

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

LPA No.231 of 2016 (O&M)

Date of decision: 27.07.2016

Haryana Vidyut Prasaran Nigam

.....Appellant

Versus

Union of India and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the 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*

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Sidhant Kant, Advocate for appellant.

DARSHAN SINGH J.

CM No.461-LPA of 2016

This application has been moved under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter called the 'CPC') for condonation of delay of 5 days in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the same is allowed and the delay of 5 days in filing the present appeal is hereby condoned.

LPA No.231 of 2016

The present appeal has been preferred by the Haryana Vidyut Prasaran Nigam Limited (hereinafter called the “Nigam”) against the judgment/order dated 01.04.2015 vide which the learned Single Judge has dismissed the Civil Writ Petition No.13117 of 1999 filed by the appellant-Nigam.

2. The appellant-Nigam has filed the writ petition seeking direction to the respondents to make good the loss (in terms of electricity units) amounting to Rs.19,15,64,377.30 along with interest @ 18%, caused to the petitioner on account of pilferage of electricity with effect from January, 1985 to June, 1990 due to lack of vigilance and acts of omission and commission on their part.

3. The appellant-Nigam came into existence by Haryana Act No.10 of 1998 on 10.03.1998 and for all practical purposes, it became the successor body of the erstwhile Haryana State Electricity Board. At the time of inception of the Bhakra Beas Management Board (hereinafter called the “BBMB”), the composite State of Punjab and Rajasthan had collaborated in the construction of a dam across the river Sutlej at Bhakra to set up a Hydro Electric Generation Plant. An agreement was effected between the State of Punjab and Rajasthan on 13.01.1959 (Annexure P-1). That in the year 1965 the re-organization of States took place and composite State of Punjab was divided into three States *i.e.* State of Punjab, State of Haryana and State of Himachal Pradesh. All the newly created States became the partner, who were entitled to share the power to be generated by the Bhakra Hydro Electric Project. The agreement dated 17.04.1967 came

into existence. As per the said agreement, the percentage of power to be shared between the respective States is as under:-

Punjab	:	54.5 %
Haryana	:	39.5%
Chandigarh	:	3.5%
Himachal Pradesh	:	2.5%

4. The electrical energy to the Union Territory, Chandigarh used to be transmitted and supplied through 66 KV Grid Sub Station, Industrial Area, Chandigarh. The transmission lines which were laid, installed and maintained by the BBMB/State of Haryana and Union Territory, Chandigarh. The power to 66 KV Sub Station BBMB, Chandigarh was being supplied from 220 Sub Station, Dhulkot and also from 132 KV Sub Station, Pinjore. In the year 1989, a complaint was received by the appellant that M/s Bhushan Industries, Industrial Area, Chandigarh was committing theft of energy besides violating the power regulatory measures. The said complaint was thoroughly investigated and it was revealed that power connection to M/s Bhushan Industries was released in December, 1981 from 33 KV bay at 66 KV Sub Station, Industrial Area, Chandigarh, against the provisions of the Indian Electricity Act, 1910 and the Rules made thereunder. It was also revealed that M/s Bhushan Industries has been using more than sanctioned limit incorrectly which was metered and the energy was accordingly being pilfered with the connivance of the official of BBMB and Union Territory, Chandigarh causing direct loss of energy to the appellant. Ultimately, the matter regarding theft of electricity was referred to the Central Bureau of Investigation (for short the "CBI"). The CBI

carried out the detailed investigation and came to the conclusion that M/s Bhushan Industries indulged in theft of electricity in connivance of officials of the BBMB and Union Territory, Chandigarh as the electricity was being supplied to M/s Bhushan Industries against the statutory provisions of the Indian Electricity Act and the Rules framed thereunder and the appellant was made to suffer in the matter of excess billing of electricity from 01.01.1985 to June 1990 in terms of 15.8 crore units amounting to Rs.19,35,95,737/- plus interest. Hence, the writ petition.

5. The respondents contested the writ petition by filing the separate written statements. Respondents No.1 and 4 pleaded that the whole claim raised in the petition is based on the alleged theft of energy by M/s Bhushan Industries, Chandigarh, which was a necessary party but has not been impleaded. The theft of electricity has been tried to be established merely on the basis of surmises, conjectures and possibility of theft through various means. The procedure adopted by the appellant is totally hypothetical, arbitrary and based on numerous assumptions which is not an established accounting procedure. It was further pleaded that the energy meters were provided on all out going feeders through the Union Territory at 66 KV Sub Stations of BBMB at Chandigarh. The CBI report does not establish any mode of theft of electricity. The said report is also based on conjectures, surmises, presumptions and possibilities. It was further pleaded that there was no privity of contract between it and M/s Bhushan Industries.

6. Respondents No.2 and 3 *inter alia* pleaded that the electricity connection given to M/s Bhushan Industries, Industrial Area, Chandigarh was through an independent feeder from 66 KV Sub Station, Industrial

Area, Chandigarh, which is otherwise under the complete operational and maintenance control of BBMB *i.e.* respondent No.4. The writ petition filed by the appellant was not maintainable and the only remedy available to them was to file a civil suit in the Court of competent jurisdiction, for which in fact, the appellant had already initiated the process by serving the legal notice under Section 80 of CPC to the respondents, which was duly answered. It was further pleaded that the appellant has based its claim on the basis of electricity assumed to be supplied from 220 KV Sub Station Dhulkot and 132 KV sub Station, Pinjore, in the absence of complete metering at some of the feeding and receiving points, whereas the CBI in its investigation has determined the alleged loss on the basis of production data of M/s Bhushan Industries. In this way there is huge difference in the determination of loss by the appellant and the CBI. It was further pleaded that since the meter installed was within the premises of 66 KV Sub Station, which was directly under the control of the BBMB, therefore, the alleged pilferage of electricity cannot be commented upon. With these pleas, the respondents pleaded for dismissal of the writ petition.

7. The learned Single Judge, on appreciating the material on record and contentions raised by the parties, dismissed the writ petition vide the impugned judgment/order dated 01.04.2015. Hence, this appeal.

8. We have heard Mr. Puneet Jindal, learned Senior Advocate with Mr. Sidhant Kant, Advocate, learned counsel for the appellant and have meticulously examined the record of the case.

9. The learned Single Judge has dismissed the writ petition primarily on the grounds that M/s Bhushan Industries, Industrial Area,

Chandigarh, the beneficiary of the pilferage of electric energy was not impleaded as party to the petition; secondly, that the mode of assessment has proceeded on some technical lines which was not attempted to be explained by the learned counsel for the parties and even the amount claimed seems to be arbitrary; thirdly, there ought to be the better evidence on actual mode of assessment of the loss and the persons responsible for the loss, which cannot be done through writ petition.

10. Mr. Puneet Jindal, learned Senior Advocate contended that M/s Bhushan Industries, Industrial Area, Chandigarh was not privy to the contract with the appellant, so the appellant could not raise the claim against the said industry. He further contended that in the written statement filed by the Chandigarh Administration, the loss on account of pilferage of the energy is clearly admitted. This material fact has been overlooked by the learned Single Judge. He further contended that the CBI has conducted the thorough investigation. It was found that the pilferage of electric energy had taken place as a result of connivance between the officials of the BBMB, Electricity Department of the Chandigarh Administration and M/s Bhushan Industries, Industrial Area, Chandigarh. The investigation conducted by the CBI vindicates the stand of the appellant. He contended that once the pilferage was not disputed in the written statement filed by respondents No.2 & 3, there was no reason to decline the claim of the appellant by the learned Single Judge.

11. We have duly considered the aforesaid contentions.

12. In the writ petition filed by the appellant, a specific amount has been claimed on account of pilferage of electricity due to lack of

vigilance and acts of omission and commission by the officers/officials of the respondents in connivance with M/s Bhushan Industries, Industrial Area, Chandigarh, the beneficiary.

13. It is settled principle of law that where the facts are disputed and evidence of the parties is required to adjudicate upon the claim, the writ petition is not the appropriate remedy. We do not find any substance in the plea raised by the appellant that there is an admission in the written statement of respondents No.2 & 3 with respect to the pilferage of energy and loss. In order to act upon, the admission should be unequivocal and unambiguous. In the written statement of respondents No.2 & 3, there is no such admission, rather in the written statement, respondents No.2 & 3 have mentioned that the appellant is claiming the amount of **alleged** loss and amount of **alleged** pilferage of electricity by M/s Bhushan Industries, Industrial Area, Chandigarh from the electricity connection given to them from independent feeder from 66 KV Sub Station, Industrial Area, Chandigarh, which is under the complete operational and maintenance control of the BBMB. It is further pleaded that the appellant had based its claim on the basis of electricity assumed to be supplied from Sub Station Dhulkot and Pinjore in the absence of complete metering at some of feeding and receiving points. Whereas the CBI in its investigation had determined the loss on the basis of production data of the said industry and in this way, there is huge difference in determination of loss by the appellant and the CBI. So, from the aforesaid averments in the written statement of respondents No.2 & 3, it comes out that there is no admission with respect to the alleged loss on account of pilferage of energy to the amount claimed

by the appellants, rather even the method of determining the loss by the appellant and the CBI has been stated to be entirely different.

14. The learned Single Judge has rightly observed that the method of calculation of loss is not clearly explained anywhere in the petition. The factum regarding pilferage of energy and resultant amount of loss is a matter of evidence, which is beyond the scope of the writ petition being a disputed question of fact. The appellant in order to succeed, was required to quantify the loss on the basis of cogent and legally admissible evidence. Said course is not permissible before the writ court. No doubt the inquiry/investigation in the matter was carried out by the CBI and prosecution of the officials and the Directors of M/s Bhushan Industries, Industrial Area, Chandigarh was recommended, but it was a settled legal position that the result of investigation is itself not a substantive legal evidence. The conclusion arrived at by the investigating agency in the investigation has to be established by adducing the substantive evidence in the Court of law and that stage is yet awaited.

15. Even as per the averments in the writ petition filed by the appellant, M/s Bhushan Industries, Industrial Area, Chandigarh was the beneficiary of the pilferage of the energy. The learned Single Judge has rightly observed that 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 shifting of liability could be made without involving them in the adjudicatory process. So, the appellant cannot lay the claim without impleading M/s Bhushan Industries, Industrial Area, Chandigarh, who was primarily responsible for the

pilferage/theft of energy and in the absence of M/s Bhushan Industries, Industrial Area, Chandigarh, it is not possible to determine the liability of the respondents whose officials/officers are rather alleged to be conduit for the ultimate benefit of the said industry. Consequently, there is no scope of interference with the well reasoned findings arrived at by the learned Single Judge.

16. Resultantly, the present appeal being devoid of merits, is hereby dismissed.

(SURYA KANT)
JUDGE

(DARSHAN SINGH)
JUDGE

27.07.2016

sunil yadav

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No