2023:PHHC:077482

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

110 **CWP-7044-2023**
Date of Decision: 15.05.2023

DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED THROUGH ITS XEN, OPERATION AND ANOTHER

... Petitioners

VERSUS

SUMAN BALA AND ANOTHER

... Respondents

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

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

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VINOD S. BHARDWAJ, J. (ORAL)

The challenge in the present petition is to an order dated 18.09.2022 (Annexure P-6) passed by the Appellate Authority against the petitioners whereby the Appellate Authority i.e. the respondent No.2 has allowed an appeal filed by the respondent No.1 against an order of assessment in theft of electricity under Section 135 of The Electricity Act, 2003.

The case of the petitioners is that the respondent No.1 was released an electricity connection of F.P.O. Category i.e. for the purpose of running a Fish Production Pond with a sanctioned load of 19 KW. A checking of the premises was conducted on 30.08.2022 in the presence of husband of respondent No.1. The Consumer was found committing direct theft of electricity by passing the meter through a four core PVC cable of about 7-8 meter connected with incoming cable by making a cut in it before the meter, which was taken to the premises on change over with a connected load of 24 BHP = 17.90 KW. The Maximum Demand

Indicator of the meter was showing that 45.06 KW maximum load was used by the consumer. Accordingly, an LL-1 checking report dated 30.08.2022 was prepared at the spot by the raiding team on the basis of Maximum Demand Indicator of the meter. A copy of the said report was supplied to the husband of respondent No.2-consumer under his signature. An assessment order dated 01.09.2022 (Annexure P-2) was served upon the respondent No.2 calling upon her to deposit an amount of Rs.5,09,706/- as assessed by the Distribution Licensee for committing theft of energy. The respondent No.1-consumer was given an option to accept the assessment and deposit the abovesaid assessed amount whereupon the supply shall be restored within a period of 48 hours. Additionally, a separate notice/communication dated 01.09.2022 was also issued to the respondent No.1-consumer intimating that a complaint had been lodged with the police and that in case the respondent No.1-consumer wanted compounding of the matter to absolve herself of the criminal liability, she may approach the Compounding Officer. The details of the amount of compounding was conveyed as Rs.5,30,000/-.

Aggrieved of the assessment made, the respondent No.1-consumer submitted a representation dated 07.09.2022 (Annexure P-4) and the same was found to be without any merit. The consumer deposited the amount of Rs.5,09,706/- on the same date. Simultaneously, an appeal dated 12.09.2022 was also filed by the respondent No.1-consumer before the Appellate Authority which conducted the hearing on 15.09.2022. The said appeal has now been allowed by the Appellate Authority vide the impugned order dated 18.09.2022 (Annexure P-6) which is a subject matter of challenge in the present petition.

On a specific query, learned counsel for the petitioner referred to notification no.16/6/2017-DP dated 10.08.2017 issued by the Power Department of the Government of Haryana, as per which the State Government notified the

Appellate Authority under Section 127 of The Electricity Act, 2003 to be also the Appellate Authority against an assessment made under Section 135 of The Electricity Act, 2003 as well.

Counsel for the petitioner has argued that the Appellate Authority has wrongly interfered with the order of assessment of penalty passed by the assessing Authority and that the Appellate Authority has no power or jurisdiction to reduce the period of assessment for the loss caused to the Nigam and the same has been vested only with the authorized Assessing Officer. It is only in case he is satisfied that theft of electricity was for a lesser period than 12 months, he will record reasons for his satisfaction and then reduce the period of assessment of loss. He further contends that the Appellate Authority also committed an error in ignoring the load as indicated in the Maximum Demand Indicticator and directing computation on the basis of contract demand. It is further argued that the Appellate Authority has also committed an error in applying the concessional rate of AP subsidized tariff of Rs.4.75 per unit in a case of theft of energy ignoring the Sale Circular D-12/2021 (Annexure P-7) that was relied upon by the Nigam as per which the benefit of concessional tariff is not to be extended to the consumers who are defaulters or whose bill is outstanding for more than two billing cycles. It is thus alleged that a defaulter is not entitled to the benefit of concession of subsidized tariff and that a consumer found guilty of commission of theft of electricity would fall within the category of defaulter and hence would not be entitled to any concession including assessment of penal charges.

I have heard the learned counsel for the petitioner and have gone through the documents appended alongwith the present petition with his able assistance.

While dealing with the above noted objection raised by the petitioner, the Appellate Authority recorded its findings as under:

- *"It is stated by the petitioner that a SP connection on her name was released on 22-6-2022 for fish farming under FPO category. Petitioner further contended that a load of 7.46 KW (10 BHP) motor and 2 no. areators of 7 BHP each was existing at her premises and the same was directly connected to incoming cable through changeover switch which is also shown in the LL1 but she has been charged for 45.06 KW.*
- *In reference to the above, respondent was asked to produce the subject cited LL1. On examining the LL1, it is observed that one motor of 10 BHP + 2 areators of 7 BHP is shown directly connected. The respondent, also agreed that only above said load was existing and found directly connected.*
- *Further petitioner contended that compounding has been charged by the respondent on extremely higher side & without basis on which respondent informed that compounding is made under LT category as the same is not particularly defined for FPO category.*

Going through the plea and counter plea, it is brought out that:-

As per LL1 no.12530/19 dated 30.08.2022, theft of electricity was taking place and total 17.904 KW load was running directly which is also admitted by the respondent but the computation of assessment was made on the basis of MDI which is 45.06KW.

As per sales circular D-21/2017, 22 (b) ***"The consumption of electricity so computed will be charged for a presumptive period of twelve months preceding the date of detection of theft at two times the normal tariff rate. The period of twelve month may, however be suitably reduced if the authorized officer, for reasons to be recorded in writing, is satisfied that theft of electricity has actually taken place for a lesser period."***

Considering the above fact penalization made by the respondent seems not in order and shall require to be reviewed for a proportionate period starting from the date of release of connection (as per record) taking into account the sanctioned load or connected load whichever is higher i.e. 19 KW with tariff charges @ Rs4.75/-per unit.

Apart from the computed assessment, the compounding amount so computed by the SDO Op DHBVNL Dabwali also seems not in order as it clearly mentioned at note 7 of sale circular no, D.12/2021 that the fish farming units connected on AP feeder shall continue to be billed on AP subsidized tariff further the charge of compounding offence as notified by the State Govt. notification no. 1/12/2003-1 Power dated 11.12.2013 under section 152 of the act the FPO category is not specifically defined however it is clearly mentioned that for other services compounding @ 2000 KW Is to be charged & the same may be revised for connected load of 19 KW."

It is thus evident from the perusal of the above that the connection in question was released to the petitioner under FPO category on 22.06.2022 and that upon interpreting the Sales Circular D-12/2017, the period of 12 months can be suitably reduced for reasons to be recorded on recording a satisfaction that theft of electricity had actually taken place for a lesser period. Since the connection in question was released only on 22.06.2022 and the theft was purportedly detected on 30.08.2022, the imposition of penalty for a period even prior to the date of release of connection was rightly found to be improper. A definite computation of period can be done in the present case. I find myself in agreement with the finding recorded by the Appellate Authority to the said effect.

Insofar as the submission of the petitioner that the computation could not have been done under the subsidized tariff for a defaulter is concerned, reference has been made by the Appellate Authority to note 7 the Sales Circular

No.D-12/2021 to the effect that Fish Farming Units connected on AP Feeder shall continue to be billed on AP subsidized tariff. Nothing has been referred to by the counsel for the petitioner that the said finding is based on an incorrect reading of the Circular or the note. Further, it has also been recorded that the charge of compounding of offence as notified by the State Government Notification no.1/12/2003-1/Power dated 11.12.2013 under Section 152 of The Electricity Act, 2003, for the Fish Production Operation (FPO) category is not specifically defined. Since, the statute clearly mentions that for other services, compounding at the rate of Rs.2,000/- per KW is to be charged, hence, once the statute defines the compounding charges, the finding recorded by the Appellate Authority to levy the said rate cannot be said to be in conflict with the statute or based upon misreading or misinterpretation thereof.

Insofar as the contention of the petitioners that the Maximum Demand Indicator showed a load of 45.06 KW and that the assessment ought to have been done only on the said demand is concerned, the report LL-1 was examined by the Appellate Authority which reflected that one motor of 10 BHP + 2 areators of 7 BHP were shown to be connected. Only the abovesaid load was existing and found to be directly connected. An explanation was furnished by the respondent No.1-consumer that the spike in the Maximum Demand Indicator took place as a result of voltage fluctuation which had also caused damage to the motors. The Appellate Authority has referred to the Sale Circulars to conclude that the sanctioned load or connected load, whichever is higher, has to be taken into consideration for carrying out assessment as per the Regulations in force.

Counsel for the petitioners could not refer to any other Regulation and/or instructions issued by the competent Authority on the basis whereof it could be held that the finding recorded by the Appellate Authority were in conflict with the same. In the absence of the finding of the Appellate Authority being in conflict with any Regulation or instruction issued by the competent Authority, a discretion exercised by such Authority would not ordinarily be interfered with merely because any other view may also be a possible view.

I fail to find any illegality, impropriety or misappreciation of evidence, Regulations and/or instructions by the Appellate Authority. The instant petition is accordingly dismissed in limine.

(VINOD S. BHARDWAJ)
JUDGE

15.05.2023
rajender

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