SUPREME COURT OF INDIA

Oswal Agro Mills Ltd.

Vs.

Punjab State Electricity Board

C.A.Nos.662-663 of 2013

(A.K.Patnaik and Sudhansu Jyoti Mukhopadhaya JJ.)

23.01.2013

JUDGEMENT

A. K. PATNAIK, J.

1. Leave granted.

2. The facts very briefly are that the appellant owns a sugar mill situated at Phagwara, and the respondent no.1-Board is supplying electricity to the sugar mill. In 1989, the appellant installed a TG Set of 3187.500 KW capacity to meet some of its electricity demand and applied for approval of its TG Set to the respondent no.1. By memo dated 08.12.1992, the Chief Engineer, Commercial of the respondent no.1 granted permission to the appellant for installation of 2 No. TG Sets subject to some conditions. On 09.12.1992, however, the Flying Squad, Jalandhar of the respondent no.1 visited the sugar mill of the appellant and checked the electricity connection at the sugar mill. Pursuant to the report submitted by the Flying Squad, the Sub- Divisional Officer (Suburban), Phagwara of the respondent no.1 issued a demand notice dated 10.12.1992 to the appellant stating inter alia that the TG Set and stand-by load had not been sanctioned by the respondent no.1 and the appellant was liable for an excess unsanctioned load of 4904.127 KW for load surcharge at the rate of Rs.1,000/- per KW, which worked out to Rs.49,04,127/-.

3. The appellant made a representation to the Sub-Divisional Officer (Suburban), Phagwara, and to the Chief Engineer, Commercial of respondent no.1 against the demand of load surcharge of Rs.49,04,127/- . When there was no response from the aforesaid two authorities of the respondent no.1, the appellant filed a Writ Petition CWP No.370 of 1993 before the High Court of Punjab and Haryana at

Chandigarh challenging the demand of load surcharge of Rs.49,04,127/-. The Division Bench of the High Court held in its order dated 30.03.1993 that the respondent no.1 could charge for the excess load which was to be the sum of the rated capacities of all the energy consuming apparatus in the consumer's installation, but from the order impugned by the High Court or from the documents filed by the respondent no.1 before the High Court along with its written reply, there is nothing to show that the TG Set having the capacity of 3187.5 KW was an energy consuming apparatus. The Division Bench further held in its order dated 30.03.1993 that for the purpose of charging for the excess load, the load of the stand-by machinery was to be excluded and, therefore, the load to the extent of 2226.330 KW of the stand-by apparatus in the order impugned before the High Court could not be included. For the aforesaid reasons, the Division Bench quashed the demand of load surcharge of Rs.49,04,127/- leaving it to the respondent no.1 to pass afresh appropriate order, if so advised, with liberty to the appellant to challenge the same, if required.

4. Thereafter, by a fresh demand notice dated 01.06.1993, the Sub- Divisional Officer (Distribution), Suburban Sub-Division, Phagwara, raised the very same demand of Rs.49,04,127/- for the unauthorized TG Set load of 3187.500 KW and stand-by load of 2226.330 KW totalling to 6520.155 KW at the rate of Rs.1,000/- per KW. The appellant filed a second Writ Petition CWP No.7299 of 1993 challenging the aforesaid demand. The learned Single Judge, who heard and disposed of the writ petition, held in his order dated 01.04.2009 that the finding of the Division Bench of the High Court in earlier Writ Petition CWP No.370 of 1993 that the stand-by load of 2226.330 KW could not be included in the demand for excess load was binding on the respondent no.1 and hence the demand of excess load on account of the stand-by load could not be raised again by the respondent no.1. Regarding the connected load of the TG Set, the learned Single Judge of the High Court referred to the earlier order dated 21.08.2008 of the learned Single Judge in which it was recorded that the learned counsel for the appellant had very fairly stated that he would accept the decision of the Dispute Settlement Committee of the respondent no.1 and as the Dispute Settlement Committee had decided the matter against the appellant, the addition on account of the load connected on the TG Set could not be faulted with. Aggrieved, the appellant filed Letters Patent Appeal No.304 of 2009 before the Division Bench of the High Court, but by the impugned order dated 01.05.2009 the Division Bench dismissed the appeal after holding that there was no infirmity in the findings returned by the learned Single Judge on the basis of the statement made by the counsel for the appellant and the report submitted by the Dispute Settlement Committee. The appellant filed a Review Application RA No.6 of 2009 before the Division Bench,

but by the impugned order dated 31.07.2009 the Division Bench dismissed the Review Application. Aggrieved, the appellant has filed this appeal by way of special leave under Article 136 of the Constitution challenging the orders of the Division Bench of the High Court in the Letters Patent Appeal and the Review Application.

5. Learned counsel for the appellant submitted that the only ground on which the learned Single Judge in CWP No.7299 of 1993 declined to quash the demand for the excess connected load of the TG Set was that the learned counsel for the appellant had agreed before the learned Single Judge on 21.08.2008 that he would accept the decision of the Dispute Settlement Committee of the respondent no.1 on this aspect of the matter. He submitted that a reading of the order dated 21.08.2008 of the learned Single Judge would show that the learned counsel for the appellant had only agreed to accept the decision of the Dispute Settlement Committee of the respondent no.1 on the question whether with the aid of a device called a bus coupler, inter-transferability of load could be effected between the TG Set of the appellant and the energy supplied by the respondent no.1. He submitted that the learned counsel for the appellant, therefore, had not agreed before the learned Single Judge on 21.08.2008 to accept the decision of the Dispute Settlement Committee of the respondent no.1 with regard to the legality of the demand for the excess load on account of the TG Set. He further submitted that it will be clear from the memo dated 08.12.1992 issued by the Chief Engineer, Commercial, that the respondent no.1 had permitted installation of the two TG Sets subject to certain conditions and, therefore, the load of the TG Set had been permitted/sanctioned by the competent authority of the respondent no.1- Board and the appellant could not be charged any load surcharge at the additional rate of Rs.1,000/- per KW for 3187.500 KW connected load of the TG Set under the Commercial Circular No.12 of 1989.

6. Learned counsel appearing for the respondents, on the other hand, submitted that the memo dated 08.12.1992 of the Chief Engineer, Commercial of the respondent no.1 would show that the appellant was permitted installation of 2 No. TG Sets subject to certain conditions which were to be complied with by the appellant and if the conditions were to be complied with, the appellant was liable for prosecution under Section 58 read with Section 43 of the Indian Electricity Act, 1910 and the unauthorized TG Sets were to be disconnected after giving 24 hours notice and were not allowed to be run till its sanction is obtained from the competent authority of the respondent no.1. He submitted that the permission was only given for installation of TG Set and not for the bus coupler and yet on 09.12.1992 when the Flying Squad of the respondent no.1 entered the sugar mill of the appellant, they

found that the TG Turbo Bus and the supply of the respondent no.1 were electrically connected through LT Bus Coupler and there was inter- transferability of load. He submitted that, therefore, the TG Set of the appellant was found as unauthorized load for which the appellant was liable for load surcharge at the additional rate of Rs.1,000/- per KW. He submitted that the learned Single Judge and the Division Bench of the High Court were, therefore, right in rejecting the challenge of the appellant to the demand of Rs.26,77,797/- towards load surcharge for the TG Set at the rate of Rs.1,000/- per KW.

7. The first question that we have to decide is whether on 21.08.2008 the learned counsel for the appellant had agreed before the learned Single Judge to accept the decision of the Dispute Settlement Committee of the respondent no.1 on the legality of the demand of the unauthorized load of the TG Set and, therefore, the learned Single Judge and the Division Bench of the High Court were right in taking a view that the appellant was not entitled to challenge the demand of load surcharge for the authorized load in respect of the TG Set. The order dated 21.08.2008 of the learned Single Judge in CWP No.7299 of 1993, which records the submission of the learned counsel of the appellant, is extracted hereinbelow:

> "Present: Mr. Rahul Sharma, Advocate For the petitioner.
>
> Mr. H.S. Riar, Advocate with Mr. DPS Kahlon, Advocate for the Respondents.
>
> Arguments in part heard.
>
> The dispute in this petition primarily relates to the question, whether with the aid of a device called a bus coupler, inter- transferability of load could be effected between the captive generation apparatus of the petitioner and the energy supplied by the respondent-board. This is a disputed question of fact.
>
> > At this stage learned counsel for the petitioner has very fairly stated that he would accept the decision of the Dispute Settlement Committee of the respondent-board on this aspect of the matter. Let the Dispute Settlement Committee of the respondent-board, after hearing both the parties, give an opinion on the question whether the bus coupler installed by the petitioner would permit inter-transferability of the load between the Turbo Generator Set of the petitioner and the PSEB. Let representatives of both the parties appear

before the Dispute Settlement Committee in this regard on 28.08.2008.

The matter is adjourned for two weeks i.e. 8.9.2008. Copy of this order be given to both the learned counsel under the signatures of the Reader of this Court.

Sd/-

Ajay Tewari

Judge

August 21, 2008."

8. It will be clear from the aforesaid order dated 21.08.2008 that the learned Single Judge was of the opinion that the dispute between the parties was on the question whether with the aid of a device called a bus coupler, inter-transferability of load could be effected between the captive generation apparatus of the appellant and the energy supplied by the respondent no.1 and he was also of the opinion that this dispute was on a question of fact and accordingly learned counsel for the appellant had stated very fairly that he would accept the decision of the Dispute Settlement Committee of the respondent no.1 on this aspect of the matter. Hence, learned counsel for the appellant had not agreed before the learned Single Judge of the High Court that he would accept the decision of the Dispute Settlement Committee of the respondent no.1 on the legality of the demand for the extra load on account of the TG Set. In fact, we find from the proceedings of the Dispute Settlement Committee that the Dispute Settlement Committee has also not decided on the legality of the demand for the extra load on account of the TG Set, but has only decided that with the aid of a device called a bus coupler, inter-transferability of load could be effected between the captive generation apparatus of the appellant and the energy supplied by the respondent no.1. In our considered opinion, therefore, the legality of the demand for the extra load on account of the TG Set should have been decided by the learned Single Judge or the Division Bench after taking into account the finding of the Dispute Settlement Committee that with the aid of a device called a bus coupler, inter-transferability of load can be effected between the TG Set of the appellant and the energy supplied by the respondent no.1.

9. The next question that we have to decide is whether the appellant is liable for the demand of load surcharge for the unauthorized load in the notice dated 01.06.1993 issued by the Sub-Divisional Officer of the respondent no.1 keeping in view the finding of the Dispute Settlement Committee of the respondent No.1 that with the aid of bus coupler, inter-transferability of load can be effected between the captive generation apparatus of the appellant and the energy supplied by the respondent no.1 board. The justification of the demand made by the respondent no.1 is given in the demand notice dated 01.06.1993 of the Sub-Divisional Officer of the respondent no.1 in which demand for load surcharge has been raised. Relevant extract from the demand notice dated 01.06.1993 containing the justification of the demand is extracted hereinbelow:

> "1. Total load running on PSEB System as checked by enforcement staff on 9.12.92: 1106.325 KW.
>
> 2. As agreed by your representative Sh. Ramesh Chand who was present at the time of spot checking, the TG Set load which also includes the running stand bye load which was taken on the basis of details of load given to the Board as per A/A form along with test reports submitted earlier and not on the basis of R.C. Set Capacity: 3187.500 KW
>
> Stand by Load on T.G. Set: 2226.330 KW
>
> Total: 6520.155 KW
>
> In addition to above, as per checking of enforcement staff on 9.2.92 and your representative Sh. Ramesh Chander Sharma present at the time of checking the total load was accepted so this load is unauthorized. It is also made clear that under PSEB Circular No.12/89 General Condition 14 and as per 8.. of Tariff Schedule, the standby load until sanctioned by the Board is unauthorized. Your attention is invited to your registered letter No.2922 dt. 26.8.89 addressed to Member Commercial, PSEB, Patiala in which you had mentioned that new schedule of tariff for Sugar Mills would tend to increase difficulties and also admitted that keeping this in view approximately Rs.35/40 lacs required to be deposited for running the 4434 KW on T.G. Set, expenses of which are not bearable. Keeping this in view the Board has issued Special instruction to the sugar mills vide Circular No.CC23/90 along with some condition, the compliance of which is not fulfilled by you. As a result of this a load of 4904.127 KW was declared unauthorized after checking by the XEN Enforcement on 9.12.92. Keeping in view the

unauthorized load you are requested to deposit Rs.49,04,127/- as per Board Circular No. CC 12/89 clause No.2 C 23/90 @ Rs.1000/- per KW. Since it is your 2nd default you have already deposited Rs.33,347/- on 23.5.91 towards first default."

10. It is apparent from what has been extracted from the demand notice dated 01.06.1993 of the Sub-Divisional Officer of the respondent no.1 that the unauthorized load comprised the TG Set load 3187.500 KW and the standby load of 2226.330 KW. So far as the standby load of 2226.330 KW is concerned, the demand for unauthorized load has been set aside by the learned Single Judge by the order dated 01.04.2009 in CWP No.7299 of 1993 and the order dated 01.04.2009 has not been challenged by the respondents either before the Division Bench of the High Court or before this Court. In fact, we find that the Sub-Divisional Officer of the respondent no.1 has issued a fresh demand notice dated 12.06.2009 to the appellant pursuant to the order dated 01.04.2009 of the learned Single Judge in CWP No.7299 of 1993 restricting the demand of Rs.26,77,797/- for the unauthorized load on account of the TG Set. Hence, we are to examine whether the reasons given in the demand notice dated 01.06.1993 of the Sub-Divisional Officer of the respondent no.1 for the unauthorized load of the TG Set are legal.

11. From the aforesaid extract of the demand notice dated 01.06.1993 of the Sub-Divisional Officer of the respondent no.1, we find that the reason for the demand for unauthorized load for the TG Set is that respondent No.1- Board has issued special instruction to sugar mills vide Circular No.CC23/90 along with some conditions, compliance of which have not been fulfilled by the appellant and as a result the load on account of TG Set was declared unauthorized after checking by XEN Enforcement on 09.12.1992. We have examined the Circular No.CC 23/90 and we find that by the said Circular issued by the Chief Engineer, Commercial of the respondent No.1, all concerned were informed that respondent no.1 has decided to regularize the load of the sugar mills fed from TG Sets after recovering ACD worked out according to the capacity of TG Sets. In para 3 of the Circular, the working details for regularizing load of sugar mills from the supply of respondent no.1-Board and TG Sets have been given and at the end of the Circular it is mentioned that necessary action for regularizing total load of the sugar mills may be taken accordingly. Pursuant to the said Circular, the appellant applied for regularization of load of two TG Sets and by memo dated 08.12.1992 issued by the Chief Engineer, Commercial of the respondent no.1, the appellant was permitted to install two TG Sets subject to certain conditions. The memo dated 08.12.1992

issued by the Chief Engineer, Commercial of the respondent no.1 is extracted hereinbelow:

"PUNJAB STATE ELECTRICTY BOARD

From

The Chief Engineer / Commercial,

Tariff Billing Directorate, PSEB,

The Mall, Patiala 147001

To,

M/s Oswal Agro Mills Ltd.

Sugar Divn. G.T. Road,

Phagwara (Pb.)

Memo No.64192/Com/54/Indl./Jall.

Dated 8.12.92

Sub: Permission for installation of 2 no. TG Sets of 3730 KVA 500 KVA capacity.

Reference your letter regarding permission for installation of 2 No. TG Sets.

You are hereby permitted to install 2 No. TG sets of 3750 KVA Capacity of make Jyoti Vadodars, 420 Volts of 1500 RPM KVA Tg Set of Crompton make 400 volts 375 RPM, subject to the following conditions:-

i. All relevant provisions of the I.E. Rules, 1956 shall be complied with by you and test report of the installation shall be furnished.

ii. That the Generating set will be operated whenever called upon to do so by the Pb. State Elecy. Board for meeting your demand or for

giving suitable relief to the Board's system by meeting the demand of the other consumers also, depending upon the prevailing situation.

iii. Full proof arrangements to be approved by SE/DS concerned shall be provided to avoid mixing of Board's supply with that to be generated by the generating sets. It shall be ensured that the nature of the PSEB supply is isolated ruing change over to TG sets supply.

iv. That after obtaining receipts of this permission you will give notice not less than 7 (seven) days to the concerned District Magistrate in terms of Section 30 of the Indian Elecy. Act, 1910 intimating the nature and purpose of supply.

v. That the separate notice of not less than 7 (days) shall also be given to Chief Electrical Inspector to Govt. Punjab as laid down in Section 30 of the Indian Electricity Act, 1910. Notice shall also be accompanied by the following documents:-

a. Particulars of the Electrical installation and plan thereof.

b. A copy of the notice sent to the District Magistrate.

c. An attested copy of the consent received from the Punjab State Electy. Board.

d. Original Challan of the prescribed inspection fee under the following Head of Account;

-043 – Taxes and Duties on Electricity fee under the Indian Electricity Rules."

e. Test report from Licensed Wiring Contractor in token of his having carried out the job and tested the installation for safety.

f. A single line key diagram indicating the arrangement of connecting the generator installation to the existing electrical installation.

vi. That suitable energy meter shall be installed to comply with the requirement of Rule-6 of Punjab Electricity Duty Rules

1958. The meter shall be got tested from the nearest PSEB laboratory.

vii. That in case you fail to comply with the above provision you shall make yourself liable for prosecution under Section 58 read with Section 43 of Indian Electricity Act, 1910. The unauthorized T.G. Sets shall be disconnected after giving 24 hours notice and shall not be allowed to run till its sanction is obtained from the competent authority. In case you do not disconnect the TG Sets or apply for regularization of TG Sets your connection shall be disconnected after giving 24 hours notice in writing for contravening the provisions of the said Act and Clause 19 of the PSEB, abridged conditions of supply. Supply in such cases shall not be restored unless you disconnect the TG Sets and furnish test report for sanction electric installation or comply with the above provisions."

Thus, on 09.12.1992 when the Flying Squad, Jalandhar, of respondent no.1 visited the sugar mill of the appellant, the Chief Engineer, Commercial of respondent no.1 had already permitted installation of TG Sets in the sugar mill of the appellant. If the appellant had refused to comply with the conditions mentioned in the Circular No.CC 23/90 for regularization of the load of the sugar mill fed from the TG Sets, the Chief Engineer, Commercial, would not have granted such permission in the memo dated 08.12.1992. Alternatively, even if the appellant had refused to comply with some conditions in the Circular No.CC 23/90, the Chief Engineer, Commercial did not consider such refusal to disentitle the appellant for regularization of the installation of the TG Set and permitted the installation of the TG Sets by the memo dated 08.12.1992.

12. We further find from the aforesaid extract from the demand notice dated 01.06.1993 that for the unauthorized load, a demand has been made at the rate of Rs.1,000/- per KW in accordance with Clause 8-b of the Schedule of Tariff applicable to the sugar mill of the appellant as notified in the Commercial Circular No.12/89. Clause 8-b of the Schedule of Tariff as notified in the Commercial Circular no.12/89 is extracted hereinbelow:

"SCHEDULE OF TARIFF:

i. Schedule L.S. – Large Industrial Power Supply 1 to 7.

8. ……..

‘8-b. If the connected load of a consumer exceeds the sanctioned connected load, the excess load shall be unauthorized load. Such excess of the connected load shall be charged load surcharge at an additional rate of Rs.1000/- per KW for each subsequent default.”

It will be clear from Clause 8-b of the Schedule of Tariff that if the connected load of a consumer exceeds the sanctioned connected load, the excess load shall be unauthorized load and such excess connected load shall be charged at additional rate of Rs.1000/- per KW for each subsequent default. If, therefore, any load is sanctioned by the appropriate authority of respondent no.1-Board, such load cannot be held to be unauthorized load or excess load liable to surcharge at the rate of Rs.1000/- per KW. As we have already found, on 08.12.1992, the Chief Engineer, Commercial, has sanctioned or permitted or regularized the installation of two TG Sets and hence the load of 3187.500 KW of the TG Set detected on 19.12.1992 was a sanctioned load and was not an unauthorized load for which the appellant can be charged load surcharge at the rate of Rs.1000/- per KW under Clause 8-b of the Schedule of Tariff.

13. Once we hold that the load of the TG Sets was sanctioned and authorized, the appellant could not be held liable for load surcharge under clause 8-b of the Schedule of Tariff for the load of the TG Set, even if by the aid of bus coupler, inter-transferability of load could be effected between the TG Set of the appellant and the energy supplied by the respondent no.1-Board. For the consumption of energy from the supply of the respondent no.1, the appellant was liable for every unit of energy consumed to the respondent no.1. For demand of energy, the appellant being a sugar mill was also liable for demand charges with minimum contract demand of not less than the capacity of the distribution transformer(s) installed by the appellant and not 60% of the connected load as stated in the Commercial Circular Nos.12/89 and 23/90. What the learned Single Judge and Division Bench of the High Court failed to appreciate is that the appellant was separately liable for energy charges and demand charges to the respondent no.1 for consumption of energy and demand of energy respectively under the Schedule of Tariff and the levy of load surcharge at the additional rate of Rs.1000/- per KW was only meant for a load of the consumer which was unauthorized or not sanctioned and if a particular load of a consumer is sanctioned or authorized, load

surcharge at additional rate of Rs.1000/- per KW could not be levied under Clause 8-b of the Schedule of Tariff.

14. Learned counsel for the respondents vehemently submitted that the permission to install the TG Sets granted by the memo dated 08.12.1992 by the Chief Engineer, Commercial of the respondent no.1 was subject to various conditions mentioned in the memo dated 08.12.1992 and these conditions have not been fulfilled by the appellant. Learned counsel for the respondents is right that since the permission to install the TG Sets was granted by the memo dated 08.12.1992 subject to various conditions, the load of the TG Sets installed could not be said to be sanctioned or authorized if the conditions in the memo dated 08.12.1992 were not fulfilled. It was, therefore, open to the respondents to treat the load of the TG Set as unauthorized on the ground that the conditions in the memo dated 08.12.1992 permitting the installation of the TG Sets were not fulfilled. But neither in the first demand notice dated 10.12.1992 nor in the second demand notice dated 01.06.1993 of the Sub-Divisional Officer of the respondent no.1 raising the demand for unauthorized load for the TG Set, there is any mention that the demand for unauthorized load was being raised because the appellant had not fulfilled the conditions mentioned in the memo dated 08.12.1992 of the Chief Engineer, Commercial of the respondent no.1. In the demand notice dated 10.12.1992 of the Sub- Divisional Officer of the respondent no.1, the only reason given for raising the demand for unauthorized load was that the TG Set load "has not yet been sanctioned by the Board". After the High Court quashed the first demand notice dated 10.12.1992 in CWP No.370 of 1993, leaving it to the respondent no.1 to pass afresh an appropriate order, the Sub-Divisional Officer issued the second demand notice dated 01.06.1993, but in this lengthy second demand notice also it has not been stated that the demand for unauthorized load for the TG Set was being made because the appellant has not fulfilled the conditions mentioned in the memo dated 08.12.1992 of the Chief Engineer, Commercial of the respondent no.1. In fact, in the two demand notices dated 10.12.192 and 01.06.1993 no reference at all has been made to the memo dated 08.12.1002 of the Chief Engineer, Commercial of the respondent no.1.

15. In the result, these appeals are allowed. The impugned orders of the learned Single Judge and the Division Bench of the High Court are set aside and the demand raised against the appellant in the demand notice dated 01.06.1993 and the demand notice dated 12.06.2009 for unauthorized load of the TG Set is quashed. The parties shall bear their own costs.