

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

APPEAL NO. 34 OF 2022

Dated: **31.03.2022**

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

In the matter of:

UTTAR HARYANA BIJLI VITRAN NIGAM (UHBVN)

Through Executive Engineer /RA
Shakti Bhawan, Sector-6, UHBVNL,
Panchkula, Haryana
Email: sera@uhbvn.org.in

..... Appellant

VERSUS

1. HARYANA ELECTRICITY REGULATORY COMMISSION

Through Its Secretary,
Bays No. 33-36, Sector-4,
Panchkula – 134112
Email.: dir-trf.herc@nic.in

2. SHARAD FARMS AND HOLDINGS PVT. LTD.

Through General Manager
LFG-10, Vasant Square Mall, Plot-A,
Pocket-B, C Block, Vasant Kunj,
New Delhi- 110 070
Email.: dept2007@rediffmail.com

3. CHIEF ENGINEER/PD&C,

Through Executive Engineer/Regulatory Affairs
UHBVN, Shakti Bhawan,
Sector-6, Panchkula
Haryana – 134 109
Email.: lr@hvpn.org.in

4. SUPERINTENDENT ENGINEER 'OP' CIRCLE,

UHBVN, Rohtak
OPH Colony Circular Road
Near Double Phatak,
Rohtak, Haryana – 124 001
Email.: ceoppanchkula@uhbvn.org.in

5. DEPUTY SECRETARY (TECHNICAL)

UHBVN, Secor-6 Panchkula
Through Executive Engineer/ Regulatory Affairs
UHBVN, Shakti Bhawan
Sector-6, Panchkula

Email.: sera@uhbvn.org.in

..... Respondents

Counsel for the Appellant (s) : Ms. Nikita Choukse
Counsel for the Respondent (s) : Mr. Nalin Kohli for R-1
Mr. Sacchin Puri, Sr. Adv.
Mr. Shaishir Divatia
Ms. Shweta Puri 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. The second respondent – Sharad Farms and Holdings Pvt. Ltd. – had developed a township in Sector 35 of District Rohtak in the State of Haryana where the appellant is the distribution licensee. For purposes of the inhabitants of the said township it had calculated the required load at 33.651 MVA. It had applied to the respondent State Commission for in principle approval under the Haryana Electricity Supply Code, 2014 to take supply by setting up a sub-station of 33 KV capacity. It is admitted on all sides that the permissibility of such a prayer is covered by Regulation 3.2.1 read with Regulation 3.2.2 of the Electricity Supply Code.

3. By Order dated 27.01.2020, the State Commission granted the in principle approval, the operative part of the said order reading thus:

“2.3 Shri S.K. Bansal, SE “OP” Rohtak stated that they have no objection to the proposal of the Petitioner and the proposed Sub Station provided it is fed from two different sources, i.e. one 132 KV sub-station, sector-3 Rohtak and another 132 KV sub-station Khokrakote Rohtak at the cost of the petitioner and capacity of transformers is as per standard design of Nigam.

2.4 The Commission has carefully examined the contents of the Petitioner/averments made by the representatives of both the parties during the hearing in the matter and approves in principle for creation of one 33KV Sub-Station of capacity 3x12.5 MVA 33/11 KV Power Transformers or any other suitable configuration as decided by the Respondent Nigam as per their Standard/approved design at Sector 35 Rohtak for catering to the load of 33.651 MVA of the petitioner subject to other conditions as prescribed in the relevant Regulations in vogue.”

4. It appears, before the Order dated 27.01.2020, as above, was passed, there was a second amendment brought into the Electricity Supply Code, 2014, as a result of which Regulation 3.2.2 would read thus:

“3.2.2 In case where supply, depending upon the technical conditions of the transmission/distribution system and/or the requirement of the consumer, has to be given at a voltage other than specified in Regulation 3.2.1/approved plan, the licensee may accept the request of the applicant with the approval of the Commission.

Further, in case 33 KV voltage level is not available in the area of supply than load above 5 MVA upto 8 MVA may be served through 11 KV feeder with appropriate type/size of conductor. Provided, the difference of cost of 33 KV substation at the consumer end along with its connectivity from the distribution/transmission licensee’s substation including the bay and the actual cost of connection of 11 KV is borne by the consumer.

Provided further that, in case intermediate voltage level between 33 KV and 220 KV is not available in the area of supply of the licensee, the load upto 37.5 MVA may be served through 33 KV feeder with appropriate type/size of

conductor provided the difference of cost of substation as per Regulation 3.2.1 at the consumer end along with its connectivity from the distribution/transmission licensee's substation including the bay and the actual cost of connection on 33 KV is borne by the consumer."

5. It appears the appellant raised a demand by letter dated 06.05.2020 for payment of the differential cost by the consumer (second respondent) in terms of the last proviso of Regulation 3.2.2 (as amended) quoted above. The second respondent resisted the said demand refusing to pay, taking the matter eventually back to the Commission which, by the impugned Order dated 04.09.2020, held thus:

"6.13 The Commission's directions dated 27.01.2020, granting in principle approval to the changes in the plan of electrical infrastructure to be created by the petitioner, were consciously given with the intention to provide exemption to the petitioner from paying the cost difference between the 33 kV substation and 132 kV substation."

6. The appellant was aggrieved by the view expressed by the Commission in the above order about it having consciously given the in-principle approval with intent to provide exemption from such payment as mentioned above. It then took out review proceedings which resulted in the second impugned order being passed on 11.02.2021, the Commission holding it an abuse of process, treating the issue of exemption from payment in terms of Regulation 3.2.2 as "finally decided".

7. We have heard learned counsel on all sides. We are unable to find any articulation or expression of opinion *vis-à-vis* issue of exemption from

payment of costs under Regulation 3.2.2 by the Commission in the Order dated 27.01.2020 from which the entire controversy presently brought before us emanates. If such were the intent of the Commission it should have found some discussion in its Order dated 27.01.2020.

8. During the course of the hearing, the learned counsel for the second respondent insisted that the technical feasibility report which had been issued subsequent to the Order dated 27.01.2020 clearly reflected that requisite load was available with the appellant and, therefore, a case for exemption was properly made out. We do not wish to express any opinion on this plea since it was not raised earlier at any stage before the Commission in any of the proceedings leading to three orders now under scrutiny.

9. In above facts and circumstances, we find the invocation of Section 142 of Electricity Act, 2003, a penal provision, inappropriate. While vacating the impugned orders and dismissing the case under Section 142 of Electricity Act, 2003 against such backdrop, we find it just and proper to direct the Commission to hear the parties and pass clear order on the issue of costs, as mentioned in Regulation 3.2.2. Consequently, the impugned Orders dated 04.09.2020 and 11.02.2021 are set aside. To make it clear, the Commission will be obliged to pass an appropriate order determining as to whether the consumer is to bear such costs as are envisaged in the said Regulation or it is entitled to exemption from such payment on account of

such factors as are being presented by the second respondent. The Commission is directed accordingly. It shall invite the parties by appropriate process at an early date and take appropriate decision in accordance with law, within four weeks of this judgment.

10. Needless to add, further action, if any, pursuant to the demand letter dated 06.05.2020 will be subject to the decision that is rendered by the Commission on this remit.

11. The appeal is disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 31ST DAY OF MARCH, 2022.**

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson