

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 17.08.2019****CWP No.3092 of 2013**

Uttar Haryana Bijli Vitran Nigam Ltd.

...Petitioner

Vs.

The Electricity Ombudsman, Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S.Longia, Advocate, for the petitioner.

Mr. Hardeep Singh, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J.

1. The Uttar Haryana Bijli Vitran Nigam Ltd. (for short 'the Nigam') has preferred this writ petition challenging the order passed by the Electricity Ombudsman, Haryana on 03.08.2012 and the further order dated 01.10.2012, whereby the petitioner Nigam has been directed to regularize the existing material HL/LT line and transformer provided to respondent No.2 – Arjun for release of tube-well connection under Self Execution Scheme (SES) with a further direction not to recover any type of penalty amount from him etc in connection with theft of energy.

2. Memo dated 21.06.2012 issued by the Officers of the Nigam found, inter alia, that the transmission lines of the tube-well connection to respondent No.2-Arjun have been found erected illegally. The case of respondent No.2 was dealt with at Sr.No.2 of the Memo. Arjun had applied for A.P. tube-well connection vide A&A No.52968 dated 01.06.2010. He opted for self execution of work for release of tube-well connection and

deposited 1.5% of the estimated cost as inspection charges. However, after depositing the inspection charges, he did not offer the line material and transformer for inspection. Due to non-compliance of the instruction of the SES, SDO (Operation), Sub Division Israna cancelled his application vide memo dated 28.06.2011. It is recited in the order that in the month of April, 2012 one forged energy bill was issued to Arjun. The site of the tube-well connection was checked by Junior Engineer Kanshi Ram alongwith Line Man Balbir Singh who found the tube-well running unauthorizedly. They filled up LL-1 on site vide LL-1 No.05/20 dated 10.05.2012. On the basis of LL-1, the SDO (Op.) imposed penalty of Rs.30,000/- and lodged an FIR in Police Station Karnal (Power & Irrigation) on 11.05.2012 for theft of electricity. The memo recalls that during inquiry by two SDOs of the Nigam, Arjun-respondent No.2 was asked as to who had erected and energized the line for his tube well connection. He stated that he contacted Sh. Rana (contractor) resident of Kaithal for his tube well connection. He also said that no other person of Nigam was involved/responsible for release of tube well connection. This was a self-incriminating admission of which I find no record in writing signed by Arjun owning up to the admission.

3. Aggrieved by the penalty imposed on him for an unauthorized A.P.Tube well connection, respondent No.2 preferred an appeal before the Electricity Ombudsman, Haryana. The relevant pleadings in Para 7 & Para 9 are as follows:

“7. The applicant deposited the inspection charges on dated 04.10.10 but did not offered the material for inspection not submitted the bills of material and not tested the T/F from the UHBVN workshop. On dated 28.06.11 the applicant was

served notice for not completing the formalities and his application was cancelled.

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9. As per the record of this office, the application of the applicant was cancelled on dated 28.06.11. No service connection order was issued by the office, but in the month of 04.2012, one energy bill found issued to the applicant by billing agency. After enquiring the matter it was found that with connivance of any mischievous employee of the Nigam, the applicant succeed to get one electricity Bill.”

4. The Nigam filed a detailed parawise reply. The case and the pleadings were considered by the Electricity Ombudsman in the impugned order dated 03.08.2012. Arjun had pleaded in his complaint against the penalty order before the Electricity Ombudsman as follows:

- “(i) That he applied for a tube well connection in ‘OP’ Sub Division, UHBVNL, Israna on dated 05.10.2010 under Tatkal Scheme.
- (ii) That this connection was released on dated 10.01.2012 after completion of all the formalities.
- (iii) That the bill for the period from 10.01.2012 to 20.03.2012 amounting to Rs.638/- was received by him which he paid on 11.04.2012 under proper receipt.
- (iv) That thereafter he received Memo No.22009 dated 09.05.2012 from Nigam’s office mentioning that he has energized his tube well connection himself.
- (v) That the actual fact is that all works relating to his tube well connection were got done by the Nigam itself.
- (vi) That after this he received another Memo No.2027 dated 11.05.2012 from SDO Israna intimating him that he has committed theft of energy.

(vii) That a fine of Rs.15,000/- has been imposed upon him.

(viii) That he has been directed to deposit the penalty amount of Rs.15,000/- otherwise legal action would be taken against him.

(ix) That he has neither violated the laws of the Nigam nor committed theft of energy but his tube well connection has been disconnected on dated 30.05.2012.

(x) That the Nigam is doing injustice and harassing him.”

5. He prayed that the fine imposed upon him be withdrawn and his tube well connection be got reconnected.

6. Keeping in view the issues narrated in the complaint, it was referred to the Haryana Electricity Regulatory Commission for issuing necessary guidelines and directions to sort out the matter. The Commission after considering the facts forwarded the complaint to the Electricity Ombudsman with the request to decide the case on merits. Accordingly, the complaint forwarded by the Commission was registered as Appeal No.13/2012 on 27.06.2012. The Electricity Ombudsman issued notice to the concerned parties to appear personally or through an authorized functionary or duly authorized advocate on 12.07.2012. Parties were heard. Arjun-appellant pleaded that he had paid Rs.72,000/- to Karam Chand, Line Man working in the office of SDO ‘Op’ Sub Division, Israna, holding independent charge of Junior Engineer given to him by SDO ‘Op’ Sub Division, Israna. It appeared to the Electricity Ombudsman that Karam Chand, Line Man working as Junior Engineer was getting the construction works executed of new tube well connections to be released under SES by

taking the amount from the concerned consumers on the directions of the Officers of the Nigam.

7. In its turn, the Nigam proceeded against Arjun for committing offence under Section 135 of the Electricity Act, 2003. The notice by the Nigam was for compounding the theft of electricity and making an order of assessment against the licensee for the alleged offence.

8. The Nigam was asked by the Electricity Ombudsman to reply and clarify several points, which are enumerated in the order [at pp.52-53]. The SDO informed that though the appellant (Arjun) had deposited the supervision charges on 05.10.2010, but he did not complete the formalities as required in SES as per instructions issued by the Nigam. It was mentioned that under SES, the work has to be completed within one month and the connection is released soon after the execution of the work. Arjun had applied for AP connection on 01.06.2010 for release of tube well connection under SES and deposited the supervision charges. Arjun was not informed by the Nigam of what procedure/norms he had to follow for getting his tube well connection released. The Electricity Ombudsman noted that when a consumer applies for tube well connection and opts for SES and deposits the supervision charges as per requirement of the utility, he should be well informed as to what procedure/norms he has to follow for getting the work executed under SES i.e. he has to purchase the material from the authorized firm enlisted by the Nigam; get the work executed from the person concerned who has been authorized by the Chief Electrical Inspector; offer the material for inspection before getting the work executed and getting the line inspected after completion of the construction work as so on.

9. The Electricity Ombudsman records in the impugned order that Arjun is an illiterate person. As per directions of the officials of the Nigam, he paid Rs.72,000/- to Karam Chand, Line Man, who was officiating as Junior Engineer i.e. the competent authority for getting the works of tube well connection under SES. Karam Chand had assured him that he will get all the formalities completed which are necessary for getting his tube well connection energized/released.

10. The Electricity Ombudsman has remarked in his order that the SDO 'Op' Sub Division Israna did not bother to see what action is being taken by his staff and the applicants who have opted for SES and deposited the supervision charges during 2010 itself. Non providing of proper guidance to the applicants who have opted for SES and non proper monitoring of what actually is happening in the Sub Division and who is getting the work executed under SES for months together after the deposit of supervision charges by the applicants has been considered as gross negligence and deficiency in service on the part of the Nigam.

11. Thus, the Electricity Ombudsman has allowed the appeal and directed the Nigam to regularize the release of tube well connection to Arjun under SES with further direction to the Nigam to regularize the existing material/HT/LT line and transformer provided by the appellant for release of his tube well connection under SES. The Nigam has been restrained from recovering any amount of penalty in connection with theft of energy from Arjun-respondent No.2 since he has not committed any theft of electricity. The operative part of the reasoning assigned by the Electricity Ombudsman is reproduced below:

“In the present case of Sh. Arjun, since he had paid supervision charges on dated 05.10.2010 had paid the full amount as required under the Self Execution Scheme to the responsible officer Sh. Karam Chand, Line Man who is working as JE in the Sub Division and who had assured him that his connection will be released after the completion of the due formalities as required by the department as such he cannot be held responsible or any type of lapse in completing the formalities as required under Self Execution Scheme.

The appellant has ever been issued the electricity bill by the department during April, 2012. Since, he had received the electricity bill during April, 2012 and made the payment of the same, it had been assumed by the appellant that his the well connection has been released officially and everything is in order. But when the appellant received the notice issued by the SDO ‘OP’ Sub Division, UHBVNL, Israna, Distt. Panipat vide his Memo No.2028 dated 11.05.2011 that he had committed theft of energy and fine of Rs.15,000/- has been imposed upon him and was further informed regarding legal action to be taken against him, the appellant moved to the various officer of the utility intimating them that he has no committed any theft and his connection has been released by the official of the Nigam Sh. Karam Chand, Line Man after receipt of full amount required under Self Execution Scheme and even has paid the electricity bill received by him during April, 2012, but no action on his request was taken by the SDO ‘OP’ Sub Division, UHBVNL, Israna, Distt. Panipat.”

12. The action of the Nigam has to be held by the Ombudsman to be arbitrary and dictatorial on the part of the SDO concerned because of the attitude adopted without him going into the details of the facts. Respondent No.2 has been harassed and mentally tortured due to gross negligence and deficiency in service on the part of the Nigam.

13. I put a query to Mr. R.S.Longia, learned counsel appearing for the Nigam, whether there is anything on record to confirm the alleged statement of respondent No.2 said to have been made before the two SDOs, as mentioned in the Memo dated 21.06.2012 to the effect that *no other person in the Nigam was responsible for release of tube well connection* is supported by an admission in writing. The answer is in the negative. I also asked Mr. Longia, whether it was taken up as a ground of appeal in the petition, which is not the case. There is also no denying that Karam Chand, Line Man was officiating as Junior Engineer and as such was competent to process the AP Tube well connection under SES. Again the answer was in negative.

14. The Electricity Ombudsman is a statutory authority to hear appeals of theft of electricity and non-compliance of procedure and its findings are not utterly perverse or based on no evidence, and should not be interfered with. The jurisdiction of the writ court against the orders of Ombudsman which is akin to a special Tribunal is limited by perversity, irrationality and deciding with not an iota of evidence as explained in the Constitution Bench judgment of the Supreme Court in Syed Yakoob Vs. K.S.Radhakrishnan, AIR 1964 SC 477.

15. For these reasons, I find no occasion to interfere with the orders and would dismiss the petition.

16. Ordered accordingly.

17.08.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No