

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

CWP No.19608 of 2013
Date of decision : 15.05.2017

Amar Nath

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ranjit Singh Saini, Advocate for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. P.S. Poonia, Advocate
for UHBVNL-respondent Nos.2 and 3.

Mr. R.S. Budhwar, Advocate for respondent Nos.5 and 6.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the order dated 26.08.2013 (Annexure P-16) passed by the Lokayukta, Haryana, Chandigarh, whereby auction proceedings being conducted by the officials of the Uttar Haryana Bijli Vitran Nigam Ltd. has been assailed by respondent No.5.

Mr. Ranjit Saini, learned counsel appearing on behalf of petitioner submits that tubewell connection No.91/SPA was installed by Minor Irrigation Tubewell Corporation, Haryana at Village Tatka, Tehsil

Thanesar, District Kurukshetra. The aforementioned corporation was abolished in the year 2002 and its assets were handed over to the Irrigation Department, Haryana. Ultimately, the tubewell connection, which was installed by the Corporation at Village Tatka, was given to the Tatka Tubewell Irrigation Cooperative Society Limited, 6th respondent, which was registered on 20.05.2003 for the purpose of running the tubewell only. The electric connection of the tubewell was also transferred in the name of society. Since, there were dues against the Corporation, the respondent No.3 disconnected the aforementioned tubewell connection and stopped the electricity supply. The Haryana Government issued instructions dated 23.05.2003 that Cooperative Irrigation Society be formed to control the affairs of the tubewells. However, on 05.07.2010, the Irrigation Department, Haryana put the aforementioned tubewell along with its connection and apparatus to “open auction” which was conducted and the petitioner being highest bidder as per Annexure P-1 and as per the auction proceedings dated 05.07.2010 (Annexure P-2), was successful. On completion of auction proceedings, the petitioner submitted an application to SDO, HBVNL, Pipli for change of the connection. However, it was made clear that earlier connection was in the name of MHTC bearing Account No.BAT 3/243 and its new number is BAR-3/432. The tubewell connection is installed in the land owned by the petitioner. However, the respondent No.6 filed a suit for injunction (Annexure P-6) which was withdrawn and remedy was availed before the Lokayukta but its jurisdiction was objected to being domain of Civil Court or some other competent court. Same was rejected and the connection was ordered to be transferred in favour of the private respondent

No.5.

Mr. Saini, Advocate has also drawn the attention of this Court to the written statement filed by respondent No.3 supporting the case of the petitioner and by relying upon the instructions Annexure R-3/1, to contend, that in case of the absence of the consent of the owner, the electricity connection can be transferred in favour of proprietor provided the purchaser produces the proof of purchase of land/tubewell.

The stand of the 5th respondent in the written statement is that writ petition is not maintainable and deserves to be dismissed as petitioner has concealed the true facts, despite the fact that as per the letter dated 24.11.2010 only the material of the defunct tubewell was sold but not the entire tubewell, much less, connection. No electric connection was shown to be sold in the open auction to the petitioner and as per the no objection, which is shown to be taken by the petitioner from the Executive Engineer, the same was not issued by the Department. An reference has been made to Annexures R-5/2 and R-5/3. Even the information sought under RTI Act from UHBVN conveys that there is no requirement of NOC from the society. Sh. Amar Nath was given NOC being the highest bidder by the Executive Engineer, Water Services Sub Division, Jyotisar.

Department had only auctioned the tubewell and nowhere transferred the electric connection and, therefore, there was no jurisdiction for the Electricity Board to transfer the electric connection, thus, Lokayukta in view of the complaint made against the Officer had the jurisdiction to look into the matter.

Mr. Punia, learned counsel appearing on behalf of respondent

Nos.2 and 3 does not dispute the issuance of circular, much less, factum of the auction, but submits that if the person purchases land along with structures/tubewell, but the change of name, cannot be allowed due to the No Objection by the tubewell owner, due to either non-availability of the seller or the seller declining to give consent for change of name of the sold connection of tubewell. Circular dated 21.10.2004 (Annexure R-3/1) entitles for changing of the name of the tubewell connection in the name of the petitioner.

I have heard learned counsel for the parties and appraised the paper book and of the view that shorn of the facts as indicated above, remedy for challenging the auction and transferring the electric connection lies only by either civil suit or under Article 226, but not before Lokayukta as the disputed questions of fact could have not been looked into by it. The respondent No.5 relied upon contents of the letter to allege that only accessory work has to be done and same could have been decided by preponderance or cross-examination, much less, admissibility of documents but not by Lokayukta. Once the circular of the Electricity Board support the case of the petitioner in my view, the Lokayukta should not have interfered into the alleged complaint of the respondent No.5.

Resultantly, order of the Lokayukta suffers from falsity, illegality and, therefore, cannot be sustainable and is hereby set aside.

Respondent Nos.5 and 6 have agreed to avail the the remedy as indicated above.

Writ petition stands allowed in the aforementioned terms.

It is also a matter of fact that respondent No.6 has also got

participated in the auction proceedings and had not taken any liberty from the Civil Court for withdrawing the suit for injunction, thus, remedy indicated above can always be subject to the objections taken by the successful bidder.

15.05.2017

Pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No