

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**I.A. NO.199 OF 2015  
[For Stay]  
IN  
APPEAL NO.126 OF 2015**

**Dated: 20<sup>th</sup> November, 2015**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member.**

**In the matter of:-**

**UTTAR HARYANA BIJLI VITRAN )  
NIGAM LIMITED, )  
Vidyut Sadan, Sector-6, Pnchkula, )  
Haryana – 134 112. ) ... **Applicant****

**AND**

**1. HARYANA ELECTRICITY )  
REGULATORY COMMISSION, )  
Bays-33-36, Sector-4 at )  
Panchkula-134 112. )**

**2. M/S. HERMAN PROPERTIES )  
LIMITED, )  
Pipli, Kurukshetra – 136 131. ) ... **Respondents****

Counsel for the Applicant(s) : Mr. Varun Pathak.

Counsel for the Respondent(s) : Mr. Hemant Singh  
Mr. Tabrez Malwat for **R-1.**  
Mr. Harish Chandra  
(Manager/Auth. Rep.) for **R-2.**

## **J U D G M E N T**

### **PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON**

1. The Applicant is a Public Sector Company owned by the Government of Haryana. It is engaged in distribution of electricity within the State of Haryana. Respondent No.2 is an estate developer and is engaged in the business of construction of residential and commercial properties. It is the case of the Applicant that Respondent No.2 approached the Applicant for approval of electrification plan for the colony to be developed at Village Bir, Pipli, Kurukshetra. The request of Respondent No.2 was considered by the Applicant. Respondent No.2 was asked to furnish Bank Guarantee equal to 1.5 times the estimated cost of the whole infrastructure to be provided for ultimate load as per the latest load norms of the Applicant. According to the Applicant, the said step was taken pursuant to the policy decision taken vide Sale Circular dated 31.12.2012 ("**Sale Circular**").

2. Respondent No.2 filed a petition before the State Commission challenging the Sale Circular. Following are the prayers made by Respondent No.2.

- “i) To give direction to Respondent Nigam (Applicant herein) to withdraw instructions contained in para-2 of the Sales Circular No.U-45/2012 dated 31.12.2012 to the extent of submission of Bank Guarantee equal to 1.5 times the estimated cost of the whole infrastructure to be provided for ultimate load as per the latest load norms of the nigam.*
- ii) To immediately approve the Electrical Layout for the Ansal Herman City being developed in Sectors 31 and 32, Pipli, Kurukshetra as per the electrical load norms fixed in this regard.*
- iii) To desist from issuing any instructions having financial implications without prior approval from the Hon’ble Commission.”*

3. The said petition was disposed of by the State Commission by its order dated 27.2.2015. Following are the directions issued by the State Commission while disposing of the petition.

- “i) The Petitioner should get the validity of the licence extended from the Director, Country & Town Planning, Haryana and submit to Distribution Licensee.*

- ii) *The Respondent shall consider and approve the Electrical Layout Plan submitted by the Petitioner as per latest norms of Discom for the ultimate load requirement without asking for the Bank Guarantee at this stage. Respondent Nigam shall approve the plan within 15 days of the receipt of the same in accordance with the load norms of the Nigam and to cater the ultimate load of the colony.*
  
- iii) *The Electric Connection shall only be released by the Distribution Licensee after completion of the entire electrical infrastructure (internal as well as external) for the ultimate load, as per approved layout plan and to the satisfaction of the Distribution Licensee.”*

4. In the instant appeal, the Applicant has challenged the said order dated 27.2.2015. In this application the Applicant has prayed that the impugned order be stayed.

5. We have heard learned counsel for the Applicant. Counsel submitted that the State Commission ought not to have waived Bank Guarantee. Counsel submitted that the Sale Circular was issued by the Applicant because the Applicant has come across several cases where the developers like Respondent No.2 do not erect adequate electrical

infrastructure causing great inconvenience to the public at large. This has resulted in protracted litigation. Counsel submitted that by waiving the Bank Guarantee the State Commission has interfered with internal management of the Applicant which it could not have done. In this connection, counsel relied on the judgment of this Tribunal in **Appeal No.102 of 2007 in Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Anr. dated 23.11.2007.**

Counsel further submitted that distribution licensees of State of Haryana have been facing problems because the developers are not providing electrical infrastructure as per the requirements and as per layout approved by the distribution licensees. The Sale Circular has been issued as a safeguard against non compliance by the developers of their obligations towards development of electrical infrastructure. The State Commission should not have therefore directed the Applicant to consider and approve electrical layout plans submitted by Respondent No.2 as per the latest norms without asking for the Bank Guarantee. Counsel submitted that it is therefore

necessary for this Tribunal to stay the impugned order during the pendency of the instant appeal.

6. Learned counsel for the State Commission on the other hand contended that it is not necessary to stay the impugned order because the order clearly states that electric connection shall only be released by the distribution licensee after completion of entire electrical infrastructure and therefore it is ultimately for the distribution licensee to decide whether electric connection should be released or not and in case entire electrical infrastructure is not created it is open to the distribution licensee to refuse to release electric connection.

7. Mr. Harish Chandra, Manager and Authorized Representative of Respondent No.2, is present before us.

8. *Prima facie*, we find substance in the submission of the counsel for the Applicant that the State Commission ought not to have waived the requirement of furnishing Bank Guarantee

as the Bank Guarantee was directed to be furnished pursuant to the Sale Circular. The Sale Circular was issued as a safeguard against developers who try to avoid their liability to provide adequate electrical infrastructure. *Prima facie*, it appears that having come across several cases where developers have avoided to create electrical infrastructure causing great inconvenience to distribution licensees and general public, the Sale Circular was issued. This measure taken by the Applicant falls within the scope of internal management of the Applicant. *Prima facie*, we are of the opinion that the State Commission ought not to have interfered with it and waived the Bank Guarantee. The State Commission ought to have also kept in mind that Respondent No.2 has not got the validity of the licence extended from the Director, Country & Town Planning, Haryana. Though *prima facie* we feel that the Bank Guarantee should not have been waived, considering the fact that as per the impugned order, the ultimate control over the situation is with the Applicant, inasmuch as the Applicant can refuse to release electric connection if the entire electrical infrastructure is not created

by the developer, it is not necessary to stay the impugned order.

9. We are informed by the learned counsel for the Applicant that there is a possibility of Respondent No.2 initiating proceedings under Section 142 of the Electricity Act, 2003 against the Applicant. In this connection we may note that we have already directed that no coercive steps should be taken against the Applicant. In the circumstances of the case, we are of the opinion that the said direction needs to be kept operative till the disposal of the present appeal. It is however, necessary to direct Respondent No.2 to file an undertaking in this Tribunal that in case the Applicant succeeds in this appeal, Respondent No.2 shall furnish the required Bank Guarantee if during the pendency of this appeal the Applicant approves the electrical layout plan submitted by Respondent No.2 pursuant to the impugned order.

10. Hence, the following order:

Application for stay is rejected. However, during the pendency of the present Appeal no coercive steps should be

taken against the Applicant. Respondent No.2 shall file an undertaking that if the Applicant succeeds in this Appeal Respondent No.2 shall furnish the required Bank Guarantee if during the pendency of this appeal, the Applicant approves Respondent No.2's electrical layout plan as per the impugned order. This undertaking must be filed within a period of 4 weeks from today.

11. The Registry to place the appeal on board for final hearing on 2.2.2016.

12. Pronounced in the Open Court on this 20<sup>th</sup> day of November, 2015.

**I.J. Kapoor**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

✓ **REPORTABLE/NON-REPORTABLE**