IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212

CWP-28513-2018
Date of decision: 20.02.2024

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD AND OTHERS

......Petitioners

VERSUS

M/S VIPUL MOTORS PVT LTD AND ANOTHER

.......Respondents

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

*****

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

Mr. Ashish Gupta, Advocate
for respondent No1.

*****

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 07.09.2018 passed by the Appellate Authority-cum-Superintending Engineer, TS, Circle, Faridabad under Section 135 of the Electricity Act, 2013.

2. Counsel for the petitioner contends that respondent No.1 M/s Vipul Motors Pvt. Ltd. has its business establishment at Mathura Road, Ballabgarh. An electricity connection bearing Account No. INHT-0004 (RLS-325) of HT Industrial category had been released in favour respondent No.1. The said premises of respondent No.1 were checked by the team of M & P Division, Faridabad on 23.06.2014 during which the respondent was

found using the electricity supply of Industrial category for non-domestic supply (NDS). As there was a considerable difference in the tariff rates applicable to industrial consumer viz-a-viz. the NDS purpose, the account of the respondent No.1 was overhauled in accordance with the regulation and instruction applicable in the matter. The M.T.-1 report dated 23.06.2014 was prepared and copy thereof was delivered to the General Manager of respondent No.1 at the spot and under signatures.

3. A provisional assessment order was thereafter passed on 27.06.2014 against which an application was preferred by the respondent No.1 under Section 127 of the Electricity Act, 2003. The said appeal was allowed vide order dated 18.09.2015. The petitioner distribution licensee preferred CWP-1178 of 2016 against the said order which such representation was allowed and the order of the Appellate Authority under Section 127 of the Electricity Act, 2003 was set aside as being not maintainable against the provisional assessment order. However, at the time when the writ petition was decided, the Assessing Officer had already passed a final assessment order dated 09.07.2014. The respondent No.1 was granted liberty to challenge the final assessment order whereupon appeal dated 27.02.2017 was filed by the respondent No.1. The Appellate Authority thereafter allowed the said appeal and set aside the order of assessment passed by the respondent No.2-Appellat Authority.

4. Counsel for the petitioner contends that the evidence available on record clearly suggests that the respondent No.1 was carrying on commercial activities at Plot No. 1A situated at 19/6, Delhi-Mathura Road and that the said activity being a commercial activity, was susceptible to a

different tariff as approved by the appropriate Commission. Hence, the assessment was correctly done and the demand was rightly raised.

5. Pet contra, counsel for contesting respondent No.1. has contended that the order passed by the Appellate Authority was based on correct appreciation of the evidence available on record. He contends that they are in fact two plots owned by the respondent No.1. While Plot No.1-A, 19/6 Milestone, main Mathura Road, Faridabad is used for the purpose of carrying out denting, panting and repairing of the Maruti Cars as a Workshop, the other plot bearing No.27/5 is being used for the commercial activity. He contends that the HT Industrial connection with the current sanction load of 205 KV has already been installed at the said premises on 1100 volts and pressure supply on 11 KV HT line. There was thus no theft or unauthorized use of electricity. Attention is drawn to the operative part of the order passed by Appellate Authority which reads thus:-

> "*Order:*
>
> *Having heard both the parties, the Appellate authority in the matter after going through the written submission of the appellant and relevant replies by the defendant and oral submissions in the matter on different date of hearings reached to the following inferences:*
>
> *1. The defendant DHBVN failed to prove that they delivered the final assessment order done by them on 09.07.2014 to the appellant either through registered post or in person. However, the final order or assessment was submitted to the Appellate authority during the previous appeal which was delivered to the appellant through email by the Appellate authority. The same stands acknowledge by the appellant.*

2. Before the release of the connection in the industrial category, the schedule of energy consuming apparatus to be connected by the prospective consumer were verified by SDO/OP of the defendant DHBVN on 14.09.2017. The premises was equipped with 40 machines driven by the electric motors having horse power varying from 5 HP (Horse Power) to 25HP. The motive load driven by the motors verified at site was found as 270, 425 KW further 28.500 KW load was found being assigned to light points, power points, fan points and other auxiliaries which was less than 10%.

3. Further, checking report of defendant dated 23.03.2014 do not specify the load found in the category which could be specified as NDS. As per the sales circular D-61/2013. The load found running at site authorized and unauthorized category is required to be quantified by the checking officer and the penalty will be charged in proportionate manner to the load found respective categories with respect to the consumption of electricity recorded in the meter in preceding 12 months. No such quantification was done and only a statement that

a) Billing is being done in industrial category whereas supply is being used for the NDS purpose.

b) Account of consumer be overhauled as per Nigam instructions.

4. HERC Notification dated 8th January, 2014 with respect to Electricity Supply Code Regulation No.HERC/29/2014-1 in Regulation -4 unambiguously sate that:

4.11.1 if it is found that a consumer has been wrongly classified in a particular category, the licensee may consider reclassifying the consumer under appropriate *category. The consumer shall be informed of the proposed reclassification through a notice asking him to file objections, if any, within 30 days. The licensee after due consideration of the consumer's reply, if any, may after the classification.*

4.11.4 For the period in which the consumer's application for reclassification is pending, the consumer shall not be liable for any action on grounds of unauthorized use of electricity.

The tariff for this period will be of new category.

5. The HERC Regulation 8. 6. 7 duly state as under:-

> *In the cases where the consumer has not concealed the category of usage of supply while applying for the connection but the load was sanctioned under a wrong category by the sanctioning authority only the difference of the tariff from the date of connection shall be charged and no case of unauthorized use of supply or theft of electricity shall be made. The future billing, however, shall be made on the applicable category.*

6. The Appellate authority is of the considered opinion that the provisional order of assessment dated 27.06.2014 and final order of assessment dated 09.07.2014 both containing penalty amount of Rs.2650697/- on the basis of impugned checking report dated 26.06.2014 by defendant DHBVN have been issued contravening the relevant specific instruction, regulations issued by the HERC and DHBVN from time to time.

7. The plea of the appellant also hold good that it was duty of the checking officer to specify and quantify the exact load found in the authorized category as well as unauthorized category use in the checking report. The *checking team has created major infirmity in report by not mentioned the load found in non-domestic category thus has violated the specific instructions contained in relevant regulations. In absence of exact assessment of the load found in unauthorized category, any penalty imposed contravene relevant sales instructions, regulations and is unlawful and cannot sustain in the eye of law.*

8. Further these assessment orders have been found unquestionably non-speaking, bland, and have been Issued completely ignoring the fact that the connection was classified/categorized in the Industrial category since the date of its release. It is pertinent to mention that the connection has been released after due diligence by none other than the officer in-charge responsible to release the connection after taking due cognizance of the load available at site. Even if the connection pertain to different classification that need to be notified for reclassification as per regulation to the consumer concern giving him appropriate opportunity to comply, therefore, the plea of the respondent DHBVN also has no locus standee that sales & service stations have been specifically reclassified in non-domestic supply category.

9. On merit the respective assessing authorities before issuing respective assessment orders have also failed to verify the very basic document i.e. test report of the appellant consumer in the matter and have not appreciated the existence of motive load to the tune of 270.425 KW out of sanction load of 299KV which was meant to run the machines with the help of electric motors, which is no manner can be classified or categorized as Non Domestic Supply category load. Needless to mention the load meant for other support services is less than admissible load of 10.

> *10. The premises of the consumer was checked by defendant DHBVN two months prior to the impugned checking of 26.06.2014 on 25.04.2014 by the same members of staff of the respondent and no Infirmity was found by them as per the report submitted by the appellant. Since the connection was released in the year 2007 and pertain to HT category, the appellant consumer must have been checked on several occasions as per standard instructions of the utility. No violation prior to the impugned checking report dated 23.06.2014 was ever found and conveyed to the appellant consumer.*
>
> *For the aforesaid reasons & infirmities, the appeal of the appellant is allowed. The Impugned demand, decisions and orders of defendant DHBVN are declared illegal and quashed with the direction that within 30 days from the date of issue of order, the respondent shall refund the amount of Rs.2650897/- to the appellant with interest. The Interest rate would be applicable rate of fixed deposit allowed by the nationalized banks as on date and shall be payable from the date on which penalty was paid by appellant till such time the amount is refunded to the appellant by the defendant DHBVN."*

6. He thus contends that the evidence available on record was minutely examined and considered by the Appellate Authority and it was noticed that the allegations as leveled by the respondents were unsubstantiated and that the industrial connection was being put to use for the purpose for which such supply had been used. The matter came up for hearing before this Court on 22.08.2023. In order to ascertain the factual aspect, Local Commission was appointed with the consent of the parties. A report dated 05.09.2023 has

been furnished by the Local Commissioners appointed by this Court. A copy of the said report had been furnished to the counsel for the respective parties to file their objections/response, if any.

7. On resumed hearing, counsel for the respective parties contend that they have no objection to the report furnished by the local Commission.

8. I have heard learned counsel appearing on behalf of the respective parties and having gone through the documents available on record.

9. The entire dispute revolves around the purported use of the Industrial connection for carrying out a commercial activity or not. It is not in dispute that the respondent No.1 is owner of Plot No.1-A, 19/6, Milestone, Main Mathura Road, Faridabad as well as Plot No. 27-5, Mathura Road, Faridabad. The contention of the respondent No.1 is that it carries on the industrial activity at Plot No.1-A and the commercial activity at Plot No.27-5. The said aspect was duly considered by the Appellate Authority and the writ petition was accepted, however, for the purposes of verification of the respective claims, the Local Commission was appointed. A report of the Local Commission has been perused and photographs of site have been appended. All the said photographs corroborate the stand of the respondent that the work of repair is being undertaken at the premises in question. A large number of equipment stocks and stores are available alongwith the vehicle that have been parked there for repairs in the body shop. The machinery and equipment installed therein seems to be old and greased reflecting the continuous usage of such site for the purposes of carrying out the repair works. Further, it is also reported by the Local Commissioners that the documents regarding the registration certificate of the company, the

factory license, the employee list, attendance register, Accounts books, customers receipt etc. were duly inspected and were found to be in order. The attendance register and salary slips of the employees working in the premises were also thoroughly examined to corroborate the number of employee working therein. Further, the customers were also seen visiting the premises for service and bills in the name of various customers were also obtained. Even though certain brand new Maruti Suzuki Cars with temporary number plates were found present, however, on inspection of the chassis number of the cars, it was found that those cars were sent to the service center from the inventory for some repair work. Further, the CCTV footage for the last 2-3 months was also seen by the Local Commissioners and they reported that no activity of sale or purchase of Maruti Cars was seen in the footage in the said plot and that the sale and purchase was only limited to the showroom premises in Plot No. 27-5, Mathura Road, Faridabad.

10. The above said report has remained undisputed and uncontroverted. The said report thus substantiates the finding recorded by the Appellate Authority.

11. In the totality of circumstances and considering that all the objections raised by the petitioner had already been dealt with by the Appellate Authority under reasoned order has been passed thereupon and the findings/basis of the order recorded by the Appellate Authority stands corroborated from the report of the Local Commissioner. The present writ petition deserves dismissal.

12. Dismissed accordingly and the impugned order dated 07.09.2018 passed by the Appellate Authority is accordingly affirmed and upheld.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 20, 2024
Vishal Sharma

Whether speaking/reasoned	**:**	Yes/No
Whether Reportable	:	Yes/No