



CWP- 15896-2017

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

CWP- 15896-2017

Date of Decision: 03.12.2024

DAKHIN HARYANA BIJLI VITRAN NIGAM AND ANOTHER

..... PETITIONERS

VERSUS

M/S STAR WIRSE INDIA LIMITED

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Parminder Singh Kanwar, Advocate
for the petitioners.

Mr. Jagdeep Singh Rana, Advocate
for the respondent.

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed *inter alia* seeking a writ of *certiorari* quashing the order dated 14.08.2015, passed by the Forum for Redressal of Consumer Grievances, Dakshin Haryana Bijli Vitran Nigam (for short 'the Forum'), whereby the petitioner/Nigam has been directed to refund the service connection charges recovered from the respondent/Company in the years 2004, 2006 and 2009 along with interest at the rate of ten per cent after adjusting supervision charges, if not deposited by the consumer separately.

2. Facts of the case, in brief, are the respondent approached the Forum seeking refund of service connection charges deposited against the application for extension of load of its Consumer Account, bearing

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No. RLS-107; it had deposited ₹37.50 lacs on 19.05.2009, ₹18.75 lacs on 29.04.2006, and ₹11.25 lacs on 09.07.2004, for the purpose. The refund of this amount was sought in terms of Sales Instruction No.5/2012 issued by Nigam, Annexure P-5, clarifying that “no service connection charges should be levied/recovered from consumer having independent feeder either for new connection or for its extension where the cost is entirely borne by the consumer. The charges as mentioned in the Schedule of General and Miscellaneous Charges approved by the Commission shall be chargeable for the works carried out by the distribution licensee(s) at their own cost.”

2.1 The claim was accepted by the Forum directing the petitioners to refund the amount already deposited by the petitioner therein with interest, vide impugned order dated 14.08.2015; the relevant part whereof reads as under:

The SDO submitted letter through Nodal Officer/CGRF, DHBVN, vide his office memo No. 544 dated 13.08.2015 that the consumer has deposited Rs.37.50 Lacs on 19.05.2009, Rs. 18.75 Lacs on 29.04.2006 and Rs. 11.25 Lacs on 09.07.2004 on account of service connection charges and after verification of sales Instruction No. 5/2012 it is clarified that no service connection charges should be levied/recovered from the consumer having independent feeder either for new connection or its extension where the cost is entirely borne by the consumer.

He further submitted that nothing is clear regarding refunding of already recovered service connection charges before the issue of Sales instruction No.05/2012 dated 03.10.2012.

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Forum is on the opinion that it is un-just to recover amount from the consumer and retain that amount without doing the work of the consumer. Since, the work was got executed by the consumer under Self Execution Scheme, it is utterly against the natural justice to retain the amount deposited by the consumer.

After going through the case file the information/documents supplied by the applicant as well as by the respondent on the date of hearing and discussion held during the course of hearing in the case, the Forum directs the respondent SDO to refund the amount already deposit by the consumer and to pay interest @ 10% from the date of deposit by the consumer till the date of refund after adjusting 1.5% supervision charges if not deposited by the consumer separately. The case is closed. The Forum disposes off the petition without any cost on either side.

2.2 Learned counsel for the petitioners contends that the respondent has raised a stale claim before the Forum. The limitation to file a complaint is one year after the cause of action has arisen, whereas the petitioners approached the Forum on 01.04.2015, i.e., after a period of more than six years from the date of last deposit of service connection charges. The complaint was, accordingly, liable to be dismissed.

3. Learned counsel for the respondent, on the contrary, contended that the impugned order was challenged by the petitioners before the Haryana Electricity Regulatory Commission (HERC) in 2016 by filing petition No.HERC-PRO-18 of 2016, wherein, vide order dated 22.11.2016, they were directed to comply with the impugned order dated 14.08.2015.



They filed appeal against it before the Appellate Tribunal for Electricity (APTEL), bearing no.122 of 2017, which was withdrawn on 17.07.2017. Accordingly, the petitioners are not entitled to file the instant petition. He, however, does not dispute that the limitation to file a complaint before the Forum is one year from the date of cause of action.

4. Submissions made by the learned counsel for the parties have been considered.

5. The Forum has been set up under the provisions of Electricity Act, 2003 to provide a system for redressal of consumer grievances vide ‘the Haryana Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) and (Electricity Ombudsman) Regulations, 2004’ (hereinafter referred to as ‘the Regulations 2004’), dated 12.04.2004. Section 8 thereof prescribes the procedure to file a complaint, as also the limitation; the same is as under:

8. Procedure to file the Complaint

1. Every complaint must be filed in writing in duplicate to the Chairperson of the Forum by the Complainant in Form-1.

Provided that

i) the complaints relating to previous years pertaining to any grievance covered under regulation 7 can be filed with the forum within one year of its coming into existence.

ii) after one year of the establishment of the Forum, only those complaints filed within 1 year of its cause for action shall be entertained by the Forum.

iii) and (iv) xxx xxx

2) xxx xxx



6. Regulation 8(1) (i) stipulates that complaints relating to any grievance of previous years can be filed with the Forum within one year of its coming into existence, i.e., 12.04.2004; it is also provided in sub-clause (ii) that after one year of the Forum's establishment, only the complaints filed within one year of arising of the cause of action shall be entertained. The respondent approached the Forum by instituting a complaint in terms of these Regulations on 01.04.2015, seeking the refund of service connection charges deposited in the years 2004, 2006 and 2009. Apparently, the complaint was filed much after the expiry of one year limitation period, since the cause of action to claim refund of even the last deposit of ₹37.50 lacs arose on 19.05.2009. No explanation has been put forth by the respondent for this inordinate delay in filing the complaint. There is a clear bar on the Forum's jurisdiction to entertain the complaints after one year from the cause of action. Therefore, the complaint having been filed beyond limitation could not have been entertained by the Forum; this renders the impugned order without jurisdiction.

7. It is also a matter of record that the complaint has been filed seeking refund of service connection charges on the basis of Sales Instruction No.5/2012, issued on 03.10.2012, which has not been made applicable retrospectively. The charges had been deposited much prior to issuance of the instruction, and could not have been ordered to be refunded in terms therewith since it applied prospectively only. On this account also, the respondent was not entitled to the refund ordered by the Forum. Further, challenging the impugned order dated 14.08.2015 before the HERC, or the

direction issued therein to comply with the same, cannot give validity to the order which is inherently without jurisdiction.

8. In view of the aforementioned reasons, the petition is allowed and the impugned order, dated 14.08.2015, is hereby set aside.

03.12.2024

Seema

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(TRIBHUVAN DAHIYA)

JUDGE