

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

110

CWP-28490-2023
Date of Decision: 11.01.2024

NBCC (INDIA) LIMITED

... Petitioner

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM AND ORS.

... Respondents

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

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Vikrant Panchnanda, Advocate,
Mr. Rohan Mittal, Advocate and
Mr. Armaan Dahiya, Advocate
for the petitioner.

Mr. Puneet Jindal, Sr. Counsel with
Ms. Navroop Jawanda, Advocate and
Mr. Arshnoor Singh, Advocate
for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the letter dated 01.06.2022 (Annexure P-1) issued by respondent No.2 to one Army Welfare Housing Organisation and a further prayer has been made for issuance of direction to the respondent distribution licensee to provide electricity connection through the 33 KV Sub-Station in Sector 95, Gurugram to the project of the petitioner.

The petitioner, which is a Navratna Company of the Government of India, has approached this Court contending that it has developed a residential township, NBCC Heights, Group Housing Complex, at Hyattpur, Sector 89, Gurugram and that it had filed an application vide letter dated 09.03.2015 for sanctioning of 4457 KW load of electricity on 33 KVA supply pressure at NBCC heights with the respondent distribution licensee. On

10.05.2016, the respondent-Distribution Licensee sanctioned the abovesaid load request of the petitioner, based on the recommendations of Technical Feasibility Committee. It is further contended that another Housing Society namely Ansal Housing Ltd. had also been sanctioned a load of 4.793 MVA vide memo dated 08.11.2016 for a residential housing project in Sector 92, Gurugram and that the abovesaid load was enhanced to 9.689 MVA vide memo dated 20.06.2019.

A Memo of Understanding was executed between the petitioner, Ansal Housing Society Ltd. as well as between respondent No. 3-Army Welfare Housing Organization to share the construction, land and electrical equipment cost to build 33 KV Sub-Station in Sector 95, Gurugram for the group of builders for their respective projects in Sectors 89, 92 and 95, Gurugram as per the load sanctions granted to them in 2016 and 2019. Thereafter, on 10.08.2021, the respondent No.3-Army Welfare Housing Organisation transferred a piece of land to the respondent-Distribution Licensee as per the terms and conditions of the sanction granted to it for setting up of 33 KVA Sub-Station.

On 01.06.2022, the respondent No.1- the Dakshin Haryana Bijli Vitran Nigam issued a communication to AWHO pointing out that the petitioner's project NBCC Heights is at a distance of 3.5 KMs from respondent No.3's project and thus the formation of group of 33 KVA Sub-Station with the petitioner is not feasible so as to avoid crisscrossing of the cables through a defined corridor. The abovesaid letter is a subject matter of challenge in the present petition.

Counsel for the petitioner has further placed reliance on the letter dated 06.06.2022 (Annexure P-6) issued by petitioner to the respondent-Distribution Licensee on the subject of 33 KVA switching station at Army

Welfare Housing Organization, Sector 95, Gurugram with whom the NBCC is an MOU partner. It is contended that pursuant to the aforesaid representation submitted by the petitioner, a response was sent by the respondents on 21.09.2022 vide memo No.4246 wherein it was conveyed that so far as the formation of group with Army Welfare Housing Organization is concerned, the Competent Authority of Dakshin Haryana Bijli Vitran Nigam did not consider it technically suitable being at a long distance, and it was informed that a suitable land parcel of M/s Pegasus Land and Housing Pvt. Ltd. at Sector 93, Gurugram is available at a distance of 1.200 KMs away from the project and the petitioner was advised to initiate a process to execute an Irrevocable Agreement in coordination with Dakshin Haryana Bijli Vitran Nigam for sharing the land for Switching Station. The petitioner, thereafter, submitted another letter on 27.10.2022 (Annexure P-14) reiterating his request to allocate the bay at Feeder Station, NBCC alongwith the shared infrastructure with Army Welfare Housing Organization in Sector 95, Gurugram for utilization of 33 KVA connection for the NBCC Heights at the earliest. It is submitted that no decision on the aforesaid application has been communicated to the petitioner NBCC so far by the respondent Distribution licensee.

I have heard learned counsel for the petitioner at some length and have gone through the appended documents.

It is not in dispute that challenge in the present petition is to the communication bearing Memo dated 2058 dated 01.06.2022, which is in response to the office memo dated 31.05.2022 sent by Army Welfare Housing Organization. The said communication having not been generated on any request of the petitioner, it is incomprehensible as to under what capacity the

petitioner could have preferred the present writ petition challenging decision on a letter sent by M/s Army Welfare Housing Organization. Moreover, the office memo dated 31.05.2022, in response whereof, the above said memo had been issued on 01.06.2022, is also not on record so as to ascertain the contents thereof or the requests made thereunder. Further, so far as the communication dated 06.06.2022 sent by the petitioner to the respondent-Distribution Licensee for providing 33 KVA Sub-Station to their Township, at the earliest in terms of the Memo of Understanding is concerned, the said letter was responded to by the respondent-Distribution Licensee and the request of the petitioner to set up 33 KVA Switching Station at the said site was declined by the respondent-Distribution Licensee vide memo No.4246 dated 21.09.2022 while specifically referring that the Competent Authority of the Dakshin Haryana Bijli Vitran Nigam did not consider it technically suitable and further the respondent-Distribution Licensee even suggested a more suitable land for development of such a project. The abovesaid communication, whereby the request of the petitioner was declined, is again not a subject matter of challenge in the present writ petition.

In any case, a subsequent request is also stated to have been submitted by the petitioner on 27.10.2022 to the respondent-Distribution Licensee to reconsider the decision. It has been submitted that no decision has been taken on the subsequent request and the same is still pending. The cause of action if any would accrue only in case the respondent-Distribution Licensee passes an order on the said application of 27.10.2022. It is further seen at this juncture that the petitioner has for reasons best known to it chosen not to impugn the communication dated 21.09.2022 whereby the request of the

petitioner had already been declined. In an absence of any challenge to the decision of the respondent-Distribution Licensee, declining the usage of the land as proposed by the respondents under the Memo of Understanding for construction of 33 KVA external infrastructure, no direction can be issued to the respondent to permit the petitioner to use the land offered under the Memo of Understanding for construction of 33 KVA switching station.

At this juncture, Mr. Puneet Jindal, Sr. Advocate assisted by Mr. Arshnoor Singh fairly submits that the respondent-Distribution Licensee would have no objection in taking a decision on the communication/letter addressed by the petitioner to the respondent-Distribution Licensee dated 27.10.2022 (Annexure P-14) and would examine the request made by the petitioner.

The present petition is accordingly disposed of at this stage, on the above statement of the respondent and consented to by the petitioner, without commenting on the merits of the case with liberty to the petitioner to approach the respondent-Authorities within a period of three weeks from today. The respondent-Authorities shall thereupon consider the application dated 27.10.2022 submitted by the petitioner and pass a reasoned and speaking order on the request of the petitioner for a joint 33 KVA switching station at the proposed place.

Writ petition stands disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 11, 2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No