IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 30.8.2018

1. RSA No.5680 of 2015(O&M)

Prem Kumar ….Appellant

VERSUS

DHBVNL and another .....Respondents

Present: Mr. B.S. Mittal, Advocate for the appellant.

Mr. Padamkant Dwivedi, Advocate for respondents.

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2. RSA No.5682 of 2015(O&M)

Sushil Kumar ….Appellant

VERSUS

DHBVNL and another .....Respondents

Present: Mr. B.S. Mittal, Advocate for the appellant.

Mr. Vishal Garg, Advocate for respondents.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J.

This order will dispose of RSA No.5680 and 5682 of 2015 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.5682 of 2015.

The appellant/plaintiff sought declaration to assail additional demand to the tune of Rs.1,13,671/- by way of Bill No.71 dated 08.06.2009 regarding electricity account bearing No.T31-GW51-0001 pertaining to Milk Chilling Centre at village Goriwala, Tehsil Dabwali, District Sirsa raised by respondents/defendants. A relief of permanent injunction restraining the respondents from recovering the aforesaid amount and disconnecting his electricity connection forcibly as well as mandatory injunction directing the respondents to accept regular consumption charges from time to time was also prayed for.

As per the case set up by the appellant, he had set up Milk Chilling Centre at Goriawala in the year 2008. Electric connection bearing account No.T31-GW51-0001 was granted by the respondents. Before granting this connection, a scheme was prepared by the respondents and required charges were got deposited before supplying the energy. The appellant has been regularly paying the bills towards consumption charges and nothing is due against him except the current bill of Rs.29,552/-. The additional demand has been raised without furnishing complete details nor any notice has been served. The additional demand is arbitrary and untenable.

The respondents filed the written statement and admitted that they released the electric connection on 30.05.2008 which is a small power connection. At that time, instructions issued vide sales circular No.D-19/2006 dated 08.05.2006 and No.D-14/2008 dated 24.03.2008 were in force and charges were levied as per these instructions. However, Dakshin Haryana Bijli Vitran Nigam Limited (in short 'DHBVNL') issued another circular No.D-37/2008 and as per information sent by the Chief General Manager/Commercial DHBVNL Hisar vide memo No.CH-37/SE/Comm./R-16/34/2006/S/C dated 06.10.2008, it has been clarified that the previous instructions issued vide aforesaid circulars dated 08.05.2006, 24.03.2008 and D-26/2008 dated 01.07.2008 have been withdrawn and expenditure incurred for releasing the new connection is to be recovered in accordance with HERC Regulation No.HERC/12/2005 dated 26.07.2005. Necessary amendments in sales instruction No.5.14 of Sales Manual 2005 has been considered to have been amended to this extent. Said circular came into force with immediate effect, therefore, they asked the plaintiff to pay Rs.1,09,380/-. After deducing the amount of SC charges, the amount has been correctly levied upon the plaintiff.

The learned trial Court framed the issues reproduced in para 4 of the judgment. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record and by referring to notification dated 26.07.2005 Ex.D3 containing provision for recovery of expenditure and taking into consideration that respondents had failed to bring on record any evidence to show that connection of the plaintiff is beyond 30 mtr. area, plea of the plaintiff that the respondents are not entitled to levy additional charges was accepted. Resultantly, suit of the appellant/plaintiff was decreed with costs and the respondents were restrained from recovering additional amount and disconnecting the electric supply for non-payment of additional amount.

The judgment of trial Court became subject matter of challenge before the Court in appeal and the Court by relying upon judgment of this Court **Bhupinder Vs. DHBVNL in CWP No.3592 of 2010 decided on 22.03.2010** reversed judgment of the trial Court by holding that facts of the case involved in Civil Writ Petition are fully in conformity with the facts of the present case and DHBVNL has asked the plaintiff to pay Rs.1,13,671/- i.e. estimated cost of connection in view of circular dated 26.07.2005 of HERC in view of its circular No.D-37/2008 dated 06.10.2008.

Counsel for the appellant would argue that the judgment passed by the Appellate Court by relying upon judgment of this Court in **Bhupinder Singh's case** (supra) is the result of non-application of mind and cannot be allowed to sustain. It is vehemently argued that in **Bhupinder Singh's case** (supra), the issue before this Court was entirely different from the one involved in the present case which is covered under Regulation 4.1 part III of the Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2005 (in short 'the Regulations'). It is further argued that as in the case at hand, there is no denial to the case set up by the appellant that distance from terminal pole is less than 30 mtrs, it is the responsibility of the licensee to lay down the distribution system and no charges shall be recoverable from the applicant on this account except as provided under the Regulations. According to counsel, as per Regulation 4.1, the licensee also has the obligation to provide the service cable up to 30 mtrs from terminal pole to the metering cubicle, as noticed by the trial Court. It is argued with vehemence that the respondents till date have failed to disclose much less explain as to under which Regulation they have raised the additional demand of more than Rs.1 lakh. The last submission made by counsel is that since the judgment passed by this Court in **Bhupinder Singh's case** (supra) cannot be applied to the controversy involved in the present case, the judgment passed by the Court in appeal cannot be allowed to sustain and liable to be set aside.

Counsel representing the respondents has supported judgment passed by the Court in appeal with the submission that after withdrawal of circulars dated 08.05.2006, 24.03.2008 and 01.07.2008 with effect from

06.10.2008 vide memo Annexure A-2, expenditure incurred for releasing new connection would be recovered in accordance with the Regulations, therefore, additional demand raised by the respondents has rightly been upheld by the Court in appeal while reversing the judgment of the trial Court.

I have heard counsel for the parties, perused the paper-book and records.

Indisputably, connection in favour of the appellant was released on 30.05.2008 and he had paid all the charges demanded by the respondents in this regard. Counsel for the respondents has not disputed that distance from the terminal pole is less than 30 mtrs. and the provisions of Regulation 4.1 of the Regulations are applicable in the given case. Despite repeated queries raised by the Court, counsel for the respondents is not in a position to advance any arguments much less meaningful as to how he can support findings of the Court in appeal that judgment passed in **Bhupinder Singh's case** (supra) can be applied to the facts of the case at hand.

In **Bhupinder Singh's case** (supra), Regulation 4.1 was not the subject matter of discussion and decision, therefore, first Appellate Court without correctly appreciating the factual controversy has misdirected itself by applying the judgment in **Bhupinder Singh's case** (supra) to the present case and on the basis thereof upholding plea of the respondents with regard to liability of the appellant to pay the additional charges. Counsel for the respondents has failed to point out that the impugned demand can be legally raised by invoking a particular provision in the Regulations. In this view of the matter, I find merit in contention of the appellant that additional demand raised by the respondents is not in accordance with Regulations and claim of the respondents has rightly been rejected by the trial Court. That being so, decree passed by the Court in appeal cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeals are allowed. The judgment and decree passed by the Court in appeal are set aside and that of the trial Court are restored, leaving the parties to bear their own costs.

AUGUST 30, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no