on 4.12.2001. There is thus no justification restricting the interest to the date of the order of the Dispute Settlement Authority i.e. 27.6.2005. This date is wholly fortuitous and has no concern with reality. The petitioner is entitled to interest from the date of the deposit of the amount i.e. 4.12.2001 @ 12 percent. Accordingly the order dated 15.3.2007 (Annexure P.6) of the Ombudsman, Electricity, Punjab is set aside to that extent.

7. The argument raised by the respondents on the basis of Regulation 147 of the Regulations permitting interest on refund up to 9% is wholly without merit. It may first be appropriate to read Regulation 147, which is as under:

147 Interest on refund of amount deposited by consumers:

147.1 Interest shall be recoverable at the prime lending rates of the banks on the amount decided finally as per the decision of the case by Circle Level/Zonal Level Dispute Settlement Committee/Dispute Settlement Committees/Dispute Settlement Authority/ BLRC. The existing lending rate is 9% per annum. In case disputed amount is upheld by the DSC/DSA/BLRC, then the interest shall be recoverable on the amount not deposited in the first instance i.e., the pending amount after adjustment of 50%, 33% or less amount already deposited by the consumer for getting his case heard in the Dispute Settlement Committee/DSA/BLRC. In case the disputed charges are decided to be not recoverable, then PSEB

will pay interest charges at the prime lending which is 9% at present on the amount deposited @ 50%, 33% or less percentage of the disputed amount from the date of its accrual and for the period the amount remained adjudication. CAO/ Revenue shall issue instructions every year regarding the prime lending rate which shall be made applicable during the entire forthcoming financial year.

8. A perusal of the regulation shows that in case the charges are found not recoverable then interest @ 9% on the amount deposited, at the rate of 50%, 33% or less percentage of the disputed amount from the date of its accrual and for the period amount remained under adjudication is to be paid, which is prime lending rate. The first question needs to be determined is the period for which the amount deposited by the petitioner remained under adjudication. The writ petition was filed in December 2001 and the interim order was passed by the Division Bench on 4.12.2001, directing the petitioner to deposit a sum of Rs. 50 lacs and he was also held entitled to refund of the whole amount with interest @ 12% per annum in case the demand raised was found to be untenable. The amount remained under adjudication from 4.12.2001 and the case was sent to the Dispute Settlement Committee after it was set up. It cannot be said that the amount remained under adjudication only from 27.6.2005 when Dispute Settlement Committee decided the matter and not earlier to that. Secondly, the rate of interest has been determined by a judicial order and the rate postulated by Regulation 147 would not apply to such an order. The order dated 4.12.2001 was passed in the presence of learned Counsel for the respondents, therefore, we find no merit in the contention raised by the learned Counsel for the respondents.

9. In view of the above, the writ petition is allowed, the respondents are directed to release the interest on the amount of Rs. 50,00,000/-by calculating the same from the date of deposit i.e.4.12.2001 till the date of actual payment. The needful shall be done within a period of four weeks from the date of receipt of copy of this order.