(2021) 05 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 396 Of 2019, Writ Petition (C) No. 1135 Of 2019, CM No. 01, 2073 Of 2019

M/S Medicare Diagnostic Imaging Centre — APPELLANT

Vs

State Of J&K And Others — RESPONDENT

Date of Decision : 06-05-2021

Acts Referred:

Jammu And Kashmir Electricity Act, 2010 — Section 13, 44, 138

Citation : (2021) 05 J&K CK 0033

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Arha Syed, Mohsin Qadiri, Hakeem Aman Ali

Final Decision : Dismissed

Judgement

1. Petitioner is aggrieved of and intreats quashment of Notice, bearing No.ESD/1/285-90 dated 06.07.2018 issued by Assistant Executive Engineer,

Electric Sub Division, Baramulla â?" 1st (respondent no.4 herein). Setting-aside of Order dated 14.02.2019 passed by Special Mobile Electricity

Magistrate (Judicial Magistrate, 1st Class) Pattan (for short â??Trial Courtâ?) directing petitioner to deposit an amount of Rs.4.00 Lacs with

respondents and produce documentary evidence to that effect before Collector and in that eventuality Collector to desist from proceeding with process

of recovery of arrears of electricity charges, is also beseeched for by petitioner. Besides, a direction in the name of respondents is implored for by

petitioner in this writ petition, not to cause any interference or impediment to electric supply to the diagnostic centre of petitioner.

2. The case set up by petitioner is that he is running a diagnostic centre under the name and style of M/s Medicare Diagnostic Imagining Centre at

Delina, Baramulla. Respondent department is stated to have not earlier granted power connection to petitionerâ??s diagnostic unit on the ground that

consumption and load for running the unit would be on higher side and would require high investments and therefore, petitioner was left with no option

but to invest his own money for getting electric supply as a separate electricity to the unit and whatever was the investment for the purpose of raw-

material for getting the cost of construction of 11 KV tap line feeding the unit, was borne by petitioner himself including maintenance charges. It is

contended that petitioner was granted power supply to the tune of 30 KW by respondents in terms of order No. 239 of 2013 dated 24.05.2013 and

petitioner had to install HT Tri Vector Meter with CT/PT units on HT side on his own cost including other conditions, which was done by him in the

year 2013, involving investment of Rs. 8,33,595/-. And since then he has been maintaining the same at his own cost as is evident from the invoice

dated 28.01.2013 and same is authenticated by the certificate of the respondent issued vide endorsement No. EST/1/086 dated 21.04.2017. It is stated

that respondent department in violation of rights of petitioner has chosen to provide few electricity connections to other third parties from the same line

which has been installed and maintained by petitioner himself at his own cost, which has resulted into insufficiency and malfunctioning of the

diagnostic centre due to load shedding. Petitioner claims that he took up the matter with respondents, multiple times but of no avail, constraining him to

approach civil court for seeking permanent, prohibitory, and mandatory injunction. The matter is still pending adjudicating before the court at Baramulla

and is still under the orders of status quo with regard to the subject matter on spot with further direction to respondents not to disturb the electricity

connection of the petitioner.

3. Objections have been filed by respondents. They assert that petitioner had to establish a commercial unit at a place where 11000 volts network was

not available and since he required an electric connection on 11000 volts side, so he was directed by respondent-department to extend existing 11000

volts line of Power Development Department. The DPS colony, it is next averred, was initially fed from receiving station, Puthkhah, which was

terribly overloaded and was affecting large section of population due to excessive load shedding. The department had no corridor to take a separate tap line for the said colony as the only corridor available was utilized by the petitioner along. The said colony being a residential area was shifted on

this line purely on the technical ground and the power supply was affected by shifting of this load to the petitionerâ??s feeder is untenable and

baseless. In terms of Section 4.119 of J&K State Electricity Supply Code, J&K SERC, the department can utilize any line on technical grounds even if

the said line was erected by the consumer on his own cost. It is also maintained by respondents that petitioner has not alone erected 11000 Volt line to

his unit at his own cost but there are hundreds of such consumers who have erected 11000 volts line for their units at their own cost. The department

has to bear any cost for creating any infrastructure for any individual commercial or industrial units. He has made only few payments vis-Ã -vis his

bills that too only when his installation /line was disconnected. There is still an amount of Rs. 13, 95,211/- pending against the petitioner till 03/2019.

4. Heard and considered.

5. During course of arguments, attention of this Court was invited to Jammu and Kashmir State Electricity Supply Code (hereinafter referred to as the

â??Codeâ?) which has been made and issued on 20th July 2011, in exercise of powers conferred by Section 44 and clause (b) of subsection (2) of

Section 138 of J&K Electricity Act 2010 (for short â??Act of 2010â?). The Code shall apply to all distribution and retail supply licensees including

deemed licensees and all consumers in Jammu and Kashmir. It shall also apply to all other persons who are exempted under Section 13 of the Act of

2010. The Code is also applicable to unauthorised supply, unauthorised use, diversion and other means of unauthorised use/abstraction of electricity.

The Code also provides obligations of the Licensee and consumers vis-Ã -vis each other and specified the set of practices that shall be adopted by the

Licensee to provide efficient, cost-effective and consumer friendly service to consumers. The Code specifically details the procedure for connection,

disconnection, reconnection, assessment of load, changes in existing connection, load modification, change of name, change of tariff category, etc., and

recovery of electricity charges, billing, payment of bills, preventing, tempering, distress of damage to plan, lines or meters, entry of licensees,

authorised persons, load assessment etc., as mandated by section 44 of the Act of 2010. Clause 4.116 of the Code provides that eh consumer shall pay the cost-of-service line etc. in accordance with J&K Electricity Rules 1978 and system loading charges and these charges shall be either on the

basis of the schedule of standard charges approved by the Commission or actual cost of works as given in the estimate prepared by the Licensee.

Clause 4.117 relates to mode of payment. Clause 4.118 says that consumer shall provide space of requisite dimensions and at convenient location as

mutually agreed between consumer and Licensee, free of charge, for erection/ installation of that part of service line that falls within his premises,

transformers, switch gear, meter and all other apparatus up to the point of commencement of supply. The whole of service line and other apparatus

shall be deemed to be the property of the Licensee and shall remain under his control.

6. Clause 4.119 provides that licensee can use the service line and other apparatus to give supply to other consumers provided that supply to consumer

who has paid for them is not affected adversely. Further, even if supply to consumer who has paid for the line/apparatus is disconnected for whatever

reason, the consumer shall permit the Licensee continued access to the service line and other apparatus if they are required to give supply to other

consumers, and no payment shall be due to the consumer for such access/ facility, until alternate arrangements are made. However, it is expressly

provided that the Licensee shall make all possible efforts to make alternate arrangements as early as may be practicably possible. For this purpose, the

Licensee may explore a mutually acceptable arrangement for continuation of the installation at the existing place. In such circumstances, there can be

no lame excuse on part of petitioner to contend that respondent department cannot utilize any line on technical grounds albeit the line is erected by

consumer on his own cost and the same cannot be taken as a reason to make payment of electricity charges. Petitioner, for all practical purposes, is

liable and bound to make payment of electricity charges whatever due against him. Writ petition on hand, in that view of matter, is liable to be

dismissed.

7. It is also made mention of here that petitioner owes respondent department an amount of Rs.10,53,666/- as is discernible from impugned order

dated 14th February 2019, on account of arrears of electricity charges. Non-payment of electricity charges has forced respondent department to initiate proceedings before the Trial Court.

While passing order impugned dated 14th February 2019, the Trial Court has clarified that if petitioner deposits an amount of Rs.4,00,000/-with

concerned Electric Sub Division and produces documentary evidence to that effect before Collector, in that eventuality, Collector would desist from

proceeding with process of recovery of arrears of electricity charges from petitioner. Petitioner instead of making payment as directed by Trial Court,

has preferred to approach this Court with instant writ petition.

8. The matter, when taken up for threshold hearing, was considered by a Bench of this Court on 5th April 2019. Impugned order dated 14th February

2019 passed by Trial Court was stayed subject to depositing of Rs.4.00 Lacs before the Trial Court within two weeks. Thereafter, an application,

being IA no.02/2019, was filed by petitioner seeking direction in the name of Trial Court to accept amount of Rs.4.00 Lacs in the shape of cheque. A

Bench of this Court vide order dated 19th April 2019 allowed application and directed Trial Court to permit to permit petitioner to deposit Rs.4.00 Lacs

in the shape of cheque. By this, writ petition has become infructuous qua relief sought for by petitioner to set-aside impugned order dated 14th

February 2019, passed by the Trial Court and as a consequence of which, show-cause notice dated 6th July 2018, issued by respondent no.4 has got

implemented and resultantly relief to quash show-cause notice dated 6th July 2018 becomes futile. In that view of matter writ petition is liable to be

dismissed. Insofar as direction sought to be passed in the name of respondents not to create any interference of impediment to electric supply to

diagnostic centre of petitioner, is concerned, Clause 4.119 of the Code empowers respondent-department to use the service line and other apparatus to

give supply to other consumers. In such circumstances, there remains nothing in writ petition and is, thus, liable to be dismissed.

9. For the reasons discussed above, writ petition is devoid of any merit and is, accordingly, dismissed with connected CM(s). Interim direction, if any,

shall stand vacated.

