

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No.738/2012

Reserved on :19.09.2022
Pronounced on : 30.12.2022

JK Montessori School ...Petitioner(s)

Through:- Ms.Veenu Gupta, Advocate

V/s

State of J&K and others ...Respondent(s)

Through:-Mr. Amit Gupta, AAG

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. Through the medium of present writ petition, the petitioner, *inter alia*, seeks a writ of certiorari quashing the action of the respondents in illegally disconnecting the electricity supply to the petitioner-school in flagrant violation to the provisions of the J&K Electricity Act, 2010 and Rules framed thereunder and without providing 15 days notice in writing as per the provisions of Section 50(1) of the J&K Electricity Act, 2010.

FACTS

2. The facts leading to the filing of this petition are that the petitioner-School has been established by Mrs. Rajni Gupta to provide and impart quality education to the students, who have

been admitted to the petitioner-school. The JK Montessori School was taken over by the petitioner in the year 2002 and since then the same is being run strictly in consonance with the provisions of law. According to the petitioner, at the time when the school was taken over by the petitioner, all electricity dues were cleared by the erstwhile owner of the school and there was nothing outstanding on account of electricity charges against the said school. It is submitted that the respondents after assessing the consumption of electricity in the petitioner-school, sanctioned 7.5 KW load and a modern digital electronic meter has also been installed by the respondents in the premises of the school. It is averred that the digital electricity meter installed cannot, under any circumstances, be tempered or fiddled and if any attempt is made in this regard, the meter stops working. According to the petitioner, the petitioner was regularly paying the electricity bill and never committed any default in making payment of the electricity bill. It is submitted that on 15.05.2012, a team of officers including respondent No.5 had visited the petitioner-school and found the digital meter installed in the premises intact. The said team left the premises of the school without asking or saying anything to the petitioner. It has further been submitted by the petitioner that after few hours of inspection, the respondents have sent, Electricity bill-cum-pay-in-slip dated 15.05.2012 endorsing thereupon excess load penalty amounting to

Rs.3,84,805/-, to the petitioner. On the said electricity bill-cum-pay-in-slip a notice has also been endorsed that if the payment is not made on due date, the petitioner shall be liable for electricity disconnection after expiry of seven days of the due date.

3. It is the case of the petitioner that after receipt of the aforesaid electricity bill-cum-pay-in-slip, petitioner rushed to the office of respondent Nos. 4 and 5 to enquire about the details on which such a huge amount of Rs.3,84,805/- as excess load penalty has been imposed and on enquiry, nothing has been disclosed by the respondents to the petitioner and instead in an arbitrary and illegal manner disconnected the electricity connection thereby causing severe harassment not only to the petitioner but also to the students and the teachers and other staff engaged by the petitioner for running the school. The petitioner is aggrieved of the action of respondents in demanding Rs.3,84,805/- from the petitioner as excess load penalty and illegal disconnection of the electricity connection primarily on the following grounds:-

- i) The action of respondents in disconnecting electric connection of the petitioner is *per se* illegal, arbitrary and violates the fundamental rights of the petitioner.
- ii) The action of respondents in demanding an amount of Rs.3,84,805/- from the petitioner as excess loan penalty is illegal

and arbitrary, inasmuch as no reason has been disclosed by the respondents for imposing such a huge penalty.

iii) That on impugned electricity bill-cum-pay-in-slip, a notice has been appended whereby seven days time has been provided to the petitioner in terms of Section 24(1) of the J&K Electricity Act Samvat 1997 to deposit the said amount failing which electric connection shall be liable for disconnection; the impugned bill-cum-pay-in-slip was issued on 15.05.2012 and without waiting for a period of seven days, the respondents in a totally illegal and arbitrary manner disconnected the electricity connection of the petitioner. It is submitted by the petitioner that J&K Electricity Act, Samvat 1997 stands already repealed by promulgation of J&K Electricity Act, 2010 and as per Section 50(1) of the J&K Electricity Act, 2010, fifteen days time has been provided for deposit of electricity dues.

4. On the other hand, the respondents have contested the writ petition by stating that petitioner-school is existing/functioning in two premises having one metered connection and another without meter and inspection of the petitioner-school (both premises) was conducted and it was found that 2nd phase namely, JK Millennium International School was using electricity illegally through hooking and in terms of Clause 11.8, 11.9 and 11.10 of Tariff Order, an amount of Rs.3,84,805/- was assessed/calculated as penalty on account of illegal usage of electricity/unmetered excess

load charges for previous six months and the said amount was required to be deposited in the existing I.D. As per the respondents, the petitioner/owner of the said premises deposited Rs.64,134/- only as electric charges for additional load for a period of two months and also assured that she will apply for separate fresh connection for the premises. The petitioner applied for issuance of fresh connection for the aforementioned another/additional premises namely, JK Millennium International School. It is further the case of respondents that subsequent to the inspection so conducted by the respondents and imposition of penalty, under Voluntary Disclosure Scheme (VLDS), the petitioner has applied for the enhancement of the load.

Submissions of the Petitioner:

5. Learned counsel for the petitioner has assailed the action of the respondents in imposing excess load penalty and disconnection of the electric connection on the ground that the same is in violation of the principles of natural justice. Learned counsel further submits that the action of the respondents is totally bad in the eyes of law as no reason for excess load penalty has been disclosed.

Submission of the Respondents:

6. On the contrary, Mr. Amit Gupta, learned counsel for the respondents submits that the present writ petition is not maintainable as disputed questions of fact have been raised in this

petition. Learned counsel has further submitted that the petitioner has not approached this Court with clean hands, as such, the writ petition deserves to be dismissed. It is submitted that huge theft of power was going on in the petitioner's premises/school for which penalty amounting to Rs.3,84,805/- was imposed for un-metered/hooking, which is payable to the state exchequer and the said penalty is strictly in terms of J&K SERC Tariff Order for the financial year 2012-13.

Analysis

7. Heard learned counsel for the parties and perused the material on record.
8. The issue whether the petitioner-school is functioning in two premises and the petitioner has obtained one connection for the two premises or the connection has been installed only in one premises and in the other premises petitioner was using electricity illegally by hooking falls within the realm of disputed questions of fact which cannot be gone into by this Court in its extraordinary writ jurisdiction.
9. Section 86 of the Electricity Act, 2010 deals with the Assessment. For facility of reference Section 86 of the Act is reproduced hereunder:-

“86. Assessment.—(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets,

machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under subsection (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such un-authorized use of electricity has taken place, and if, however, the period during which such un-authorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation: — For purposes of this section,—

(a) "Assessing Officer" means an officer of the Government or licensee, as the case may be, designated as such by the Government ;

(b) "Unauthorised use of electricity" means the usage of electricity: —

(i) by an artificial means ; or

(ii) by a means not authorised by the concerned person or authority or licensee ; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised ; or

(v) for the premises or areas other than those for which the supply of electricity was authorised."

10. From a perusal of Section 86, it becomes evident that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess the electricity charges payable by such person or by any other person benefited by such use. The order of provisional assessment would be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed. The person on whom order of assessment has been served shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording reasonable opportunity of hearing pass a final order

of assessment within thirty days from the date of service of such order of provisional assessment. Any person served with the provisional assessment may accept such assessment and deposit the assessed amount within seven days of service of such provisional assessment order. It is also provided that if the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if the period during which unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited for a period of twelve months immediately preceding the date of inspection. It is further provided that assessment shall be made at a rate equal to twice the tariff applicable for the relevant category. Explanation appended to Section 86 defines ‘unauthorized use of electricity’ as under:-

- i) by an artificial means; or
- ii) by means not authorized by the concerned person or authority or licensee; or
- iii) through a tampered meter; or
- iv) for the purpose other than for which the usage of electricity was authorized; or
- v) for the premises or areas other than those for which the use of electricity was authorized.

11. The case of the petitioner is covered by explanation (v) because as per the respondents, only, one electricity connection has been installed in the premises of the petitioner and in the other premises, the electricity was being used without authorization by the petitioner. Therefore, in terms of Section 86 of the Electricity Act, 2010 after inspection, provisional assessment has been made. In terms of Section 86(3), the petitioner is entitled to file objections, if any, against the provisional assessment before the assessing officer, who after affording reasonable opportunity of hearing to such person, was required to pass final assessment order. It seems that the petitioner has not chosen to file any objection to the assessment so made and straightway come to the High Court through the medium of present writ petition. Provisions of Section 86 would be applicable to the cases where electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. The assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'unauthorized use of electricity.
12. Section 87 of the Act provides for appeal to the Appellate Authority. In terms of Section 87, any person aggrieved by the final order made under Section 86, within thirty days of the said

order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the Commission, to an Appellate Authority as may be prescribed.

Section 87 of the Act reads thus:-

“87. Appeal to Appellate Authority.—(1) Any person aggrieved by the final order made under section 86 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the Commission, to an Appellate Authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to one-third of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The Appellate Authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the Appellate Authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the Appellate Authority referred to in subsection (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months.

13. When Section 87 in clear terms provides for an appeal against the final order of assessment, writ petition cannot be held maintainable in view of the availability of alternate remedy provided under the Act itself. Learned counsel for the respondents has also submitted that now Internal Grievance Redressal (IGR) Cell for Jammu Power Distribution Corporation Limited (JPDCL), Jammu to record and redress grievances in a timely manner is in place and the petitioner can very well approach the Internal Grievance Redressal Cell against the excess load penalty imposed upon her.
14. The Supreme Court in a recent judgment in the case of **Radha Krishan Industries v. State of Himachal Pradesh and others, 2021 SCC Online SC 334** after considering the principles that have been crystallized in **Whirpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1** and **Harbanslal Sahni v. Indian Oil Corporation Limited, (2003) 2 SCC 107** summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternative remedy, which reads as under:-

“28. The principles of law which emerge are that :

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

15. I have carefully gone through the grounds urged in the writ petition and also the arguments advanced by the learned counsel for the petitioner, I don't find it a case, which is covered by the exceptions to the general rules that in the face of alternate and efficacious remedy, the Constitutional Court would entertain the present writ petition under Article 226 of the Constitution of India. The case of the petitioner does not fall within exceptions carved out to the general principle that in the face of alternate and efficacious remedy, the writ petition can be maintained. The writ petition as such, is not maintainable.
16. The law in this regard is well settled that when statutory and equally efficacious remedy is available, writ petition should not be entertained and the party concerned should be relegated to such

alternative remedy. There is no whisper in the writ petition which is filed by the petitioner that she has availed alternate and efficacious remedy provided under statute nor any averment that case of the petitioner falls within the exceptional clause to give a right to the petitioner to bypass the alternate efficacious remedy by approaching this Court straight way.

17. It is trite law that ordinarily relief under Article 226 of the constitution of India is not available, if efficacious alternative remedy is available to any aggrieved person. Where statutory remedy is created by law, the writ petition should not be entertained ignoring the statutory dispensation. It is also a well recognized principle of law that where a right or liability is created by a statute, which provides for speedy remedy for enforcing it, the remedy provided by the said statute alone should be availed of. Undoubtedly, it is equally well settled that this canon of law is not free of exceptions and alternative remedy is not a bar to the entertaining of writ petition filed for enforcement of any of the fundamental rights or where there has been violation of principles of natural justice or where the order under challenge wholly without jurisdiction or vires of the statute providing for alternative remedy is otherwise under challenge. As such, when the statutory remedy of appeal is available to the petitioner, this writ petition is not maintainable, I have carefully perused the grounds urged in the writ petition, I do not find it a case, which is covered by the

exceptions to the general rules that in the face of alternate remedy, the Constitutional Court would not entertain the writ petition under Article 226 of the Constitution of India.

18. Since the petitioner has admittedly raised questions which are disputed by the respondents, as such, in terms of the principles summarized by the Supreme Court in **Radha Krishan Industries** (supra), the present writ petition is not maintainable. Further the nature of controversy raised by the petitioner is not the one which justifies exercise of writ jurisdiction by this Court.
19. A Coordinate Bench of this Court in the case of **Abid Hussain Ansari v. State and others, 2014(1) JKJ[HC] 287**, held that in terms of Sub Section (1) of Section 50 of the Jammu and Kashmir Electricity Act, 2010, the petitioner has to pay the amount demanded from him under protest and is at liberty to bring a suit in the civil court to contest his liability for refund of the amount not due from him, therefore, the writ is not a remedy.
20. Furthermore, the respondents have refuted the claim of the petitioner and have tried to justify the imposition of excess load penalty by pleading that the petitioner school is functioning in two premises having one metered connection and another without meter, which fact has never been denied by the petitioner. This fact has also been admitted by the petitioner by applying for fresh electricity connection in the name of JK Millennium International

School. The person seeking relief under discretionary writ jurisdiction must come to the court with clean hands. It is a settled principle of law that one who demands equity must do equity. On this count also the writ petition is not maintainable as the petitioner has not pleaded correct facts.

21. Hon'ble the Supreme Court in the case in **Vijay Syal & Anr. v. State of Punjab & Ors., (2003) 9 SCC 401**; has stated;

"In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice".

22. In yet another case titled **K.D.Sharma v. Steel Authority of India, (2008) 12 SCC 481**, Hon'ble the Supreme has observed as under:-

“The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is

extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.”

23. In view of settled legal propositions and what has been discussed herein above, this writ petition is devoid of any merits, *hence dismissed* along with connected application, if any.
24. However, having regard to the fact that petitioner has been pursuing its claim before this court by filing this writ petition under Article 226 of the Constitution, as such, if the petitioner would wish to avail the remedy of statutory appeal as per the Act, *supra*, the Appellate Authority shall consider the same without making reference to the period of limitation and, till then, no punitive action/recovery will be taken against/from the petitioner.

(Wasim Sadiq Nargal)
Judge

Jammu.
30.12.2022
Vinod.

Whether the order is speaking : Yes
Whether the order is reportable: Yes