SUPREME COURT OF INDIA

Punjab State Electy. Board

Vs.

Vishwa Calbier Builders Pvt.Ltd.

C.A.No.2538 of 2010

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

19.03.2010

JUDGEMENT

G.S. Singhvi, J.

1. Leave granted.

2. This is an appeal for setting aside order dated 30.7.2008 passed by the Division Bench of Punjab & Haryana High Court whereby it dismissed the writ petition filed by the appellant against the order of Ombudsman, Electricity, Punjab (hereinafter described as "the Ombudsman") who, in turn, reversed the decision of the Disputes Settlement Authority (for short, "the DSA") and directed refund of the amount recovered from the respondent towards Advance Consumption Deposit (ACD), service connection charges and load surcharge.

3. The respondent, who owns a shopping complex at Mata Rani Chowk, AC Market, Ludhiana submitted application dated 23.5.1995 to the competent authority of the appellant for sanction of NRS connection with a load of 2548 KW and deposited ACD amounting to Rs.5,25,600/-. The Engineer-in-Chief/Commercial Sales Director, Punjab State Electricity Board sanctioned registration of the application of the respondent subject to the condition that connection would be released only after shifting of 8 MVA load from 66 KV sub station, G.T. Road, Ludhiana to the proposed 66 KV sub station, Feroze Gandhi Market and Transport Nagar, Ludhiana.

> "However, due to non-availability of the transformer, steps for shifting 8 MVA load from 66 KV sub station, G.T. Road, Ludhiana, could not be taken. After some time, the respondent applied for release of connection with 1500 KW from the existing system. The request of the respondent was accepted by the Chief Engineer concerned and accordingly a connection was released in favour of the respondent with effect from 25.3.1996. On 11.5.1999, new transformer was installed at 66 KV sub station, G.T. Road, Ludhiana. Thereafter, Memo dated 11.8.1999 was issued to the respondent to give consent for release of the balance load. The latter submitted

consent letter dated 1.9.1999 with a stipulation that six months' period may be allowed for building up the balance load. On being asked by the Senior Executive Engineer, the respondent submitted an affidavit dated 16.10.2000 for release of the balance load."

4. Since, the respondent failed to avail the balance load within six months, the competent authority of the appellant forfeited the ACD on the premise that the application made by the applicant had lapsed. This was followed by notice dated 13.12.2001 vide which the respondent was informed that it can submit fresh A&A form for availing the balance load.

"To the same effect, reminder dated 23.5.2002 was also issued to the respondent. However, the representative of the respondent declined to submit fresh A&A form by contending that the same is not applicable to NRS connection."

5. The electricity connection installed in the premises of the respondent was checked on 27.8.2004 by a team of officers of the Board which found that as against the sanctioned load of 1500 KW, the respondent was using total load of 1981.637 KW. Upon receipt of the report of the checking team, demand notice dated 25.1.2005 was issued to the respondent requiring it to deposit Rs.15,41,492/- which included Rs. 3,37,400/- as ACD, Rs.4,81,637/- as service connection charges and Rs.7,22,455/- as load surcharge.

6. The respondent challenged the aforesaid notice by filing a petition before the DSA, which was dismissed vide order dated 20.2.2006. The operative portion of that order reads as under:

"Keeping in view the petition, reply, rejoinder, evidence adduced, written arguments and oral discussion DSA concluded that charging of load surcharge for 432 KW load is correct. As per SR No.35.1.2, the petitioner did not apply for any extension in time after the expiry of six months for building up of his load, in such cases where the consumer does not come up with the request for extension in time beyond six months for building up of balance load/demand, the load/demand not availed shall be deemed to have elapsed. In this case above mentioned regulation is applicable for calculating the penalty.

Thus, Rs.7,22,455/- charged, as load surcharge are recoverable.

As far as ACD of Rs.3,37,400/- is concerned the Board has already received ACD of full load in 1995. So only the difference of rate of ACD of 1052.920 KW load is recoverable.
DSA also decided that Rs.4,81,637/- charged as SCC are also recoverable from the petitioner.

Correct surcharge as per Board's instructions be also recovered."

7. The respondent carried the matter before the Ombudsman, who ruled that the load of 1918.637 KW should be accepted as the built up load and the same should be deemed as regularized with effect from 1.3.2000. The relevant portions of order dated 5.9.2007 passed by the Ombudsman are extracted below:

> "There is merit in the petitioner's presumption having complied with procedural formalities of balance load and their request for extension to build up total load within six months of their consent letter dated 01.09.1999. There offer to be charged for minimum monthly charges on full load of 2548 KW clear their antecedents. Checking report dated 27.08.2004 confirms that load was built up to 1981 KW if not upto 2548 KW. The respondents themselves confirm on the basis of consumption data that load in excess of 1500 KW was running for some years. Despite the petitioners consent letter dated 01.09.1999 to pay minimum monthly charges on 2548 KW billing continued to be done on the load of 1500 KW by the respondents.
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> Both the parties can not be absolved of the acts of omission and commission in complying with deadlines and the rules and regulations framed by the Respondents. Under the circumstances, I am of the opinion that the load of 1981.637 KW detected as on 27.08.2004 should be accepted as the built up load and deemed to be regularized w.e.f. 01.03.2000 as per the commitment of the petitioner. It will mean that there was no unauthorized or excess load as on the checking date of 27.08.2004. The load surcharge of Rs.7,22,455/- service connection charges of Rs.4,81,637/- and ACD of Rs.3,37,400/- levied on account of excess load found during checking are not recoverable from the petitioner.
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> The minimum monthly charges on the regularized load of 1981.637 KW are to be charged from the date of this offered consent i.e.1.3.2000. It will also mean that the balance load of 566.363 KW not build up till 27.08.2004 will lapse. The service connection charges & ACD deposited at initial stage shall be dealt with in accordance with SR 35.5. & 35.6 of Electricity Supply Regulations.
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> For any further enhancement of extension of load beyond 1981.637 KW, the rules and regulations governing the extension of load as per Sales Regulations will apply. The respondents shall refund any balance amount after adjustment of minimum monthly charges with interest as per the Board's instructions within two months of the receipt of this order."

8. The writ petition filed by the appellant was dismissed by the High Court by observing that having failed to fulfill its obligation to release connection with a load of 2548 KW, the appellant cannot put the respondent in a disadvantageous position and make it liable for the load which was not utilized.

9. Shri Jagjit Singh Chhabra pointed out that there is no provision in the Electricity Act, 2003 (for short, `the Act') and the regulations framed by the appellant for regularization of

unauthorized use of electricity and argued that the Ombudsman did not have the jurisdiction to ordain deemed regularization of extra load with effect from 1.3.2000 and the High Court committed serious error by refusing to interfere with patently illegal order of the Ombudsman. Learned counsel further argued that the appellant's inability to arrange for transfer of 8 MVA load from 66 KV sub station, G.T. Road, Ludhiana to the proposed 66 KV sub station at Feroze Gandhi Market and Transport Nagar, Ludhiana could not have been made basis by the Ombudsman for declaring that use of electricity by the respondent over and above the sanctioned load of 1500 KW did not amount to unauthorized use of electricity. Shri Chhabra then submitted that in terms of Clause 37.1.2 of the Sales Regulations framed by the appellant, the respondent could have availed the balance load within six months of the submission of A&A form, which it failed to do and both the Ombudsman and the High Court committed serious error by ignoring that without getting sanction for the balance load by complying with the requirement of the relevant regulations, the respondent was not entitled to take supply with a load of 1981.637 KW and that it was a clear case of theft of electrical energy to the extent of 481.637 KW.

10. We have considered the arguments of the learned counsel and agree with him that in the absence of any provision in the Act or the regulations framed by the appellant, the Ombudsman committed jurisdictional error by directing regularization of unauthorized use of electricity by the respondent and refund of the alleged excess amount charged by the appellant. The fact that the appellant could not release connection with a load of 2548 KW on account of non-availability of transformer necessary for transfer of 8 MVA load from 66 KV sub station, G.T. Road, Ludhiana had no bearing on the issue of consumption of electricity by the respondent beyond the sanctioned load. Undisputedly, in terms of the request made by the respondent, the Chief Engineer had sanctioned connection on the existing system with a load of 1500 KW, but the respondent used excess load to the tune of 481.637 KW and this amounted to unauthorized use of electrical energy. It is also not in dispute that after installation of new transformer, the respondent could not avail the balance load within the stipulated time of six months and when the concerned authority issued notice dated 13.12.2001 and reminder dated 23.5.2002, its representative refused to submit fresh A&A form necessary for release of the balance load. This being the position, the fault, if any, for non-release of the balance load lay at the doors of the respondent and the Ombudsman committed serious error by directing the appellant to refund the alleged excess amount collected from the respondent on account of use of electricity over and above the sanctioned load.

11. In the result, the appeal is allowed. The impugned order of the High Court as also order dated 5.9.2007 passed by the Ombudsman are set aside and the one passed by the DSA is restored. The respondent is allowed three months time to deposit the amount payable in terms of demand dated 25.1.2005. The appellant and, if necessary, its successor shall be entitled to charge interest at the prevailing banking rate on the amount which was not paid by the respondent or which may have been refunded by the appellant in terms of the directions given by the Ombudsman and/or order passed by the High Court.