

S.No.104

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

**CWP No.19348 of 2020 (O&M)
Date of Decision:02.12.2020**

Gian Singh

.....Petitioner

Vs.

Punjab State Power Corporation Limited and othersRespondents

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IN VIRTUAL COURT

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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Ferry Sofat, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari for setting aside the letter No.1396 dated 16.09.2020 issued by respondent No.3 vide which the show cause notice was served upon the petitioner by the respondent- Corporation.

The undisputed facts involved in this case are that Harbhajan Singh; the father of the petitioner; was having a tube-well electricity connection in his name. The said connection was of load of 5 HP. Later on, the said load of the connected was got extended to 7.5 HP after depositing the requisite fee in the month of December, 2004. The father of the

petitioner had died on 16.09.2006. In the year 2014, the petitioner had applied for extension of the load of connection to 10 HP and for that purpose, the petitioner had submitted self declaration affidavit to the respondents in which it was pointed out by him that his father had already expired, but still the load of the said connection was enhanced after depositing of the requisite fees. However, the connection continued in the name of the father of the petitioner. Later on the matter qua the death of the father of the petitioner came to knowledge of the respondent- Power Corporation Ltd. Hence, the notice has been issued by the respondent- Power Corporation to the petitioner to the effect that the said connection of the tubewell is continuing in the name of the dead person. As per the Regulation of the Corporation, the connection has to be got transferred in the name of the legal heirs of the earlier consumer of the connection. Hence if the legal heirs of the deceased consumer do not get the connection transferred in their names within 15 days, then the electricity connection of the tubewell shall be disconnected. It is against this notice issued by the respondent- Corporation that the present petition has been filed.

Arguing the case, learned counsel for the petitioner has submitted that in case the Corporation is to disconnect the electricity connection in question, then the Corporation is required to pass a speaking order in that regard. It is further submitted by the counsel that in the year 2014, the petitioner had applied for the extension of the load of the electricity connection. At that time, the fact of death of the father of the petitioner was duly intimated to the Corporation. The Corporation had accepted the load extension fee and had even extended the load. Therefore,

the Corporation cannot now raise the objection that since the connection has not been got transferred in the name of legal heirs of the original consumer, therefore, the connection is bound to be disconnected. It is further submitted that after the death of the father of the petitioner, the estate of the father of the petitioner has devolved upon his two legal heirs. The partition proceedings qua the agricultural land filed by legal heirs are still pending before the Authority. Therefore, the respondent- Corporation cannot disconnect the electricity connection till the partition proceedings are finalised.

Having heard the learned counsel for the petitioner and having perused the paper book, this Court finds that it is not even in dispute that the original consumer, in whose name the connection in question was released, was the father of the petitioner. Undisputedly, he expired in the year 2006. Therefore, as per the regulations of the Corporation it was incumbent upon the petitioner and other legal heirs of the said consumer to agree upon the common name so that the electricity connection could have been transferred in the name of such legal heirs of the said consumer. Vide the impugned notice, the Corporation has required the petitioner to do that exercise only. The notice served by the respondent- Corporation has only given time to the petitioner to apply for transfer of the connection in the name of legal heir(s) of the original consumer- Harbhajan Singh. The said notice has been issued only in compliance of the rule relating to the transfer of the electricity connection. Hence, no fault could be found with the notice issued by the respondent- Corporation; as such.

It has been argued by learned counsel for the petitioner that the

respondent- Corporation is required to pass a speaking order before disconnecting the connection in question. In this regard, counsel for the petitioner has relied upon Rule 36.2.3 of Electricity Supply Code, 2014. Although, the petitioner cannot presume in advance that the respondent- Corporation would not pass any order for proceeding further with the disconnection of the electricity connection, yet it is obvious that, the rule relied upon by the petitioner is not relating to the procedure for getting the electricity connection transferred in the name of the legal heirs of the deceased consumer. The rule relied upon by the counsel for the petitioner relates to the procedure required to be followed qua unauthorised use of the electricity from a connection and the assessment of the charges for that unauthorised use. There cannot be any dispute that in case of action against unauthorised use of electricity through a connection, the competent Officer is required to pass a speaking assessment order. However, in the present case, it is not the matter of action qua unauthorised use of electricity. Rather, it is a matter of transfer of connection in the name of lawful legal heirs of a deceased consumer. This aspect may not even require any speaking order on behalf of the respondent- Corporation for disconnecting an electricity connection; except to say that the legal heirs of the deceased consumer have not applied for transfer of the connection in their names in accordance with law despite being asked through a notice. Hence, this argument of counsel for the petitioner does not find favour with this Court. Undisputedly, till today, the petitioner has not even applied for transfer of the connection either in his name or in the name of a common and unobjected to legal heir of the original consumer. Hence, the respondent-

Corporation is well within its rights to disconnect the same; after following the prescribed procedure.

Learned counsel for the petitioner has also submitted that the petitioner had applied for extension of the load of the connection in question after death of his father. The respondent- Corporation had even extended the load of the said connection after charging the requisite fee. Therefore, the respondent- Corporation now cannot insist upon transfer of the said connection in the name of legal heirs of the deceased- consumer. However, even this argument is to be noted only to be rejected. Irrespective of any act, done by the respondent- Corporation; legally or illegally, the electricity connection in question cannot be continued in the name of a dead person. There cannot be any estoppel against the provision of law which mandates getting the connection transferred in the name of legal heirs of a deceased consumer. Moreover, the affidavit submitted by the petitioner at the time of getting the load extended, also shows that at that time it was mentioned by the petitioner that nobody had got objection to the extension of the load of the connection in question. Still further, it was undertaken that in case of litigation, the petitioner would be responsible for any loss to the Corporation or for any action to be taken against the consumer. It was not pointed out in the said affidavit that there were more legal heirs of the deceased- consumer Harbhajan Singh than the petitioner only. Therefore, the extension of the load by the respondent – Corporation appears to have been done under bonafide impression which had been created due to the affidavit submitted by the petitioner. Moreover, even at that time, no formal application for transfer of the connection in the name of the petitioner was

moved. Therefore, even at that time, the requisite procedure qua the connection had not been followed by the Corporation qua transfer of the connection in the name of the petitioner.

The next argument of the counsel for the petitioner that since the partition proceedings are continuing between the legal heirs of the deceased consumer, therefore, the respondent- Corporation cannot disconnect the electricity connection till conclusion of the partition proceedings; also does not have any substance. Rather, the initiation of the partition proceedings have only brought out one fact that the deceased consumer Harbhajan Singh was having more than one legal heirs. This shows that the petitioner is not the only legal heir of the original consumer. Therefore, even if the respondent- Board so desired, the said connection could not have been transferred in the name of the petitioner only; in case there is any objection from the other legal heirs of the deceased- consumer. The petitioner could have got the said connection transferred exclusively in his name only if all other legal heirs of the deceased- consumer agreed to that fact or there had been an appropriate adjudication qua the right of the petitioner to get the connection transferred in his name and a decision on such adjudication would have been produced before the Corporation. However, nothing of that kind has happened. On the contrary, the brother of the petitioner, who is the other legal heir of the deceased consumer; is in fierce battle with the petitioner over the rights qua the property left behind by the deceased consumer, including the connection in question. Therefore, by getting the connection transferred exclusively in his name, the petitioner cannot be permitted to unilaterally and collaterally damage the rights of his

brother qua the estate and the belongings left behind by the deceased consumer, who happen to be the father of the parties. Moreover, so long as there is any objection of any kind from anyone of the legal heirs, the respondent- Corporation is not supposed to transfer the connection in name of either of them. Therefore, since the respondent- Corporation cannot continue the connection in the name of the dead consumer, therefore, only other alternative left with the respondent- Corporation is to disconnect the electricity connection and to get out of the picture of the dispute between the legal heirs.

In view of the above, this Court does not find any fault with the action being taken by the respondent- Corporation. Hence, this Court does not find any merit in the present petition as such and the same is dismissed.

December 02, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No