

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

**CWP No.19147 of 2013
Date of decision:12.05.2017**

UHBVNL and another

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.S.Poonia, Advocate
for the petitioners.

Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Suresh Monga Advocate
for respondent No.3.

AMIT RAWAL J.

Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) through its XEN Operation City Division seeking quashing of the order dated 31.05.2013 (Annexure P-16) rendered by the XEN, M&P: CC Division HVPNL Panipat exercising the powers of Appellate Authority under Section 127 of the Electricity Act, 2003.

Mr. P.S.Poonia, learned counsel appearing on behalf of the petitioners submits that a bulk supply domestic connection bearing account No.BS-01 having sanctioned connected load of 987.600 KW on H.T. Supply is in the name of respondent no.3 under operation Sub Division, UHBVNL, Rai District Sonipat. On 06.12.2012, the connection was inspected by a team of UHBVNL headed by Assistant Engineer Enforcement, UHBVNL, Rohtak commonly known as Assistant Director

Vigilance. During the aforementioned inspection, it was noted that 36.331 KW load was running for building construction through underground LT Cable from LT of T/F 2. Even the DG set was in off position, i.e. not running and the load was running through a underground LT cable taken from LT of T/F-2 installed in Tower-4. On further inquiry by the inspection team, it was found that 11 KV electric supply to the T/F-2 had been taken from meter (11 KV) O/G installed in the adjacent tower T-3. On checking of the metering room, no window in the front of the wall was observed which is in violation of the instructions of the UHBVNL.

Even the inspection was duly video graphed. In this regard, a notice dated 12.12.2012 (Annexure P-8) raising a demand of Rs.60,06,893/- was served upon the private respondent No.3 by way of provisional assessment which was objected to vide objections, (Annexure P-9). After giving the opportunity of hearing, final order of assessment was communicated to respondent No.3, vide memo dated 7.1.2013. The petitioners deposited half of the amount of final assessment, i.e.,Rs.3003447/- in the office of SDO OP S/Division, vide demand draft No. 673762 dated 19.01.2013.

He further submits that though during the inspection, demand was revised but the same was done at the back of the petitioners, therefore, he would not be submitting arguments on that point and only assailed the order under challenge by raising following submissions:-

- i) The Appellate Authority has grossly erred in not appreciating the fact that for the purpose of construction of huge magnitude, respondent No.3 was required to apply for

temporary connection for the purpose of housing society being constructed but was found to be drawing the power as per checking report which shows that temporary cable network was laid for transforming of electricity to temporary connection which is kept in open and the electricity was used directly for the purpose of construction being undertaken by respondent No.3 as per photographs (Annexures P-5 and P-6), thus, respondent No.3 was found to be indulging in unauthorized use of electricity. All these factors have completely been brushed the aside.

ii) The Appellate Authority has not taken into consideration the fact that in case, respondent No.3 needed a connection for the purpose of construction activity on his premises with regard to construction of housing society, then he should have applied and got the temporary category connection, but instead of doing that as per Sale Circular No.60 of 2007 dated 10.8.2007 got issued the bulk domestic supply single point connection, falls in category of un-authorised use of electricity, therefore, there is misreading of circular, much less the documentary evidence on record, thus, the order under challenge is liable to be set aside.

Mr. Suresh Monga, learned counsel appearing on behalf of respondent No.3 submits that sale circular would not come into play as the statutory provisions of Section 126 of the Electricity Act, 2003 require provisional assessment and thereafter, final. The sale circular relied upon

had not been approved by the Haryana Electricity Regulatory Commission (HERC). In fact, there was no unauthorized use of electricity at the premises and the load was running for the construction purpose through underground LT cable taken from LT of Transformer No.2 installed in Tower-4 as alleged. In fact, the checking was not done in the presence of the representative of respondent No.3.

He further submits that the order of the Appellate Authority is perfectly legal and justified and do not call for any interference. The Appellate Authority has gone through the checking report of Assistant Director Vigilance and found the lapses which have not been rebutted in the writ petition yet the same has been filed for the sake of it. The video CD prepared by the Vigilance Team for a specific duration of 4.22 minutes and 24 seconds, do not show any of the load in running position. The physical connectivity of the temporary load with the transformer No.2 has also not been checked. Once the cable is underground, it cannot be presumed its point of beginning and thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. P.S.Poonia.

The order of assessing authority, in my view, do not call for any interference as it has been rendered by the authority being an expert and the Court cannot substitute the opinion of an expert until and unless some glaring facts are pointed out which result into perversity and would fall into ambit of doctrine akin to judicial review. On going through the decision

rendered by the Appellate Authority, thrust of the finding had been on the account, that the electrification plan for 9.77 acre land had been approved by CE OP UHBVN, Rohtak vide memo No.Ch-2/C-268/DRG-SNP dated 19.10.2010, so therefore, it could not be said to be case of resale of the power. The aforementioned approved electrification plan consists of four towers, T-1, T-2, T-3 and T-4 having plots of various sizes. Tower No.4 is within the same premises of the consumer for which the Bulk Supply (Domestic) connection had been sanctioned. The report of vigilance had been examined which revealed that the connectivity of the T/F2 with the load had been relied upon the statements of the persons present at the site which were not even video graphed but were just heard in the CD accepting that the motors would run when switched ON, therefore, in my view, the electricity department failed to prove the source of power - whether generator's or Nigam's supply. Even the physical connectivity of the temporary load with the transformer 2 had not been checked. The demand of electricity was based on the presumption of underground cable. The role of the electricity department is to provide succor to the consumer to sensitize about the eligibility of connection, i.e., as and when any consumer applies for electric connection, the officers, who were the watchdog of the particular department are required to visit the spot and see the contents of the application for which the connection had applied for and accordingly, advice the consumer to apply for any of the connections as per the Act, Regulations and Sales Manuals and should not burden the consumer and equally so, the consumers are also required not to indulge into theft of electricity or unauthorized use of the same, much less not indulge into

'Kundi' connection. Equal balance is required between the electricity department and consumer so that litigation is minimized and the people are not harassed with hefty demand of penalty. While conducting inspection of the premises, the electricity department should conduct the inspection not only in the presence of the representative of the consumer but should be done by taking the witness of the vicinity in order to rule out the element of biasness and certain other consideration.

For the reasons aforementioned, in my view, the order of the authority below allowing the appeal and ordering for refund of Rs.30,03,447/- deposited by the consumer do not call for any interference, much less do not fall within the realm of judicial review to form a different opinion while exercising the powers under Article 226 of the Constitution of India.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

May 12, 2017
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No