

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7771-2016 (O&M)
Date of decision: 08.05.2023

RAJESH DEWAN

...Petitioner

VS

UNION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Lajpat Sharma, Advocate,
For the petitioner.

Ms. Puneeta Sethi, Sr. Panel Counsel, UOI
For respondents No.1 and 2.

None for respondent No.3, despite service.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is to set aside order dated 25.10.2016 passed by learned Executing Court, Ambala vide which the objections filed by the respondents/Judgment Debtors were accepted and the execution petition filed by the petitioner/Decree Holder was dismissed.

2. Learned counsel for the petitioner submits that petitioner is owner in possession of Bungalow No.147, Allenby Lines, Ambala Cantt, which was granted by Union of India under the Old Grant Scheme. The said bungalow is more than 60 years old and is the suit property. The petitioner was/is using electricity supply issued by Military Engineering Services (MES). Petitioner was/is paying electricity consumption charges regularly. The above said premises is located in Cantonment area and MES (Military Engineering Services) is controlling the area not only for general

administration, but for the supply of electricity to the entire area and civil authorities i.e. Uttar Haryana Bijli Vitran Nigam (UHBVN) erstwhile known as Haryana State Electricity Board (HSEB) had no access to the area or any set-up for supply of electricity to the inhabitants of that area and it is solely duty and jurisdiction for all intents and purposes of M.E.S.

2.1 Since the respondents wanted to disconnect the electricity and water supply to the bungalow of petitioner bearing No.147 ibid, the petitioner preferred Civil Suit No. 18-CS of 1999, instituted on 12.02.1999 and the same was decreed by the Id. Trial Court on 22.01.2004 (Annexure P-1).

2.2 Feeling aggrieved against the aforesaid judgment and decree passed by Id. Trial Court, respondents preferred an appeal before learned Appellate Court and learned Appellate Court dismissed the appeal of the respondents, vide judgment and decree dated 20.11.2004 (Annexure P-2). He further submits that the respondents have not challenged the above said judgments and decrees by way of filing Regular Second Appeal and same attained finality.

2.3 He would further submit that despite passing of judgment and decrees (Annexure P-1 and P- 2), respondent no.1 issued a notice dated 16.04.2016 (received on 27.04.2016) to the petitioner stating that the petitioner should arrange for the electricity supply connection by 15th May, 2016 Annexure P-3). Petitioner submitted reply to the above said notice. He further made a representation for withdrawal of the notice. Respondents by ignoring the reply and representation of the petitioner disconnected the electricity connection of the petitioner. Thereafter, petitioner preferred execution petition before learned Executing Court and also moved an

application dated 12.09.2016 for restoration of electricity connection on the basis of judgments and decrees passed by Courts below in favour of the petitioner. Learned Executing Court passed an order dated 23.09.2016 in favour of petitioner, whereby the respondents were directed to restore the electricity connection in the premises of the petitioner.

2.4 Learned counsel for the petitioner submits that the above said order dated 23.09.2016 passed by learned Executing Court was not complied with by the respondents and the petitioner filed an application before learned Executing Court praying for adoption of coercive measures against the respondents i.e. for passing of orders for payment of Rs.5000/- per day w.e.f 13.08.16 (the date of illegal disconnection of electricity) till the reconnection of the same and for grant of compensation to the tune of Rs.5,00,000/- towards physical and mental harassment plus social humiliation caused to the petitioner. There was a condition imposed on the petitioner in the order dated 23.09.2016 (Annexure P-8), while directing the respondents to restore electric connection to the effect that the stay granted shall stand vacated in case the petitioner does not apply for electricity connection to the UHBVN within 10 days. In compliance to the above said direction issued vide order dated 23.09.2016, petitioner applied dasti on 01.10.2016 for the supply of electricity connection to the UHBVN (Annexure P-10).

2.5 In continuation of aforesaid earlier application, petitioner again sent another application dated 07.10.2016 to the office of SDO, UHBVN, Cross Road, Ambala through registered post (Annexure P-11). Notwithstanding, learned Executing Court passed the impugned order, whereby objections filed by the respondents were accepted and execution petition moved by the petitioner was dismissed. He submits that SDO,

UHBVN returned the application of the petitioner dated 07.10.2016 in original declining the application for supply of electricity (Annexure P-15). Hence the present revision petition.

3. Learned counsel for respondents No.1 and 2-UOI strenuously oppose instant revision petition and support the impugned order and argue that same is based on correct findings.

4. I have heard learned counsel for the parties and gone through the case file.

5. Order assailed herein *inter alia* is premised on the following reasoning:

“5. It transpired that the sum and substance of the objections filed by the JDs is that the decree holder did not obey the directions given in the judgment and decree dated 22.01.2014 by not applying for fresh electricity connection to UHBVN till date and resultantly, the JDs rightly disconnected the electricity supply to the decree holder. Contrary to this, the decree holder has submitted that the learned Appellate Court while dismissing the appeal of JDs against the judgment and decree dated 22.01.2004 modified the said judgment and decree vide its decision in judgment and decree dated 20.11.2004, to the effect that the JDs do not disconnect the electricity supply of the decree holder, if the decree holder goes on making payments of the bills without any default. To this, I am of the firm opinion that the learned Appellate Court has not modified the trial court judgment and decree dated 22.01.2004, rather, it was only the observation of the learned Appellate Court regarding the continuous supply of electricity to decree holder on payment of bills without any default. Had it been the case as alleged by the decree holder that the trial court judgment and decree was modified by the Learned Appellate Court then, the same would have been reflected in the form of modification with its specific findings in its judgment and decree dated 20.11.2004 but same is not the situation, as there is no finding of the appellate court qua modification of the judgment and decree of trial court. It is also worth to mention here that the learned Appellate Court has confirmed the trial court judgment and decree dated 22.01.2004 vide its decision dated 20.11.2004 and the present execution application has also been filed on the basis of aforesaid trial court judgment and decree. Even, in the execution application, the decree holder has stated that the trial court judgment and decree was confirmed by the Appellate Court. There is no such plea of modification of trial court

decree is there in the execution application. It is only the self styled belief of decree holder that on making payment of bills without any default, the decree holder would going to enjoy the unhindered electricity supply from the JDs. The decree holder instead of complying the judgment and decree dated 22.01.2004, is taking undue benefit for the last more than 12 years by getting un- interrupted electricity supply till the time, same was disconnection by the Jds. It would also not be out of place to mention here that in the present execution application, an order dated 23.09.2016 was passed by the court of Ms. Manvika Banswal, the Ld. CJ(JD), Ambala on the application of decree holder for issuance of directions to the JD to restore the electricity connection of the DH to the effect that JDS are directed to restore the electricity connection in the premises of the DH subject to the condition that the DH shall apply for the electricity connection to UHBVN within a period of 10 days, failing which, stay granted shall stand vacated. Although, the decree holder has placed on record the application dated 01.10.2016 for supply of electricity connection in his premises addressed to SDO, UHBVN, Rai Market, Ambala Cantt but in my opinion, the said application cannot be treated as an application for applying fresh electricity connection as no receipt of UHBVN department has been placed on record by the decree holder which could show that the proper procedure has been followed by the decree holder before applying for the said connection as neither there is any receipt of receiving the said application by the UHBVN or any receipt of security amount deposited by the decree holder to the UHBVN nor there is any other document on record which could show that so and so load supply has been applied for by the decree holder. Mere forwarding the application for supply of electricity connection that too by post cannot be considered to be a proper procedure for applying the electricity connection. Accordingly, from the aforesaid discussion, it is very much clear on record that neither the decree holder obeyed the judgment and decree dated 22.01.2004 passed in his favour nor has complied the directions given to him vide order dated 23.09.2016, as discussed above.

6. In view of the above discussion, objections filed by the objectors finding merits therein, are hereby accepted and accordingly, the execution application filed by the decree holder is hereby dismissed."

6. Perusal of the impugned order shows that the sum and substance before learned Executing Court was to implement the decree granted in favour of the petitioner but owing to some ambiguity on the part of learned Executing Court in comprehending the observations made in First Appellate Judgment dated 20.11.2004 wherein it was expected of the

judgment debtor to continue supplying of the electricity to the decree holder on payment of bills without any default.

7. The aforesaid observations/expectations of learned First Appellate Court can be better appreciated in the light of specific restraint which was imposed on the judgment debtors vide judgment and decree dated 22.01.2004 in para 11 (relief clause) thereof, which, being apposite, is reproduced hereinbelow:

“RELIEF

11. In view of my findings on issue No.1, the suit of the plaintiff is decreed. The defendants are restrained from disconnecting the electricity and water supply to Bungalow No. 147, Allenby Line, Ambala Cantt, till the plaintiff gets the electricity connection from HSEB and the water connection from the Cantonment Board. Decree sheet be prepared. File be consigned to record room.”

8. What thus is clear from the above is that no doubt, petitioner was on one hand asked to apply for the electricity connection from the Power Distribution Company in the area where he resides, which as on today is Uttar Haryana Bijli Vitran Nigam Ltd. (UHBVNL) and till the alternative source of power was to be supplied. Until the alternative arrangement of supply of power was made by the DISCOM, the judgment debtors were to continue supply of power in terms of the judgment and decree of learned trial Court. Petitioner applied for supply of electricity connection to UHBVNL vide an application dated 01.10.2016 (Annexure P-10).

9. On a Court query, it transpires that said application was never responded to by the DISCOM, learned counsel for the petitioner points out that petitioner has been running from pillar to post and each time he was told that the area in which his premise is located, there is no power supply currently being undertaken by the DISCOM and, therefore, the application was though received in the office but was never processed.

10. It was in this premise that vide order dated 28.08.2017 following order was passed and respondent No.3 has been specifically impleaded:

“During the course of hearing, it has come to my notice that in spite of two applications having been submitted by the petitioner, the Uttar Haryana Bijli Vitran Nigam has not started supplying electricity to the petitioner. In view thereof, the Uttar Haryana Bijli Vitran Nigam, is added as respondent No.3.

Notice be issued to the Uttar Haryana Bijli Vitran Nigam, Sector 6 Panchkula, through its Secretary for 26.10.2017.

Petitioner to take steps to serve added respondent No.3 through dasti process as well.”

11. *Apropos*, it transpired that UHBVN at the relevant time was not in a position to supply the electricity, vide subsequent order dated 29.10.2018 passed by this Court and electricity was directed to be restored to petitioner by respondent No.1 in the following terms:

“Learned counsel for respondent No. 1-UOI seeks an adjournment.

Adjourned to 13.12.2018.

In the meanwhile, since the respondent No. 3-Electricity Department has informed the petitioner that it cannot supply electricity to him as in the area where the suit property is situated there is no electricity supply line of theirs and the petitioner is stated to be without electricity for the last about two years as also for the reason that the present adjournment is sought on behalf of respondent No. 1-UOI, till the next date of hearing in the matter, the electricity connection to the petitioner is ordered to be restored by respondent No. 1-UOI.”

12. The position continues to be same as on today i.e. on one hand, UHBVN has not taken any steps to explore the possibility of supply the power, on the other hand, petitioner contends that for no fault of his, he has been deprived of electricity connection by UHBVN.

13. Under the Electricity Act it is bounden duty of the DISCOM to supply power to every consumer, who applies the same being an essential

commodity for life. In this context, reference may be had to Section 43 of The Electricity Act, 2003 which is reproduced herein below:

“Section 43. (Duty to supply on request): --- (1) *I[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

I[Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

14. I am of the view that in order to meet the ends of justice, the interim orders passed by this Court shall continue to operate until respondent No.3 takes effective steps to supply power to all the civilians residing in the neighbourhood where the petitioner resides as in course of hearing, petitioner as many as other residents, who are otherwise surrounded by defence establishment/cantonment area are at loggerheads with respondent No.3 to supply power on one hand and on the other hand, they will suffer the

disconnection of power supply currently being supplied by respondents No.1 and 2.

15. Be that as it may, position in law as it stands today is that judgment and decree passed by Ld. Trial Court in favour of the petitioner continues to operate as respondents No.1 and 2 unsuccessfully challenged the same before learned First Appellate Court.

16. In the premise, in the interest of justice, respondents No.1 and 2 to take up the matter with respondent No.3 by appropriate correspondence in case, they are not in a position or willing to continue to supply power to the petitioner, who is a civilian. Until the request of respondent Nos.1 and 2 is accepted by respondent No.3, needless to say, they shall continue to supply power to the petitioner in terms of the decree suffered by them.

17. In the parting, I may hasten to add that pursuant to steps as above to be taken by respondent Nos.1 and 2 to take up the matter with respondent No.3 in case it is found that there are certain formalities, which are required to be completed by the petitioner, the needful will be done him in compliance to the intimation as and when the same is received from respondent No.3.

18. At this stage, learned counsel for respondents No.1 and 2 states that as per her information, the petitioner has not applied for power with respondent No.3 as per the requisite proforma by giving details of the quantum of load required by him and also not made pre-deposit as required on his part and it is only for this reason, application has not been entertained.

19. Since simple application on plain paper filed by the petitioner sending communication has not been entertained by respondent No.3, petitioner shall apply afresh on the prescribed proforma along with pre-

deposit by giving details of quantum of load required by him to respondent No.3 with copy to respondents No.1 and 2. Needless to say that thereafter matter will be taken up by respondents No.1 and 2 with respondent No.3 as well as other steps to be taken by respondents No.1 and 2 in case they do not wish to continue supplying the power, as already noted hereinabove. Steps required on the part of petitioner be taken within a period of 6 weeks from today.

- 20. Disposed of accordingly.
- 21. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

08.05.2023
vandana

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