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(2021) 04 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 23009 Of 2019(O&M)

M/S Impact Projects Private Limited And Another — APPELLANT

Vs

Punjab State Power Corporation Limited And Others — RESPONDENT

Date of Decision : 07-04-2021

Acts Referred:

Punjab Apartment And Property Regulation Act, 1995 — Section 2(i), 2(1)(i), 5
Electricity Act, 2003 — Section 43, 44, 45, 46, 47, 48, 50, 55, 56, 57, 58, 59, 82, 86, 181, 126, 127, 135, 152, 154, 163
Punjab Apartment And Property Regulation Rules, 1995 — Rule 10(1)(e)(xii)

Citation : (2021) 04 P&H CK 0109

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Gurminder Singh, J.S.Gill, Naveen S. Bharadwaj

Final Decision : Dismissed

Judgement

Sr.

No.","Name of

Colony","Licence

issued by

PUDA","Licence

date of

issue","Licence

valid upto","NOC

issued by

PSEB

(PSPCL)","Date of

issue

(NOC)","NOC valid

upto

1.,"Garden

Enclave",LDC2002/88,04.01.2002,03.01.2005,"No NOC

applied.",-,-

2.,"Garden

Enclave

Ext.1",LDC2004/136,28.07.2004,27.07.2007,3420,28.12.2007,-

3.,"Garden

Enclave

Ext. 2",LDC2004/143,10.09.2004,09.09.2009,3423,28.12.2007,-

4.,"Impact

Park",26/2006,30.06.2006,29.06.2009,1223,21.07.2008,20.07.2010

5.,"Impact

Extate",30/2006,11.08.2006,10.08.2009,1220,21.07.2008,20.07.2010

6,"Garden

Estate",31/2006,14.08.2006,130.08.2009,1226,21.07.2008,20.07.2010

S.No.,Name of category,Load(KW),,,,,

1,"Residential plots

1.Up to 100 (Sq. Yards)

2.From 101- 200 (Sq. Yards)

3.From 201-250 (Sq. Yards)

4.From 251 -350 (Sq. Yards)

5.From 351- 500 (Sq. Yards)

6.Above 500(Sq. Yards)","5

8

10

12

20

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30",,,,,

S.No.,Name of category,Load(KW),,,,,

2,"Residential flats

1.One Bedroom Set

2.Dwelling unit (single room flat)

under basic service to urban poor

under JnNURM/EWS flats.

3. Two Bedroom Set

4.Three Bedroom Set

5. Four Bedroom Set

6.Five Bedroom Set","5

1.5

7

10

12

15",,,,,

3,"Commercial Area

1.Shop

2.Other Commercial plot(s) for

dispensary, school, hospital etc.

including other common services

falling under commercial category","10

35 Watts per sq.

yard",,,,,

4,Other load for common services,As per requirement,,,,,

developer furnish a Bank Guarantee (BG valid for 5 years) equivalent to 150% of the estimated cost of balance works. This amount of Bank,,,,,,,

Guarantee shall keep on reducing with the completion of remaining works of the L.D system. After submission of Bank Guarantee to the satisfaction,,,,,,,

of licensee, it shall be the responsibility of the licensee to release connections to the residents/occupiers of the colony/complex according to the time",,,,,,,

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frame specified in regulation 8.,,,,,,,

d) In case the expected demand of the colony/complex computed as per (b) above exceeds 4000 kVA, the developer/ builder/ society/ owners/",,,,,,,

association of residents/occupiers shall also pay the ""System Loading Charges' as provided in the cost data approved by the Commission in addition to",,,,,,,

the charges payable as per regulation (c) above. In such a case, the erection or augmentation of grid sub-station, if required, shall be carried out by the",,,,,,,

licensee at its cost. However, in case the grid sub-station is required to be erected in the colony, the developer/ builder/ society/ owners/association of",,,,,,,

residents/ occupiers shall provide the space and right of way free of cost, if permissible or at nominal token money @ of Rs.1 per sq. metre. In case",,,,,,,

the cost of grid sub-station and/or HT/EHT line including bay/breaker has been deposited by an authority under the State Act viz.,,,,,,,

PUDA/GMADA/GLADA etc., the ""System Loading Charges' for the same shall not be recovered from the developer of such colony/complex.â??",,,,,,,

4.1 As already noticed the aforesaid supply code 2014 has been made in exercise of the powers conferred under the Electricity Act, 2003 and hence it",,,,,,,

is a subordinate legislation/delegated legislations. The communications under challenge have been issued in accordance with the aforesaid Supply,,,,,,,

Code 2104. Therefore, the learned senior counsel is not correct in contending that the communications have been issued without any statutory basis.",,,,,,,

4.2 Now, let's examine whether it is permissible to club the expected electricity demand of the various projects or not?",,,,,,,

On careful reading of Regulation 6.7.1(c), it is apparent that the developer/ builder/society/owners/association of residents/occupiers are required to lay",,,,,,,

down a local distribution system themselves or deposit the charges with the PSPCL to lay down the local distribution system for them. It is further,,,,,,,

provided that such area/colony would be given supply from 11KV feeder. The expenditure incurred by the distribution licensee for erection of 11KV,,,,,,,

feeder(s) including from feeding substation to the connection point shall also be born by the developer. It is further provided under clause (d) that in,,,,,,,

case the expected demand of the colony/complex, computed as per Clause (b) mentioned above, exceeds 4000 KVA, the developer /builder/ society/",,,,,,,

owners/association of residents/occupiers shall also pay the system loading charges. In other words, if the premises in the colony developed is",,,,,,,

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expected to have a demand exceeding 4000 KVA, the colonizers are also not only liable to pay the necessary charges but also required to comply with",,,,,,,

the requirements of the supply code 2014.,,,,,,,

4.3 With regard to the first argument of learned counsel for the petitioners that there is no provision for clubbing, it may be noted that Regulation 6.6",,,,,,,

provides that the distribution licensee shall provide a single point supply for residential colonies/complexes developed by developers /builders /societies,,,,,,,

/owners /associations of residents/occupiers under bye-laws/rules of the State Govt. not covered under Regulation 6.6. above on 11 Kv. feeder..,,,,,,,

Clause 6.7 further lays down the manner in which the supply of electricity of individual consumers in the new residential colonies/multi-storey,,,,,,,

residential complexes, developed under the bye-laws and rules of the State Government, shall be released. Regulation 6.7.1 do grant liberty to the",,,,,,,

residents/occupiers of such colonies/complexes to obtain individual connections directly from the distribution licensee. However, it obliges the",,,,,,,

developers/builders to make an arrangement for the compliance of the requirements specified in the Supply Code, 2014. 4.4 On careful reading of",,,,,,,

Regulation 6.7, it becomes clear that the supply of electricity to the individual consumers in the residential colonies/ multi-storey residential complexes",,,,,,,

developed by developers /builders/ societies/ owners/associations of residents/ occupiers who are not covered under Regulation 6.6, shall be issued by",,,,,,,

the Distribution Licensee. However, before such connections are released, the developer has been given two options under Clause 'c' of Regulation",,,,,,,

6.7.1. One is to deposit the estimated cost of laying the local distribution system of the colony with the Distribution Licensee. The expenditure incurred,,,,,,,

by the Distribution Licensee for erection of 11 KVA feeder including breaker from the feeding substation to the connection point of the internal,,,,,,,

distribution system shall also be born by the developer. Second option is that the developer can get the work of internal local distribution system,,,,,,,

executed at his own level. In that case, the developer would be required to pay 15% of the supervision charges on the labour cost to the licensee and",,,,,,,

thereafter get it inspected and approved from the Chief Electrical Inspector to the Government of Punjab. Clause-'d' provides that in case the,,,,,,,

expected demand of the colony/complex computed as per Clause 'b' exceeds 4000 KVA, the developer is also required to pay the system loading",,,,,,,

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charges as provided. However, if a grid substation is required to be erected in the colony, the developer shall provide the space and the right of way",,,,,,,

free of cost. In other words, as per the supply code, it is the duty/responsibility of the developer to bear the cost of not only of the local distribution",,,,,,,

system but also to pay the system loading charges. It may be noted here that the respondents have taken a specific stand that although six separate,,,,,,,

projects were got approved by the petitioners, however, this entire developed area is contiguous and there is no physical separation between the",,,,,,,

houses/buildings of these six projects. The entire area has common facilities. There is neither any separate entry or exit gate for the houses of each,,,,,,,

project nor the plots in these projects are separated by a boundary wall. In these circumstances, particularly when the distribution licensee is required",,,,,,,

to supply the electricity in the area, in which the expected demand is likely to exceed 4000 KVA, the petitioners, who are developers/colonizers,",,,,,,,

cannot be permitted to shy away from providing the infrastructure required for the supply of the electricity. As already noticed, the petitioners-society",,,,,,,

initially got the project approved for 49.781 acres and thereafter, kept expanding the same by getting the additional projects approved for contiguous",,,,,,,

area in a phased manner. As per the stand of respondents, the petitioners/ developers have also not submitted any separate completion/occupancy",,,,,,,

certificates. Now, since the petitioners want to hand over the management of the electricity supply to a distribution licensee without completing the",,,,,,,

work as required under the supply code, therefore the respondents are justified in insisting the petitioners to comply with the requirements.",,,,,,,

4.5 It may be noted here that the learned counsel appearing for the petitioners has emphasized on the definition of the word 'colony' as defined in,,,,,,,

Section 2(i) of the Regulation Act, 1995. No doubt, the colony as defined means an area of land not less than 1000 Sq. Mtr. divided or proposed to be",,,,,,,

divided into plots/residents/ commercial/industrial purpose plots. However, the requirement is that the area of land should not be less than 1000 Sq.",,,,,,,

Mtrs. but there is no upper limit. Once, the colonizer/developer has converted agricultural land into a residential complex, then such developer cannot",,,,,,,

be permitted to avoid its responsibility as provided in the supply code 2014.,,,,,,,

4.6 Learned counsel for the petitioners has relied upon the judgment in Ansal Properties and Industries Ltd.(supra). In the aforesaid case, the State",,,,,,,

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had called upon the developer to pay an amount of Rs.61,000/- per gross acre towards the construction of internal community buildings. The Supreme",,,,,,,

Court, after examining the statutory provisions, found that there was neither any statutory basis nor there was any requirement under the licence to",,,,,,,

pay the amount. Hence, it was held that the demand of s.61,000/- per gross acre towards the construction of community buildings was unjustified.",,,,,,,

With greatest respect, the aforesaid judgment has no applicability, particularly when in the present case, the supply code, 2014 enables the distribution",,,,,,,

licensee to insist the developer/builder to fulfill its requirements.,,,,,,,

4.6.1 There is also no substance in the next argument of the learned counsel for the petitioners that once the various 'NOCs' were issued for the 5,,,,,,,

colonies, then the supply Code of 2014 shall not be applicable. The various 'NOCs' were issued to the petitioners under Section 5 of the Regulation",,,,,,,

Act, 1995. It is with reference to the proposal to develop the plain land into a complex. In exercise of the powers conferred by the Regulation Act,",,,,,,,

1995, the Punjab Apartment and Property Regulation Rules, 1995 have been notified. Rule 10(1)(e)(xii) thereof requires a builder to obtain a 'NOC'",,,,,,,

from the distribution licensee. This 'NOC' is granted only to take the opinion of the distribution licensee with respect to feasibility of the supply of,,,,,,,

electricity at the location where the project is proposed to be developed. The issuance of 'NOC' does not confer any right on the developer to get the,,,,,,,

electricity supply on the basis of the supply code applicable at its issuance. Still further, on careful reading of the 'NOC', it is apparent that the",,,,,,,

distribution licensee did notify that the instructions amended from time to time shall be applicable. In these circumstances, this Bench expresses its",,,,,,,

inability to accept the arguments of the learned counsel for the petitioners.,,,,,,,

4.7 The learned counsel for the respondents is also correct while contending that the petitioners who got the 'NOC' in the year 2007-2008, but",,,,,,,

thereafter took 10-11 years to complete the projects cannot insist for supply of the electricity as per the supply code applicable in the year 2007-08.,,,,,,,

He is further correct in contending that while issuing the 'NOC', the distribution licensee had nowhere bound itself to supply electricity as per the old",,,,,,,

supply code.,,,,,,,

4.8 It may be noted here that it is not disputed by the petitioners have failed to completely develop the local distribution networks in most of the,,,,,,,

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projects as the occupancy is low. The petitioners want to hand over the incomplete projects to the distribution licensee and walk away. In such,,,,,,,

circumstances, the distribution licensee is entitled to insist upon the petitioners to comply with the necessary requirements, so that the infrastructure for",,,,,,,

the expected demand of electricity is in place before the petitioners hand over the management of the electricity distribution to the PSPCL. No doubt,",,,,,,,

individual electricity connections have been issued to the occupiers/buyers/ individual owners of the residential premises, however, that would not",,,,,,,

absolve the petitioners from fulfilling the requirements of the supply code, 2014.",,,,,,,

4.9 This matter can be examined from yet another perspective. If in the absence of complete infrastructure, the distribution licensee is forced to take",,,,,,,

over the incomplete local electricity distribution network, the consumers are likely to suffer. The developer after handing over the complete",,,,,,,

management would walk away from the project and the distribution licensee would be then either be unjustifiably required to invest in the,,,,,,,

infrastructure which is the responsibility of the developer as per supply code, 2014 or the occupier will get proper supply of the electricity.",,,,,,,

In these circumstances, the petitioners-developers are not entitled to the writ as prayed for.",,,,,,,

Hence, dismissed.",,,,,,,

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