

(1994) 07 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3175 of 1994

Hukam Singh

APPELLANT

Vs

Haryana State Electricity Board

RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

Electricity Act, 1910 — Section 24(1)

Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970 — Section 4

Citation : (1995) 1 CivCC 188 : (1995) 109 PLR 79

Hon'ble Judges : N.K. Sodhi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Randhir Singh Badhran, for the Appellant; Sudhir Nehra and Ashish Kapoor, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This writ petition is directed against action taken by the Haryana State Electricity Board (for short "the Board") and its officers for disconnecting electric supply of the petitioner for his alleged failure to deposit the dues.

2. The case of the petitioner is that his father Bali Ram was provided with electric connection for his tubewell. Even after the death of his father the connection continued to be in his name. As per agreement the petitioner's father was entitled to use of 5 H.P. motor for the purpose of irrigation of crops. On January 4, 1994 the officers of the respondent Board disconnected the electric supply to the said tubewell, even though the petitioner had deposited all electricity dues. The petitioner has asserted that a controversy arose between him and the board after September, 1992. The officers of the Board made allegations against him that, he was using electric connection for motor of 7-1/2 HP, although the petitioner was not using such motor and the authorities of the Board disconnected supply of electricity. However before disconnecting the electric supply the respondent Board did not comply with the provisions of Section 24(1)

of the Indian Electricity Act, 1910 and Section 4 of the Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970.

3. The respondents have come forward with a case that premises of the petitioner were checked on 12.12.1992 by Shri Chanan Singh, Assistant Foreman of the Board. He reported that the motor installed was for 7-1/2 BHP although connection was only for 5 BHP and when it was checked with the clip on meter it was found taking 12 Ams. On 400 volts. On discovery of these facts a penalty of Rs. 750/- at the rate of Rs. 50/- BHP for six months was imposed and from the billing month of January, 1993 bill for 7-1/2 BHP were raised. An opportunity was given by the Board to its consumers to deposit the arrears of bill in two instalments upto 30th June, 1993 and 31st October, 1993 respectively. The date of deposit of last instalment was extended upto 31st December, 1993. Nevertheless the petitioner did not deposit the amount. Thereafter the Board passed an order on 9.11.1993 for temporary disconnection. Even then the petitioner did not deposit the amount due. Consequently, order of permanent disconnection was issued on 14.3.1993. According to the respondents, the petitioner had been informed on more than one occasion about the use of electric connection for motor, of 7-1/2 BHP and he had full knowledge of the background in which penalty of Rs. 750/- was imposed upon him and bills for higher amount were raised by the Board. On this premise, the respondents have pleaded that there has been no violation of the provisions of 1910 Act or 1970 Act.

4. Admitted facts which have come on record shows that electric connection was duly sanctioned in favour of the father of the petitioner for use of motor of 5 BHP. Disconnection of supply of electricity has also been admitted. However, the parties are in dispute about the manner in which supply of electricity has been disconnected. While the petitioner says that no notice or opportunity of hearing was afforded to him before disconnection was brought about, the respondents have pleaded that the petitioner was fully aware of the reason for disconnection of supply. After going through the rival pleadings, we are fully satisfied that before action for disconnection of supply was taken by the respondents, no written notice was given to the petitioner calling upon him to show cause as to why supply of electricity be not disconnected on account of his neglect to pay charge due from him. Section 24 of the Indian Electricity Act, 1910 empowers licensee to cut off the supply of any person who neglects to pay any charge for energy. Similarly Section 4 of the Karyana Government Electrical Undertakings (Dues Recovery) Act, 1970 contemplate disconnection of supply after giving notice of demand in the prescribed form. Since these two provisions are relevant for the purposes of deciding the controversy between the parties they are reproduced below.

5. Section 24 of the Indian Electricity Act, 1910 is as under :

"24. Discontinuance of supply to consumer neglecting to pay charge. - (1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy

to him, the licensee may, after giving not less than seven clear days" notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision :

Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee had made a request in writing to the consumer for deposit with the Electrical Inspector of the amount of the licensee's charge or other sums in dispute or for the deposit of the licensee's further charge for energy as they accrue, and the consumer has failed to comply with such request."

Section 4 of the Haryana Government Electrical Undertakings (Due Recovery) Act, 1970, reads as under :

"4. Notice of demand for dues and penalty not paid where the dues are not paid by a debtor by the date specified in the bill therefor, the prescribed authority may at any time serve or cause to be served upon him a notice of demand in the prescribed form, stating the name of the debtor, the amount payable by him on account of the various dues, penalty and costs of recovery and the undertaking to which it is payable.

Explanation. - The sending of the notice of registered post shall be deemed to be sufficient service on the person concerned."

6. A look at the above quoted provisions show that although licensee/prescribed authority has been vested with the powers to disconnect the supply of electrical energy or to cut off supply of person who neglects to pay any charges for dues, exercise of this power is hedged with the condition namely that before taking action for disconnection of the supply the licensee or competent authority must give notice to the person concerned and call upon him to pay the dues. Section 24(1) of 1910 Act contemplate giving of notice not less than seven days. Section 4 of 1970 Act does not contemplate seven days" notice but does require that the prescribed authority must serve notice of demand in the prescribed form. It is, therefore clear to us that before action for disconnection of supply of the consumer can be taken by the licensee or any other competent authority it is incumbent upon it to give notice to the affected party, these two statutory provisions can appropriately be termed as manifestation or principle of rule audi alteram partem. One of the principles of natural justice is that no man should be condemned unheard and since that principle is ingrained in the statutory provisions, it was the statutory duty of the respondents to have served a notice

on the petitioner before effecting disconnection of electric supply to him. That has admittedly not been done and, therefore, we have no hesitation in recording a conclusion that action of the respondents in disconnecting supply of electricity to the petitioner is void being contrary to the principles of natural justice.

7. Supply of electricity has been restored to the petitioner during the pendency of the writ petition under an interim order passed by the Court. Therefore, no order is now required to be passed for restoration of electricity supply to the petitioner. However, declaration of nullity of action of the respondents is required to be given with an option to the respondents to take appropriate action against the petitioner after giving a show cause notice to him.

8. In result the writ petition is allowed. Action of the respondents in disconnecting supply of electricity to the petitioner is declared illegal. Restoration of electricity by the respondents under the interim order of the Court shall not be disturbed now. However, the respondents shall be free to take fresh action for disconnection of supply of electricity to the petitioner in case as a result of enquiry held in accordance with law it is found that the petitioner has misused the electric connection provided to his father.