

CWP-15135-2019(O&M)

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

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CWP-15135-2019(O&M)
Date of decision: 13.09.2024

Ashok Kumar

...Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam & ors.

...Respondents

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

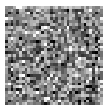
Present : Mr. Parminder Singh, Advocate and
Mr. Sukhdeep Singh, Advocate
for the petitioner.

Mr. Sunil Kumar Dhanda, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 25.04.2017, whereby the petitioner has been directed to pay arrears of electricity bills, on the basis of the audit report for the entire intervening period from the year 2014 to 2017 notwithstanding the office instructions/order dated 23.02.2010.

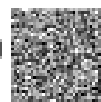
Learned counsel for the petitioner contends that the petitioner has undergone the professional course/training programme from the Central Institute of Fisheries Education for Inland Saline Water Aquaculture Management Practice. He intended to run fisheries farm in his field and applied for an electricity connection for the running of the water tubewell motor and running of fans for generating oxygen in the pond for the fisheries work. The respondent- Department carried out a survey and assessed the consumption of load and found that 49 KW transformer is



required for the above-mentioned purposes. The petitioner, accordingly, submitted an application (appended as Annexure R/1 by the respondents) for release of the electricity connection. The said application form, in column No.12, provided the applicant to opt for any one of the two categories (DS or NDS). Since the connection has been sought for running of the fish farm and is not in the nature of domestic connection, hence the petitioner specified the category of connection as NDS with a specific reference (as fish farm). The said column is extracted as under:-

12. Category connection (DS and NDS)	NDS (Fish Farm)
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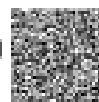
He contends that the application form did not have any other option or category (except for these two), however, the purpose for which the electricity connection was being sought had been specifically mentioned by him and the same had also been assessed by the respondents, after a physical verification of the site but before release of the connection for determining the load requirements of the petitioner. It is further submitted that the respondent distribution licensee issued a sale circular No.U-46/2009, dated 02.12.2009 for conversion of horticulture and fisheries into agriculture category. The said sale circular had been issued in light of the decision taken by the State Government to the effect that the Horticulture and Fisheries activities are to be included in the Agriculture metered category. The per unit rate applicable to the said category was 25 paisa per unit and at par with the agriculture consumers w.e.f. 01.12.2009. A similar sale circular was also issued by the Dakshin Haryana Bijli Vitran Nigam bearing No.10/2009 dated 17.12.2009. Counsel for the petitioner submits that the application form for release of electricity connection was submitted

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in the statutory format as supplied by the respondents. However, despite the said sale circulars already being in force there was no separate column prescribed for fishery/A.P. connection. Hence, the purpose was specified by the petitioner in the application form. It is submitted that the petitioner continued to pay the electricity meter charges regularly as per the applicable tariff of 25 paise per unit. However, the respondents raised a demand vide memo No.4431, dated 25.04.2017 since the audit party raised an objection claiming an amount of Rs.15,65,955/- to be due. Hence, the present writ petition.

Learned counsel submits that the aforesaid demand has been raised by the respondents claiming that the electricity supply had been categorized by the petitioner as non-domestic supply, hence, the revision had been done on the basis of actual consumption and as per the tariff applicable to the non-domestic supply. He submits that purpose for connection was fully made known to the respondents and there is no allegation of the electricity having been consumed for any purpose other than fisheries, however, despite the same, the demand has now been raised without affording any opportunity of hearing. There had been no concealment of any nature and there was full disclosure by the petitioner.

Learned counsel for the respondents, on the other hand, contends that the demand has been rightly made. The application form for release of the electricity supply was submitted by the petitioner under the NDS category and hence he is amenable to a charge to be collected at the tariff applicable to the NDS category. The audit rightly pointed out the error and demand has been rightly raised.

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I have heard learned counsel for the parties and have gone through the documents appended along with the present petition.

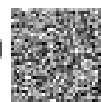
On a specific query posed to the counsel for the respondents to the effect that once a distribution licensee had already issued commercial circular bringing horticulture and fisheries within agricultural operations as to whether any separate column was provided in the A & A Form to the said effect, he contends that no such separate column has been mentioned in the A&A Form for release of electricity supply under the agriculture feeder for the fisheries.

Learned counsel for the respondents is also not able to controvert that in the said application form the words “fish farm” had been specifically mentioned by the petitioner.

A query has also been posed to the respondents whether the bills were continuously being raised by the respondents at the tariff so approved in terms of the sale circular issued by the distribution licensee for the Agriculture Category and as to whether the parties had been in default. Counsel for the respondents finally submits that there was no default.

He was also confronted with the fact that there were no allegations of electricity being used for any purpose other than fish farm. He fairly submits that there is no such allegation of any unauthorized use of electricity or electricity being used for any purpose other than agricultural activity as reflected from the demand notice dated 25.04.2017.

The petitioner thus submitted complete information as sought for by the respondents at the time of submission of A&A Form. The specific usage was declared and verified by the respondents before the

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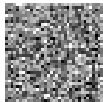
release of connection. It was only due to the mutual understanding that bills were being raised at an agricultural tariff for the entire period. Had it not been the case, the bill at all times would be charged on the NDS tariff. It seems that the respondents are attempting to take benefit of the use of expression, 'NDS' in the A&A form so as to levy and collect a charge to which the petitioner is not liable.

Under the given circumstances, I find that the respondents were required to take a considered decision, after affording an opportunity of hearing to the petitioner, before a demand was to be made.

The Electricity Act, 2003 specifically prescribes a statutory remedy for the redressal of the grievances pertaining to bills/demand raised by the respondents before the Consumer Grievances Redressal Forum under Section 42 (5) of the Electricity Act, 2003. The question of law having been answered, the question as to whether assessment is correct or not or whether the demand is solely for the tariff under NDS category, in a matter that has to be first examined by the Consumer Grievances Redressal Forum.

Under the given circumstances, the present petition is disposed of at this stage, without commenting on the assessment of the demand, with liberty to the petitioner to move an appropriate petition before the Consumer Grievances Redressal Forum under Section 42(5) of the Electricity Act, 2003, within a period of two months from the date of receipt of certified copy of this order.

In the event of the petitioner approaching the Consumer Grievances Redressal Forum, a considered decision shall be taken upon the contentions of the petitioner by the Forum. Recovery of the aforesaid



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demand of Rs.15,65,995/- conveyed vide memo No.4431, dated 25.04.2017 shall however remain stayed for the aforesaid period of two months or till the petitioner files an appropriate petition before the Consumer Grievances Redressal Forum, whichever is early. The petitioner shall however continue to pay the current energy charges towards consumption as per tariff applicable to fisheries.

13.09.2024
monika

(VINOD S. BHARDWAJ)
JUDGE

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