

CWP-11132-2023 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: December 16, 2024

PUNJAB STATE POWER CORPORATION LTD. & ANOTHER

....Petitioner

Versus

KULDEEP SINGH AND ANOTHER

.....Respondents

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

**Present:- Mr. Parminder Singh, Advocate
for the petitioners.**

Mr. Inderjit Kaushal, Advocate for respondent no.1

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the award dated 3.3.2022 (Annexure P-8) passed by the Permanent Lok Adalat, Bathinda, whereby the petitioner PSPCL was directed to consider and process the application of respondent no.1 (applicant herein) for release of tubewell connection, as per the latest instructions issued by the petitioner relating to the scheme for release of tubewell connection, but in doing so, it has already disregarded the applicable instructions.

Learned Counsel appearing on behalf of the petitioner-PSPCL contends that the Permanent Lok Adalat has directed the petitioner to consider and

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process the application of respondent no.1 for release of the tubewell connection as per the latest instructions relating to scheme for release of tubewell connection.

The operative part of the order reads thus:

“.....10. After hearing both the sides and on going through the evidence, it is found that it is not under dispute that the applicant applied for tubewell connection vide application No. 33139/AP and he deposited Rs. 2,100/- vide a receipt dated 11.04.2007, copy of which is Ex A1. He also purchased the material for installation of tubewell vide receipts Ex A3 to Ex A6. According to the respondents, the applicant had applied for tubewell connection in a scheme which was applicable to the applicants having land less than 2.5 Acres. The evidence further shows that the application of the applicant was not considered on the ground that he was having land more than 2.5 Acres and the letter Ex R2 shows that the amount deposited by the applicant was returned vide cheque. The applicant filed an affidavit on 14.02.2022 that he did not receive the cheque and the amount is still lying with the respondents. Ex R2 further shows that in the said letter the application of the applicant was not considered on the ground that he did not fulfill the necessary requirements. It has not been mentioned in the said letter that the application of the applicant was declined as he was having land more than 2.5 Acres. The respondents have failed to produce any evidence that the application of the applicant was covered in a scheme for the applicants having less than 2.5 Acres of land. The self

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declaration Ex A10 shows that the applicant in the said letter clearly mentioned that he was not having land more than 5 Acres in the State of Punjab. Even the report Ex R12 of Naib Tehsildar, Goniana shows that the applicant is having land less than 5 Acres in the revenue area of village Mehma Sawai.

11. From the above position, it is found that the application of the applicant has been declined without any justification on the ground that he had applied in a scheme less than 2.5 Acres. Rather, the evidence shows that the case of the applicant is covered under the scheme between 2.5 to 5 Acres of land. As per the affidavit dated 14.02.2022 filed by the applicant, the amount deposited by him is still lying with the respondents.

12. For the reasons given above, the present application is allowed and an Award is passed in favour of the applicant and against the respondents whereby the respondents are directed to consider and process the application of the applicant forthwith for release of the tubewell connection as per the latest instructions issued by the respondent No. 1 relating to scheme for release of tubewell connection of the applicants holding land between 2.5 to 5 Acres. Copy of the Award be supplied to the parties as per rules.....”

(emphasis supplied)/-

Learned counsel for the petitioner contends that the Commercial Circular Letter No.05/2014 dated 17.02.2014 regarding extension of AP Policy for the year 2013-14 for issuance of tubewell connection reads as under:

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“Punjab State Power Corporation Limited

Office: Chief Engineer/ Commercial, Patiala

Commercial Circular Letter No.05/2014

To

*All Engineer-in Chief/Chief Engineers (Distribution)
Under Punjab State Power Corporation Limited.*

Memo No. 129/133/SSM-414/Tubewell Policy-2013-14

Dated: 17.02.2014

*Subject: Regarding extension of AP Policy for the year 2013-14 for
issuance of tubewell connection.*

*The following extension is made with regard to tube well
policy 2013-14 regarding issuance of tubewell connection
which was issued vide Commercial Circular No.32 of 2013
dated 11.06.2013.*

*a) Small Farmers who have upto 2.5 Acre and 2.5
Acre to 5 Acre land, whose applications are
pending up to 31.03.2007, tubewell connection be
issued up to 31.12.2014.*

*b) Small Farmers who have upto 2.5 Acre of land,
whose applications are pending from 1.4.2007 to
31.12.2013, tube well connection be released to
them upto 30.06.2015.*

*The above mentioned connections be issued on priority
basis and expenses occurred due to release of above said
connection shall be charged as per para no.10 (ii) of Circular
No.32 of 2013 and modifications will be made after accepting
instructions mentioned in Commercial Circular No.50 of 2013.*

*The applicants who shall comply with the demand
notices within 3 months and their seniority shall be fixed from
the registration of A&A Form and those applicants who shall
comply with the demand notice after 3 months, their seniority
shall be fixed as per receipt of their test report. This condition
had been made keeping in view that the fact that the applicants
who had applied later on be not made senior than the small
farmers who have not been issued tubewell connections for a
long time.*

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The compliance be made by the Field Office regarding Commercial Circular No.32 of 2013 and instructions issued from time to time.....”

Learned counsel for the petitioner contends that as per the aforesaid Commercial Circular read with the reply filed by respondent no.1 to the effect that he is owner to the extent of 4 acres 2 kanals and 10 marlas in village Mehma Sawai, Tehsil and District Bathinda, the claim of the petitioner would fall under clause (a) of the aforesaid commercial circular. Only those small farmers whose applications were pending up to 31st March 2007, were to be issued tubewell connections up to 31.12.2014. He contends that undisputedly, the respondent-applicant submitted the application for release of connection under the AP policy on 11.4.2007 i.e. after 31.03.2007 and hence, his case did not fall under the said policy for release of the tubewell connection. Notwithstanding the same, the Permanent Lok Adalat has directed the consideration of the claim of the applicant and to release the tubewell connection. He contends that there would be no grievance of the PSPCL in so far as consideration of the claim of respondent no.1 as per the latest instructions is concerned, however, the grievance emanates from the finding recorded by the Permanent Lok Adalat in para no. 11 of its award wherein, it has been specifically stated that the case of the respondent no.1-applicant is covered under the scheme between 2.5 to 5 Acres of land. This finding poses a challenge to the consideration of the claim in terms of the applicable policy.

Counsel appearing on behalf of respondent no.1-applicant, however, contends that the respondent no.1-applicant had not been at fault and that he had deposited the application money to the tune of Rs.85,000/- approximately in the year 2007 and that he is still awaiting the release of the connection. He contends

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that the aforesaid Commercial Circular was not adduced by the petitioner-PSPCL before the Permanent Lok Adalat and as such, he should not be penalized for the omissions committed by the petitioner. A further submission is made that consequent upon the details furnished by the petitioner-PSPCL, the respondent no.1-applicant made investment by way of construction of a kotha in the fields along with the requisite structure and a tubewell. As per the counsel appearing for respondent no.1-applicant, he is entitled to be compensated for the same.

Counsel for the petitioner-PSPCL contends that there is no claim by the applicant as regards the lack of knowledge about the aforesaid Commercial Circular despite the plea of the petitioner specific to the said effect. He also contends that merely because the said document was not produced before the Permanent Lok Adalat, would not operate as a bar against referring to the aforesaid Commercial Circular. The respondent no.1-applicant has neither disputed the said Commercial Circular, while filing the reply, nor has he referred to any other evidence which would show that the said Commercial Circular stands superseded by any other commercial circular. Thus, the applicability of the said Commercial Circular cannot be ignored. The said document is not a subsequent creation of the petitioner. It was already in existence even at the time when the application was filed by the respondent no.1-applicant on 3.01.2018. He submits that any such failure should not be held as a ground to ignore the essential terms and conditions of a Commercial Circular considering that fiscal liability of subsidy is fastened as a result. No exemption can be carved out for respondent no.1-applicant and eventually similar benefits must be also made available to all other similarly placed persons. If the connection is released to one applicant even after the cut off date, all other similarly placed persons would also be entitled to same treatment on parity. He also refers to the para no.3 of the reply

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filed to the application under Section 22 (c) of the Legal Service Authorities Act, 1987, wherein it has been submitted that the respondent-applicant was found to be not entitled for any tubewell connection.

No other arguments have been raised.

I have heard learned counsel for the parties and have gone through the documents available on record as well as the impugned award, with their assistance.

A perusal of the above undisputed factual position shows that no commercial circular has been issued in supersession of Circular at No.5 of 2014 regarding extension of AP Policy for the year 2013-14. The above Commercial Circular was an extension of Commercial Circular no. 32 of 2013 dated 11.06.2013. As per the said circular, small farmers owning land from 2.5 acres to 5 acres and whose applications were pending up to 31st March 2007 were entitled to get connections up to 31st March 2014. As per the counsel for the petitioner, respondent no.1-applicant had originally submitted the application for release of connection under the category of less than 2.5 acres, whereas, as per the reply furnished by him, he is the owner to the extent of 4 acres two canals and ten marlas of land and as such he undisputedly comes under the category of small farmers who own land from 2.5 acres to 5 acres. As per the terms and conditions of the above Commercial Circular, in order to be eligible for the release of electricity connection under the said category, only those applications submitted before 31.3.2007 were to be considered. The application in question had been submitted after 31st March 2007. Undisputedly the application in hand was submitted on 11th April 2007 i.e after the cut-off date. Thus, the respondent no.1-applicant does not fulfill the terms and conditions of Commercial Circular Letter No. 5 of 2014 to be eligible for the release of connection under the AP category.

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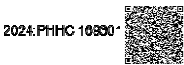
Even though, this Court is conscious of the fact that application in question had remained pending with the petitioner for nearly 17 years, however, It has also to be seen that the tubewell connection is being claimed under a subsidized connection and cannot be released at the mere asking of the applicant notwithstanding the financial implications and the management of the subsidies to be given by the State Government. It is only when an applicant fulfills the conditions prescribed by the State Government to release the connection under the subsidized category that the petitioner distribution-licensee can grant the benefit under the relevant Scheme.

A court is required to remain conscious of the fact that there may be many other similarly placed persons awaiting release of electricity connections. A cut-off date determined by the State cannot be obliterated and has a sacrosanct character in fixing an eligibility. It is normally not to be ignored and has to be given effect to in determining the eligibility. The financial liability fastened on the State would flow on to the Public Exchequer and that such financial burden would not ordinarily be created by the Court. The State even does not happen to be a party in the proceedings before the Permanent Lok Adalat.

Even though operative part of the award directing the petitioner-PSPCL to consider the claim of the applicant for the release of the electricity connection do not require much interference, however the findings as recorded in para number 11(Supra) of the Award needs to be clarified.

The present writ petition is accordingly partly allowed. The finding recorded in para number 11 of the impugned award, to the extent of holding the respondent no.1-applicant eligible for grant of electricity connection, is ordered to be expunged. The petitioner-PSPCL is accordingly directed to consider the case

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of the respondent no.1-applicant for release of AP tubewell connection as per its applicable policy and the eligibility conditions prescribed therein.

Needless to mention that in the event the respondent no.1- applicant being found to be ineligible under the applicable Commercial Circular for release of electricity connection, the amount already deposited by respondent no.1- applicant for release of the electricity connection shall be released to him alongwith interest, from the date of its deposit till its disbursement, as prescribed by the appropriate commission, within a period of 30 days of passing of such an order.

In so far as submission of the respondent-applicant for grant of compensation for the investment made by him is concerned, the said aspect raises disputed questions of fact and cannot be gone into by the High Court in a judicial review and may be pursued in an alternative competent forum. The period spent in pursuing the present proceedings shall, however, be exempted while assessing limitation for considering applicant’s prayer for seeking compensation for as alleged loss caused to him.

Petition is disposed of being partly allowed.

December 16, 2024
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(VINOD S. BHARDWAJ)
JUDGE

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