

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.3809 of 2013 (O&M)

Date of decision:08.01.2015

Amaltash Residents Welfare Association (The Laburnum Condominium), through its Resident Welfare Association, Sushant Lok, Sector 28, Gurgaon, Haryana, through its President Shri Vijay Krishan Pahwa.

... Petitioner

versus

Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) (A Government of Haryana Undertaking), Vidyut Sadan, Vidyut Nagar, Hissar –125005, Haryana, through its Chairman and Managing Director, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. M.L. Sarin, Senior Advocate,
with Mr. Rohit Khanna, Advocate,
and Mr. Saurabh Gautam, Advocate,
for the petitioner.

Mr. S.K. Hooda, Advocate,
for respondent No.1.

K.Kannan, J. (Oral)

1. The matter in challenge by the petitioner-association are the decisions of the Chairman of the Redressal of Consumer Grievances and the Appellate Authority, namely, Ombudsman of the Haryana Electricity Regulatory Commission. The subject on which the association aired its grievance was that after the alleged inspection made at the premises, they found that the differential tariffs applied for domestic use at ₹ 3.50 paise and ₹4.09 for bulk

non-domestic use was being extended on an understanding that the domestic use within the entire area will be to the extent of 85% and non-domestic use will be for common service for 15% and this was alleged to be breached by having a higher percentage of electricity of common facilities at a higher percentage of area. In the manner of reckoning the Electricity Commission had included areas for lift, fire fighting equipment and water supply as falling with non-domestic common area and this was the subject of grievance of the petitioner-association that they ought not to have been so included but they should be taken as electricity supply given for residential purpose only. If such a reckoning was to be made, according to the association, it would be seen that the power supply was only on the agreed manner of distribution of 85% to residential use and 15% to common facilities.

2. The matter required an adjudication only because there had been no specific definition of what would qualify for residential use and for common use. This came to be resolved by Haryana Electricity Regulatory Commission on 03.09.2010 (Annexure P16) at the instance of Beverly Park Condominium, Gurgaon and it was held by the Commission that the connected loads of lift, fire fighting equipment and water supply pumps would henceforth be included to domestic use within 85% of the total connected load. The petitioner's contention was that if the Commission's

recommendations were to be applied, it would seen that the connected load was in the manner already stipulated and there was no additional load cast on common facilities.

3. The two authorities have held that this decision of the Commission will be operative only prospectively and it cannot be given effect from the time if the initial demand was made in the year 2007. Admittedly, the petitioners have paid at a higher tariff at ₹4.09 paise even for the connected load to lift, fire and water supply pumps as though they were for non-domestic use. I find if the Commission was clarifying in the absence of specific definition that the 3 above noted uses were to be treated as part of domestic supply, then it ought to be applied in a similar fashion even retrospectively from the date when the higher tariff was applied. Indeed it appears that the Appellate Tribunal of the Electricity Commission has taken such a view in the decision against the Regulatory Commission by its decision in appeal No.117 of 2012. The appellate authority has upturned its own order as clarificatory in nature and that the tariffs would be worked out treating lifts, fire fighting equipment and water supply as in domestic use retrospectively, that is, the date from which the bulk domestic supply was credited by the State Commission. The decision of the Appellate Tribunal ought to therefore prevail over the decision which has already been taken by the authorities which are impugned before this court.

4. Consequently, the order already passed are quashed in the light of the decision of the appellate authority and the amount paid in excess shall be readjusted against the future liabilities. The appellate authority has already granted 10% interest on the excess amount collected and the same rate of interest will also have to be credited to the benefit of the association in the manner of adjustment.

5. The writ petition is disposed of on the above terms.

(K.KANNAN)
JUDGE

08.01.2015
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