

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 638 of 2010.

Reserved on : 23rd June, 2014

Decided on: 31st July, 2014

M/s SAB Industries Limited

.....Petitioner.

Versus

H.P.S.E.B. & Another

.....Respondents.

Coram

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

Whether approved for reporting?¹Yes.

**For the petitioner : Mr. K.D. Sood, Senior Advocate
with Mr. Sanjeev Sood, Advocate.**

**For the Respondents : Mr. Satyen Vaidya, Advocate for
respondent No.1.**

**Mr. Virender Verma, Addl.
A.G. for respondent No.2.**

Dharam Chand Chaudhary, J.

Challenge herein is to an order Annexure P-5, passed by Principal Secretary (Power), Government of Himachal Pradesh in an appeal registered as case No.11/03 filed under Sales Circular No.15 of 2002 whereby the order passed by Board Level Dispute Settlement Committee on 5.3.2003 in case No.BLDSC/08/02 has been partly set aside and while accepting the appeal partly, directed the 1st respondent-Board as follows:-

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

“ There is merit in the appeal which is partly accepted as such the charges raised by the respondent do not seem to be in order. It is ordered that disputed amount as mentioned above be charged accordingly as under:

The energy charges raised prior to 19.1.88 on the basis of meter installed at Giri end and further distributed to consumer on the basis of their production w.e.f. 6/86 to 11/87 is not in order and the amount be refunded to the appellant accordingly.”

2. Challenge is also to the order Annexure P-15, passed by Chief Secretary (MPP & Power), Government of Himachal Pradesh consequent upon the judgment of this Court in CWP No.922 of 2007 holding thereby that whatever was due and admissible amount has already been ordered to be refunded to the petitioner by his predecessor vide impugned order Annexure P-5 and the petitioner is not entitled to the recovery of any other and further amount and even interest also being not awarded by his predecessor while deciding the appeal vide impugned order Annexure P-5.

3. The petitioner is a company having its head office at SCO No.49-50, Sector 26, Madhya Marg, Chandigarh whereas registered office at village Rampur Banjaran, District Sirmaur, H.P. The petitioner-Company has installed its factory at Village Rampur Majri, near Dhaula Kuan, District Sirmaur, Himachal Pradesh and

manufacturing steel billets and ingots therein. The load of 6.5 MW was sanctioned in favour of the petitioner company by the respondent Board in June 1986. Subsequently it was enhanced to 11 MW in June 1997, the power to the factory premises is being supplied from Girinagar Power House on 33 KV line. The respondent-Board has installed the electricity meter in the factory premises of the petitioner, under Section 26 of the Electricity Act read with Rule 58 of the Indian Electricity Rules 1956 and Instructions No.101 of the H.P. State Electricity Board Sales Manual. The petitioner-company allegedly paid the amount under the bills raised by the respondent-Board on the basis of meter-reading from time to time.

4. The dispute is with regard to the bills amounting to ₹8,61,660.55, for the period from 26.4.1987 from 21.7.1988 because as per the version of the petitioner the bills pertaining to this period has already been paid on the basis of actual consumption of electricity. Similarly the bill amounting to ₹2,16,988.10 pertaining to the month of January 1988 issued on the basis of the reading recorded from the meters installed at Girinagar power house is not correct as according to the petitioner such meter has been installed by the

respondent-Board contrary to the provisions of the Indian Electricity Act and the Rules framed thereunder, hence not liable to be paid. The petitioner-Company was not allowed to have access to the meter so installed to know the reading qua the consumption of electricity on daily basis. The petitioner being a consumer of bulk power supply should have been allowed to take down the reading on daily basis in order to plan its schedule of production estimated costs of products and its sale in the market. Since the petitioner Company could have not afforded to shut the shutter of its factory and on an assurance that the amount under such bills will be adjusted in the bills for subsequent months, has paid the bill so raised under protest. The chart showing the detail of payment made allegedly in excess during the period January 1988 to October 1988 is as under:

Month	Due	Reading as per Factory meter	Amount (Rs.)	Reading as per Girinagar meter	Amount (Rs.)	difference
1/88	2/88	13552219	12,98,196.10	1589910	15,15,184.20	2,16,998.10
2/88	3/88	967860	9,22,370.58	1147950	10,93,996.30	1,71,625.72
3/88	4/88	1197180	8,77,532.94	1607400	11,87,224.20	3,00,691.26
4/88	5/88	837900	6,14,180.70	1135359	8,32,211.55	2,18,030.85
5/88	6/88	1453500	10,65,415.50	1725300	12,64,644.90	1,99,229.40
6/88	7/88	1456200	11,22,667.30	1693350	12,93,868.80	1,71,201.50
7/88	8/88	622800	5,03,222.40	721800	5,83,214.40	79,992.00
9/88	10/88	390960	3,15,895.68	462600	3,73,780.80	57,885.12
Total						14,15,643.95

5. In the month of November 1988, the petitioner Company was again issued a bill for ₹29,94,403/- for the period from January 1986 to November 1987, in addition to the normal bills already raised for this period. The petitioner-Company allegedly was compelled to pay from January 1988 to November 1988, a sum of ₹44,16,956.93. The detail of payment allegedly made in excess to the respondent-Board under protest, which reads as follows:-

Month	Receipt No.	Date	Amount (Rs.) paid
2/90	712372	24.2.1990	2,50,108.58
3/90	714497	23.3.1990	2,50,108.58
4/90	715012	24.4.1990	2,50,108.58
5/90	718774	25.5.1990	2,50,108.58
6/90	725894	25.6.1990	2,50,108.58
7/90	728526	26.7.1990	2,50,108.58
8/90	728948	24.8.1990	2,50,108.58
10/90	894130	5.10.1990	2,50,108.58
11/90	897486	23.11.1990	2,50,108.58
12/90	000867	26.12.1990	2,50,108.58
1/1991	645284	23.1.1991	2,50,108.58
Total			30,01,302.98

6. The petitioner-Company allegedly paid ₹44,16,956.93 in excess for the period w.e.f. June 1986 to November, 1987 and January 1988 to October 1988. It is this amount, which has been sought to be refunded together with interest @18% per annum. The Board Level Dispute Settlement Committee has rejected the representation made by the petitioner vide order Annexure P-2. In appeal, the appellate authority vide order Annexure P-5 has held that the bill raised prior to 19.1.1988 on the basis of meter reading taken from the meter installed at Girinagar power house was not in order and as such the respondent-Board was directed to refund the amount realized from the petitioner. The respondent Board, however, refunded only ₹29,54,133/- vide cheque dated 8.1.2007 leaving the balance amount i.e. ₹14,62,823.93 along with interest on the excess amount ₹8,64,05,069.00 in all. Therefore, the petitioner-Company claims the refund of this amount together with interest i.e. ₹8,78,67,892.93. The appeal preferred by the petitioner under Sales Circular No.15/2002 was partly allowed vide order Annexure P-5.

7. In compliance of the order Annexure P-5 only a sum of ₹29,54,133/- was refunded to the petitioner by the respondent-Board against the due and admissible

amount allegedly ₹44,16,956.93/- together with interest @18% per annum. When the entire amount was not paid to the petitioner, representation was made and the respondent-Board even was served with legal notice also, but of no avail. The petitioner, therefore, was compelled to file Civil Writ Petition No.922 of 2007 in this Court, which was disposed of vide order Annexure P-11.

8. The 2nd respondent had re-considered the matter consequent upon the direction of this Court, however, not held the petitioner entitled to any other and further amount including the interest vide impugned order Annexure P-15. It has been claimed that neither Board Level Dispute Settlement Committee nor the appellate authority have taken into consideration various factors leading to raise inflated bills, which has resulted in miscarriage of justice to the petitioner, hence the writ petition for the grant of following reliefs:-

- “a) Direct the quashing of the orders Annexures P-5 and P-15 in so far as it is against the petitioner;
- b) Direct the refund of the amount of Rs.14,62,823.93 along with interest.”

9. The respondent Board, in reply to the writ petition has submitted in preliminary that the petition is neither competent nor maintainable and also that in

view of this Court has decided CWP No.922/07 vide judgment dated 3.7.2007, therefore, this petition is not maintainable being barred by the principle of *res judicata*. The questions of estoppel and maintainability of the writ petition on account of delay and laches have also been raised. It is specifically averred that the petitioner is seeking adjudication of serious and disputed question of facts, which cannot be decided in the writ jurisdiction and as such the writ petition has been sought to be dismissed on this score alone. The abandonment of its entire claim by the petitioner-Company at the time of withdrawal of the suit in the Court at Paonta Sahib has also been pressed in service.

10. On merits, the entire case as set out in the writ petition has been denied being wrong and it has been urged that nothing is due and payable by the respondent-Board to the petitioner-Company.

11. The petitioner-Company has filed rejoinder and controverted the case as set out by the respondent-Board in the reply filed to the writ petition. Mr. K.D. Sood, learned Senior Advocate, during the course of arguments, has mainly emphasized on the issue of utilization of the huge amount charged by the respondent-Board, by raising inflicted bills not as per the

actual consumption of energy, but on exaggeration, however, not refunded the same together with interest irrespective of the said bills were held to be excessive and false by the 2nd respondent.

12. On the other hand, Mr. Satyen Vaidya, learned standing counsel has urged that whatever amount was due and admissible to the petitioner, has been refunded consequent upon the order Annexure P-5 passed by the appellate authority. Since no interest has been awarded by the competent authority, therefore, according to Mr. Vaidya, the petitioner is neither entitled to any other and further amount nor the interest as claimed. It is further urged that the entitlement to receive any other and further amount including interest constitutes disputed facts, which need evidence for its proof and cannot be gone into in writ jurisdiction. Mr. Vaidya has also pointed out that in view of the judgment passed by this Court in CWP No. 922 of 2007, filed by the petitioner-Company with identical questions of law and facts, this writ petition is not maintainable.

13. On analyzing the rival submissions and also the record of this case, it would not be improper to conclude that the machinery needs to be set in motion

in a dispute of this nature has been provided under the Electricity (Supply) Act 1948 and other enabling provisions in this behalf. The respondent-Board in exercise of the powers conferred upon it under sub-section (j) of Section 79 of the Act vide Sales Circular No.15/2002 dated 19.10.2002 has constituted various Dispute Settlement Committees at different level and also appellate authority to review the award announced by the concerned Dispute Settlement Committee, in case the consumer still feels aggrieved and not satisfied with the award. The award made by the appellate authority shall be final and binding on the consumer. The constitution and powers of the appellate authority as per Sales Circular No.15/2002 referred to hereinabove read as follows:

“ The appellate Authority to review the award of the concerned dispute settlement committee in case the consumer is not satisfied with the award shall be the next dispute settlement committee whose award shall be final and binding on the consumer. The appellate authority against the award of Boards Level Dispute Settlement Committee shall be the Secretary (MPP & Power) to H.P. Government.

The appeal before the authority can be preferred within a period of 30 days from the

date of issue of award/decision by the Dispute Settlement Committee. Appellate Authority before admitting the appeal for review of the decision of Dispute Settlement Committee shall decide the quantum of amount to be deposited by the consumer before the commencement of hearing/proceedings. The consumer shall deposit the quantum of balance disputed amount as directed by the appellate Authority within 15 days.

14. Adverting to the case in hand the Board Level Dispute Settlement Committee had considered the matter qua excess billing brought before it by the petitioner-Company vide representation Annexure P-1 and rejected the same vide order dated 5.3.2003 Annexure P-2. In an appeal Annexure P-3, the appellate authority while partly setting aside the order Annexure P-2 has arrived at a conclusion that the bills partly raised were excessive and raised wrongly and as such while allowing the appeal partly, directed the respondent-Board to charge the disputed bills in the light of the order Annexure P-5 and refund the due and admissible amount to the petitioner-Company. The directions so issued by the appellate authority stand reproduced in this judgment in para supra.

15. Consequently, the respondent-Board vide Cheque Annexure P-9 had refunded a sum of ₹29,54,133/- to the petitioner-Company. The Company was not satisfied with the refund so made and when the respondent-Board failed to refund the amount claimed by it in its representation and also the legal notice, filed CWP No.922 of 2007 in this Court, which was disposed of vide judgment dated 3.7.2007, which reads as follows:-

“ The petitioner by means of this writ petition has basically sought implementation of order dated 23.9.2006 passed by the Principal Secretary (Power) to the Government of Himachal Pradesh in case No.10/2003 titled as M/s SAB Industries Limited v. HPSEB. According to the petitioner, the Himachal Pradesh State Electricity Board has sent a cheque of Rs.29,54,133/- to the petitioner in purported compliance of the said orders. According to the petitioner, even after adjusting this amount, a sum of Rs.14,62,823.93/- is still due to it.

This court in exercise of its extraordinary writ jurisdiction, cannot be turned into an executing court to execute the orders passed by the statutory appellate authority under the Electricity Act. It is for the appellate authority itself to determine what is the amount due and payable to the petitioner, if any, under its orders. We, therefore, dispose

of this writ petition with a direction that in case the petitioner approaches the Principal Secretary (Power) to the Government of H.P. within three weeks from today, he shall, after issuing notice to the HPSEB and hearing both the parties, determine the amount, if any, due to the petitioner within three months thereafter. With these observations, the petition stands disposed of."

16. The matter, therefore, landed again before learned appellate authority i.e. Chief Secretary (Power) to the Government of Himachal Pradesh, who has decided the same with the following observations:-

" I find from the orders of my predecessor that he had partly accepted the appeal. I also find that in his order he has mentioned that the respondent has erred in charging the consumption for the month 6/86 to 11/87 and raising bill thereof to the tune of Rs.29,94,403.30 paise on the basis of meter installed at Giri end and distributing the energy to the consumers on the basis of their production. In the last para he has again referred to the charges levied prior to 19.01.1988 on the basis of meter at Giri end and further distributing the energy to the consumers on the basis of their production w.e.f. 6/86 to 11/87 not being in order and therefore the amount be refunded to the

appellant accordingly. I also find that the petitioner company had accordingly sought refund of Rs.29,94,403.43 paise vide its own letter dated 11th October, 2006.

I therefore, hold that the amount has been refunded by HPSEB as per the order of my predecessor. I also find that there was no order with regard to interest and as such the Board has rightly not allowed any interest to the petitioner. Accordingly I reject the petition."

17. It is thus seen that no other and further amount was found to be due and admissible to the petitioner-Company either towards principal or the interest. It is this order, which has been challenged in this writ petition as noted at the very outset in this judgment.

18. This Court is of the considered opinion that the machinery to set in motion in a dispute of this nature is provided under Sales Circular No.15/2002 dated 19.10.2002. The respondent-Board has constituted various Dispute Settlement Committees at Sub Divisional/Circle and Zonal Level as well as at Board Level. At the apex, is the appellate authority referred to hereinabove and its decision, in the matter, is final and binding on the consumer. Whatever was found due and admissible to the petitioner, the appellate authority while

adjudicating upon the appeal preferred by the petitioner against the order Annexure P-2 passed by the Board Level Dispute Settlement Committee has been paid to the petitioner vide cheque Annexure P-9.

19. The appellate authority has re-considered the matter consequent upon the above quoted directions of this Court, issued in CWP No.922 of 2007. No other and further amount has been found to be recoverable by the petitioner against the respondent-Board. Interest has not been awarded by the appellate authority and as such has not been paid on the amount so refunded. The bills raised by the respondent-Board from time to time are excessive or wrong is a question of facts, which cannot be determined in writ jurisdiction for the reason that the adjudication thereof needs proof, which can only be produced in competent Court having jurisdiction over the matter including the Fora established for redressal of the complaints of the consumers in case there is deficiencies in service being rendered by the service providers.

20. It has already been held in the judgment dated 3.7.2007, rendered in CWP No. 922 of 2007 that this Court cannot sit as an executing Court to execute the order passed by the appellate authority and it is for

this reason the said authority was directed to re-examine the matter qua the refund of any other and further amount except the one refunded to the petitioner consequent upon the order Annexure P-5. The appellate authority, however, has not found the petitioner entitled to any other and further amount as is apparent from the perusal of impugned order Annexure P-15.

21. In ***Kanaiyalal Lalchand Sachdev and Others*** versus ***State of Maharashtra and Others, (2011) 2 SCC 782***, a similar case where appellant, after having availed the statutory remedy of the appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, the apex Court has held as under:-

“22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well

settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.* (2003) 3 SCC 524 : 2003 SCC (Cri) 762, *Surya Dev Rai v. Ram Chander Rai* (2003) 6 SCC 675 and *SBI v. Allied Chemical Laboratories* (2006) 9 SCC 252.)

24. In *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla* (2009) 1 SCC 168 this Court had observed that: (SCC p. 175, para 30)

"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) the person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the

Chief Judicial Magistrate, etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution."

22. Above all in the exercise of jurisdiction under Article 226 of the Constitution of India, the matter where foundational facts are in dispute should not be adjudicated by the High Court. In the case in hand, as noticed hereinabove, the facts such as the quantity of electricity consumed, the bills raised allegedly are not as per the actual consumption of electricity, hence exaggerated or inflated and that such bills should have not been raised nor the amount would have been payable, are disputed questions of facts. The same cannot be adjudicated upon in these proceedings. Above all this Court has entertained the writ petitions twice previously and it is on the direction of this Court, the appellate authority has decided the appeal and in the order so passed by the appellate authority, the petitioner even has obtained refund also. Therefore, for all the reasons hereinabove, the relief as sought in this petition cannot be granted. The petitioner, however, is

at liberty to approach appropriate forum, in accordance with law, against its surviving grievances, if any.

23. For all the reasons hereinabove, this petition fails and the same is accordingly dismissed. Pending application(s), if any shall also stand disposed of.

July 31, 2014
(ps)

(Dharam Chand Chaudhary),
Judge.