IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

203 **CWP-423-2016**
Date of Decision: 06.07.2023

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. & ANR.
... Petitioners
VERSUS

PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES) AND ANR.
... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.
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Present: Mr. R.S. Longia, Advocate
for the petitioners.

Mr. Ram Pal Verma, Advocate
for the respondent No.2.
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VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed challenging the Award dated 19.05.2015 (Annexure P-14) passed by Permanent Lok Adalat (Public Utility Services), Jhajjar, whereby the application dated 09.09.2014 (Annexure P-12) filed by respondent No.2 under Section 22-C of the Legal Services Authorities Act, 1987 has been accepted and the petitioners have been directed to release the tube-well connection to the private respondentswithin one month as per the policy prevailing in the year 2007-08.

Briefly summarized, the facts of the present case are that the petitioners had issued a Sales Circular No.U-77 of 2001 dated 28.09.2001 for release of power connection to the tube-wells under the general category. The respondent No.2-applicant moved an application for release of agricultural connection on 31.12.2008. Pursuant thereto, a demand notice was sent by the petitioner-Distribution Utility on 16.09.2009 for a non-refundable amount of Rs.20,000/- to the respondent No.2-applicant, which was made good on 12.12.2009. The connection was to be released on a seniority list to be maintained by the petitioners. Eventually, when the respondent No.2-applicant became entitled to the release of electricity connection on his seniority, a demand notice dated 18.10.2010 was sent by the petitioners to respondent No.2-applicant to deposit an amount of Rs.84,000/- as charges under the Sales Circular for release of the connection.

It is the case of the petitioner-Distribution Utility that the above said amount was not deposited by the respondent No.2-applicant despite reminder sent on 30.09.2011 to deposit the abovesaid amount. Subsequently, vide an application dated 28.05.2012, the respondent No.2-applicant prayed for permission to deposit the amount and the amount of Rs.84,000/- was deposited on the same day.

It is contended that as Sale Circulars are No.U-10 of 2011, U-11 of 2012 and Sales Circular No.U-17-2012 had in the meanwhile been issued by the petitioner-Distribution Utility, hence, the amount required to be deposited had undergone a change. The petitioner-Distribution Utility accordingly sent a communication to the respondent No.2-applicant to deposit the balance amount of Rs.1,06,125/- since the total amount payable under the revised Sales Circulars was Rs.2,10,125/- and only an amount of Rs.1,04,000/- had been received from the respondent No.2-applicant. The needful was, however, not done, whereupon subsequent reminders were also sent and final demand for deposit of the balance amount of the estimate was also sent to the respondent No.2-applicant vide letter dated 16.01.2014. Thereafter, the application of the respondent No.2-applicant was rejected by the petitioner-Distribution Utility.

Notwithstanding the rejection of the application, the respondent No.2-applicant preferred an application under Section 22-C of the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Jhajjar on 09.09.2014. The parties appeared before the Permanent Lok Adalat and efforts were made to reconcile the issue between the parties, however, the compromise could not be arrived at and the petition had to be decided on merits. The Permanent Lok Adalat thus proceeded to adjudicate the controversy in exercise of powers under Section 22-C(8) of the Legal Services Authorities Act, 1987.

The claim of the respondent-applicant, on the other hand, was that he had deposited the dues as per the applicable Sales Circulars and was entitled to the release of the Electricity Connection as persons junior to him were granted connection. The factual aspects noticed above have remained undisputed.

Upon consideration of the rival submissions advanced by the respective parties, the Permanent Lok Adalat (Public Utility Services), Jhajjar allowed the abovesaid application and directed the petitioner-Distribution Utility to release the tube-well connection to the respondent No.2-applicant within a period of one month as per the policy prevailing in the year 2007-08 and to withdraw the demand notice as relied upon in the written statement. Aggrieved thereof, the present writ petition has been filed.

Counsel for respondent No.2-applicant has made a statement to the effect that he does not intend to file any separate reply and that the requisite Sales Circulars issued by the petitioner-Distribution Utility, which are already on record, shall be relied upon by him to support his case.

Counsel for the petitioner-Distribution Utility has vehemently argued that the action of the petitioner-Distribution Utility in raising the demand had been in consonance with the sales circulars applicable as on the date when the demand was raised. The petitioner-Distribution Utility was always willing to release the tube-well connection in favour of the respondent No.2-applicant on fulfillment of conditions for the release of connection. The respondent No.2-applicant, however, committed default and did not deposit the said amount. He thus cannot seek any benefit despite his own default. Since the statutory charges and the cost of the transformer and augmentation of the supplies had increased in the meanwhile, such additional charges were required to be borne by the consumer. Accordingly, a revised calculation/estimate was communicated to the respondent No.2-applicant, as per which an amount of Rs.2,10,125/- was payable for agriculture/tube-well connection. The amount deposited by the respondent No.2-applicant was only to the tune of Rs.1,04,000/- and was thus short by Rs.1,06,125/-. A communication and various reminders were sent to the respondent No.2-applicant to make good the deposit. He, however, failed to do the needful. The Permanent Lok Adalat (Public Utility Services), Jhajjar also failed to take into consideration the relevant sales circulars and the impact thereof on the *inter se* rights of the petitioner-Distribution Utility as also the default of the respondent No.2-applicant himself in not complying with the demands raised by the petitioner-Distribution Utility in accordance with the subsequent sale circulars.

Counsel for the respondent No.2-applicant has on the other hand contended that the Sales Circular No.U-77 of 2001 was applicable on the date when the respondent No.2-applicant submitted an application for release of connection. Clause 11 of the said Sales Circular prescribed that the entire balance cost of release of connection including distribution transformer was to be borne by the petitioner-Distribution Utility. The relevant Clause of the abovesaid policy reads thus:

> *"11. The entire balance cost of release of connection including distribution transformer will be borne by the Utility."*

He further relies on the Sales Circular No. 26 of 2012 issued by the petitioner-Distribution Utility on 06.08.2012 in relation to the release of the tube-well connection under the modified scheme. The said Sales Circular reads thus:

> *"From*
>
> *Chief General Manager/Commercial,*
> *UHBVN, Panchkula.*
>
> *To*
>
> *All CEs (OP)/SEs (OP) XENs/SDOs/OP,*
> *JEs-1, Incharge Sub-offices in UHBVN.*
>
> *Memo No: Ch-4/TR-95 (90)/5/T/well/CGM/C-I*
> *Dated: 06.08 2012.*
>
> *Subject:* *Release of tube-well connection under modified scheme.*
>
> *SC No U-17/2012 dated 14.06 2012 was issued to implement the release of T/well connection under modified scheme in compliance to approval of decision taken in the meeting held on dated 06.06.2012 under the Chairmanship of worthy FC&PS (Power) Haryana*
>
> *Now, the matter has been discussed in the ORC meeting held on dated 10.07.2012 and it is decided that augmentation/providing additional T/F shall also be priorities as per the capacity of T/F i.e., separate priority for 25 KVA, 63 KVA & 100 KVA T/F shall be maintained. In addition to the 6 No, priorities already mentioned.*
>
> ***1. All the farmers/agriculturists who have deposited the full amount i.e., Rs 20,000/- plus span charges after issue of Demand***

notice; the connection shall be released at the old policy i.e., as per SC No.U-77/2001 on LT/HT as per the site conditions.

2. All the farmers/ agriculturists who have deposited only Rs 20,000/-, the connection shall be released on LT/HT as per the site conditions after getting the span charges deposited @ Rs.12,500/- per span. However the release of connection to such applicants will be regulated as per old policy i.e., SC No U-77/2001.

3. The charges to be deposited by the farmers who have applied for connection on or after 01.01.2011 (or who have not deposited any amount except ACD) shall be i.e., Rs.30,000/- + Rs 12,500/- per span and the release of connection to such applicants will be regulated as per the guidelines given at Sr. No.5.

4. The transformer installed under HVDS can also be augmented while releasing the above connections.

5. The additional Guidelines for the consumers covered under Sr. No. 3 & 4.

a) If on a new T/F the number of connections to be released is exactly 3, then the consumers will be asked to pay 30,000/- and 12500/- per span each.

b) If on a new T/F the number of connections to be released is exactly 2, then both the consumers will be asked to share equally the total cost incurred for release of connections.

c) Single connection per transformer where the consumer meets the full cost of release of the connection i.e., the line & T/F cost.

d) In case where spare capacity is available on the existing transformer and:-

(i) Only cable upto 20 mtr is required then the consumer shall pay Rs.20,000/- or Rs.30,000/- as applicable,

(ii) In case additional poles are required for LT Line then Rs.12500/- per span shall be payable in addition to Rs.20,000/- or Rs.30,000/-as applicable

(e) In case where spare capacity is not available on the existing transformer and augmentation of the T/F is required he will

be covered in the categories detailed above as per d (i) & d (ii).

f) In case where on account of theft/damage of T/Fs installed under HVDS/ Self Exécution Scheme were replaced by utility with higher capacity T/F, such T/F shall be augmented as per clause 'e' for releasing the new connections.

Priority to release the Tube-well Connection:-

1. *Single connection per transformer where the consumer meets the full cost of release of the connection.*
2. *In case where spare capacity is available on the existing transformer and only cable upto 20 mtr is required.*
3. *In case where spare capacity is available on the existing transformer and only LT span are required.*
4. *In case where spare capacity is not available on the existing transformer and augmentation of the T/F is required and cable upto 20 mtr.*
5. *Augmentation of existing T/F & erection of LT Line (2 connections or more).*
6. *Providing additional T/F & erection of LT line (2 or more Tube Well connections).*

Note: Transformers will be supplied by the Nigam.

SC No.U-17/2012 dated 14.06.2012 stands superseded.

The above instructions may be brought to the notice of all concerned for strict & careful compliance."

(Emphasis supplied)

It is thus argued that the case of the respondent No.2-applicant is covered under Clause–1 of the aforesaid Sales Circular and the respondent No.2-applicant is entitled to the release of agriculture/tube-well connection in terms of the Sales Circular No.U-77 of 2001 and no additional cost can be demanded by the petitioner-Distribution Utility.

Learned counsel for the petitioner-Distribution Utility does not dispute the aforesaid Sales Circular and also does not dispute that the amount of Rs.20,000/- plus span charges as applicable under Sales Circular No.U-77 of 2001 had been deposited by the respondent No.2-applicant on 28.05.2012.

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.

Even though the arguments were forcefully advanced by the counsel for petitioner-Distribution Utility, however, the Sales Circular No.U-26 of 2012 dated 06.08.2012 demolishes the abovesaid demand. Clause -1 of the abovesaid Sales Circular that has been extracted above clearly shows that all the farmers/agriculturists, who had deposited the full amount i.e. Rs.20,000/- plus span charges under the Sales Circular No.U-77 of 2001 were to be released the connection as per the old policy. The application of the above said Sales Circular and/or deposit of the complete amount is not subject matter of dispute. Further, it has also been fairly conceded by the counsel for the petitioner-Distribution Utility that even though the abovesaid amount of Rs.1,04,000/- had been deposited by the respondent No.2-applicant by 28.05.2012, the same has not been refunded so far and the amount has remained with the petitioner-Distribution Utility since then i.e. for a period of more than 10 years.

Even though the counsel for the petitioner-Distribution Utility has vehemently argued that the application of the respondent No.2-applicant had been rejected by the petitioner-Distribution Utility, however, there is no specific order placed on record or the date of any such order having been passed by the petitioner-Distribution Utility referred to in any pleading. An attempt was made by the counsel for the petitioner-Distribution Utility to make a reference to

Annexure P-11 to contend that it was conveyed to respondent No.2-applicant that in the event of the not depositing the additional demand, the application shall be deemed to be rejected and as such, by necessary implication, the application did not survive.

A pointed query was also raised to the counsel for the petitioner-Distribution Utility as to whether the policy/Sales Circular No.U-77 of 2001 stipulated any specified time frame within which the amount was to be deposited and specified any consequences for failure to deposit the said amount within the demand period. He has failed to refer to any such clause in Sales Circular No.U-77 of 2001 which would have entitled the petitioner-Distribution Utility to reject an application merely on account of delay in depositing the demanded amount.

A further pointed query was raised to the counsel for the petitioner-Distribution Utility as to whether the notice demanding an additional amount could travel beyond the contours of the applicable policy and prescribe consequence not stipulated in the policy itself. He, however, could not refer to any provision of law under which a power could have been exercised by the petitioner-Distribution Utility in purported discharge of a policy/Sales Circular, when such power/authority had not been so conferred under the applicable Sales Circular.

Notwithstanding the abovesaid lapses, the contentions of the petitioner-Distribution Utility to raise a demand for additional service connection charges fall flat in view of the subsequent notified Sales Circular No.U-26 of 2012 dated 06.08.2012. Clause-1 of the said Sales Circular specifically revived the rights of all applicants who had deposited the full amount i.e. Rs.20,000/- plus span charges after the issue of demand notice for release of connection in their favour as per the old policy. The abovesaid Sales Circular although did contemplate demanding of additional charge where the capacity of the transformer had to be augmented or where additional poles were required to be erected, however, the above said demand under Clause -5 was applicable only to the consumers under Category 3 and 4, and was not applicable qua the consumers under Category 1. The demand which the petitioner-Distribution Utility may have validly raised against consumers who had submitted applications post 01.01.2011 cannot be applied to the consumers who had submitted applications prior in point of time and were covered under the Sales Circular No.U-77 of 2001 read with Clause I of Sales Circular No.26 of 2012. The petitioner-Distribution Utility having itself taken a conscious decision in the ORC meeting held on 10.07.2012 to release electricity connection to all consumers who had deposited the full amount under Sales Circular No.U-77 of 2001, any such demand as would travel beyond the scope of the above said Sales Circular would not have sanctity of law. In my view, the demand raised by the petitioner-Distribution Utility under the erstwhile Sales Circular, is no more valid in view of the Sales Circular No.U-26 of 2012 and the electricity connection had to be released in favour of the respondent No.2-applicant under the Sales Circular No.U-77 of 2001. The petitioner-Distribution Utility cannot elect enforcement of Sales Circular selectively which favour or support the demand and conveniently ignore those that favour the consumer. Once the subsequent circular restores all benefits, raising a demand to the contrary would be hit by the Circular and is untenable.

Any attempt by the petitioner-Distribution Utility to deny an applicant of the benefits that have accrued in his favour under a Sales Circular issued by the petitioner-Distribution Utility deserves to be deprecated.

Even though the Permanent Lok Adalat (Public Utility Services), Jhajjar has failed to refer to the abovesaid Sales Circular in its Award, however, the same being on record, this court takes cognizance of the said Sales Circulars. There is no reason as to why benefits of said Sales Circular be denied to the respondent No.2-applicant. Seemingly, the said Sales Circular had been withheld by the petitioner-Distribution Utility from the Permanent Lok Adalat and no reference was made to the above in its reply even though a reference was made to a subsequent Sales Circular of 2013. Such an attempt of an instrumentality of State, which ought to be moved by the public welfare, is condemned. State agencies and instrumentalities are expected to be fair and not governed by selfish profit motives that may infest a private profit oriented organization.

Hence, even though I do not find myself in agreement with the Permanent Lok Adalat (Public Utility Services), Jhajjar for the reasons given by it in the impugned Award, however, for the reasons given above, I affirm the relief granted to the respondent-applicant by the Permanent Lok Adalat (Public Utility Services), Jhajjar. Hence, even if the rationale of the Permanent Lok Adalat is bad, yet, the writ petition deserves dismissal for the above reason.

For the foregoing reasons, the present writ petition is dismissed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 06, 2023
rajender

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