

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 14th OF SEPTEMBER, 2022

WRIT PETITION No.7246 of 2022

Between:-

**RAIL SPRING KARKHANA
THROUGH ITS CHIEF WORKSHOP
MANAGER (EARLIER KNOWN AS
CHIEF PROJECT MANAGER)
SHEIKH MOHAMMAD ANIS S/O
SHRI SHEIKH ABDUL KADAR, AGE
58 YEARS, RAIL SPRING
KARKHANA, SITHOULI DISTRICT
GWALIOR (MADHYA PRADESH).**

.....PETITIONER

(BY SHRI S.S. KUSHWAHA – ADVOCATE)

AND

**DEPUTY GENERAL MANAGER
(VIGILANCE) OFFICE OF CHIEF
GENERAL MANAGER (GWALIOR
REGION) MADHYA PRADESH
MADHYA KSHETRA VIDHYUT
VITRAN COMPANY LIMITED,
GWALIOR (MADHYA PRADESH).**

.....RESPONDENT

(BY SHRI ANIL SHARMA – ADVOCATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

- “a) Allow the present petition; and,
- b) Order Annexure P-1 & P-2 may kindly be set aside; and,
- c) The respondent authorities may further be directed to provide domestic connection in respect of the residential colony of the petitioner unit i.e. Railway Spring Karkhana; and/or,
- d) Any other relief which this Hon'ble court deems fit in the facts & circumstances of the case may kindly be passed.”

2. The necessary facts for disposal of the present petition in short are that the petitioner factory is owned by Government of India. For obtaining the electricity connection, map was deposited with respondent authorities. From the map itself, it is clear that site of factory, quarter etc. were shown. For operation of the Rail Spring Factory, high tension electricity connection was granted and since the petitioner had residential accommodations also, therefore, on 2/5/2001 a meeting between the petitioner and high officials of the respondent took place, in which it was informed by SE/MPEB that only HT general purpose power supply can be made available to the Railway Colony at Sithouli, as no domestic

feeder is available in near vicinity, which would be even more expensive and, therefore, the matter was kept pending for further discussions. It is submitted that because separate feeder for providing electricity to the residential quarters of the petitioner was not given by the respondent, therefore, the petitioner was also utilizing the high tension wire electricity, which is being provided to the petitioner at commercial rate, which is much more than the rate which is applicable to the low tension electricity connection / residential area. The petitioner had also applied for enhancement of load and in the form itself the fact of colony was specifically mentioned. All the above facts are in the knowledge of the respondent and in spite of that, a preliminary assessment order was issued on the ground that the petitioner is running a Rail Spring Factory, Sithouli and has industrial connection of 1200 KVA from 33 KV, HT Feeder, however, from the said feeder it is also utilizing electricity for the residence of its employees, whereas the payment is being made on the basis of tariff applicable to the industrial connection. It is the case of the respondent that during the inspection it was found that the residential colony is situated at a distance of 1/2 km. from Jhansi-Gwalior Railway Track and the industrial connection is being unauthorizably used for supply of electricity to residential quarters of the petitioner and such an act comes within the purview of Section 126 of the Electricity Act and, therefore, the objections with regard to preliminary assessment order were rejected.

3. It is further submitted that being aggrieved by the rejection of the objections, the petitioner also preferred an appeal, which too has been dismissed by order dated 9/11/2021 passed by the Appellate Authority in

case No.2/2017-18/31/2012-13.

4. It is submitted that in the light of the interim order dated 29/3/2022, the petitioner has already deposited 50% of the amount of final assessment.

5. It is submitted by the counsel for the petitioner that the respondent failed to see that the petitioner had never unauthorizedly used the electricity supplied by the respondent. When the petitioner applied for a separate connection for residential purpose, then the respondent had expressed its inability to provide low tension domestic feeder on the ground that no domestic feeder is available in near vicinity. It is submitted that the prayer for grant of low tension residential connection was never rejected by the respondent and the matter was kept pending for further discussions. Thus, the respondent on one hand had expressed its inability to provide low tension residential connection for the quarters of the factory and is charging the tariff at the rate which is applicable to industrial connection and at the same time it has claimed that since the petitioner has unauthorizedly used the electricity, therefore, its act is covered under Section 126 of the Electricity Act.

6. The respondent has filed the return and submitted that the Appellate Authority has not been impleaded in the present proceedings. The Vigilance of answering respondent had made an inspection in the premises of the petitioner and found that there is a violation of Section 126 of Electricity Act, 2003, as the petitioner was “unauthorizedly using” the high tension electricity connection for the premises other than that for which the supply of electricity was authorized. Against the provisional assessment for the dues of Rs.3,51,234/-, the petitioner preferred an

appeal under Section 127 of the Electricity Act before the Appellate Authority, which was presided over by SDO (Revenue) and Chief Electricity Inspector, Government of Madhya Pradesh and it is an admitted fact, HT connection was installed in the factory premises, whereas the said connection was being used for the residential area also, which is situated at a distance of approximately 500 meters and the petitioner himself has admitted that both the premises are totally separate. The words “unauthorized use of electricity” has been defined under Section 126 (6) (b) of the Electricity Act. It is submitted that merely because the respondent had not provided the electricity connection to the petitioner for supply of electricity in its residential area would not empower the petitioner to “unauthorizedly use” the industrial connection for supply of electricity to its residential area. The petitioner is an industry of Railway and there is a specific provision to provide electricity in industrial area uninterruptedly, whereas there can be some disturbance in supply of electricity in domestic area depending upon circumstances, but the petitioner has provided the electricity meant for industrial purpose to the residential area, which is sheer misuse and “unauthorized use” on the part of the petitioner. It is also submitted that otherwise also the electricity of the industry is provided at a higher rate, than the tariff, which is applicable to domestic connections, which amounts to loss to the Railway which is not permissible under the law. The illegalities committed by the petitioner are recurring in nature and it has relied upon tariff schedule of 2011-12 and 2012-13. It is further submitted that tariff schedule are changed almost every year and they cannot be applied retrospectively. Otherwise also, as per the tariff

schedule, the tariff shall apply to HT consumers including mines for power, light and fan, lighting in the office etc. within the premises for which HT electricity connection is obtained and even the residential area of such premises, for which statutory permission of distribution is necessary. At the cost of repetition, it is submitted that even according to the petitioner, the industrial area and residential area are separate and the petitioner has obtained HT connection only for the industrial area.

7. Challenging the order passed by the Appellate Authority as well as the order rejecting objections filed by the petitioner, it is submitted by the counsel for the petitioner that undisputedly the petitioner is making payment of electricity charges at a higher tariff, therefore, there is no pecuniary loss to the respondent. On the contrary the respondent is having undue enrichment. The respondent cannot take advantage of its own inability to provide electricity for residential purposes. In the return it is nowhere mentioned that the respondent is ready with its infrastructure to provide residential low tension connection to the petitioner.

8. *Per contra*, the petition is vehemently opposed by the counsel for the respondent. It is submitted that in fact by making payment of electricity charges at higher tariff, the petitioner is causing undue loss to its parent department, i.e. Railway Department. In the year 2001 the respondent was not having any infrastructure to provide residential low tension connection, but that does not mean that the petitioner was exempted from making such a prayer in future also. There is nothing in the writ petition to show that the respondent is not having any infrastructure to provide residential low tension connection. The conduct

of the petitioner is duly covered by the definition of unauthorized use of electricity as provided under Section 126 (6) (b) of the Electricity Act.

9. Heard learned counsel for the parties.

10. It appears that the Vigilance of the respondent had carried out a surprise check and it was found that the high tension industrial connection with 1200 KVA load provided to the petitioner for industrial purpose was also being used for supply of electricity to the residential area of the petitioner factory. According to the respondent, since the consumer was “unauthorizedly using” the said electricity for the purposes other than for which it was provided, therefore, a preliminary assessment of Rs.3,51,234/- was made. The petitioner immediately filed an objection to the said preliminary assessment order, which was rejected by the respondent by holding that the electricity was being used for the purposes other than for which it was granted. The appeal has also been dismissed.

11. The only question for consideration is “as to whether there was a deliberate defiance on the part of the petitioner by providing electricity from high tension industrial connection to its residential area or the respondent itself was not able to provide low tension residential connection?”

12. The petitioner has relied upon the letter dated 1/10/2001 addressed to Chief Engineer, MPEB, Gwalior. The said document reads as under:-

“H. K. Kala
Chief Workshop Manager

No. M.RSK.E.MPEB.8-A.4

Rail Spring Karkhana
SITHOULI, GWALIOR
Phone:91 751 322192(O)
91 751 423707(R)
FAX: 91 751 324704
E-Mail-cwmrsk@rediffmail.com

Date : 01.10.2001

Chief Engineer
MPEB, GWALIOR

MOST URGENT

SUB Settlement of long pending issue in respect of Rail Spring Karkhana, Sithouli.

REF Meeting held in the chamber of the CE/MPEB/GWL on date 02.05.2001

Rail Spring Karkhana, Sithouli, Gwalior has been receiving 33 KV power supply from Mahalgaon substation of MPEB, since 1989. Certain disputes and problems were highlighted by railway administration in connection with various aspects of receiving 33 KV power supply on this feeder.

The above referenced meeting was held in the chamber of CE/MPEB to settle these long pending disputes and determine solutions to problems being faced by both the parties. The

1. CE/MPEB/GWL
2. SE(O&M)MPEB/GWL
3. CWM/RSK/STLI/GWL
4. SEE/RSK/STLI/GWL

Following decisions were taken in the meeting:-

1. CWM/RSK pointed out that the contracted demand of railway workshop was 1000 KVA. The MD meter provided by MPEB for this workshop had started giving erratic readings and overshooted many times, since November 1998. This had resulted in recovery of excess MD charges by MPEB authorities from railway administration. The MD meter was attended by MPEB authorities many times, but it got defective again and again. To avoid imposition of any further penalty railway administration was forced to unnecessarily go in for increase in its contracted demand from 1000 KVA to 1400 KVA.

However, the defective MD meter was changed by the MPEB authorities in July 2000. But, during this period from November

1998 to July 2000, an amount of Rs.36.65 lacs was paid as penalty, for overshooting contracted MD, by railway administration. It is needless to say that after change of the MD meter, the MD reading has never exceeded an amount of Rs 36.65 lacs needs to be waived and paid back to the railway administration.

Later in September 2000, MPEB authorities changed their CT and PT meant for the MD meter to comply with the procedure of enhancement of the contracted demand from 1000 KVA to 1400 KVA. But the MD of this workshop has never overshooted till now.

CE/MPEB agreed that the erratic MD readings has been recorded and the excess amount needs to be waived off. The limit of waiver was decided to be the maximum KVA recorded after change of the MD meter by the MPEB authorities.

2. CWM/RSK indicated that there are two nos. 33 KV feeders exclusively feeding supply to this workshop from Mahalgaon substation of the MPEB. But, it is the experience of this workshop that in case of failure of the working feeder, power supply distribution on the second feeder is not possible, as such the very utility of having second feeder is not fulfilled. It is understood that a long stretch of the overhead conductor on this feeder is missing.

CE/MPEB stressed that the matter will be looked into and problem rectified at the earliest.

3. **CWM/RSK requested that keeping the source of power supply same, electricity consumption in the colony may be metered separately and charged at domestic rates.**

SE/MPEB indicated that only HT general purpose power supply can be made available to the Railway Colony at Sithouli, since no domestic feeder is available in near vicinity, which would be even more expensive as such the matter was pended for any further discussions.

4. CWM/RSK demanded that the quality of power supply on the 33

KV feeder is not good (very heavy voltage fluctuations) and is causing huge losses to the railway administration and the Indian Government in turn, SE/MPEB gave the assurance that the matter will be looked into and needful will be done.

It is however regretted that no any progress has been noticed on the decisions taken and this office has been finding it difficult to answer its audit department.

You are requested to kindly look into the matter and take appropriate measures.

This may kindly be treated as most urgent.

Chief Workshop Manager
Rail Spring Karkhana, Sithouli

Superintending Engineer (O&M), MPEB, Gwalior
Executive Engineer (MRT-1) MPEB, Gwalior
Chief Electrical Engineer, Central Railway, Mumbai

Chief Workshop Manager
Rail Spring Karkhana, Sithouli”

13. From the contents of this document, it is clear that some disputes and problems were in existence between the petitioner and the respondent and accordingly, a joint meeting was held. It is clear from Clause 3 of the letter that SE/MPEB indicated that only HT general purpose power supply can be made available to the Railway Colony at Sithouli, since no domestic feeder is available in near vicinity and as such the matter was kept pending for further discussions. It is also clear from Clause 3 of the said letter that the prayer for grant of low tension residential connection made by the petitioner was never rejected and this issue was kept pending for further discussions in future.

14. Thus, the demand for low tension residential power connection

always remained pending with the respondent, but it did not take a final decision in the matter. It is clear from the letter dated 1/10/2001, Annexure P/6, that the respondent had no infrastructure to supply low tension residential power supply, however, the return is completely silent in this regard. It is not known that now whether the respondent is in a position to supply low tension residential power supply to the petitioner or not, but one thing is clear that the respondent is getting the price of electricity at a higher / industrial tariff, which is otherwise being used for residential purposes having low tariff. Although the respondent has tried to criticize this act of the petitioner by alleging that the petitioner is causing undue loss to its parent department, i.e. Railway Department, but at the same time, the respondent is getting the benefit of undue enrichment. "Unauthorized use" would necessarily involve two elements on the part of consumer, i.e, (i) *mens rea*; and, (ii) in detriment to the financial interest of the respondent. Under these circumstances, where respondent did not suffer financial loss of even single penny, but on the contrary it was getting the payment at a higher tariff, this Court is of the considered opinion that there was no *mens rea* on the part of the petitioner to use the high tension industrial connection for supply of electricity to its residential area. For operation of a factory, it is necessary to have residential area around the factory premises. It is not the case of the respondent that the entire factory is fully automated and does not require any manpower. Therefore, the machinery and manpower are interdependent on each other. On one hand if a factory cannot run without machinery, then at the same time the factory cannot operate without any manpower. Thus, it cannot be said that establishment of

residential area near the factory premises was not having any direct or incidental nexus with the operation of the factory. The respondents by not providing electricity to the petitioner cannot compel the petitioner to lock-down the factory because in absence of electricity, the petitioner would not be in a position to provide basic amenities to its employees.

15. The Supreme Court in the case of **Dilip (Dead) Through LRs Vs. Satish and others** by judgment dated 7/7/2022 passed in **Criminal Appeal No.810/2022** has held as under:-

“It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived.....”

16. Thus, viewed from every angle, this Court is of the considered opinion that after having charged higher tariff even for the electricity which was used for residential purposes the respondent was not justified in making a preliminary assessment under Section 126 of the Electricity Act. It is true that the respondent has expressed its concern over alleged loss which is being caused to the Railway Department, but instead of criticizing the petitioner, who was compelled to pay higher tariff even for the electricity which was being used for residential purposes, the respondent should have developed its infrastructure for supply of low tension residential connection.

17. Be that whatever it may.

18. For the reasons mentioned above, this Court is of the considered opinion that the preliminary assessment, final assessment as well as the order dated 9/11/2021 passed by Appellate Authority in case No.2/2017-18/31/2012-13 cannot be given the stamp of judicial approval. Accordingly, they are hereby **quashed**.

19. The petitioner has already deposited 50% of the amount of assessment, accordingly, the petitioner is entitled to get it back from the respondent. The respondent is directed to refund the said amount within a period of 15 days from today, failing which the deposited amount shall carry an interest at the rate of 6% per annum till the actual payment is made.

20. In order to put the controversy at rest for once and all, this Court thinks it appropriate to issue following directions to the respondent:-

1. Since the prayer for grant of low tension residential power supply connection is pending with the respondent, therefore, the respondent shall inform the petitioner within a period of 15 days from today as to whether the respondent is in a position to provide low tension residential electricity connection or not.
2. If the respondent is in a position to provide low tension residential electricity connection, then the petitioner shall fulfill all the requirements as required under the Act, Rules or Guidelines within a period of 15 days from the date of receipt of communication from the respondent.
3. The respondent shall provide a separate low tension residential electricity connection within a period of one month from the date of completion of formalities by the petitioner.

21. Since the respondent has unnecessarily created a situation in hand in spite of the fact that the respondent was getting higher tariff even for the electricity which was being used by the petitioner for residential

purposes, therefore, this petition is **allowed with cost of Rs.50,000/- (Rs. Fifty Thousand Only)** to be deposited by the respondent in the Registry of this Court within a period of 15 days from today.

(G.S. AHLUWALIA)
JUDGE

Arun*