

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 14th OF SEPTEMBER, 2022

WRIT PETITION No. 9654 of 2021

BETWEEN:-

**NARMADA RESOURCE THR. SHRI HARITPAL SINGH
S/O SURENDRA SINGH HORA PARTNER VILLAGE
TAKRAWAD TEHSIL SHAMGARH (MADHYA
PRADESH)**

.....PETITIONER

**(BY SHRI A.K. SETHI, SENIOR ADVOCATE WITH SHRI D.S.
PANWAR, ADVOCATE)**

AND

- M.P. PASCHIM KSHETRA VIDHYUT VITRAN CO.LTD.**
- 1. MANAGING DIRECTOR GPH COMPOUND
POLOGROUND INDORE (MADHYA PRADESH)
M.P. PASCHIM KSHETRA VIDYUT VITRAN CO. LTD**
 - 2. THR. SUPERINTENDING ENGINEER CHAMBAL
COLONY. MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANSHUMMAN SHRIVASTAVA, ADVOCATE)

WRIT PETITION No. 9736 of 2021

BETWEEN:-

**JAIHIND BUILDCON PRIVATE LTD. THROUGH SHRI
VIJAY BORKHATARIYA AUTHORIZED SIGNATORY
REGISTERED OFFICE- 108-110. G.K. COMMERCIAL
COMPLEX, NEAR SBI BANK , NEAR RAJ CHAMBERS,
KHODIYAR COLONY, JAMNAGAR, GUJRAT/ LOCAL
OFFICE- S.NO. 2625, VILLAGAE- PAVATI, TEHSIL
GAROTH, DIST. MANDSAUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI A.K. SETHI, SENIOR ADVOCATE WITH SHRI D.S. PANWAR, ADVOCATE)

AND

M.P. PASCHIM KSHETRA VIDHYUT VITRAN CO. LTD.
MANAGING DIRECTOR G.P.H. COMPOUND,
POLOGROUND, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ANSHUMMAN SHRIVASTAVA, ADVOCATE)

WRIT PETITION No. 20428 of 2021

BETWEEN:-

LCC PROJECTS PVT. LTD THR. SANDEEP KUMAR
MISHRA S/O SHRICHANDRASHEKHAR PRASAD
MISHRA, AGED ABOUT 36 YEARS, OCCUPATION:
SERVICE B WING 15TH FLOOR PRIVILIHON BUILDING
VIKRAM NAGAR AMLI BHOPAL ROAD B/H ISKCON
TEMPLE (GUJARAT)

.....PETITIONER

(BY SHRI ABHINAV DHANODKAR, ADVOCATE)

AND

- M.P. MADHYA KSHETRA VIDYUT VITRAN CO. LTD.
1. KALAKHET THE GENERAL MANAGER (O AND M)
CIRCLE OFFICE (MADHYA PRADESH)
CHIEF ENGINEER GENERAL MANAGER
(COMMERCIAL) M.P. MADHYA KSHETRA VIDYUT
 2. VITRAN CO. LTD. NISHTHA PARISAR, BIJALI NAGAR,
GOVINDPURA (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. KIRTI PATWARDHA, ADVOCATE)

WRIT PETITION No. 2277 of 2022

BETWEEN:-

G R INFRAPROJECTS LIMITED THROUGH
AUTHORIZED PERSON MONIT BHATNAGAR S/O
SHRI MAHENDRA SINGH BHATNAGAR R/O
WHITEWOOD, 202ND FLOOR, MALIBU TOWNE,
GURGAON (HARYANA)

.....PETITIONER

(BY SHRI VINAY SARAF, SENIOR ADVOCATE WITH SHRI ASHUTOSH GONDLI, ADVOCATE)

AND

- THE STATE OF MADHYA PRADESH PRINCIPAL
1. SECRETARY VB-2, VALLABH BHAWAN ANNEX, MANTRALAYA (MADHYA PRADESH)
MADHYA PRADESH PASCHIM KSHETRA VIDYUT
 2. VITRAN COMPANY LIMITED GPH COMPOUND, POLO GROUND, INDORE (MADHYA PRADESH)
MADHYA PRADESH PASCHIM KSHETRA VIDYUT
 3. VITRAN COMPANY LIMITED THROUGH SUPREINTENDING ENGINEER (O AND M) MPPKVV CO. LIMITED INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI N.S. BHATI, P.L. FOR THE STATE AND SHRI ANSHUMMAN SHRIVASTAVA, ADVOCATE FOR RESPONDENTS No.2 and 3)

WRIT PETITION No. 8700 of 2022

BETWEEN:-

G R INFRAPROJECTS LIMITED THROUGH AUTHORIZED PERSON MONIT BHATNAGAR S/O SHRI MAHENDRA SINGH BHATNAGAR, AGED ABOUT 33 YEARS, OCCUPATION: SENIOR MANAGER (LEGAL) R/O WHITEWOOD 202 FLOOR MALIBU TOWN (HARYANA)

.....PETITIONER

(BY SHRI VINAY SARAF, SENIOR ADVOCATE WITH SHRI ASHUTOSH GONDLI, ADVOCATE)

AND

- THE STATE OF MADHYA PRADESH PRINCIPAL
1. SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
M.P. KSHETRA VIDYUT VITRAN COMPANY LIMITED
 2. THR. MANAGING DIRECTOR MPPKVVCL, MPPKVVCL, GPH COMPOUND, POLO GROUND, INDORE. (MADHYA PRADESH)
 3. MADHYA PRADESH PASCHIM KSHETRA VIDYUT

- VITRAN COMPANY LIMITED THR. SUPERINTENDING
MPPKVV CO. LIMITED, JHABUA (MADHYA PRADESH)
M.P. KSHETRA VIDYUT VITRAN COMPANY LIMITED
THR. SUPERINTENDING ENGINEER (HT BILLING
4. CEEL,) MPPKVV CO. LIMITED. INDORE (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI N.S. BHATI, P.L. FOR THE STATE AND SHRI
ANSHUMMAN SHRIVASTAVA, ADVOCATE FOR RESPONDENTS
No.2 and 3)

*This petition coming on for admission/orders this day, the
court passed the following:*

ORDER

1] This order shall also govern the disposal of WP No. 9654/2021, WP No. 9736/2021, WP No. 20428/2021, WP No. 8700/2022 and WP No. 2277/2022 as a common issue has been raised in all these petitions.

2] For the sake of convenience, the facts as narrated in WP No. 9654/2021 are being taken into consideration for the disposal of this batch of petitions.

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

“(i) That this petition may kindly be allowed and an appropriate writ, order of direction be issued to quash the impugned demand dated 22.03.2021 (Annexure P-1) with annexed Audit Report Para and Notice dated 13.05.2021 (Annexure P-2) issued by respondent No. 2.

(ii) That, any other relief as deemed fit may kindly be granted by the Hon’ble Court.”

4] In brief, the facts of the case are that the petitioner is a partnership firm and owns a Stone Crusher Unit. Admittedly, the petitioner had applied for permanent electricity HT connection of 500 KVA which was also granted by the respondents M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. (hereinafter referred to as “MPPKVVCL”) vide agreement dated 30.06.2020. The requisite deposit and fees bills etc. have also been paid by the petitioner since the execution of the agreement. However, on 22.03.2021, respondent No.2/Superintending Engineer of MPPKVVCL has issued a demand notice to the petitioner which is challenged in this petition, holding that the petitioner is liable to pay an amount of Rs. 48,62,716/- as an audit recovery has been issued against the petitioner that its connection has to be treated as a temporary connection for billing purposes.

5] The contention of the learned counsel for the petitioner is that the aforesaid demand notice has been issued on misreading of Clause 4.43 of M.P. Electricity Supply Code, 2013 which is not applicable to the petitioner and the petitioner cannot be treated as a temporary consumer. Counsel for the petitioner has also submitted that the petitioner is engaged in the business of stone crushing which, by no stretch of imagination can be treated to be a unit made for construction purposes. Counsel for the petitioner has also drawn the attention of this Court to the agreement dated 30.06.2020 executed between the parties which clearly provides that the agreement is for permanent connection and shall remain in force for a period of two

years. Counsel has also submitted that the petitioner has not violated any of the conditions of the agreement and the demand notice has been issued only on the basis of an audit objection by the audit team, and not only the recovery has been effected towards temporary connection but, it has also been sought to be recovered retrospectively, i.e., from the date of connection till February, 2021 which is liable to be quashed.

6] Shri A.K. Sethi, learned counsel appearing for the petitioner has also relied upon the decision rendered by the Supreme Court in the case of *U.P. Power Transmission Corporation Limited and Another vs CG Power and Industrial Solutions Limited and Another reported as (2021) 6 SCC 15*, wherein the Supreme Court has in no uncertain terms held that, in the absence of any adjudication, it is impermissible for the power generating company to issue the communication to realize cess solely on the report of the CAG. Shri Sethi has also submitted that in the present case also, the impugned notice has been issued at the instance of Central Audit Team of Comptroller and Auditor General (CAG), Indian Audit and Accounts Department on March, 2021 which works with the Union Government. Thus, it is submitted that the case of the petitioner is squarely covered by the aforesaid order passed by the Supreme Court.

7] Shri A.K. Sethi, counsel for the petitioner has also relied upon Section 18 of the Comptroller and Auditor-General's (Duties, Powers and etc.) Act, 1971, which refers to powers of Comptroller and

Auditor-General in connection with audit of accounts as also Section 19 which refers to audit of Government companies and corporations. Section 19A also provides for laying of reports in relation to accounts of Government Companies and Corporations before each House of Parliament. Thus, it is submitted that none of the provisions have been complied with by the respondents before issuing the impugned demand notice to the petitioner.

8] A reply to the aforesaid petition has also been filed and Shri Anshuman Shrivastava, learned counsel appearing for the respondent has vehemently opposed the prayer and it is submitted that the petitioner has been found to be involved in construction business and is carrying on its business for the purposes of providing raw material to road constructors who have been allotted the tender to construct eight lane highway by the Indian National Highway Authorities. Thus, the petitioner's business is closely connected with the construction work and as per Clause 4.43 of the M.P. Electricity Supply Code, 2013, permanent connection shall not be given for construction purposes.

9] Heard learned counsel for the parties and perused the record.

10] On due consideration of submissions and perusal of the documents filed on record as also the decision rendered by the Supreme Court in the case of ***U.P. Power Transmission Corporation Limited (Supra)***, this Court finds that so far as the audit recovery on the basis of the report of Comptroller and Auditor General of India is concerned, the Supreme Court in the aforesaid case has held as

under:-

“60. As observed above, UPPTCL demanded and partly realized cess on the supply Contract, solely on the basis of report of the CAG. In our considered view, in the absence of any adjudication, it was impermissible for UPPTCL to issue the impugned communication to realize cess solely on the basis of the report of the CAG.

61. In Centre of Public Litigation v. Union of India reported in (2012) 3 SCC 1, this Court held that when CAG report was subject to scrutiny of the Public Accounts Committee and the Joint Parliamentary Committee, it would not be proper to refer to findings and conclusions contained therein. In this context, reference may also be made to the decision of this Court in Arun Kumar Agrawal v. Union of India and Others reported in where this Court held:-

“56. CAG may be right in pointing out that public monies are to be applied for the purposes prescribed by Parliament and that extravagance and waste are minimised and that sound financial practices are encouraged in estimating and contracting, and in administration generally.

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67. The question that is germane for consideration in this case is whether this Court can grant reliefs by merely placing reliance on the CAG's Report. The CAG's Report is always subject to parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG Report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's Report.”

(emphasis supplied)

11] In view of the above, this Court is of the considered opinion that the aforesaid finding recorded by the Supreme Court applies *mutatis-mutandis* to the facts of the present case as well. It is also found that although the demand has been raised by taking exception to the agreement executed between the parties itself, holding that the connection granted to the petitioner ought to have been temporary in

nature instead to permanent but, till date even the aforesaid agreement has not been repudiated by the respondents. It is also found that although the petitioner is involved in the business of stone crushing, but it cannot be said that the aforesaid unit is for the construction purpose as the construction purpose would mean, construction of buildings/power plants etc. and for the purpose of setting up of industrial units as is prescribed in Rule 4.43 of the M.P. Electricity Supply Code, 2013 which reads as under:-

“4.43 Any person requiring power supply for purpose that is temporary in nature, may apply for temporary power supply for a period of less than two years in the Form as required by the Licensee. The period of temporary connection can be extended up to five years for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10 kW and 30 days before for higher the said loads Under no circumstances, permanent connection be allowed for construction purposes.”

12] It might be that the need of the petitioner was temporary, but as the agreement has been executed by the respondent Licensee who is a State within the ambit of Art.12 of the Constitution of India, for permanent connection, no retrospective recovery can be made on the basis that the agreement was wrongly executed as it was supposed to be for temporary connection. This is for the reason that as the subsequent denial on the part of the respondent would be in violation of the *doctrine of promissory estoppel*, as the petitioner has altered his position on the basis of the agreement between the parties. Thus, on this count, as also on the ground that the impugned demand

notice has been issued by the respondents without complying with the provisions of the Comptroller and Auditor-General's (Duties, Powers and etc.) Act, 1971 or any violation of the order passed by the Supreme Court in the case of *U.P. Power Transmission Corporation Limited (Supra)*, the impugned demand notice cannot be sustained.

13] Resultantly, the petitions stand *allowed* and the impugned demand notices are hereby set aside. It is found that the petitioner has paid certain amount to the respondents as directed by this Court while granting interim relief vide order dated 13.07.2021 and 18.08.2021, it is directed that the amount paid by the petitioner shall also be remitted back to the petitioner with the applicable bank interest rate within a period of one month from the date of receipt of certified copy of this order.

14] Original copy of this order be placed in WP No.9654/2021 and a copy thereof be kept in other connected petitions.

(Subodh Abhyankar)

Judge

krjoshi