

ITEM NO.101 (PH)

COURT NO.4

SECTION IV/IVB

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

CIVIL APPEAL NO. 6277/2013

PODDAR TYRES LTD.

APPELLANT(S)

VERSUS

PUNJAB STATE ELECTRICITY BOARD & ORS.
(WITH INTERIM RELIEF AND OFFICE REPORT)

RESPONDENT(S)

WITH

C.A. NO. 6283/2013

(WITH INTERIM RELIEF AND OFFICE REPORT)

SLP(C) NO. 29155/2011

(WITH APPLN.(S) FOR DIRECTIONS AND INTERIM RELIEF AND OFFICE REPORT)

C.A. NO. 6278/2013

(WITH INTERIM RELIEF AND OFFICE REPORT)

C.A. NO. 6279-6282/2013

(WITH INTERIM RELIEF AND OFFICE REPORT)

C.A. NO. 6293-6294/2013

(WITH OFFICE REPORT)

Date : 01/03/2017 These cases were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

For parties :

CA 6269, 6277, 6278 &
6283/2013Mr. Tejinder Joshi, Adv.
Mr. Chandan Kaushal, Adv.
Mr. Subhasish Bhowmick, Adv.Ms. Abhisar Bairagi, Adv.
Mrs. Vanita Bhargava, Adv.
For M/s. Khaitan & Co., Adv.

CA 6279-6282/13 Mr. Neeraj Kr. Jain, Sr. Adv.
 Mr. Sanjay Singh, Adv.
 Mr. Jagjit Singh Chhabra, Adv.
 Mr. Saksham Maheshwari, Adv.

CA 6293-94/13 Ms. Anita Sahani, Adv.
 Ms. Purnima Bhat, Adv.

 Mr. V. Giri, Sr. Adv.
 Mr. Anand K. Ganesan, Adv.
 Ms. Neha Garg, Adv.
 Mr. Manav Vohra, Adv.
 Mr. Krishna, Adv.
 Mr. Tushar Bakshi, Adv.
 For Ms. Naresh Bakshi, Adv.

SLP(C) 29155/11 Mr. Sakesh Kumar, Adv.
 Ms. Charu Singhal, Adv.
 Mr. Karunakar Mahalik, Adv.
 Ms. Anuradha Mutatkar, Adv.

 Mr. Satinder S. Gulati, Adv.
 Mrs. Kamaldeep Gulati, Adv.

UPON hearing the counsel the Court made the following
 O R D E R

 Leave granted in Special Leave Petition (Civil)
 No.29155 of 2011.

 All the appeals shall stand allowed in terms of the
 signed order. Consequently, all pending applications are
 disposed of.

[VINOD LAKHINA]
 COURT MASTER

[ASHA SONI]
 COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 6279-6282/2013

M/S SHREYANS INDUSTRIES
LTD. . . . APPELLANT

VERSUS

PUNJAB STATE ELECTRICITY BOARD
& ORS. . . . RESPONDENTS

WITH

CIVIL APPEAL NO. 6277/2013
[PODDAR TYRES LTD. VERSUS
PUNJAB STATE ELECTRICITY BOARD & ORS.]

CIVIL APPEAL NO. 6283/2013
[GOVIND RUBBERS (UNIT-1) VERSUS
PUNJAB STATE ELECTRICITY BOARD & ORS.]

CIVIL APPEAL NO. 3547 OF 2017
[@ SLP(C) NO. 29155/2011]
[M/S GILLANDERS ARBUTHNOT & CO. LTD. VERSUS PUNJAB STATE
ELECTRICITY BOARD & ORS.]

C.A. NO. 6278/2013
[GOVIND RUBBERS (UNIT-1) VERSUS
PUNJAB STATE ELECTRICITY BOARD & ORS.]

C.A. NO. 6293-6294/2013
[M/S VARDHMAN POLYTEX LIMITED VS. PUNJAB STATE
ELECTRICITY BOARD & ORS.]

ORDER

1. Leave granted in Special Leave Petition (Civil) No.29155 of 2011.
2. All these appeals which were heard analogously are directed against the common judgment and order of the High Court of Punjab and Haryana at Chandigarh by which the LPAs filed against the dismissal of writ petitions filed by the appellants have also been dismissed. The challenge in the writ petitions filed was against the levy of surcharge on the appellants for not converting from 11 KV to 66 KV transmission. As the bills raised/ submitted were of the year 2007, we will understand the period of time required to be considered to be relatable to the tariff orders for the years 2004-2005, 2005-2006 and 2006-2007.

3. The appellants are electricity consumers of the general category who were drawing power at 11 KV. Under different notifications, issued from time to time, while other consumers like Induction Furnaces and Arc Furnaces were required to migrate to 66 KV transmission and in the interregnum pay surcharge at the stipulated rate, there was no such requirement for the appellants. The first time that such a stipulation came was in the ARR for the year 2004-2005 which was brought in by a corrigendum dated 15th September, 2004 issued well after the conclusion of the public hearings on the published Annual Revenue Requirement (concluded on 3rd September, 2004). The net result of the above would be that so far as the consumers of the category to which the appellants belong were made to suffer the levy of surcharge without an opportunity of hearing

against the proposed levy. The point though not urged in the pleadings contained in the writ petitions appears to have been projected before the High Court in the course of the hearing. The High Court understood the corrigendum to be a beneficial exercise for the consumers and, therefore, discarded the plea urged with regard to violation of the principles of natural justice.

4. Having read and considered the corrigendum we are of the view that the same has been misconstrued by the High Court inasmuch as the benefit thereunder was afforded only to arc furnaces and the general category consumers like the appellants were brought in within the framework of the surcharge for the first time by the said corrigendum. It is on the aforesaid basis and in view of the provisions of Section 64(3) of the

Electricity Act, 2003 that we are considering the appeals notwithstanding the fact that there was no challenge by the appellants to the tariff order(s) of any of the three years which issue is not being dealt with by us in the present order.

5. As the provisions of Section 64(3) of the Electricity Act, 2003 appears to have been infringed and the levy of surcharge imposed on the appellants were without adequate notice and opportunity to them we are of the view that insofar as the year 2004-2005 is concerned, the appellants ought to be afforded the necessary relief. We have considered the options available to us at this stage insofar as grant of relief is concerned, specifically, in a situation where over a decade has elapsed in the meantime. Having debated and considered the precise relief that would be in consonance with the principles of justice we are of

the view that so far as the year 2004-2005 is concerned the bills raised against the appellants on account of levy of surcharge should be to that extent interfered with by us. We make it clear that the above relief will be confined only to the present appellants who have approached this Court.

6. We have perused the tariff orders along with the extracts of the ARR for the years 2005-2006 and 2006-2007 which have been placed before us by Shri V. Giri, learned Senior Counsel appearing for the respondents. The tariff orders for the aforesaid two years do not indicate any fundamental flaw which would require us to interfere either with the exercise undertaken or the refusal of the High Court to interfere with the same to the remaining extent, namely, the years 2005-2006 and 2006-2007. It appears from a reading of the aforesaid two tariff orders that the

abridged version of the ARR was duly published; objections were invited/received and duly considered and thereafter the matter was proceeded with.

7. Consequently and in the light of the above, we are of the view that the bills raised on the appellants which were the subject matter of challenge before the High Court in the writ petitions should receive our interference so far as the levy of surcharge for the year 2004-2005 is concerned. The levy of surcharge for the years 2005-2006 and 2006-2007 will remain unaffected. Proportionate adjustment will be made by the respondents and relief to that extent will be granted to the appellants.

8. There is another dimension of the case in one of the appeals, namely, Civil Appeal Nos.6293-6294 of 2013 where there is a categorical assertion on the part of the

appellant therein that the appellant had tendered payment of the necessary charges for conversion to 66 KV on 28th August, 2006. The line was energized on 31st March, 2008. Relying on clause 5.8 of the Electricity Supply Regulations, 2004 it is contended that the appellant would not be liable to pay surcharge for the period from the date of the deposit of the costs for the switch over to 66 KV, namely, from 28th August, 2006. As the date of payment and date of energisation appears to be disputed and in any event as the said claim would need verification of facts, we are of the view that the appellant in Civil Appeal Nos. 6293-6294 of 2013 should be left with liberty to raise the said claim before the respondent - Authority by giving full particulars. Thereafter, the said claim will be considered by the respondent - Authority in accordance with law and

relief, if any, as may be due, in terms of the Electricity Supply Regulations of 2004 would be afforded to the appellants.

9. All payment(s) and refund, if any, as may be due in terms of the present order will be made as expeditiously as possible. As earlier observed, benefit(s) under the present order is confined only to the appellants before this Court.

10. All the appeals shall stand allowed to the extent indicated above.

.....,J.
(RANJAN GOGOI)

.....,J.
(NAVIN SINHA)

NEW DELHI
MARCH 01, 2017