

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12139/2005

(From the judgment and order dated 23/11/2004 in CWP No. 14879/2004
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

AVINASH CHANDER

Petitioner(s)

VERSUS

PUNJAB STATE ELECTRICITY BOARD & ORS.

Respondent(s)

(With appln. for c/delay in refiling SLP and prayer for interim relief
and office report)

Date: 24/11/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr. R. Venkataramani, Sr.Adv.

Mr. Narender Yadav, Adv.

Mr. Rameshwar Prasad Goyal,Adv.

For Respondent(s) Mr. Ruchi Gour Narula, Adv.

Mr. Rahul Kumar, Adv.

Mr. Rajiv Nanda, Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

Leave granted,

The appeal is allowed but without any order as to costs.

[Usha Bhardwaj]

Court Master

[Pushap Lata Bhardwaj]

Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2006

(Arising out of S.L.P. (Civil) No. 12139 of 2005)

Avinash Chander

...Appellant(s)

Versus

Punjab State Electricity Board, Patiala

...Respondent(s)

O R D E R

Leave granted.

The appellant is before us being aggrieved by and
dissatisfied with the judgment and order dated 23.11.2004

whereby the writ petition filed by the appellant herein questioning

the order passed by the appellate authority was dismissed:

"After considering the entire matter, the Board
Level Review committee has also come to the
conclusion that no injustice has been done to the
petitioner. It has been observed that the charges were
levelled by the Audit on the basis of the record
indicating the release of two connections in the same
plot/premises. Reference is also made to the report
dated 15.3.94. We are of the considered opinion that
no manifest injustice has been caused to the
petitioner."

In two separate plots bearing E/189 and 20 MIC,
separate electrical connections were said to have been obtained.

The question which arose for consideration was as to whether the

said

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two connections were clubbed. Indisputably, the Punjab State

Electricity Board has from regulation known as Sales Regulation

for Supply of Electric Energy to Consumers. The appellant

moved before the Dispute Settlement Authority (DSA). The

appellants' premise was inspected by D.S.A. along with APO of

Punjab State Electricity Board and AEE[Tech. Focal Point,

Ludhiana on 12.5.2000. The following observations were made:-

" The site position was seen by DSA and observed that the 2nd connection bearing A/c No.A-2/189-A/48 was being presently used in plot No.20, Mahavir Indl. Complex which has been effectively separated from Industrial unit from plot no.E-189/Focal point and no intermixing of load was observed during the site checking. The meter room of this second connection was though found existing in the corner of plot no.E-189/Focal Point but the same has been separated effectively by providing full height partition having no exist and with no possibility of interchanging of load from this connection to other. The L.T. Cable from this connection to shed no.20, Mahavir Indl. Complex has been laid on the outer wall facing the main road and there is no tapping in between this L.T. Cable. Both the premises are having separate independent gates."

It was further held:

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"The authority thus held that though there is force in the pleadings/documents produced on 2.6.2000 after the case was closed on 31.5.2000, yet the decision of D.S.A. Already

faxed on the basis of proceedings held on 31.5.2000, as reiterated in para 24 above, could not be reviewed suo-moto by D.S.A. At this stage."

It is, however, opined that the remedy of the appellant was to file a review application before the Board Level Review Committee. Pursuant thereto and in furtherance thereof an application was filed before the said authority. Before it the appellant intended to rely upon the few more documents being reports dated 5.12.89 and 19.1.90. It was not permitted to do so stating:

:The consumer represented that he should not be levied difference of LS & MS tariff and 20% LT surcharge for the period 30/9/89 to 15/3/94 because ultimately they are running two separate connections even now with the approval of the Board. However, it was observed that the charges were levied by the Audit vide half margin dated 2.5.93 on the basis of the record indicating the release of two connections in the same plot/premises. The load was also checked by the Enforcement on 15.3.94 in the presence of consumer's representatives wherein it was reported that mixing of load of total the connections not there. Therefore, consumer cannot agitate on the basic facts of the case at the

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belated stage. In view of the findings of the Enforcement, it was decided that difference of LS

& MS tariff alongwith 3% transformation losses may be charged from the consumer for the period of dispute i.e. 30.9.89 to 15.3.94 as per the charges being levied under the package issued vide CC 33/2002 and CC 63/2002."

The aforementioned order of the review authority was in question before the High Court. The short question which arises for our consideration is the extent of power of the review authority in this behalf. The relevant provisions of the Sales Regulation being Regulation 44.2.6 reads as under:

:44.2.6 The appellate authority may in the light of the appeal, facts on record and principles of equity:

44.2.6.1 confirm, reduce, enhance or annul the reviewed/original assessment; or

44.2.6.2 conduct a further enquiry itself or call for a report from the officers who had made the original assessment or final assessment and dispose of the appeal in the light of such further enquiry or report; or

44.2.6.3 pass such other orders as it deems fit. Provided that the order made shall contain the reasons thereof.

Provided further that no order adverse to the consumer shall be passed without giving him a reasonable opportunity of being heard against an order to be passed in appeal."

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The power of appellate authority is of wide amplitude. It not only can pass an appropriate order on the basis of the materials on record but it, on a plain reading of the rule, can also allow the parties to adduce additional evidence. Keeping in view the fact that reports which were sought to be brought on records by way of additional evidence go to the root of the matter, we are of the opinion that the Review Board ought to have allowed the appellant to do so. We would, therefore, allow this appeal upon setting aside the said impugned judgments and orders directing the Review Authority to allow the appellant to file the said reports and pass appropriate orders afresh on considering the merit of the matter and upon giving an opportunity of hearing to both the parties.

The appeal is allowed but without any order as to costs.

.....J.

[S.B. SINHA]

.....J.

[MARKANDEY KATJU]

New Delhi,

November 24, 2006.