IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

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CWP-661-2023 (O&M).
Date of Decision: 24.05.2023.

LABORATE PHARMACEUTICALS INDIA PRIVATE LIMITED

.. Petitioner

Versus

UTTAR HARYANA BIJLI VITRAN NIGAM LTD.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Tushar Sharma, Advocate,
for the petitioner.

Mr. Vivek Saini, Advocate,
for respondents No.1 and 2.

None for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition had been filed for seeking setting aside/quashing of the action of respondents No.1 and 2 whereby an insistence is being made for payment of outstanding dues despite the same having already been set aside by the Civil Court and also the consequential rejection of the application for seeking new electricity connection vide letter dated 06.10.2021 (Annexure P-10) in an illegal and arbitrary manner.

Learned counsel for the petitioner contends that he does want not press any relief against respondent No.3. Accordingly, appearance of respondent No.3 is dispensed with.

Briefly summarized, the facts of the present case are that respondent No.3 was owner in possession of 47 kanals and 5 marls of land at village Salwan, Tehsil Assandh, District Karnal upon which it constructed a Degree College after obtaining 'No Objection Certificate' from the Department of Town and Country Planning, Haryana in the year 2006. Respondents No.1 and 2 i.e. the distribution licensee thereafter released an electricity connection to respondent No.3-Society in July 2007. A demand notice was thereafter issued in June 2008 towards development charges for a sum of Rs.7,39,500/- on the basis of certain sale circulars issued by the distribution licensee in the year 2000 which provided for levy of development charges on the units located in unauthorized colonies and requesting for an electricity connection.

The said respondent No.3-Society raised a challenge to the demand notice before the Civil Court and vide judgment and decree dated 30.08.2012, the above said demand was set aside and it was held that the sale circulars, on the basis whereof the demand had been assessed, were not applicable qua the land in question as the same was not situated or part of any unauthorised colony and therefore, the demand having not been approved by the Haryana Electricity Regulatory Commission, was illegal, unsustainable and liable to be set aside.

Aggrieved of the aforesaid judgment and decree of the civil Court dated 30.08.2012, an appeal was filed by respondent distribution licensee before the District Judge, Karnal, however, vide judgment dated 07.07.2015, the said appeal was also dismissed. Respondents have preferred a Regular Second Appeal No.3142 of 2016 wherein only notice of motion has been issued and no interim order has been passed.

Learned counsel appearing on behalf of the petitioner contends that the petitioner purchased the land in question in the year 2021-22 vide two separate sale deeds from respondent No.3 for establishing a Pharmaceutical Plant and applied for a fresh electricity connection qua the land. The said application was however, rejected vide communication dated 06.10.2021 (Annexure P-10). The petitioner had also applied for change of the existing electricity connection in his name which such application was also declined as per the online status dated 06.09.2022 (Annexure P-12) on the ground that the above said payment was outstanding against the said connection released on the premises.

Learned counsel appearing on behalf of the petitioner contends that the action of the respondents is clearly unsustainable and in violation of the provisions of the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014. The Civil Court has already decreed in favour of the vendor of the petitioner. He contends that the petitioner is, however, ready and willing to furnish an undertaking to secure the interest of the respondents to the effect that as and when the judgment of the Civil Court is set aside by the High Court in the Regular Second Appeal and/or any further proceedings arising therefrom, he would undertake to make the demand good as claimed by the respondents and indemnify for the same.

Written statement had been filed by the Executive Engineer, Operation Division, UHBVN, Assandh, District Karnal, wherein the facts as stated above are not disputed. It is, however, submitted that as the accounts of the respondent distribution licensee reflect the status of the premises as a defaulting premises, hence in terms of Clause 4.3.1 of the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014, the request made by the petitioner has been rightly declined.

I have heard learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition.

The entire claim of the respondent distribution licensee is that since there was an outstanding amount reflected in the account released against the said premises, hence, new electricity connection and/or change of the online status of ownership against the said electricity connection could not be carried out. He, however, does not dispute the fact that the demand raised by the respondents dated 11.06.2018, has been set aside by the Civil Court and the subsequent appeal has also been dismissed. The Regular Second Appeal is pending and that no interim order has been passed as would entitle the distribution licensee to effect any such recovery. Hence, a necessary corollary which emerges from the above is that at this stage there is no subsisting demand which may be legally enforced. Clause 4.3.1. of the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014, relied upon by the petitioner, deals with the conditions for grant of connection due to change of ownership/division/reconstruction of property and prescribe that it shall be the duty of the applicant to verify as to whether the previous owner has paid all dues of the licensee and obtained a 'No Due Certificate' from the licensee or not. In case no such 'No Due Certificate' has been obtained by the previous owner, the applicant is required to request the previous owner to obtain a 'No Due Certificate' from the licensee and hand over the same to him. On receipt of such a request from the previous owner, the licensee shall either intimate in writing the dues outstanding or issue 'No Due Certificate' and if the licensee does not issue 'No Due Certificate' or any letter intimating the dues within a period of 30 days, the applicant shall be absolved of any liability on account of dues against the previous owner and licensee shall have to take legal recourse against the previous owners for recovery of such dues.

Invariably the reliance of the respondent Distribution Licensee on the aforesaid Clause is based upon the dues reflected in their account. They are clearly disregarding the judgment and decree passed by the Civil Courts whereby the demand raised by the respondent was held unsustainable and was set aside. The decree of Civil Court shall have precedence over the demand reflected in the account maintained by the respondent and effect has to be given to the Civil Court decree, till it is set aside.

The rights of the petitioner to seek connection cannot be truncated by the respondents merely on the ground that their accounts reflect an outstanding amount and completely disregarding the decree passed by the Civil Court. The action of the respondent Authorities is thus unsustainable and reflects arbitrariness. Moreover, when the petitioner-applicant consumer has already expressed his intention to submit an undertaking/indemnity to safeguard the interests of the distribution licensee or any other apprehension that may be so nurtured by the respondents qua securing the dues against the said property, there was no occasion for the respondents to deny the relief claimed by the petitioner. Ordinarily this Court would have been inclined to impose heavy cost on the respondent distribution licensee for adopting such a stance that is not backed in law and is not based on reason and objectivity. However, on the request of the counsel representing the respondent distribution licensee no such cost is being imposed.

In view of the aforesaid, the present writ petition is allowed. The request made by the petitioner for release of the new connection on the said premises and/or for change of status of the ownership against the electricity connection with all consequential rights is accepted and necessary changes are directed to be carried out by the respondents in their record subject to the petitioner furnishing an indemnity bond/surety bond undertaking to indemnify the distribution licensee for the above said outstanding amount, in the event the final judgment and decree is passed against the predecessor in interest of the petitioner and without prejudice to his rights to effect recovery, in case so ordered by the Civil Court, from the predecessor in interest.

Pending misc. applications, if any, shall also stand disposed of accordingly.

May 24, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No