(2010) 02 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Wahid Sandhar Sugars Ltd. APPELLANT

Vs

Punjab State Electricity Board and Another RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:
Electricity (Supply) Act, 1948 — Section 49, 79
Electricity Act, 2003 — Section 177

Citation : (2010) 158 PLR 70

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.

I. The lis

1. The liability to interest for an amount claimed by the Electricity Board as the amount due from a consumer is the point of adjudication in this writ petition.

II. The prior adjudication, basis for fresh demand

2. By virtue of a judgment of this Hon''ble Court in C.W.P. No. 7299 of 1993 in which the petitioner here was also the petitioner, this Court examined the challenge to a notice issued by the Electricity Board claiming Rs. 49,04,127/- as due from the petitioner being the charges for alleged unauthorized load in the mill of the petitioner. The petitioner had denied the liability in toto. This Court took for consideration the dispute regarding permissibility of adding the load connected to a TG Set namely 3187.550 KWs and the stand-by load of Rs. 2226.330 KWs. As regards the stand-by load, the Division Bench had already held in an earlier writ petition No. 370 of 1993 that the liability on the standby machinery was to be excluded. However, with regard to the connected load on TG Set, a Dispute Settlement Committee had been constituted and it had held that a bus coupler installed by the petitioner would permit inter-transferability of the load between the Turbo Generator Set of the petitioner and PSEB. In terms of the report, this Court had held that the addition on account of the load connected

on TG Set could not be faulted.

3. Based on this judgment, the Electricity Board assessed the principal amount payable to be Rs. 26,77,797/- and deducted Rs. 22,26,330/- that would bear to a claim for the stand-by load. To the amount assessed, late payment of surcharge at 10% and interest for 15 years and 140 days @ 18% had been added, which was reckoned to substantial sums of Rs. 2,67,780/- and Rs. 81,18,656/- respectively. It is the component of the interest and surcharge that is principally in challenge in this writ petition.

III. Regulation of the Board enables interest at 18%- justification for demand

4. As regards the liability for the connected load, learned Counsel for the petitioner states that the decision of this Court in C.W.P. No. 7299 of 1993 is in challenge before the Hon''ble Supreme Court and therefore, the issue regarding the principal liability shall not be urged before this Court. The decision that is sought before this Court will again have to be seen only as provisional, for if ultimately the Hon''ble Supreme Court upholds the contention of the petitioner and states that no amount at all is due, the question of loading interest thereon or levying late payment surcharge does not arise. The claim for interest is made on the basis that regulation of the Electricity Board makes possible the levy of interest @18%. The justification for the Electricity Board is purported to be on Regulation No. 121.3.1, which provides for interest @18% after the expiry of one year from the due date of the bill of gross unpaid amount including surcharge. The claim of the Electricity Board was on the basis that the liability arose even in the year 1993, when the demand was made and even by the final decision, which was taken by this Court in the year 2009, it was not as if the liability arose only on that date. By virtue of the action by the petitioner, the adjudication stood pending and when the demand was made afresh after a calculation made on the basis of the Judgment of the Court, it must be understood that the demand related to an act of the additional connected load for the period between 09.12.1992 to 08.12.1993 and hence the liability for payment of interest could not be denied.

IV. Contention of the petitioner: No claims to interest is possible - 3 reasons

5. The contention of learned Counsel appearing for the petitioner is that when this Court rendered a judgment on 01.04.2009, it did not provide for liability for interest and therefore, interest could not be claimed. Again, the amount as finally determined, was itself not an admitted amount but it was disputed. What was originally assessed at Rs. 49 lacs and odd had stood reduced by over Rs. 22 lacs and odd. Since the liability stood determined only by the subsequent notice issued on 12.06.2009, the payment of interest could, if at all, arise only from the said date. Thirdly, even if such a liability were to arise, there is no justification in demanding interest @18%, since the reliance on the Regulations which have no statutory force, cannot be justified.

V. Liability must be deemed to arise when the first demand was made, a portion of which was upheld by a subsequent decision in 2009

6. On the issue of when the liability arose, it must be seen that the petitioner has been waging a long drawn legal battle from the year 1993 onwards, ever since the notice had been made fixing the liability at Rs. 49 lacs and odd. Although the petitioner disputed the liability, ultimately when this Court delivered its judgment on 01.04.2009, it justified the levy of one portion of the demand at least, which meant the basis of calculation of one portion of the demand namely for the connected load was seen as justified. The pendency of the case for this length of time could not be taken advantage of by the petitioner to completely deny the entitlement of the Electricity Board to claim interest.

VI. Enforceability of Regulations - Do they have statutory character?

7. 1 have no doubt in my mind that if the liability subsisted as per the decision of this Hon''ble Court, the fact that the liability grew to be ascertained only by the ultimate decision of the Court will make no difference. In Rajasthan Housing Board and Ors. v. Krishna Kumari (2005) 13 S.C.C. 151 , the Hon''ble Supreme Court was dealing with the situation when a temporary injunction had been granted under Order 39 against recovery of certain sums, which represented the enhanced amount of consideration for the house allotted to the plaintiff. The interim order was on a complaint before the MRTP Commission but ultimately the complaint itself was dismissed by the Commission. The decision by the Commission in waiving the Housing Board''s claim for interest was found to be unjustified and the Court held where the extent of liability alone was in issue, the fact that the case was pending and that there had been an interim order or the fact that only after the cessation of the injunction order and the dismissal of the complaint that the Commission could enforce that right would not deprive the claim of the Board for levy of interest. Similarly in Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, , the Hon''ble Supreme Court held that the grant of stay of a notification revising electricity charges ought not to be taken as relieving the consumer or a petitioner of his obligation for late payment of surcharge or interest on the amount withheld by them when ultimately the writ petition challenging the charge failed. The Hon''ble Supreme Court was explaining its own decision in Adoni Ginning Factory and Others Vs. Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others, . While conceding to a possibility that the decision of the Hon''ble Supreme Court in Adoni Gunning Factory''s case could have been a cause for a mistaken assumption by the consumer, the Hon''ble Supreme Court reduced the rate of interest of payment of surcharge when the stay order was in operation by reducing it from 25.5% per annum to 18% per annum.

8. In my view, the above said two decisions in Rajasthan Housing Board and Kanoria Chemicals and Industries Ltd. are clear answers to the questions raised by the petitioner that the liability for the amount themselves must be understood as arising not from the date when the last payment was made after the High Court disposed of the writ petition but it should be understood as arising even on

the date when the first demand in the year 1993 was made. Again in this case, it is not as if the liability became possible only in the year 2009 after the decision was rendered by the High Court. Against the previous demand in the year 1993 for Rs. 49 lacs and odd, it had been scaled down accepting only a portion of the defence and still availing to the Electricity Board a decision for the payment of Rs. 26 lacs and odd. The claim for interest would, therefore, be possible and that it shall also be possible from the date when the original payment itself was made.

9. The relevant issue would, therefore, be only whether the Electricity Board was entitled to claim interest @18% because the Regulation provided so. The justice of the demand by the Electricity is sought to be explained by the learned Advocate General appearing on behalf of the respondents by the fact that the very same Regulations in para 123.8.4 states that if any additional amount had been collected by the Board and if the disputed amount is ultimately directed to be refunded, the Electricity Board itself would become liable to refund @18% interest and if a consumer could have the benefit of interest @18% for excess amount claimed, there is no unjustness in the demand for even recovering 18% interest from a consumer for an amount that could not immediately be collected but which had stood stayed on account of pendency of litigation before the Court.

10. On the enforcement of a term in the Regulation itself, the contention of learned Counsel appearing for the petitioner is that the provision for Regulations were contained in the Electricity (Supply) Act of 1948 through Section 49 read with Section 79(j). Section 49 makes provision for persons other than licensee and Section 79 makes provision for Regulations, which are not inconsistent with the provisions of the Act. The Regulations relied on by the Electricity Board, according to the petitioner, related to the Regulations issued under the Electricity (Supply) Act, 1948. The 1948 Act has been repealed and the Electricity Act of 2003 has replaced the same. The contention of the petitioner is that u/s 177 of the Electricity Act, 2003, the power to make Regulations is vested with the Central Electricity Authority and the Regulations of the Electricity Board already framed under the Electricity (Supply) Act, 1948 would no longer subsist. Referring to a decision of the Hon''ble Supreme Court in Indian Aluminium Company v. Kerala State Electricity Board AIR 1975 S.C. 1967, the contention of learned Counsel for the petitioner, Sh. Rahul Sharma is that the Electricity Board can frame Regulations only if specified power to make Regulations is vested by specific provisions in the statute and therefore, in the absence of such specific powers, the claim for interest @18% with Regulations as the basis cannot be justified.

11. The learned Counsel further argues that there are inconsistent circulars by the Electricity Board as regards the payment of interest between the year 2004 and 2005. The circular issued by the Board on 07.04.2004 referred to the interest payable as 9% per annum on disputed amounts and for the year 2005-06 also, the interest had been specified only as 9% per annum for the disputed amounts through the same circular. A clarification issued on 29.09.2004

regarding the payment of surcharge and interest for cases under One Time Settlement Scheme was that no late payment surcharge or interest would be charged on outstanding dues or disputed amount. If under the One Time Settlement Scheme, the late payment surcharge or interest could be waived, the demand for 18% interest now, apart from even claiming surcharge @10%, was capricious. About the enforceability of the Regulations themselves in the light of repeal of the Electricity (Supply) Act of 1948, it was contended on behalf of learned Counsel for the respondent that the Electricity Act of 2003 did not completely abrogate the Regulations, which were framed under the Electricity (Supply) Act of 1948. Section 179 saves Regulations framed already so long as new Regulations were not framed or substituted by the Regulations framed under the Electricity Act, 2003. It was, therefore, not correct to contend that no reliance at all could be placed on the Regulations.

VII. Courts power to award interest, if it exists de hors Regulations

12. In my view, the answer to the issue regarding the claim to interest could be seen only from examination of the issue that whether in spite of Regulations, the Court has the power to order any lesser rate of interest. In this case, it could be noticed that the petitioners were engaging the respondents in a dispute, which was not frivolous but which had a bearing on the interpretation of the provisions relating to the meaning of the expressions "connected load and "stand-by load" as per the commercial circulars. Again, it could be noticed that it is not as if the rate of interest specified in the Regulations are inviolable. Justice and factual considerations may dictate different terms for even their own circulars provide for levy of interest @9% for certain years. The circulars also show that under One Time Settlement Scheme even the Scheme for late payment surcharge/ interest could be waived. This issue came in a different way by a decision of Division Bench of this Hon''ble Court in M/s Sada Shiv Castings Ltd. v. Punjab State Electricity Board through its Chairman and Ors. (2008-3) 151 P.L.R. 11. While adverting to the issue of interest on refund, the Division Bench held that where the deposit of huge amount was conditional by virtue of the order of Court and in case, the amount was found not payable, the repayment with interest could not always be directed as per the Regulations and it would only be the Court order that would prevail. As against the entitlement of interest @9% as per Regulation 147 at that time, the Hon''ble Bench was finding a person to be entitled to a higher rate of interest for refund in terms of the directions of the Court orders. In my view, the interest component is nearly 300% (i.e. about 3 times) of the principal levied. The interest calculated @18% for all the period over 15 years when the litigation was pending seems unjust.

VIII. Present dispensation

13. While upholding the entitlement of the Electricity Board to claim interest from the date of first payment in the year 1993, I would restrict the rate of interest @6% per annum from the date of the first demand in the year 1993 and accelerate it to 9% from the date of the second demand in the year 2009 till date

of payment. The claim for surcharge @10%, 1 direct, shall be wholly waived. The demand contained in the respondents'' notice shall, therefore, be revised and the payment shall be done within a period four weeks from the date of receipt of copy of the order. For any further delay, the petitioner shall make himself liable for payment @18% on the principal amount as determined already.

14. The writ petition is disposed of on the above terms.

