

CASE NO.:
Appeal (civil) 2398 of 2000

PETITIONER:
Punjab State Electricity Board and Ors.

RESPONDENT:
Harvinder Singh

DATE OF JUDGMENT: 19/01/2006

BENCH:
Arijit Pasayat & R.V. Raveendran

JUDGMENT:
JUDGMENT

Arijit Pasayat, J.

Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court holding that the demand made by the Punjab State Electricity Board (in short the 'Board') for a sum of Rs 2,17,000/- was impermissible.

The background facts in a nutshell are as under:-

The respondent applied to the Board for a new electric L.S. (large supply) connection on 10.3.1992 for running an induction furnace. He deposited a sum of Rs. 2, 01,000/- as security on the same day and his application was registered after all the formalities were completed. The Board in terms of its Circular CC No. 41/95 dated 4.5.1995 decided to recover one time charge from the Large Supply consumers demanding contract demand higher than 60% of the connected load and to charge monthly minimum charge on the connected load basis instead of Contract Demand basis. An additional demand of Rs. 2,17,000/- over and above the amount already deposited was made on 12.2.1999 on the basis that the respondent had not deposited the requisite amount in terms of the Circular dated 4.5.1995 and clarificatory Circular dated 6.2.1996. The respondent made a representation to the authorities saying that there was no liability for liquidating the demand. But the authorities of the Board rejected the stand and held that the respondent was liable to make the deposit. A writ application was filed before the Punjab and Haryana High Court inter alia raising the following question for adjudication of the High Court:

- (i) "whether the representation made by petitioner can summarily be rejected without affording opportunity of hearing?
- (ii) Whether the releasing of electricity connection will be taken on the date when all formalities were completed and lines were installed upto and within the premises of the factory of the petitioner?
- (iii) Whether the demand of the respondent is illegal when the consumption charges are already been paid against the bills of electricity?"

The High Court was of the view that in the Circular dated 4.5.1995, there was no requirement for the large scale consumers to make a deposit in terms of the said Circular. What was stated by the subsequent clarificatory Circular could not provide the Board the basis for making a demand in the manner done. The High Court held that in the earlier Circular the consumers who had applied for new consumer connection prior to 1.4.1995 were not required to pay one time demand charge. Since the Board decided to recover the charges from such consumers as well by issuing Circular No. CC 11/96 dated 6.2.1996, it is only with effect from the date of the said Circular

such class of consumers were required to pay one time contract demand charge. Accordingly, the demand notice dated 12.2.1999 was quashed.

Learned counsel appearing for the Board submitted that the view of the High Court is clearly untenable. In the first Circular, it was clearly noted as follows:-

xxx xxx xxx

"It has been decided by the Board to recover one time charges from the Large Supply consumers demanding Contract Demand higher than 60% of the connected load and to charge monthly minimum charges on the connected load basis instead of on Contract Demand basis as under."

xxx xxx xxx

"The Contract Demand shall be fixed between 40% and 100% of the connected load and the consumer shall have the option to declare the same. The above charges shall be leviable only in case of new applicants who apply/applied for release of load/demand for a new connection or for extension in load/demand w.e.f. 1.4.1995. However, in case of existing consumers who have applied for extension in load/demand prior to 1.4.1995 and connections have not been released, the above charges shall be leviable on, the basis of the Contract Demand of the aggregated connected load or only on the Contract Demand for extended load, whichever is minimum. The above charges shall not be leviable in respect of HT Bulk Supply consumers as the Contract Demand is fixed minimum equal to 11KV transformers installed by them"

By subsequent Circular dated 6.2.1996 which was issued to clarify the doubts entertained by some field officers, it was stated as follows:-

"Recovery of one time Contract Demand Charges per Kva and as per rates mentioned in the C.C.No. 41/95 are to be affected from all new applicants who apply/applied for release of load/demand for a new connection or for extension in load/demand w.e.f. 1.4.1995. These charges are also to be recovered from all such consumers who's connections/extension have not been released before the issue of this circular i.e. 4.5.1995 even though they applied before 1.4.1995."

None appears for the respondent inspite of service of notice.

We find that the clear intention of the Board as is culled out from a combind reading of the two Circulars is that those applicants who applications were made prior to 1.4.1995 but to whom connections/extensions had not been released before the issue of the Circular dated 4.5.1995 even though they applied before 1.5.1995 were required to pay the amount on the basis of one time contract demand charges of contract demand in excess of 60% of the connected load.

Though some confusion appears because of the underlined portion of the first Circular dated 4.5.1995 that the charges were to be leviable only in case of new applicant who applied/applied for release of load/demand w.e.f. 1.4.1995, the subsequent lines make the position clear that it was also applicable to those applicants whose applications were made prior to 1.4.1995 and were pending. It cannot be conceived that those who had applied for extension would be required to pay demand, but not those who were fresh applicants.

Above being the position, the demand raised by demand dated 12.2.1999 cannot be said to be without sanction of law. The Board may now proceed to recover the amount from the respondent who has not appeared inspite of

service in accordance with law. The appeal is allowed accordingly. No. costs.

JUDIS