

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 224 OF 2020 &
IA NO. 1995 OF 2019**

Dated: **03.02.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

DAKSHIN HARYANA BIJLI VITRAN NIGAM (DHBVN)

[Through Executive Engineer]

DHBVNL, Vidyut Sadan,

Vidyut Nagar,

Hisar- 125005, Haryana

.... Appellant(s)

VERSUS

1. HARYANA ELECTRICITY REGULATORY COMMISSION

[Through its Secretary]

Bays No. 33-36, Secor-4,

Panchkula-134112, Haryana

2. RACHIT GARG

T 7-703, Park View Residency

Sector -3, Palam Vihar,

Gurgaon

3. PARK VIEW RESIDENCY CONDOMINIUM ASSOCIATION

[Through Secretary]

Palam Vihar, Sector 3,

Gurgaon -122017

.... Respondents

Counsel for the Appellant (s) : Ms. Nikita Choukse
Mr. Samir Malik
Mr. Manuj Kaushik
Ms. Iti Agarwal
Ms. Divya Anand
Mr. Mahip Singh Sikarwar

Counsel for the Respondent (s) : Ms. Neelima Tripathi, Sr. Adv
Mr. Sandeep Mahapatra
Ms. Gunjan Singhfor R-1

Mr. Vivek Arya
Ms. Sushmita Mahala
Mr. Anantha Prasad Mishra for R-2

J U D G M E N T(*Oral*)

PER HON'BLE MR JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. On the complaint of the second respondent, residents of Park View Residency Condominium at Sector-3, Palam Vihar, Gurugram-122017 which is represented here by the Park View Residency Condominium Association ("RWA"), the third respondent, the State Commission (first respondent) had initiated proceedings wherein directions were issued to the RWA not to charge the tariff beyond the tariff determined for single point supply in terms of the relevant regulations governing the subject. The said order dated 03.10.2017, passed in PRO-5/2016, was not immediately complied with, though directions had also been given to the appellant – distribution licensee, to ensure compliance and submit a report to that effect within the specified period (02 months). Concededly, no compliance report within the period prescribed was filed and the matter continued to linger for long, the RWA having failed to abide by the directions to the above effect. Eventually, the complainant (the second respondent) approached the Commission again and in the proceedings thus taken out, by order dated 18.06.2019, the Commission held the appellant, as also the RWA, guilty of non-compliance within the mischief of the provision contained in section 142 of the Electricity Act,

2003 imposing penalties against each of them. The penalty imposed on the appellant was in the sum of Rs. 1 lakh liberty having been granted for recovery of the said amount from the officials at fault.

3. The appeal at hand challenges the above order.

4. The appellant has come up with a plea that on account of mass transfers that had been ordered during the relevant period, there was some dislocation of work and communication gap, the relevant files not having been brought to the notice of the responsible officers, this having been led to non-compliance with direction for filing report within the specified period. We find this plea specious and, therefore, reject it outright. Internal transfers of official cannot result in such dislocation of work where such important issues can be kept in the cold storage. The Regulatory Commission had issued specific directions and they needed to be followed up and pursued and taken to logical end.

5. But then, we note that there is a mitigating circumstance in that the distribution licensee, when awakened from its slumber, after the complainant had approached the Commission again in 2019, it (the appellant) did pursue the matter with the RWA and such efforts, *albeit* belated, resulted in the RWA having agreed to fall in line and be disciplined by not charging the respondent beyond the permissible tariff rates. During the course of hearing, however, the learned counsel for

the second respondent – the original complainant - submitted that RWA has again started overcharging despite the decisions which are subject matter of these proceedings. While that may be an issue which may deserve attention of the Commission for appropriate proceedings to be drawn, in so far as the matter at hand is concerned, we are of the view that in absence of any scrutiny or even any discussion as to whether the distribution licensee had the power to force the hand of the RWA to comply with the order dated 03.10.2017, it cannot be said that it had willfully failed to abide by the directions in the said order, the default on its part being limited to non-submission of the compliance report. From that perspective, we find the imposition of penalty in the sum of Rs.1 lakh not commensurate with the guilt of the appellant that has been established.

6. For the foregoing reasons, we allow the appeal. While observing that the distribution licensee could not have failed to comply with the order of filing a report in compliance with the directions in the order dated 03.10.2017, we vacate the impugned order to the extent thereby penalty was imposed against the appellant. The amount of penalty which is stated to have been deposited by the appellant shall be refunded forthwith.

7. We leave the matter to the Respondent Commission to examine as to whether any further proceedings need to be taken out against the RWA,*suo motu* or otherwise, with regard to the continued grievance of the original complainant as noted earlier.

8. The appeal is disposed of in above terms. The pending application being infructuous is disposed of accordingly.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 03RD DAY OF FEBRUARY 2022.**

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson