

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No.117 of 2012

Dated: 8th February, 2013

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

Beverly Park II Condominium,

DLF City, Phase-II,

M.G. Road,

Gurgaon-122 022

... **Appellant**

Versus

1. **Haryana Electricity Regulatory Commission,**

Bay No. 33-36, Sector-4,

Panchkula-134 113,

Haryana.

2. **M/s. Dakshin Haryana Bijli Vitran Nagam Ltd.,**

SE, Operation Circle,

Mehrauli Road,

Gurgaron-122

...**Respondent(s)**

Counsel for the Appellant(s) : Ms. Rashmi Virmani
Mr. Abhay Pratap Singh,
Mr. Ashish Kothari

Counsel for the Respondent(s) : Ms. Sweta Mishra, Ms. Sangeeta Bharti &
Mr. Ankul Raj for R-2

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Beverly Park-II Condominium against the order dated 03.09.2010 passed by the Haryana Electricity Regulatory Commission ('State Commission') in a petition filed by

the Appellant regarding application of Bulk Non-Domestic Tariff on Domestic and Residential Complexes.

2. The Appellant is a multistoried residential complex in DLF City, Gurgaon and is a consumer taking bulk supply at a single point from the distribution licensee. The State Commission is the Respondent no. 1. Dakshin Haryana Bijli Vitran Nigam Ltd., the distribution licensee, is the Respondent no. 2.

3. The brief facts of the case are as under:

3.1 The State Commission vide its order dated 13.10.2006 allowed creation of a separate consumer category called "Bulk Domestic Supply" and introduced a separate schedule of tariff for the said category. In pursuance of the order dated 13.10.2006,

Sales Instructions dated 4.11.2006 were issued by the distribution licensee, the Respondent no. 2 herein. As per the said Sales Instructions, a discounted tariff was charged from the consumers eligible for 'Bulk Domestic Supply' tariff as compared to tariff being charged from consumers falling under the 'Bulk Non-Domestic Supply' category. One of the conditions prescribed in the Sales Instructions for applicability of Bulk Domestic Supply tariff on the consumers was that the connected load of residential and domestic use should be at least 85% of the total connected load and the balance 15% should be for common facilities and no industrial activity should be permitted.

3.2 The Appellant on 21.11.2007 made a representation to the distribution licensee (R-2) stating that the tariff was to be charged as per the tariff fixed for the Bulk Domestic Supply category and also

submitted reports regarding the details of electrical load and consumption of electricity towards common facilities to show that the consumption of electricity towards common facilities falls within the permissible limit of 15% of the total load as prescribed under the sales instructions of the distribution licensees.

3.3 The distribution licensee considered the reports submitted by the Appellant and after verification granted its approval to charge bulk domestic supply tariff from the Appellant with effect from 13.12.2007. Accordingly, the distribution licensee has been charging Bulk Domestic Supply tariff from the Appellant.

3.4 In 2010, the Appellant received a demand notice from the distribution licensee vide Memo dated 8.7.2010 demanding an amount of Rs. 27,44,002/- on the ground that since load towards common facilities

was more than 15% of the total load supplied to the Appellant, the Bulk Non-Domestic Supply tariff will be applicable to the Appellant instead of Bulk Domestic Supply tariff. Thus, the Appellant was asked to pay the difference between the tariff for Bulk Non-Domestic Supply and the tariff already paid by the Appellant for the Bulk Domestic Supply. On 04.08.2010, the distribution licensee revised the amount to Rs. 26,43,530/-.

3.5 The Appellant represented to the distribution licensee (R-2) against the demand raised on them. However, the amount demanded by the distribution licensee was paid by the Appellant under protest. Aggrieved by the said demand, the Appellant filed a petition before the State Commission for setting aside the demand by the distribution licensee.

3.6 By the impugned order the State Commission allowed the petition directing that the connected loads of lifts, fire fighting equipments and water supply pumps would henceforth be included as part of domestic use within the permissible 85% of the total connected load as mentioned in the Commission's order dated 13.10.2006. However, the State Commission decided to implement the order prospectively. The State Commission did not pass any order on the issue of arrears claimed by the distribution licensee. However, the consumers were given liberty to approach the Consumer Grievance Redressal Forum for redressal of individual grievances.

3.7 Consequently, the Appellant filed a complaint before CGRF dated 24.09.2010, claiming refund of the amount deposit as arrears with the distribution licensee alongwith interest. However, the CGRF

dismissed the complaint of the Appellant vide order dated 25.11.2010 in view of the order of the State Commission dated 3.9.2010 making the order applicable prospectively. Thereafter, the Appellant filed a Review Petition before the State Commission. The State Commission dismissed the Review Petition of the Appellant vide its order dated 30.09.2011 stating that the impugned order was not in the nature of any clarification to the previous order but a fresh order to address the difficulties faced by some of the consumers.

3.8 The present Appeal has been filed challenging the order of the State Commission dated 3.9.2010 to the limited extent of its observation regarding prospective implementation of the impugned order.

4. The Appellant has made the following submissions:

4.1 Bulk Domestic supply category was created by the State Commission vide order dated 13.10.2006 keeping in view of the emergence of a large number of multi-storied residential complexes and societies and introduction of Bulk Domestic Supply category was considered in the interest of the distribution licensee as well as the consumers, as the former saves in terms of operation and maintenance cost including metering and billing while the latter gets the benefit of the lower tariff.

4.2 The applicability of the Bulk Domestic Supply tariff was subject to fulfillment of certain conditions that the connected load of residential and domestic use should be at least 85% of the total connected load

and the balance 15% shall be for common facilities and no industrial activity shall be permitted. The State Commission did not go into the question of what would constitute “Domestic use” and use words “common facilities” for the purposes of calculating 85% and 15% use of total load respectively.

4.3 The State Commission in the impugned order dated 3.9.2010 agreed with the submissions of the Appellant and decided that the connected load of lifts, fire fighting equipments and water supply pumps would henceforth be included as part of domestic use within the permissible 85% of the total connected load. Thus, the order given by the State Commission was clarificatory in nature and should have been implemented retrospectively.

5. The learned counsel for Respondent no. 2 in reply has made the following submissions supporting the findings of the State Commission in the impugned order:

5.1 The State Commission's order dated 13.10.2006 was passed with the purpose of introducing 'Bulk Domestic Supply' category. However, this order did not go into the details of what would comprise of 'domestic usage' and 'common area supply'. The reason that the State Commission did not go into defining the 'domestic usage' and 'common area supply' was that the Commission vide another order dated 22.12.2000 had already defined these terms and had categorically mentioned that 'lights, fans, small electrical appliances' that are commonly used in any household will comprise of goods in domestic usage. However, other goods such as lifts, fire fighting equipments etc.,

were not included in the said domestic usage and therefore, were to be treated as common area goods/equipment. Thus, there was no confusion or ambiguity in respect of this aspect of the order.

5.2 On 17.6.2010, verification tests were conducted by the officials of distribution licensee to verify compliance with the conditions of applicability of Bulk Domestic Supply tariff. The report revealed that the consumption of electricity by the Appellant towards common facilities was exceeding 15% of the total load. Thus, the Bulk Non-Domestic Supply tariff was applicable instead of Bulk Domestic Supply tariff. Accordingly, a demand notice was issued on the Appellant for the balance load tariff in respect of common facilities.

5.3 The Petition before the State Commission filed by the Appellant was to treat all electrical loads of lifts, fire fighting equipments and water supply pumps etc., as part of domestic load and not a part of non-domestic load of common area. Thus, in the petition filed before the State Commission, the Appellant did not want a clarification of the order dated 13.10.2006, but in fact was praying for fresh directions and wanted the condition of 15% to be excluded from the orders. Thus, the State Commission has increased ambit of the condition propounded in the order dated 13.10.2006 without setting it aside.

6. Thus, the learned counsel for both Appellant and Respondent no. 2 made detailed submissions.

7. The only question that arises for our consideration in this Appeal is this: “whether the

impugned order dated 3.9.2010 in respect of applicability of Bulk Domestic Supply tariff would be applicable prospectively i.e. from the date of the impugned order or retrospectively i.e. from the date the new category was created by order dated 13.10.2006”?

8. Let us first examine the order of the State Commission dated 13.10.2006. This order was passed by the State Commission on a petition filed by the distribution licensee seeking review of the Commission’s order dated 26.7.2006 with request for introduction of separate schedule of tariff for bulk domestic supply consumers.

9. It was submitted in the above review petition, that the distribution licensee in its earlier petitions had prayed for partial modification of the bulk supply tariff

structure and sought approval of the Commission regarding introduction of separate schedule of tariff for bulk domestic supply consumers. It was stated that a large number of housing societies had come up in Haryana and some of them have opted for individual domestic connection instead of bulk supply connection in view of the higher tariff structure of the latter category. This resulted in increased cost as well as work load of the licensees on metering, billing and maintenance of the distribution network. In addition to this, the licensees faced problems in checking irregularities in colonies behind security gates. In view of this, the distribution licensees proposed re-introduction of Bulk Domestic Supply category for the consumers who fulfill the conditions *inter alia*, the connected load of residential and domestic load should be atleast 85% of the total connected load. In the

earlier Tariff Order dated 26.07.2006, the State Commission had rejected the petition primarily on the ground of non-supply of relevant data and also on the ground of compelling all domestic consumers behind security gate to mandatorily obtained bulk supply connection.

10. Let us now refer to the findings of the State Commission rendered in the review petition of the distribution licensees in its order dated 13.10.2006 which are as under:

“In view of the presentation made by the licensees during the course of the hearing on 21.9.2006 that the proposal is revenue neutral and hence no additional cross – subsidy/subsidy will be required, the Commission accepts the review plea and allows introduction of Bulk Domestic Supply Category to be billed @ 3.50 per unit subject to the following conditions:

1. *The Colony/Group Housing Society should have minimum 70 KW load.*
2. *The connected load of residential and domestic use should be at least 85% of the total connected load. The balance 15% shall be for common facilities and no industrial activity will be permitted.*
3. *The Colony/Group Housing Society shall be bounded by boundary wall or fence and should have only secured entry points for ingress and egress.*
4. *A single point electricity connection shall be provided at the H.T (11 kV) level (or higher) and further distribution within shall be owned and managed by the Colony/Group Housing Society.*

The Commission feels that it would encourage eligible consumers to avail bulk domestic supply and hence savings in metering, billing and collection expenditure. The amended tariff shall be applicable with immediate effect”.

Thus, by order dated 13.10.2006 the State Commission allowed introduction of Bulk Domestic Supply category as per the request of the distribution licensee subject to one of the conditions that the connected load of residential and domestic use should be at least 85% of the total connected load and the balance 15% would be for common facilities and no industrial activity would be permitted. However, the order did not define what would constitute the residential and domestic use and the common facilities.

11. Let us now examine the impugned order dated 3.9.2010 of the State Commission. The findings of the State Commission in this order are as under:

“The Commission has examined at length the availability clause for the Bulk Domestic Supply category as well as the Domestic Supply category of consumers. It is a fact that each bulk domestic supply consumer is part of a larger complex and

therefore has within its complex a varying mix of load, which besides domestic load for light, fan, household appliances etc. also includes lift, water pumps and fire fighting equipments besides other common facilities. The very purpose of introducing Bulk Domestic Supply category was that the Commission was convinced that such a category is advantageous to both the parties i.e. the power distribution company as well as the consumers. The former saves in terms of operational & maintenance cost including metering and billing while the latter gets the benefit of preferential tariff as they impose comparatively low cost on the distribution system of the Utility. Thus given the win – win situation for both the parties it is clearly a need to encourage residents of multistoried apartments to opt for single point bulk domestic supply despite the fact that they have legal rights to demand individual domestic connection.

It is observed from the schedule of DS tariff as per Commission's order dated 22/12/2000 that the same is available to consumers "for lights, fans,

domestic pumping sets and household appliances”. The order of the Commission on Bulk Domestic Supply Tariff dated 13/10/2006 did not go into the details of what would comprise of domestic usage and common area supply except for the fact that it mentioned, “the connected load of residential and domestic use should be at least 85% of the total connected load. The balance 15% shall be for common facilities and no industrial activity will be permitted”.

As there are large number of multistoried apartments having a single point bulk domestic supply it is not possible for the Commission to examine the load profile of each such consumer, which given the size of the area and the manner in which it was developed, would be fairly diverse. Nevertheless the Commission is of considered view after examining the record of the case and hearing all the stakeholders and after going through the relevant instructions, rules, statutes/Codes on the subject that the multi-storied including group housing buildings for which a concessional

domestic tariff has been extended from a single point connection, needs a close examination. The Commission feels that since such high rise buildings are of recent development in the process of rapid urbanization of the state specially in NCR and other big towns like Panchkula etc., their domestic needs were not fully taken care by the Commission's order on domestic tariff dated 22.12.2000. The Commission agrees with the views of the petitioners that statutorily under different laws/National Building Codes they have to compulsorily maintain services like lift, pumps, fire-fighting etc. to make the high rise building complex functional for residential use and the absence of which would render the complex unfit for housing and hazardous for the people living therein. Consequently it is ordered that connected loads of lift, firefighting equipment and water supply pumps would henceforth be included as part of domestic use within the permissible 85% of the total connected load as mentioned in the Commission's order dated 13.10.2006. The Commission feels that it would bring more clarity in

the definition of domestic use and make it workable in practice. This order would be implemented with prospective effect only i.e. from the date of issue of this order”.

12. The findings of the State Commission are summarized as under:

(i) The very purpose of introducing Bulk Domestic Supply category was that such a category is advantageous to the distribution licensee as well as the consumers. The distribution licensee saves in terms of operational & maintenance cost including metering and billing while the consumer gets the benefit of lower tariff in view of lower cost of supply to the consumers of this category.

ii) The creation of Bulk Domestic Supply category is a win-win situation for both the distribution licensees and the consumers and is needed to encourage

residents of the multistoried apartments to opt for single point of supply despite their having legal right to demand individual domestic connection.

iii) The order dated 13.10.2006 did not go into the details of what would comprise of domestic usage and common area.

iv) The emergence of high rise buildings is a recent development and their domestic needs were not fully taken care by the Commission's order on domestic tariff dated 22.12.2000.

v) The high rise buildings have to compulsorily maintain services like lifts, pumps, fire-fighting etc. to make the high rise building complex functional for residential use and the absence of which would render the complex unfit for housing and hazardous for the people.

vi) Accordingly, the connected load of lifts, firefighting equipments and water supply pumps would henceforth be included as part of domestic use within the permissible 85% of the total connected load as mentioned in the Commission's order dated 13.10.2006.

vii) This would bring more clarity in the definition of domestic use and make it workable in practice. However, this order would be implemented with prospective effect only i.e. from the date of issue of the order.

13. Thus, the State Commission while accepting that their order dated 13.10.2006 did not go into details of domestic usage and common area supply and accordingly, decided that the connected load of lifts, firefighting equipments and water supply pumps

which are required to be maintained by the high rise buildings statutorily would be included as part of domestic use. The Commission also felt that this order would bring more clarity in the definition of domestic use and make the order workable. However, the Commission decided to implement the order prospectively.

14. We find that the State Commission by its own admission in the impugned order has observed that it did not go into the details of what would comprise of “domestic usage” and “common area supply” in its earlier order dated 13.10.2006 and the definition of residential and domestic use now given in the impugned order by including the load of lifts, fire fighting equipments and water supply pumps would bring more clarity in the earlier order dated 13.10.2006 and make it workable in practice.

15. The reading of the impugned order would show that this order is clarificatory order as by the admission of the State Commission the order would bring more clarity in the definition of domestic use and would make the order dated 13.10.2006 workable.

16. The State Commission in the impugned order has stated that the introduction of Bulk Domestic Supply category was beneficial to the distribution licensee and to the consumers and it is win – win situation for both the parties. Therefore, if the distribution licensee has been benefitted by extending bulk supply to the Appellant retrospectively then there is no reason as to why the benefit due to the Appellant for taking bulk supply at single point should not be given on to them retrospectively i.e. from the date a separate category

for Bulk Domestic Supply was created by the State Commission.

17. The basic intent of the order dated 13.10.2006 by creating Bulk Domestic Supply category was to encourage the consumers living in multi-storied buildings to avail single point supply which would reduce the cost of the distribution licensee. Admittedly, the cost of supply to the Appellant and the similarly placed consumers is lower compared to an individual domestic consumer availing direct supply from the distribution licensee. The condition of 15% for common area and for no industrial activity was kept to ensure that the supply is not misused for industrial and commercial purposes. As clarified by the State Commission, the lifts, fire fighting equipments and water supply pumps are domestic use

of supply. Therefore, these loads cannot be considered for commercial or industrial usage.

18. If the benefit of concessional tariff is not passed on to the Appellant retrospectively, it would defeat the basic purpose of creating a separate Bulk Domestic Supply category from 13.10.2006.

19. In view of above, we feel that the impugned order dated 3.9.2010 which is a clarificatory order clarifying that the load of lifts, fire fighting equipments and water supply pumps used by the residents of the multi-storied buildings should be included in the domestic usage of electricity would be applicable retrospectively from the date of creating of a separate category of Bulk Domestic Supply.

20. The learned counsel for Respondent no. 2 has argued that the reason that the State Commission did

not go into defining the “domestic usage” and “common area supply” was that the Commission vide another order dated 22.12.2000 had already defined these terms and in that order had categorically mentioned that “lights, fans, small electrical appliances” that are commonly used in any household will comprise of goods in domestic usage. However, the other goods such as lifts, fire fighting equipments etc., were not included in the said domestic usage.

21. We are not convinced with the above arguments. The State Commission created a separate category vide its order dated 13.10.2006 for bulk domestic supply. When a separate category has been created on 13.10.2006 with certain conditionality for domestic and other usages, the domestic usage has to be defined in the same order and could not draw its meaning from an order issued about six years earlier

on 22.12.2000 when 'Bulk Domestic Supply' as a separate category was not even existing.

22. The learned counsel for Respondent no. 2 has also submitted that the petition of the Appellant before the State Commission was not for giving a clarification but for fresh directions. We find that the Appellant in their petition before the State Commission had prayed to treat all electrical loads of lifts, fire fighting equipments and water supply pumps etc., as part of domestic load and not a part of non-domestic load of common area as these amenities are under the exclusive use of the domestic consumers themselves. Therefore, we find no force in the contention of the learned counsel for Respondent no. 2 in this regard.

23. The learned counsel for Respondent no. 2 has further argued that by the impugned order, the State

Commission has increased the ambit of the condition propounded in the order dated 13.10.2006 and has given fresh directions. We do not agree with the contention of the learned counsel for Respondent no. 2. If the State Commission has decided that the lifts, fire fighting equipments and water supply pumps are to be considered as part of domestic usage, it is only a clarification of the domestic usage. Admittedly, the operation of lifts, fire fighting equipments and water supply pump for the residents of the residential complex is not a commercial or industrial activity.

24. The learned counsel for Respondent no. 2 has also referred to Judgment of Hon'ble Supreme Court reported in (1981) 4 SCC 173 to substantiate his argument that the use of word 'clarity' in the impugned order would not change the whole intent of the order. We feel that the findings of the Hon'ble Supreme Court in this case would not be of any use to the Respondent no. 2. As

held by Hon'ble Supreme Court, the task of interpretation of a statutory enactment is not a mechanical task and it is an attempt to discover the intent of the legislature from the language used. In this case as indicate above, the State Commission had not defined the word 'domestic use' in the earlier order of 2006. The domestic use was only clarified in the impugned order to include lifts, fire fighting equipments and water supply pumps. Only by this clarification the earlier order of 2006 became workable and the intent of creating a new Bulk Domestic Supply category was achieved. Thus the judgment referred to by the learned counsel for Respondent no. 2 would only help the Appellant.

25. The learned counsel for Respondent no. 2 has also referred to the Judgment of the Hon'ble Supreme Court as reported in AIR (2008) SC 2796 in the matter

of Kusumam Hotels (P) Ltd. vs. Kerala State Electricity Board, in which it was decided that all administrative orders ordinarily are to be considered prospective in nature and when a policy decision is to be given a retrospective operation, it must be stated so expressly or by necessary implication. We feel that the findings of the Hon'ble Supreme Court in this case will not be applicable to this case where in our view the State Commission has only given clarification regarding domestic usage which was not defined in the earlier order dated 13.10.2006 when the new category for Bulk Domestic supply was created. Hence, the judgment cited by the Ld. Counsel for Respondent no.2 would be of no use in this case.

26. Summary of our findings:

i) The order dated 13.10.2006 imposed one of the conditions for Bulk Domestic Supply

category that the connected load of residential and domestic use should be at least 85% of total domestic load and the balance 15% shall be for common facilities and no industrial activity shall be permitted. However, residential and domestic use in a multi-storied residential complex was not defined. Inclusion of lifts, fire fighting equipments and water supply pumps as part of domestic use was ordered by the State Commission by the impugned order to bring clarity in the definition of domestic use and to make the 2006 order workable. Thus, the impugned order dated 03.09.2010 is only a clarificatory order to the earlier order of the State Commission dated 13.10.2006.

ii) The order of the State Commission for inclusion of lifts, fire fighting equipment and water

supply in domestic use in a multistoried residential complex, housing complex should be applicable retrospectively i.e. the date from which the Bulk Domestic Supply category was created by the State Commission.

iii) The Appellant is, therefore, entitled to refund of amount recovered by the distribution licensee by charging tariff for Bulk Non-Domestic supply alongwith simple interest at the rate of 10% per annum.

27. In view of above findings, the Appeal is allowed. The impugned order will be effective from 13.10.2006 i.e. the date on which the separate category of Bulk Domestic supply was created by the State Commission. The Respondent no. 2 is directed to refund the excess amount recovered from the Appellant along with simple

interest @ 10% per annum within 45 days of receipt of a copy of this judgment. No order as to costs.

28. Pronounced in the open court on this **8th day of February, 2013.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

vs