

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDI GARH

REGULAR SECOND APPEAL No. 2060 of 2018 (O&M)
DATE OF DECISION: 28.02.2020

Ms Sarab Synthetics Pvt. Ltd.

..... Appellant

versus

Punjab State Power Corporation Ltd. and another

..... Respondents

REGULAR SECOND APPEAL No. 2078 of 2018 (O&M)

Ms Sarab Synthetics Pvt. Ltd.

..... Appellant

versus

Punjab State Power Corporation Ltd. and another

..... Respondents

CORAM - HONBLE MRS. JUSTICE ALKA SARI N

Present: Mr. Aseem Aggarwal, Advocate for the appellant

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ALKA SARI N, J.:

CM Nbs. 5687- C & 5688- C of 2018 in RSA- 2060- 2017:

For the reasons mentioned in the respective applications, the delay in filing and re-filing the appeal is condoned and applications stand disposed of.

CM 5716- C- 2018 in RSA- 2078- 2018:

For the reasons stated in the application, delay of four days in filing the appeal is condoned and application stands disposed of.

RSA Nbs. 2060 and 2078 of 2018:

The present order of mine shall dispose of RSA Nb. 2060 of 2018 and RSA Nb. 2078 of 2018. In both the cases,

the challenge is to the demand raised by the defendant-respondents on account of violation of peak load hours restrictions in the use of electricity. In RSA No.2060 of 2018, the demand of ₹12,57,277/- raised vide Memo No.8082, dated 09.11.2010 has been challenged, whereas, in RSA No.2078 of 2018, the demand of ₹2,31,719/- raised vide Supplementary Bill dated 25.11.2010 on account of violation of peak load hours restrictions has been challenged.

In brief, the case as set up by the plaintiff-appellant in RSA No.2060 of 2018 is that the defendant-respondents had issued Memo No.8082 raising a demand of ₹12,57,277/- on account of violation of peak load hours restrictions. The period of violation was stated to be 27.07.2009 to 01.09.2009 for ₹6,58,358/- and 03.10.2009 to 09.11.2009 for ₹5,98,919/-, the total penalty being ₹12,57,277/-. The suit was filed by the plaintiff-appellant on the ground that the said penalty imposed was illegal, null and void and that no notice about peak load hours restrictions or weekly off days was issued to the plaintiff-appellant which falls within category-I having domestic lines and, thus, restrictions of peak load hours were not applicable to the plaintiff-appellant.

The defendant-respondents filed their written statement taking the preliminary objection that the suit was not maintainable and that the Civil Court had no jurisdiction to entertain and try the suit. Further, it was averred that the plaintiff-appellant was guilty of suppressing material facts from the Court. It was further averred that the plaintiff-appellant had violated peak load hours restrictions in the use of electricity from 25.06.2009 to 01.09.2009 and on

account of this violation an amount of ₹6,58,358/- was charged from the plaintiff as per Memo No.2128 dated 15.09.2009 and for violation from 02.09.2009 to 09.11.2009 an amount of ₹9,98,919/- was charged from the plaintiff-appellant vide Memo No.2897 dated 01.12.2009. Thus, the total amount of Rs.12,57,277/- was charged from the plaintiff-appellant on account of violation of peak load hours restrictions. Vide Memo No.15663 dated 26.11.2009, the defendant-respondents had allowed the plaintiff-appellant to deposit the abovesaid amount in five instalments of ₹1,31,672/- each. The plaintiff-appellant challenged the levy of the said amount before the Zonal Level Dispute Settlement Committee which, after considering the same, upheld the levy of the penalty. It was further stated that only one instalment of ₹1,31,672/- was deposited on 26.11.2009 and the remaining four instalments remained pending. It was also pleaded that vide PR/Circular No.02/98 and 11/98 peak load exemption of 122 KW was granted to the plaintiff-appellant from 12.11.2009 to 31.05.2010. It was further denied that no notice regarding peak load hours restrictions was issued to the plaintiff-appellant.

In RSA No.2078 of 2018, the brief facts relevant are that the defendant-respondents issued a supplementary bill dated 25.11.2010 for an amount of ₹2,31,719/- to the plaintiff-appellant for violating peak load hours restrictions. The alleged violations were between 27.07.2009 to 01.09.2009 and 03.10.2009 to 09.11.2009. The defendant-respondents, in their written statement, denied the averments made in the plaint.

The grounds of challenge in both the suits and the appeals in this Court are virtually identical.

I have heard the learned counsel for the plaintiff-appellant.

It has been contended by the learned counsel for the plaintiff-appellant that no notice was served about the peak load hours restrictions on the plaintiff-appellant and that the procedure under section 126 of the Indian Electricity Act, 1910, has not been followed. It has further been argued that Amritpal Singh, DM, had admitted in his cross-examination that he was not present when the data was downloaded or its print was taken out and, hence, the entire basis of the penalty was vitiated as the data alleged to have been downloaded from the premises of the plaintiff-appellant was never verified and legally proved on the record.

The peak load hours restrictions have been dealt with in Rule 132 of the Electricity Supply Instructions Manual, which reads as under:-

“PENALTY FOR NON COMPLIANCE OF PEAK LOAD
HOURS RESTRICTIONS BY CONSUMERS

132.1 The penalty for violation of Peak Load Hours Restrictions on consumers on whose premises Electronic Energy Meters have been installed shall be as per sub clauses given below:-

- i. Rs. 50/- per KW of the maximum load used in excess of the Peak Load Exemption Limit per day of first default in a block of two months and Rs. 100/- per KW in the 2nd block of 2 months immediately after the first default block.
- ii. If the default occurs either during the first ‘half hour’ or the last ‘half hour’ of Peak Load Hours Restrictions period on any day, the penalty will be levied at half the rate. If, however, the default occurs both during first ‘half hour’ as well as last ‘half hour’

of Peak Load Hour Restrictions period, the penalty shall be levied at full rate.

- iii. If there is no default in any time block of two months, the next time lock in which a default occurs will be treated as the First Time Block and penalty levied accordingly.”

A perusal of the above reproduced rule clearly reveals that the defendant-respondents were well within their rights to impose penalty upon a subscriber in case of violation of peak load hours restrictions. Adverting to the evidence led by the defendant-respondents in suit out of which PSA No. 2060 of 2018 has arisen, the defendant-respondents had placed on record Ex. D12, which clearly shows that the consumers of LS connections are directed to follow peak load hours restrictions for 24 hours with effect from Friday 5.00 A.M to Saturday 5.00 A.M issued by the Deputy Director, PSEB, Patiala. They also proved on record Ex. D10 vide which peak load hours restrictions were to be followed till further orders including by the plaintiff-appellant. Further, while appearing as PW, Vikas Poddar admitted in his cross-examination that the penalty had earlier also been imposed twice for violating peak load hours restrictions.

Learned counsel for the plaintiff-appellant has not been able to deny the fact that earlier also penalty had been imposed for violation of peak load hours restrictions. He has also not been able to deny the fact that earlier the defendant-respondents had permitted the plaintiff-appellant to pay the amount in instalments which had, in fact, not been entirely paid and only one instalment had been paid.

In view of the fact that the defendant-respondents were well within their right to levy penalty for violation of peak load hours restrictions and further, in view of the fact that the plaintiff-appellant has been unable to prove the fact that the said penalty was wrongly imposed, I do not find any merit in the present regular second appeals. Both the Courts below in both the cases have concurrently found that the defendant-respondents were well within their rights to impose penalty for violation of peak load hours restrictions. It has also been concurrently found that earlier also the plaintiff-appellant had been penalized for violation of the peak load hours restrictions.

In view of the above, I do not find any merit in the present appeals. The same are, hence, dismissed.

(ALKA SARI N)
JUDGE

28. 02. 2020
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NOTE:

Whether speaking/ non-speaking: Speaking
Whether reportable: YES/ NO