IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

208 **CWP-14510-2016 (O&M)**
Date of Decision: 22.08.2023

UTTAR HARYANA BIJLI VITRAN NIGAM AND OTHERS
... Petitioner

VERSUS

PERMANENT LOK ADALAT PUBLIC UTILITY SERVICES AND OTHERS
... Respondents

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

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

Mr. Rose Gupta, Ms. Garima Modi,
Mr. Drupad Sangwan and Ms. Hardeep Kaur
Advocates for respondents No.2 and 3.

****

<u>VINOD S. BHARDWAJ, J. (ORAL)</u>

Challenge in the present petition is to the impugned order dated 11.01.2016 (Annexure P-9) passed by the Permanent Lok Adalat (Public Utility Services), Panipat in Application No.813-A/2014 instituted by the applicants/respondents No.2 and 3 on 05.11.2014.

Briefly summarized, the facts of the present case are that the petitioner is a Distribution Licensee in the State of Haryana under The Electricity Act, 2003.

The respondent No.2 – Durga Spinning and Weaving Mills Pvt. Ltd. was a consumer of the petitioner against Account No.LS-01-1011 (Old Account No.LS-18) at the disputed premises with a sanctioned load of 778 KW i.e. L.S. Category. An application dated 27.05.2013 was submitted by respondent No.2 for temporary disconnection (TDCO) and after verification and necessary sanctioned, TDCO was ordered on 22.07.2023. The supply was thereafter disconnected on 28.09.2013. Despite being liable, the respondent No.2 did not pay the MMC (Minimum Monthly Charges) whereupon a notice vide memo dated 31.12.2013 was served upon respondent No.2 failing which a permanent disconnection (PDCO) would be passed. A reminder was thereafter sent on 13.02.2014. After waiting sufficiently to enable respondent No.2 to clear the arrears, a PDCO No.01/189 was issued on 17.10.2014. The supply was eventually permanently disconnected on 05.11.2014. Regular monthly bills of minimum statutory charges were being raised by the petitioner-Distribution Licensee during this period.

Instead of making payment, the consumer filed application under Section 22-C of the Legal Services Authorities Act, 1987 challenging the demand of Rs.25,95,736/- for the period from June 2013 to 05.11.2014. It is further submitted that as per the approved tariff for 2013-14 a surcharge had also been provided for delayed deposit/non-deposit of the statutory minimum monthly charges. In a TDCO, the entire infrastructure is left intact and only one phase of the three phase supply is disconnected. The system is thus required to be maintained and two phase supply can be used for ancillary purposes.

Since the sanctioned connected load of the consumer during April 2013 to November 2014 was 778 KW, hence demand was raised in terms of Circular No.U-30/2013 dated 05.07.2013.

The demand was a subject matter of challenge before the Permanent Lok Adalat (Public Utility Services), Panipat on the ground that all dues till moving an application dated 27.05.2013 had been cleared by the respondents. TDCO can be made for a maximum period of 12 months and that minimum charges could be claimed only for one month. The debit @ Rs.1,27,500/- per month towards minimum charges was thus wrong. The surcharge was also impugned on the ground that when principal amount cannot be claimed, the surcharge does not survive.

Upon consideration of the rival contentions and evidence, the application was partly accepted and the consumer was held liable to pay the minimum monthly charges only to the extent of 1½ month from 01.06.2013. The relevant part of the Award of Permanent Lok Adalat (Public Utility Services), Panipat reads thus:

> *"8. After hearing the arguments of the Id. counsel for the parties and going through the documents produced on the file as annexures A1 to A17 by the applicants and R1 to R22 by the respondents, it is undisputedly established that the applicants had moved an application (copy annexure A2) for temporary disconnection of their electric supply as they wanted to sell out the old machinery and to install new ones. On the basis thereof, the concerned SDO had written a letter (copy annexure A4) to the XEN concerned that the applicants have applied for temporary disconnection and nothing was due against them. On this application, the temporary disconnection of the applicant was not done in accordance with the instruction No. 5.5 (vi) of the said instructions rather it was done for non-payment of the amount as is clear from the writings on the bills from annexures A7 to All as well as annexures R11 to R17.*
>
> *9. When the amount was not paid by the applicants, then the respondents should have followed the provisions of instruction No. 7.1 of the said instructions and should have disconnected the electric supply of the applicants permanently. This instruction lays down that every consumer is expected to make the payment of his dues by the due date and in case he fails to pay the amount by the*

due date, then his premises is liable for disconnection under section 56 of the Electricity Act 2003. This section also lays down that a clear 15 days notice in writing is required to be given to such consumer before disconnecting the supply. The instruction No.7.1 (2) of the said instructions, lays down that the notice of disconnection of supply in the event of non-payment of bills is printed on the bill itself, so, if the payment of bill is not received within 15 days after expiry of grace period (i.e. before expiry of notice period), the premises of consumer should be disconnected by the SDO without further notice or loss of time. This instruction also lays down that the electric supply to the premises so disconnected should not be restored until full settlement of all outstanding dues and of the charges for re-connection of supply prescribed in the schedule of general & miscellaneous charges are not made. Hence, in view of the provisions of the said instruction, when the applicants did not pay the amount of outstanding bills after 1st June 2013, then their electric supply should have been disconnected without any loss of time but it has not been done so by the respondents. As such, the plea of the respondents that the applicants are liable to pay the minimum/fixed charges, cannot be accepted except for the period w.e.f. 1 June 2013 to the date of expiry of grace period of 15 days i.e. the applicants are liable to pay the amount for minimum charges for 1 ½ months.

10. It is also necessary to be noted that when the applicants did not clear the amount due after expiry of grace period, then there was no question of effecting temporary disconnection of the electric supply to the applicants rather it was incumbent upon the respondents to effect permanent disconnection of the electric supply of the applicants.

11. Hence, in view of the aforesaid discussion, the application is hereby partly accepted and an award passed holding that the applicants are liable to pay the amount of minimum charges for 12 months w.e.f. 01.06.2013 to the respondents. However, the *applicants are not liable to pay the amount of further minimum charges to the respondents as they did not effect the permanent disconnection despite the fact that the applicants did not pay the amount of bill due. Anyhow, seeing the facts & circumstances of the case, the parties are left to bear their own costs. Memo of cost be prepared accordingly. File be consigned to the record room after due compliance."*

Aggrieved thereof, the present writ petition has been filed.

Counsel for the petitioners herein refers to the sales circular No.U30/2013 dated 05.07.2013 issued in compliance of the corrigendum issued by the Haryana Electricity Regulatory Commission for the financial year 2013-14. The issues pertaining to the temporary disconnection of the supply stipulate as under:

"(i)-(vi) XXXXX XXXXX XXXXXX

vii) Temporary disconnection of supply

(a) The industrial consumers seeking temporary disconnection of supply shall submit their written requests giving therein specific reasons for the same to Sub Divisional Officer (Operations) (S.D.O (OP)) concerned at least one month in advance of the date from which the temporary disconnection is being sought. Requests for temporary disconnection for a maximum period of six months shall be examined and decided by concerned Executive Engineer (Xen (OP)) keeping in view the merits of each case. The requests for temporary disconnection beyond a period of six months and upto 12 months shall be referred by respective SEs to concerned Chief Engineer (CE (OP)), for decision. While considering such requests for temporary disconnection the following guidelines shall be kept in view:-

(i) The consumer is not a defaulter of Licensee's dues whether disputed or undisputed.

(ii) The consumers seeking temporary disconnection under "Force Majeure Clause" are not required to submit their requests one month in advance as stipulated under above paragraph

(iii) The Force Majeure Conditions for the purpose of this clause will include only the following:-

a) Acts of God e.g. Floods, Tempests, Earthquake, lightning.

b) Acts of Civil and Military Authorities e.g. Wars, Mutiny, Civil commotion/disturbances, Riots

c) Fires, Strikes, Lockouts.

(iv)-(vi) XXXXXXXXX XXXXX

(b) XXXXXXXXX XXXXX

(c) The industries which are allowed temporary disconnection will pay minimum charges @ Rs.220/- per KW or part thereof of the connected load for one month following the month in which temporary disconnection has been allowed and no minimum charges will be levied thereafter.

(viii)-(x) XXXXXXXXX XXXXX"

(Emphasis supplied)

By referring to the above, Learned counsel for the petitioners has contended that the Permanent Lok Adalat (Public Utility Services), Panipat has erred in failing to appreciate the requirements stipulated under the above said Sales Circular. As a matter of fact, respondents-applicants were required to submit the application for temporary disconnection at least one month in advance to the Petitioners-Distribution Licensee. While considering the request of temporary disconnection, the consumer was required to deposit all the dues to the petitioners-Distribution Licensee whether disputed or undisputed, and also, the Petitioners-Distribution Licensee is entitled to recover the minimum charges at the rate of Rs.220/- per KW or part thereof of the connected load. However, the respondents-applicants committed default in payment of the minimum-charges. The temporary disconnection was actually carried out as per Clause VII of the Sales Circular instead of the request sent by him. The Petitioner-Distribution Licensee is entitled to recover the minimum charges on monthly basis from the month of temporary disconnection. Hence, the Petitioner-Distribution Licensee is in any case entitled to demand charges till 21.08.2023 as temporary disconnection was done on 22.07.2013. However, the Permanent Lok Adalat (Public Utility Services), Panipat has allowed the above said charges till the period of 45 days only w.e.f. 01.06.2013.

Counsel for the respondents-applicants, on the other hand, has contended that the request for TDCO had been submitted on 27.05.2013 and all dues till then had been cleared. The said aspect is also reflected from the communication of the SDO bearing Memo No.1261 dated 20.06.2013 to the Executive Engineer. Despite all dues having been cleared as per circular, the Distribution Licensee did not grant sanction without assigning any reason. The consumer, however, stopped consumption of electricity. The consumer is liable for arrears upto the date of submission of application for TDCO and the minimum monthly charges for a period of one month thereafter. There was no further liability. The consequences of failure by the Licensee in executing a PDCO cannot be fastened against consumer beyond what is permissible in law.

While referring to Clause 55(VI) extracted above, reliance was also placed on Clause 7.1.2 of the said instructions, which reads thus:

> *"Every Consumer is expected to make the payment of his dues by the "due date". In case he fails to discharge the liability, his*

> *premises will be liable for disconnection under section-56 of the Electricity Act, 2003. Under the provisions of Section-56 of Electricity Act, 2003, a clear fifteen days notice in writing is required to be given to such consumer before disconnecting the supply. The notice of disconnection of supply in the event of non-payment of bill is printed on the bill itself, as such, if the payment of bill is not received within 15 days after expiry of grace period (i.e. before expiry of notice period), the premises of consumer should be disconnected by the SDO without further notice or loss of time. The supply to the premises so disconnected should not be re- stored until full settlement of all outstanding dues and of the charges for reconnection of supply prescribed in the schedule of General and misc. charges are not made."*

Notwithstanding the abovesaid Sales Circular, it is obligatory on the part of the Petitioners-Distribution Licensee to carry out the temporary disconnection in the event of non-payment of electricity dues, after giving 15 days' notice, and without prejudice to the rights to recover the said charges from the consumer. He further contends that the applicants had submitted an application for seeking temporary disconnection on 27.05.2013 and all dues had been cleared, yet, the first energy bill was raised at the end of month of June, 2013. In an event of default, the Petitioner-Distribution Licensee was legally required to carry out the permanent disconnection of the electricity supply. Having not done so, they cannot now levy the charges on the consumer and were not entitled to recover the dues in accordance with the provisions of Electricity Act, 2003. The officials of the licensee have not acted in accordance with the same compounding the hardships of the applicants. The Petitioner-Distribution Licensee cannot be permitted to take benefit of their own laxity.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The facts which emerge from the case are as under:

(i) The consumer had submitted application for TDCO on 27.05.2013.

(ii) All dues and arrears, in terms of the Sales Circular U30/2013 dated 05.07.2013 for TDCO had been cleared.

(iii) The application for TDCO should be submitted in advance by a period of one month.

(iv) The minimum monthly charges were leviable against commercial load for one month following the month in which TDCO is allowed. No minimum monthly charges are leviable thereafter.

(v) The Sales Circular also provides that energy bill is a notice unto itself and electricity can be disconnected if payment is not deposited.

(vi) There is no allegation that consumer used the energy as per connected loan even after application for temporary disconnection.

(vii) The SDO recommended the case for TDCO in June 2013 but the same was issued only on 22.07.2013. The disconnection was done on 28.09.2013. No reasons have been assigned for such delay and no lapse on the part of the consumer is pleaded or established.

(viii) The demand for minimum monthly charges had been raised till November 2014 even though the Circular does not provide for minimum monthly charges, 30 days after TDCO is allowed.

(ix) Only such demand as is permissible under statute/rules/regulations can be recovered from a consumer.

(x) The billing cycle in individual connection is monthly.

(xi) Permanent Lok Adalat (Public Utility Services), Panipat relied on Section 56 of The Electricity Act, 2003 to hold that when an energy bill is not deposited within 15 days, supply ought to be disconnected. Hence, the supply should've been disconnected by 15.07.2013 when bill of June 2013 was not deposited.

(xii) The contention of the licensee is that TDCO was on account of failure to pay the bill of June 2013 and not on account of application. No reasons have been shown as to why steps as per law were not taken on the application especially when application had been submitted on 27.05.2013 and one month notice would come to an end on 26.06.2013. The minimum monthly charges could be charted for one month thereafter and even that would come to an end on 25.07.2013.

(xiii) However, the case of the licensee itself is that disconnection was done on account of non-payment. The same was also delayed by the licensee for no valid cause and considering that Section 56 of The Electricity Act, 2003 provides 15 days' time to clear dues. This period would thus end on 15.07.2013 i.e. the period for which licensee has been held entitled to minimum monthly charges.

(xiv) The petitioner has been switching for its entitlement to the Circular, but for disconnection, to Section 56 of The Electricity Act, 2003, the same would not be an appropriate and permissible way to claim demand. Since foundation of the action of TDCO is not as per the Sales Circular No.U-30/2013, hence, the statutory provisions would apply.

(xv) The Permanent Lok Adalat (Public Utility Services), Panipat has been guided in its jurisdiction by principles enshrined under Section 22-D of the Legal Services Authorities Act, 1987 relating to equity, objectivity, principles of natural justice, other principles of justice and fairness. It has tried to balance the equities and strike a balance when default is more by the petitioner itself.

The impugned Award passed by the Permanent Lok Adalat (Public Utility Services), Panipat is based on equity, objectivity, fairness, principles of natural justice and other principles of justice. The discretion exercised by the Permanent Lok Adalat (Public Utility Services) would not be ordinarily interfered with merely for the reason that any other opinion is also possible, until its Award suffers from grave illegality, impropriety, perversity or misappreciation of evidence adduced by the rival parties. I do not find existence of any such circumstance on the case file that may warrant interference with the impugned Award.

The present petition is accordingly dismissed.

Any other misc. application(s) also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

22.08.2023.
rajender

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