

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No.13117 of 1999

Date of decision: **01**.04.2015

Haryana Vidyut Prasaran Nigam through its Executive Engineer,
System Operation Shakti Bhawan, Sector 6, Panchkula.

... Petitioner

versus

Union of India through its Secretary, Irrigation & Power
Department, New Delhi, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Birender Singh Rana, Senior Advocate,
with Mr. Rajinder Paul, Advocate,
for the petitioner.

Mr. Arun Nehra, Advocate,
for respondents 1 and 4.

Mr. Vikas Chatrath, Advocate,
for respondent No.2-UT, Chandigarh.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J.

1. The Haryana Vidyut Prasaran Nigam (for short, HVPN) claims through the writ petition a direction for payment of ₹19,15,64,377.30 paise as the amount that was required to be made good principally by the Union Territory of Chandigarh and the

Bhakra Beas Management Board (for short, BBMB) in the manner of pilferage of electricity alleged to have been caused by the respondents, who are arrayed as respondents 2 and 4. The Union of India is arrayed as the 1st respondent liable for the activities of the officers of the Union Territory. The Chief Engineer, Engineering Department is also made as a party as the officer at whose instance, the pilferage was alleged to have resulted. The claim is made by the petitioner as a successor organization to the Haryana State Electricity Board. In the manner of production of electricity from Bhakra Dam, a project that involves the States of Himachal Pradesh, Punjab, Haryana and Rajasthan, there was an agreement originally between the States of Punjab and Rajasthan for distribution of power that was generated in the ratio of 84.78:15.22. Subsequently on the formation of the States of Punjab, Haryana, Himachal Pradesh and Union Territory of Chandigarh, the proportion of the entitlement of share was distributed amongst the 4 above named entities in the ratio of 54.5:39.5:2.5:3.5 respectively. This arrangement of apportionment had been brought about through an agreement dated 17.06.1967.

2. The power to Chandigarh from BBMB from the place of power generation, is transmitted through the 66 KV Sub Station at Chandigarh. It receives power from Dhulkote and Pinjore in Haryana respectively. The petition claimed, as genesis to the claim

made, to a situation in the year 1989, where it was alleged that one M/s Bhushan Industries situate in Chandigarh was committing theft of energy and the complaint was ordered to be investigated when it was found that M/s Bhushan Industries was the beneficiary of a release through a 33 KV bus (i.e. a small power feeder) installed at 66 KV power station at Chandigarh. Thus the power supplied from the 66 KV Sub Station was being given directly to M/s Bhushan Industries through 33KV independent feeder from Chandigarh. No approvals had been taken from the competent authorities and the investigation revealed that the supply was un-metered. According to the counsel, it meant that the power generated by BBMB to feed the Chandigarh consumers through its 66 KV Sub Station was surreptitiously allowed to be pilfered by a private Company without any metering to regulate or calibrate the power consumed by the private Company.

3. The Haryana Electricity Board after investigation wrote to the BBMB authorities, but there was no response and a complaint was registered with the CBI. It held after investigation that the officials of the Union Territory had connived with M/s Bhushan Industries for committing theft but the report of the CBI was not followed up through any action.

4. The petitioner would state that the agreement that provided for the sharing of power in a particular proportion had

been flouted as a result of which, the petitioner had to suffer the loss. The details of loss as claimed in the writ petition are set out in a notice issued by the Secretary of the Haryana State Electricity Board to the Chairman of BBMB through a letter dated 29.08.1991. The said communication gives an explanatory note to the method adopted in calculating the excess energy drawn by the Chandigarh Administration over and above what was billed to them.

5. The power to Chandigarh was supplied through three sources, that is, from two points, namely, 132 KV Sub Station at Pinjore and 220 KV Sub Station at Dhulkote. It also draws power from Punjab through 220 KV Sub Station at Mohali. The electric energy at Pinjore, is received from 132 KV Sub Station at Ropar. The energy sent from Ropar is metered at Ropar at 132 KV output. The energy received at Pinjore is stepped down to 64 KV and transmitted to the following:

- (a) Two circuits to Chandigarh;
- (b) One circuit to Solan;
- (c) One circuit to BCW, Surajpur;
- (d) One circuit to local Pinjore; and
- (e) One circuit to Panchkula.

The diagram showing the incoming and outgoing connections in BBMB with the respective metering details as provided by the counsel for the petitioner and the status of metering during 1985 are

as under:-

Status of Metering during 1985

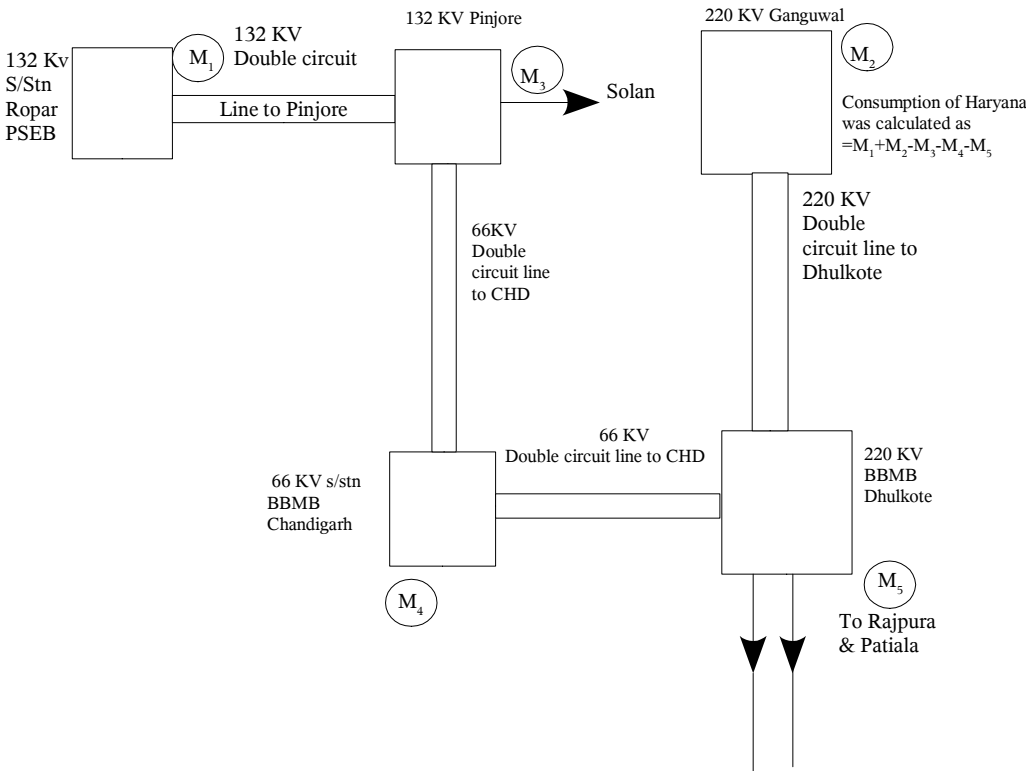
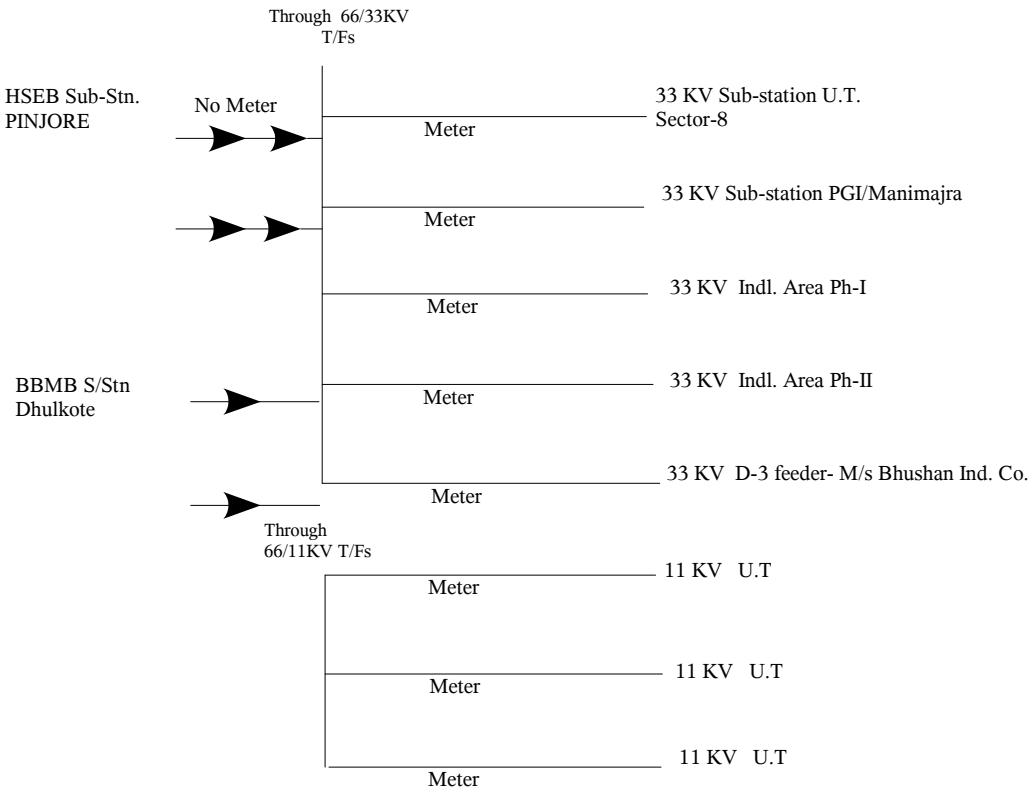


Diagram showing Incoming and outgoing connections in BBMB, Chandigarh Metering Retails



6. The elaborate CBI report is also brought on record and exhibited as Annexure P3. The investigation has proceeded on criminal case registered under the relevant provisions of Indian Penal Code, Prevention of Corruption Act and Indian Electricity Act. The investigation has directed its attention between the period 1984 to 1990. The correctness of the methodology adopted by the CBI to arrive at the loss or its finding regarding the persons that were found to be responsible for the pilferage is relevant but the extent of its reliance is beset by limitation by the nature of reliefs claims and the persons who are sought to be made liable.

7. The investigation was attempting to particularize the laches at various levels by the officials of the Chandigarh Administration through the Engineering Department and the officials of the BBMB Board. The pilferage is said to have been established and the attempt of the CBI enquiry was to identify the various officers who had contributed to the large scale pilferage to benefit a single Company. It has proceeded to give the recommendations for prosecuting some of the officers for offences under the various provisions of the Indian Penal Code, Prevention of Corruption Act and the Indian Electricity Act. Alongside the submission of report from CBI was a letter issued by the Secretary of the petitioner-institution to the Chairman of the BBMB.

8. The Chandigarh Administration filed a reply contending that the appropriate remedy would be only to file a civil suit and the amount cannot be assessed through a writ petition. The Chandigarh Administration would contend that even the manner of assessment of loss is not uniform, for, according to the petitioner, the demand is made on the basis that there was no metering at some of the feeding and receiving points, whereas the CBI in its investigation had determined the alleged loss on the basis of production data of the private Company vis-a-vis the consumption of electricity and consequently, there was a huge difference in the determination of loss by the petitioner and the CBI. The Union would also take the objection about the non-impleadment of M/s Bhushan Industries which was supposed to have been the beneficiary. Actually one energy meter had been installed on the feeder in the BBMB 66 KV Sub Station, Industrial Area, Chandigarh, from which the connection had been released to the Company. It was from this meter that the consumption was recorded for global accounting as well as for feeding of the consumers. Admittedly, the reading of the monthly consumption of electricity from the Sub Station was recorded in the presence of the representatives of all the concerned. Since the meter installed was within the premises of the 66 KV Sub Station which was directly under the control of the BBMB, the alleged pilferage cannot be attributed to the Chandigarh Administration.

9. The Union and the BBMB would make a joint written statement and contend that even as per the petitioner's averment, the cause of action for the petitioner arose on 29.08.1991 when it had lodged its claim with the BBMB (Annexure P4) and, therefore, the period of limitation for filing a normal civil suit would have arisen from that date itself and if the suit were to be instituted, it would have barred by limitation and only to cover up the delay, the writ petition has been filed in the year 1999.

10. The first contention, therefore, stated as a preliminary objection is that the claim was barred by limitation and laches. According to the BBMB, the only correct apparatus for recording the electricity consumption is the energy meter and the assessment to damage cannot be made through any other process without assessing the actual energy that could have been consumed. The mode of theft or tampering of electricity has not been specifically found by CBI in its enquiry. The assessment of loss as made by CBI itself was on the basis of production of the industrial unit of the Arc Furnace at M/s Bhushan Industries. The consumption of electricity per tonne was subject to wide variations depending upon various operating conditions of arc furnace. The assessment of loss cannot be therefore made in the manner done by CBI and be taken as the basis for the petitioner's claim. BBMB would also contend that M/s Bhushan Industries itself was not a consumer directly under it and

there was no privity of contract between BBMB and M/s Bhushan Industries. BBMB was supplying power only to Chandigarh Administration and the Chandigarh Administration in turn was supplying power to M/s Bhushan Industries and billing them on the basis of meter installed at 33 KV Feeder D3 of BBMB. BBMB had never been informed at the time when the Union Territory had requested for an additional 33 KV Feeder that it was going to the benefit of 66/11 KV transformers and utilize the spare capacity of 66/33 KV transformers at their Chandigarh Sub Station to a private Company. BBMB agreed for the additional 33 KV Industrial Area Feeder from 66 KV Sub Station subject only to the condition that total load of the Sub Station would not exceed the capability of the transformer/line conductor. The Superintending Engineer, U.T., according to the BBMB, never brought it to their attention that the additional feeder was to be used by any particular consumer. The UT Administration used this additional feeder for supply of energy to an independent consumer and the supply was duly metered as supplied to UT. The petitioner had never raised any objection on the monthly accounts circulated with the BBMB ever since January 1985. The details of energy consumed were duly reconciled in Power Controllers meetings periodically and the constituents were requested to check up and notify discrepancy, if any, within the stipulated period of 20 days from the date of account.

11. From the narration of facts from the elaborate pleadings made by the parties, all that can be noticed is that by the alleged connivance of officials of BBMB and Chandigarh Administration, a private Company had the benefit of pilfering electricity energy that was to be supplied to the share of Haryana and the loss that has resulted is quantified by the fact that the petitioner has already contributed to the share and the benefit enjoyed by the private Company must be sourced to the conniving officials of BBMB and the Chandigarh Administration and they must take the vicarious liability for the loss occasioned to the petitioner. The only mode of assessment has proceeded on some technical lines which were not attempted to be explained by any of the counsel appearing on behalf of the parties. The principal party who was responsible for drawal of power and who had enjoyed the benefit is itself not a party to the writ petition. There could be serious issues of the maintainability of an action not merely on the ground of limitation if it was to be instituted as a civil suit but also on the ground that the principal beneficiary of the theft and who had caused loss is himself not made a party but the State institutions are alone sued as parties vicariously liable. I have also no information about the stage of any criminal prosecution against the officials of BBMB of Chandigarh Administration pursuant to CBI investigation.

12. This is a case that involves huge loss to the public exchequer and if we are considering the loss occasioned to the petitioner which is a public body and if he must see that the loss was caused by yet another public institution or institutions, even if the petitioner were to be granted the relief, it secures no personal benefit. It secures the benefit to one public institution at the detriment of another. The overall loss is to the public. It is in this context that the redress through court litigative process, irrespective of actions by one public body against another public body, was conceived to be wholly inexigent. The Supreme Court held in **Oil & Natural Gas Corporation Limited Versus City & Indust. Dev. Corpn., Maharashtra and others-2007(7) SCC 39** that the filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court was not only against the propriety and polity as it smacks of indiscipline but was also contrary to the basic concept of law which required that for suing or being sued, there must be either a natural or a juristic person. The Supreme Court therefore exhorted that the States and the Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. The Supreme Court therefore issued a direction to form a high level comprising officers of Secretary level to sort out

differences. Such an exhortation did not cut ice with the executive is another strong.

13. I do not think the objection regarding limitation is formidable since there is no particular fetter for realizing the claims of one State authority against another. It cannot be seen through the prism of settling rights between private individuals or by a private individual against a State or by the State against a private individual. A State to State action stands on a different footing and if we must invoke the same principle as would applicable for suits between State or Union or between State to State or Union to State as contemplated under Article 131 of the Constitution of India, there is no bar of limitation. The Supreme Court held in **State of Himachal Pradesh Versus Union of India-2011(13) SCC 344** that Article 131 of the Constitution does not prescribe any limitation period for filing any inter-State institutes. If I am unable to embark on the relief to the petitioner, it is on account of the difficulties brought to fore by the petitioner's own conduct. By resort to an action through the writ petition where the principal beneficiary of an action of theft is not before the court, any decision that casts the liability against the State organization as vicarious would have a cascading effect of the State institutions proceeding against their officials and the officials seeking for recourse to an action against the beneficiary. Neither the State officials nor the private Company who could have acted in

collusion and taken the benefit are before the court and it is not possible to even assess whether such a shifting of liability could be made without involving them in the adjudicatory process. It would seem like going on circles chasing the real culprit and without recovering the loss from the person, who has secured the benefit. Granting the relief merely to the petitioner at the expense of respondents 2 and 4 would be robbing Peter and paying Paul. I decline to make an intervention through the writ petition as wholly inexpedient. Even the amount claimed seems arbitrary to me for method of calculation of the loss is not clearly explained anywhere in the petition and I had difficulties fathoming the basis from the letter issued by the petitioner to the Chairman BBMB (Annexure P4). A better day will come when the criminal investigation would identify the actual persons who had committed the theft and how the benefit was split. There ought to be better evidence of the actual mode of assessment of the loss. The persons responsible for the loss must also be isolated. All this cannot be done through a writ petition.

14. No action can proceed without the impleadment of persons who are primarily responsible for the theft. The principle of filing a suit merely against a master for a wrong committed by a servant cannot be adopted for criminal wrongs. While vicarious liability is the principle of tortious wrong, criminal law does not

recognize anything beyond the recognition of liability to an abettor who may be a non-actor or a person, who has shared common intention to commit the particular wrong and the final actor's offence could be attributed to the previous actors by an unbroken chain of contacts. I find no law of liability as making possible for the petitioner to sue either the BBMB which generated the power and made the installations nor the Chandigarh Administration itself which had been the conduit for the ultimate benefit by a private Company. The basis of the action itself is nebulous and I cannot grant any relief to the petitioner on this score as well. The writ petition is consequently dismissed.

(K.KANNAN)
JUDGE

01.04.2015
sanjeev