

HIGH COURT OF MADHYA PRADESH: JABALPURSINGLE BENCH:HON. SHRI JUSTICE A.K. SHRIVASTAVAWRIT PETITION NO. 4385/2009

..... Petitioner : Vinod Saraf  
S/o Late Shri Radhey Shyam  
Saraf,  
aged about 30 years,  
By occupation Businessman,  
R/o Azad Chowk, P.O. Kotma,  
District Annuppur (M.P.)

Versus

..... Respondents : 1. Madhya Pradesh East Area  
Electricity Supply Company  
Limited, Sakti Bhawan, Rampur,  
Jabalpur (M.P.)- Through its  
President cum Managing Director

2. Chief Engineer,  
Madhya Pradesh East Area  
Electricity Supply Company  
Limited, Chourasia Nursing  
Home Ke Pass, Rewa (M.P.)

3. Superintending Engineer,  
Madhya Pradesh East Area  
Electricity Supply Company  
Limited, Near Kotwali, Shahdol  
(M.P.)

4. Executive Engineer,  
Transmission & Maintenance  
Division, East Area Electricity  
Supply Company Limited,  
Annuppur (M.P.)

5. Assistant Engineer,  
Madhya Pradesh East Area  
Electricity Supply Company  
Limited, Kotma, P.O. Kotma,  
District Annuppur (M.P.)

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Petitioner - Shri P.N. Pathak, Advocate.  
Respondents - Shri M.L. Jaiswal, Senior  
Advocate with Shri K.K. Gautam,  
Advocate.  
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Date of hearing : 07/03/2011

Date of Order : /03/2011

**ORDER**

**( /03/2011)**

1. By this petition under Article 226 of the Constitution of India,  
the petitioner has prayed for the following reliefs:-

“(i) The Hon'ble High Court be pleased to direct the respondents to ensure regular, proper supply of the electricity to the premises of the petitioner to enable him to run his business and earn his livelihood;

(ii) The Hon'ble High Court be pleased to quash/set aside the impugned bill dated 27.1.09 Annexure P/4; being arbitrary illegal and unjustified;

(iii) To award suitable compensation/damages to the petitioner for loss of business, mental agony pain and suffering and financial loss due to illegal act of disconnection of supply of electricity to the business premises of the petitioner;

(iv) To award any other relief as deemed fit in the facts and circumstances of the case including the cost of this litigation.”

2. In brief, the case of the petitioner is that he is a citizen of India while the respondent no.1 is a statutory Electricity Supply Company constituted under Section 5 of the Electricity (supply) Act, 1948 (hereinafter referred to as the 'Supply Company'). Respondent No.1 is also a State enshrined under Article 12 of the Constitution of India and is amenable to the writ jurisdiction. The petitioner is a consumer of the Supply Company and had taken a 25 H.P. Electric connection No. 313990146 in the year 2002 for running his Stone Crusher business and is paying the bills regularly. The electricity bills up to March, 2009 has been paid.

3. Due to heavy rains and lightening, on 24.8.08 several electric meters including that of petitioner as well as Transformer and Cable got burnt due to natural cause of lightening and a report was lodged with the local authorities of the Supply Company which is duly entered into complaint book. Thereafter, an enquiry was set up by the Supply Company and spot inspection was also made. Thereafter the Transformer and the Cable was changed on 26.8.08 and because a 'three phase electric meter' was not available in the stock, the electric connection to the petitioner's stone crusher was directed to be start by taking connection directly. This fact has been endorsed on the rear side of the application filed by the petitioner under

Right to Information dated 28.3.09 (Annexure P/2). Subsequently, a new meter was installed on 14.9.08.

4. It is further the case of the petitioner that on 12.9.08 in the absence of the petitioner a Flying Squad from Jabalpur visited the premises of the petitioner and found that burnt meter is lying in one room and the supply line is directly connected. The said Flying Squad prepared a Panchnama in the name of one Manoj Saraf (petitioner's name is Vinod Saraf) who is the brother of petitioner who was also not present as he has no connection with the said stone crusher which is the exclusive business of the petitioner. However, the Panchnama was not served upon the petitioner but was served on his brother Manoj Saraf along with bill dated 27.1.09 and calculation orders (Annexure P/3 to P/5 respectively). Said Manoj Saraf filed his reply on 18.3.09 denying any liability as also the ownership of any stone crusher owned by him (Annexure P/6). The copy of report of the Lineman (respondent no.5) to the Assistant Engineer of the Supply Company (respondent no.4) dated 06.04.09 clarifying the correct position has been filed as Annexure P/7. Since no notice or any bill or any opportunity was provided to the petitioner, he moved applications on 25.3.09, 18.3.09 and on 02.04.09 (Annexure P/8 to P/10) for information under Right to Information Act but the

true and correct information has not been supplied to him by the Supply Company.

5. According to the petitioner, on 23.3.09 at about 6 O' Clock in the evening lineman Bhagatram Mishra and Anjani Dwivedi disconnected the electricity supply to the petitioner's unit (stone crusher) without showing any written order and without assigning any reasons. The matter was duly reported vide memo dated 24.3.09 (Annexure P/11) but when nothing was done, a legal notice dated 26.3.09 (Annexure P/12) was served on all the respondents which was duly served on them but with no result. Hence, this petition has been filed seeking the reliefs which are quoted hereinabove.

6. The return has been filed on behalf of the respondents. In the return the factum of burning of Electrical Transformer of Supply Company 63 KVA on 24.8.08 resulting into burning of cable of stone crusher of the petitioner has been admitted and further it has been admitted that on account of burning of Transformer and Cable, the electric supply was disrupted and was disconnected. According to the respondents, the Transformer was changed after two days on 26.8.08 but on account of non furnishing the fitness test report of the changed cable, the supply of electricity could not be resumed. According to the respondents, the cable which was inside the premises of

the petitioner was to be maintained by him and once it was burnt, the internal arrangement was to be tested by an authorized electric Contractor.

7. Further, it has been pleaded in the return by the respondents that Central Vigilance Party of MPPKVV Co. Ltd. Jabalpur inspected the premises of the petitioner on 12.9.08 and it was found that one Manoj Saraf the brother of petitioner had tapped direct connection from the LT line of the respondents. Thus, Manoj Saraf, by artificial means is using the electricity. The said course of action of tapping was not authorized and as such tantamounts to unauthorized use of electricity. Since on the spot it was found that Manoj Saraf was the person who had made use of electricity by unauthorized means for the benefit of the Crusher Plant, therefore, Manoj Saraf is responsible for this unauthorized use for the benefit of his brother. A Panchnama (Annexure P/3=R/1) was prepared in the name of Manoj Saraf and complaint was also lodged in the Criminal Court (Annexure R/2). In very specific words it has been pleaded in the return that Manoj Saraf was using the electricity unauthorizedly and accordingly, a demand was raised as detailed in Annexure P/4 against said Manoj Saraf. According to the respondents, the petitioner has no right to lay a challenge to the assessment made against Manoj Saraf. Except, burning of Transformer

Cable etc., the other averments made in the petition have been denied by the respondents. Hence, it has been prayed that this petition be dismissed.

8. A rejoinder has been filed by the petitioner by pleading that on bare perusal of the endorsement in Annexure P/2 Lineman Chandra Bhusan Singh admitting change of supply cable and providing electricity directly for want of meter. The report of Assistant Engineer (Annexure P/7) supports the said factual position. According to the petitioner, no test report is required when work of change of cable is being executed by an authorized personnel of the respondents, nor any test certificate was ever demanded from the petitioner. On 14.9.08 when new meter was installed, no such test certificate was either demanded or supplied by the petitioner. The respondents have illegally disconnected the supply in the premises of the petitioner and are making false and frivolous allegations to justify their illegal act.

9. It has also been pleaded by denying the allegation that on 12.9.08 when the Panchnama was prepared, his brother Manoj Saraf was present, further it has been pleaded that the petitioner was also not present. The supply line in the crusher was started by the Lineman with full knowledge and approval of the senior officers of the Supply Company which is evident from Annexure

P/2 & P/7. The entire story of theft is false and fabricated. The Panchnama Annexure P/3=R/1 is dated 12.9.08 whereas the complaint filed in the Criminal Court, Annexure R/2 is dated 11.6.09 i.e. after a gap of nearly nine months.

10. According to the petitioner, the Assistant Engineer in his report dated 6.4.09 clearly stated that no theft case is made out and recovery amount is also excessive. By putting emphasis on the facts as well as the averments made in the rejoinder, it has been submitted that the writ petition was filed in this Court on 18.4.09 and the complaint was subsequently filed on 11.6.09, obviously just to justify the illegal action of the respondents. According to the petitioner, his brother Manoj Saraf runs a Hardware Shop and he had nothing to do with the crusher owned by the petitioner. According to the petitioner, he had never consumed any stolen energy nor there is any theft of electrical energy and, therefore, the petitioner is not bound to pay any money against bill (Annexure P/4).

11. I have heard Shri P.N. Pathak, learned counsel for the petitioner and also Shri M.L. Jaiswal, learned senior counsel for the respondents. Having heard them, I am of the view that this petition deserves to be allowed.



12. The factum of burning of electric Transformer and Cable of the Supply Company as well as the '3 phase meter' of the petitioner on account of natural cause of lightening has been admitted in the return (see para 1 and 6 of the return) which would mean that on 24.8.08, the electric supply was disrupted. Admittedly, the petitioner is having a business of stone crusher. In such a situation, it was bounden duty of the Supply Company to resume the electric power at once so that the business of the petitioner may not be ruined. Otherwise also, they are not only statutorily liable but they are obliged to restore the electric power immediately. Certainly, if the electric power is not resumed immediately or latest within one or two days, the petitioner who is a consumer has to suffer a lot and would face heavy financial losses on account of non operation of his stone crusher. Admittedly on account of burning of Transformer and cable of the Supply Company. Eventually, the burning of meter of the petitioner has been admitted and further it has been admitted that new electric meter was installed on 15.9.08 and it was found that the burnt meter was lying in the premises of the petitioner. Since the meter which was to be provided only by the Supply Company to the petitioner and the burnt meter was changed only on 14.9.08, it would mean that respondents were perpetuating their own fault by not replacing the electric meter which is to be provided by them only and, therefore, they have

no right to say that they will change the meter according to their own suitability and till then the petitioner should not carry out his own business.

13. It is also an admitted fact that this petition was filed on 21.4.09 and the Criminal complaint has been filed before Special Judge on 11.6.09 viz. after one month and 20 days. On 29.4.2009, this Court directed to issue notices against the respondents. Obviously, the criminal complaint making out a case of theft has been submitted after the petition was filed and notices were directed to be issued against the respondents. It appears that in order to save the skin, the criminal complaint (Annexure R/2) has been filed against Manoj Saraf and not against the petitioner. On going through the Panchnama/ inspection report (Annexure P/3=R/1) dated 12.9.08 this Court finds that specifically it has been mentioned that burnt meter is lying separately in a room and further it has been mentioned that the connection has been taken directly from the main line and there is no meter. This Panchnama has neither been signed by the petitioner nor his brother Manoj Saraf. It has also not been mentioned that they are not available. The Panchnama has been prepared against Manoj Saraf and the criminal complaint has not been filed against the petitioner but against Manoj Saraf and thus the case of theft has not been made against the petitioner but his brother Manoj Saraf. Admittedly,

the petitioner is the consumer and he is running the business of Stone Crusher and the electric supply has been disconnected of petitioner as well as the impugned bill dated 27.1.09 (Annexure P/4) has been billed against the petitioner's brother Manoj Saraf and not against the petitioner although the unit is being run by the petitioner. Petitioner's brother Manoj Saraf submitted objections in respect of bill (Annexure P/4) on 18.3.09 stating all these facts that he is not the owner of the Stone Crusher and further that he has not signed the Panchnama nor he was so informed. On bare perusal of the report of the Assistant Engineer addressed to Executive Engineer dated 6.4.09 (Annexure P/7) this Court finds that Panchnama has been prepared in the name of Manoj Saraf and the Service Number is not mentioned in the said Panchnama. Indeed, the consumer is petitioner Vinod Saraf having Service Number 90-01-9437332. In the said report (Annexure P/7) this fact has been admitted that on account of lightening on 24.8.08 the Transformer, cable and the meter were burnt and the Transformer was changed on 26.8.08. Further it has been admitted that on account of non availability of '3 phase meter', the electricity was resumed without installing the electric meter. If the Three Phase Meter was not available in the stock of the respondents, the petitioner cannot be blamed and he cannot be allowed to suffer for no fault on his part. In this document it is also mentioned that the

meter was changed only on 14.9.08 and, therefore, in these state of affairs, I am of the view that petitioner cannot be blamed in any manner.

14. This Court is not expressing any view whether the Lineman and Assistant Engineer have joined the hands in electricity theft because the complaint has been filed before the Special Judge and it is yet to be adjudicated. However, it is the internal arrangement of the Supply Company to take action against their own employees and this Court is also not expressing any view in that regard because I have been informed that the Lineman and the Assistant Engineer has already filed a writ petition before this Court which is pending but in the peculiar facts and circumstances, the petitioner cannot be made liable. Admittedly, no complaint of electricity theft has been filed against the petitioner and certainly the disconnection of the electricity of the Unit of petitioner has been made.

15. On going through Annexure P/2 which is an application submitted by the petitioner in the office of Assistant Engineer of Supply Company under right of information, this Court finds that on the rear side of the application, there is an endorsement to the following effect:-

“दिनांक 24.08.2008 को लाइटिंग में श्री विनोद सराफ के केशर वाला ट्रांसफर केबिल और केशर का

मीटर जल गया था जो 26.08.2008 को बदल गया कम्पलेन आने पर मेरे द्वारा केशर की लाइन केबिल बदलकर बिना मीटर के चालू की गई क्योंकि उस समय में कार्यालय में 3 फेस मीटर नहीं था मेरे द्वारा 14.09.08 को 3 फेस मीटर लगाया है।“

16. On account of failure of Transformer as well as by not providing '3 phase meter' to the petitioner for near about one month and 20 days, the action of the respondents would have been in contravention of Article 19(1)(g) as well as Article 21 of the Constitution of India, if the electricity would not have been resumed directly in the facts and circumstances of the case, because till the '3 phase meter' is changed, petitioner would not have been in position to carry on his business and his fundamental rights enshrined under Article 19(1)(g) and 21 would have been thus jeopardized. This Court is not expressing any view whether Assistant Engineer and the Lineman of the Supply Company have rightly resumed the electric power through direct supply because as stated earlier, the matter is pending before this Court but, any how, the petitioner cannot be allowed to suffer on account of not providing '3 phase meter' to him by the respondents. Hence, the action of the respondents in the peculiar facts and circumstances withholding the electric supply of the petitioner cannot be said to be in accordance with law. The action of the respondents disconnecting the electric supply of the petitioner on 23.3.09 without issuing any show

cause notice and without providing any opportunity of hearing is arbitrary and runs *dehors* to petitioner's fundamental right enshrined under Article 19(1)(g) and also Article 21 of the Constitution of India.

17. For the reasons stated hereinabove, this petition succeeds and is hereby allowed. Respondents are hereby directed to resume the electricity of the petitioner forthwith so as to enable him to run his business with a further direction that they should charge the bill amount from 26.8.08 when the electricity supply was resumed to the petitioner till 23.3.09 when it was disconnected on the basis of average bill and the amount of bill (Annexure P/4) which is Rs.3,27,281/- which is not in the name of petitioner may not be realized from him. Looking to the facts and circumstances, parties are directed to bear their own costs.

(A.K. Shrivastava)  
Judge

rao



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