

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU  
(Through Virtual Mode Srinagar)**

WP(C) No.1179/2021  
CM No. 1265/2021  
CM No. 4877/2021

M/S S. D. Enterprises

.....Appellant(s)/Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with  
Mr. Vaibhav Gupta, Advocate

**Vs**

Union Territory of J&K

..... Respondent(s)

Through: Mr. Amit Gupta, AAG

**Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

**JUDGMENT**

1. The petitioner is aggrieved of the communication No.SD-2/48 dated 05.052021 whereby the petitioner has been informed that electricity connection cannot be granted in favour of the petitioner on the ground mentioned in the communication. The case setup by the petitioner is that he has purchased space measuring 2126.01 sq feet Super Built Up situated on the 5<sup>th</sup> floor of the commercial complex known as Palm Island Mall situated at Canal Road, Jammu from Amar Nath Choudhary and Radhey Sham. The copy of the sale deed is placed on the file. The mall is has been established by the owners in collaboration with M/S Ridhi Sidhi Infra Projects Private Limited. As per the petition the vendor/developer was required to satisfy the electricity bill raised by the respondents. The petitioner is regularly paying the electricity charges to the owner/developer of the Palm Island Mall. It is further stated that

33kv/433 Volts dedicated sub-station has been installed within the premises of Palm Island by the respondents and the respondents are raising consolidated electricity charges in the name of Palm Island Mall for the units of different persons who have purchased their respective units in the said mall. The Palm Island operator installed the meters in each unit and received the amount as per the recording on the meters installed. The developers of the Palm Island did not clear the dues to the department and this led to the disconnection of electricity in the entire mall on 01.05.2021. The case of the petitioner is that for the fault committed by the developer of the Palm Island by not clearing outstanding electricity charges the petitioner cannot be made to suffer. The respondents are obliged to supply the electricity to the petitioner as per the mandate of Section 43(1) of the Electricity Act, 2003 which is in vogue in the Union Territory of Jammu and Kashmir. The respondents could not deny the fresh electricity connection to the petitioner on account of the fault committed by the developer of Palm Island is the precise submission of the petitioner.

2. The objections to the petition have been filed wherein it is submitted that the owners of Palm Island are in arrears to the tune of rupees more than 44 lacs. as on April, 2021 which lead to disconnection of sanctioned load of 2500 kilowatts to the Palm Island. The petitioner has applied for new LT connection with load of 60 kw. However, the same cannot be allowed as the premises of the petitioner is not standalone structure and is part of

Palm Island with common entrance/exit corridor, passages, opening areas etc. As per the sale deed the petitioner can use common areas only for entrance and exit and is not even to change colors schemes/patterns of the walls. In case the petitioner is allowed the connection the other business establishments in the Palm Island will request for new connection resulting into pending arrears of Palm Island and thus causing huge loss to the exchequer. In the light of the aforesaid objections, the respondents seek dismissal of the writ petition.

3. The controversy in the present case lies in a narrow compass. The case of the petitioner for grant of electricity connection has been rejected on the ground as stated in the objections. Mr. Sunil Sethi, learned senior counsel appearing on behalf of the petitioner has argued that the petitioner cannot be made to suffer for the fault committed by the developers of Palm Island. The respondents are required to receive the outstanding, if any, from the Palm Island owners and not from the petitioner directly. The petitioner is not obliged to pay the outstanding amount to the respondents and therefore the case of the petitioner cannot be rejected on the ground mentioned in the impugned order. The learned counsel for the petitioner has submitted that the petitioner is the only person who possesses 5<sup>th</sup> floor of the Palm Island Mall and is ready to bear the expenses for the electricity that may be consumed in the said premises and also of the lift installed in the Palm Island Mall though the lift is common to all the establishments within the Mall. The learned counsel for the petitioner has

also submitted that the petitioner is ready to have independent meter so that there is separate billing for his establishment as well as for the lift.

4. The learned AAG has argued that the petitioner cannot be accommodated in the present scenario as the owners of the Palm Island are in huge arrears. The arrangement which the petitioner may have with the owners/developers of the Mall is not the concern of the respondents as the respondents had supplied the electricity to the Palm Island as one premise and not for each establishment within the said Palm Island. The establishment of the petitioner is not standalone structure and being part of the Mall the petitioner cannot be supplied the electricity.
5. The arrears on account of electricity consumed is due from the developers/owners of Palm Island and not from the petitioner individually. It is not the case of the respondents that as the petitioner is at fault, therefore, the petitioner cannot be provided the fresh electricity connection. The arrears amounting to Rs.44 or more cannot be the reason to deny the petitioner of having electricity connection in his favour for all times to come.
6. The court does not find substance in the argument of the learned counsel for the respondents that the establishment of the petitioner being not standalone structure is not therefore entitled to the electricity connection. The rules on the subject cannot be read in such as manner which may deprive the party of his right due to the fault of some other person.

7. The difficulty urged by the respondents in providing electricity connection exclusively in favour of the petitioner is because of other establishments within the mall and also for the reason that the petitioner will avail the facility of lift and other electricity connections which may be installed in the mall but not pay for the same. However, the plea of the respondents can be taken care of by the court by issuing appropriate directions in this regard.
8. The intending consumer cannot be deprived of the facility to which he is otherwise legally entitled to. The providing of connection will not only facilitate the cause of the petitioner but also bring gains to the government exchequer. The court finds that the reason provided by the respondents for rejecting the claim of providing the electricity connection to the petitioner cannot sustain and therefore the impugned communication is quashed. The court while granting relief to the petitioner is required to take into consideration the concern of the respondents also.
9. In the light of the aforesaid discussion, the petition is ***disposed of*** with the following directions:-
- a. The respondents to assess the requirement of the electricity consumption of the petitioner establishment along with lift and also the other points which are to be used by the petitioner and feasibility of providing the requisite load to the petitioner.

- b. The manner in which the electricity is to be provided shall be determined by the respondents.
- c. The separate meter shall be installed for recording the electricity consumption of the establishment of the petitioner. The petitioner to pay the charges for the sub-station if required or for any other equipment that may be required to be installed in the premises of the petitioner.
- d. The petitioner is directed to deposit Rs.10 lacs. with the respondents to be adjusted against the electricity charges in future. It is however made clear that in case other establishments within the Palm Island Mall become operational the respondents shall be at liberty to revise methodology of providing the electricity to the establishment of the petitioner. As the premises of the petitioner is without electricity for the last more than one year the respondents are expected to complete the process without any undue delay.

**(Puneet Gupta)**  
**Judge**

**Jammu**  
31.05.2022  
Shammi

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No