(2001) 07 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Civil Rev. No. 23 Of 2000

State of J.and K — APPELLANT

Vs

Gh.Mohi-ud-din Mir — RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Section 6

Citation : AIR 2002 J&K 112 : (2002) KashLJ 471 : (2001) SriLJ 509

Hon'ble Judges : MUZAFFAR JAN, J

Bench : Single Bench

Advocate : A. M. Magray, Syed Reyaz Ahmed, Advocates appearing for the Parties

Judgement

1. Heard the learned counsel for the parties.

2. Revision petition has been submitted to set aside the order dated 2922000 passed by the learned Munsiff, Pulwama in the controversy where

the plaintiff respondentowner of a registered Flour Mill situated at Wangam, Pulwama filed suit for mandatory injunction praying that the policy of

the petitionerState & Electric Department to charge the consumers on the basis of minimum consumption guarantee charges as well as on the

actual consumption as per meter is bad in law and not legally sustainable, with further relief of permanent injunction that the defendants (State and

Electric Department) be restrained not to recover any arrears of tariff of disconnect the electric supply to the Flour Mill of the plaintiffrespondents.

3. Along with the suit an application for temporary injunction was also filed. The trial court after hearing the parties came to the conclusion that

plaintiff has a prima facie case and directed the department (defendants) not to disconnect the Electric supply to the Flour Mill of the plaintiff and to charge the consumption of electric energy as per meter installed in the Flour Mill. The validity of this order dated 262 2000 has been challenged in

the revision petition.

4. I have heard the learned counsel for the parties at length and perused the entire record.

5. Learned counsel for the petitioners has submitted that plaintiffrespondent does not have a prima facie case to justify the interim order passed by

the trial court directing the defendants, the present petitioners to charge the plaintiff for actual consumption of electric energy as per meter and not

to enforce the consumption of minimum guarantee charges. The consumer cannot dispute his liability for payment under consumption of minimum

guarantee charges. Therefore, the revision petition may be allowed and the impugned order set aside.

6. On the other hand, the learned counsel for the respondent has argued that the order of the trial court is legally sound because the consumer will

still be liable to pay the electric charges as recorded by the electric meter for installation of his Flour Mill. No loss would be caused to the electric

department and as such, no illegality has been committed by the trial court which order may be sustained.

7. On consideration of the arguments of the learned counsel for the parties and for effective disposal of the present controversy the scheme for

tariff under the Electricity Act has to be understood.

8. Section 23 of the Electricity Act is reproduced as under

23. Charges for energy to be made without undue preference

1. X X X

2. X X X

3. In the absence of any agreement to the contrary, a licensee may charge for energy supplied by him to any consumer

(a) By the actual amount of energy so supplied or

(b) By the electrical quantity contained in the supply.

(c) By such other method as may be approved by the Govt.

4. Any charges made by a licencee under clause(c) of Sunsection (3) may be based upon, and vary in accordance with any one or more of the

following consideration, namely:

(a) The consumer's load factor or

(b) The power factor of his load, or

(c) His total consumption of energy during any stated period, or

(d) The hours at which"" the supply of energy is required.

9. From plain reading of Section 23 of the Electricity Act, SubSection (C), it is amply clear that the Government has power to charge for

consumption of electric energy by an alternate mode and method. The alternative mode and method is provided in the Schedule contained in the

Act under Clause 3(X), which reads as under:

(3)XMinimum Charges: A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manners as may

be specified by his licence, and such minimum charge shall be payable not withstanding that no energy has been used by the consumer during the

period for which such minimum charge is made."" Clause (X) of Section 3 provides for payment of minimum charges and creates an obligation to

do so.

10. This obligation to pay the minimum guarantee charges has to be considered in view of the over all obligation of the State to generate, transmit

and supply the electric energy on concessional rates to the consumers. Moreover, the State has to moniter and ensure maintenance of distribution

of supply line from the location of generation to the distribution point which involves considerable financial liability. Admitedly, the electric charges

recovered from the consumer are on subsidized rates, but the liability of the consumer under the minimum guarantee charges is created to share

some burden of the State.

11. The guarantee under the Act is not to pay flat sum of money in an arbitrary manner, without any reasonable justification. The guarantee is to

agree to consume minimum electric energy so that the department has a firm idea of the monthly or yearly requirement of the electric energy of the

consumer and also to assess the approximate income likely to be generated on the basis of minimum guarantee charges to meet the generation

requirement of the electric energy, for supply of minimum consumption demand of each consumer. Once consumer agrees to pay under minimum

guarantee charge, there is a corresponding duty cast on the department to generate the electric energy to the extent to honour the minimum

guarantee charges which is in built in the Electricity Act and for the benefit for which the Act is enacted. The agreements under the Act cannot be

taken at par with the contracts of the normal nature between the parties governing their rights, obligations and liabilities. The classification is on

intelligible differentia and distinguishable.

12. The consumer cannot take the plea of default of Electric Department on account of low voltage tripping power shedding or disruption in the

electric sup ply as violation of the terms of the mini mum guarantee charges because of the distinguishable feature provided by the Act for the

present agreements. 'See JT 2000 (Supp.3) S.C.39, Raymond Ltd and another Vs. Madhya Pradesh Electricity Board and others.

13. The tendency of the Department to disconnect the electricity on non payment of the electric charges without notice is a violation of Section 24

of the Electricity Act. Section 24 of the Act is reproduced as under

24. Discontinuance of supply to consumer neglecting to pay charge:

1. Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the

supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his

right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supplyline or other works,

being the property of the licensee through which energy may be supplied and may discontinue the supply until such charge or other sum, together

with any expenses incurred by him in cutting off and reconnecting the supply are paid, but no longer.

2. Where any difference or dispute has been referred under this Act to an Electric Inspector before notice as aforesaid has been given by the

licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision.

Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the

consumer for a deposit with the Electric Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the

licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.

14. This section clearly provides that on nonpayment of any charges, which are due to the licensee, a clear notice of not less than seven days in

writing has to be given to the consumer. No notice would be required in case the consumer is found using the electric energy in violation of the

minimum consumption guarantee.

15. On plain interpretation of the relevant provisions of the Electricity Act, it is manifestly clear that in case of non payment notice would be issued

for charges which are due as per trivector meter and also covered by the minimum consumer guarantee. But no notice would be required in case

the consumer is found using the electric energy with a trivector meter in perfect running condition but in violation of minimum consumption

guarantee.

16. In the instant case the plaintiff's grievance of disputing the provisions of the Electricity Act or minimum consumption guarantee and subsequent

refusal to pay under the minimum consumption charge does not constitute a civil enforceable right. The plaintiff/respondent on this count did not

have a prima facie case.

17. In this view of the legal position the plaintiffs/respondent initially did not have a prima facie case sustainable on law and there was no

justification for the learned Munsiff to pass the impugned order which apparently has been passed without jurisdiction and has to be set aside.

18. Accordingly the revision petition is accepted and order impugned set aside.

19. In view of the elaboration made on the present controversy, which normally comes up in the Subordinate Courts, Registry is directed to

circulate copy of this order to all the Subordinate courts for information.