IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

(THROUGH VIRTUAL MODE)

Reserved on: 01.06.2021
Pronounced on:16 .06.2021

WP(C) No.970/2020
CM Nos.2398/2020 & 2399 of 2020

MAHESH CHANDER SHARMA & ANR. **…PETITIONER(S)**

Through: Mr. Rameshwar P. Sharma, Sr. Adv. with Mr. Rohit Gupta, Advocate.

Vs.

UNION TERRITORY OF J&K & ORS. ….RESPONDENT(S)

Through: Mr. F. A. Natnoo, AAG.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1) Petitioner No.1 is a consumer of electric energy supplied by the respondents and is identified by consumer ID No.0101020005173 and Installation No.GHB/1974. He claims to have executed a lease deed in favour of petitioner No.2 qua the premises situated in Khasra No.360/361 Opposite Bakshi Nagar, Pulli Akhnoor Road, Jammu, where the subject electric connection has been sanctioned by the respondents for a load of 5KV-90KV (commercial). As is apparent from the documents on record, it is a three phase and four wire connection sanctioned by the respondents in favour of the petitioners for the aforementioned commercial load.

2) The petitioners are aggrieved and have assailed the monthly bill of supply of electricity raised by the respondents for the month of January, 2020.

3) It is the contention of the petitioners that right from the year 2016, when the sanction was accorded for revision of load of 05 KV to 90KV, the petitioner No.1 has been regularly paying the electricity bills as raised by the respondents every month and has not committed a single default in clearing the electricity bills qua the connection in question. However, the petitioner No.1 was astonished to see the bill for the month of January, 2020, with an opening balance of Rs.17,00,556.00 in addition to the monthly bill of Rs.74,249.00. The petitioners claim that on receipt of this highly excessive and inflated bill, the petitioners represented to the respondents for rectification of the bill but no action in this regard was taken. The petitioners were even threatened of disconnection of the electricity supply if they failed to deposit the bill amount.

4) The petitioners have assailed this impugned bill issued by the respondents for the month of January, 2020, on the ground that there has never been any default in payment of the electricity bills which the petitioners have been depositing regularly every month and, therefore, the demand for the arrears amounting to more than Rs.17.00 lakhs included in the monthly bill of January, 2020, is totally arbitrary, illegal and uncalled for.

5) The impugned bill has also been assailed on the ground that the respondents, before working out the excess charges of electricity supply

and making a demand thereof never put the petitioners on notice and, thus, violated the principles of natural justice. It is argued that the petitioners were never made aware as to the basis of such exorbitant and inflated bill indicating some past arrears running into lakhs.

6) Learned counsel for the petitioners, Mr. R. P. Sharma, placed strong reliance on Section 126 of the Electricity Act, 2003 and submitted that the procedure laid down in Section 126 with regard to assessment of electricity charges payable by the petitioners has not been adhered to at all and, therefore, the impugned bill, in so far it pertains to the arrears on account of electricity charges, is not sustainable in law.

7) *Per contra*, learned counsel for the respondents took this Court to the objections filed to the maintainability of the writ petition on behalf of respondent No.1 to 5. He referred to Section 24 to 26 of the Electricity Act and, in particular, placed reliance on Rule 16 of the Indian Electricity Rules, 1956 to put across his argument that in the face of an alternative and efficacious statutory remedy being available to the petitioners, the resort to extraordinary jurisdiction of this Court was not permissible.

8) Learned counsel for the respondents would further point out that the case of the petitioners is not one relatable to assessment made under Section 126 of the Act but is only by way of correction of an error committed by the respondents while working out the electricity charges for the supply made to the petitioners.

9) The stand of the respondents is reflected in para 4 of the objections, which, for facility of reference, is reproduced here-under:

> "….it is submitted that the petitioners are bound to pay the demand charges of Rs. 18,00,939/- (Rupees Eighteen lakhs nine hundred and thirty nine only) as it has been found during inspection that the billing being done to the petitioners was quite less since the Multiplying Factor being applied only @ 1, however, the (Multiplying Factor had been three times the Unit i.e. (multiplied by 3), but the excess charges have not been charged from January, 2016, but only previous 24 months have been charged keeping in view the departmental policy. The petitioners are bound to pay the charges for excess energy consumed by them since the same has cause huge loss to the public exchequer and the billed amount is perfectly legal and there is no flaw/arbitrariness in the said bill."

10) In short, the argument of learned counsel appearing for the respondents is that the actual energy consumption of the petitioners for the month of January, 2020, is only Rs.74,348.66, whereas the amount of Rs.15,48,260/ has been imposed as short assessment made by the respondents due to applying of wrong multiplying factor. It is pointed out that it was during the inspection conducted by third party i.e. M/S Yadav Measurements Pvt. Ltd. on the directions of the Government, it came to light that since the petitioners had been sanctioned a three phase connection, as such, the units were required to be calculated with a Multiplying Factor of (3) whereas the respondents had been applying the Multiplying Factor of (1). It is on account of this discrepancy pointed out by the Inspection Agency, corrective measures were taken and bills for last 24 months were reworked and recalculated. This happened in many similarly situated cases. It is not the case of the petitioners that the petitioners above have been chosen for differential treatment.

11) Having heard learned counsel for the parties and perused record, I am of the view that the impugned bill, in so far it pertains to the arrears

worked out by applying the multiplying factor (3) as per the report of independent Inspection Agency, cannot sustain in law.

12) Admittedly, the petitioners are not at fault in any manner. It is not the case of the respondents that the petitioners from the date of sanction of the electricity connection in their favour, have ever defaulted in payment of electricity bills raised by the respondents on month to month basis. The error, which the respondents allege to have been committed by the officials of the department, is also not in any manner attributed to the petitioners. As a matter of fact, it is the case of the respondents that due to a *bona fide* mistake or lack of knowledge, the respondent department had been applying the multiplying factor (1) whereas the actual multiplying factor applicable was (3). And it was so pointed out for the first time by an independent Inspection Agency appointed by the Government to inspect all important installations. This Court is not saying even for a minute that the respondents are not within their right to correct the errors of fact, if any, made by them. Going by the stand of the respondents, it is evident that they have acted upon the inspection report submitted by an independent agency appointed by the Government and have come to know that in case of three phased connection, the units consumed at a particular installation are required to be calculated with multiplying factor (3).

13) Be that as it may, the question remains that was it not incumbent upon the respondents to put petitioners to notice, supply them the report of the Inspection Agency also the basis for revision of paid electricity bills. If the answer to this question is in affirmative, then the impugned

bill clearly gets vitiated being issued in violation of principles of natural justice. Had the petitioners been heard in the matter, given an adequate opportunity to rebut claim of the respondents, it is possible that they could have legitimately contradicted the stand of the respondents and persuaded them not to revise the bills simply on the basis of observations made by the Inspection Agency. In the absence of report of Inspection Agency made available to the petitioners and in the absence of making the petitioners known of the formula applied for working out the impugned bill, there was no occasion or opportunity for the petitioners to explain their position or contradict the findings of the Inspection Agency and the respondents. I, therefore, find the impugned bill in flagrant violation of principle of *audi alteram partem*.

14) After the judgment of **A. K. Kraipak v. Union of India. (1969) 2 SCC 262**, a thin line of distinction between an administrative power and a quasi judicial power is virtually obliterated. In paragraph 20 of **A. K. Kraipak** (supra), the Supreme Court held thus:-

> "20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there

> was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have far more reaching effect than a decision in a quasi-judicial enquiry. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

15) The principles of natural justice have been designed to ensure fairness in action by the State and public bodies and, therefore, an important facet of Article 14 of the Constitution of India. One of the principles of natural justice i.e. the principle of *audi alteram partem* has been explained by the Supreme Court in numerous judgments handed down by the Supreme Court from time to time. **Mohinder Singh Gill v. Election Commission of India, (1978) 1 SCC 405**, **Smt. Maneka Gandhi v. Union of India, AIR 1978 SC 597** and **Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818**, **Union of India v. Tulsiram Patel, (1985) 3 SCC 398** to cite the few**.**

16) In paragraph No.95 and 96 of **Tulsiram Patel** (supra), the Supreme Court beautifully concertized law on the subject, which, for facility of reference, are reproduced hereunder:-

"95. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of state action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

The rule of natural justice with which we are concerned in these Appeals and Writ Petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and

not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that clause is merely an express statement of the audi alteram partem rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that Article by recent decisions of this Court. Clauses (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The nature of the hearing to be given to a government servant under clauses (2) of Article 311 has been elaborately set out by this Court in Khem chand's case in the passages from the judgment extracted above. Though that case related to the original clause (2) of Article 311, the same applies to the present clause (2) of Article 311 except for the fact that now a government servant has no right to make any representation against the penalty proposed to be imposed upon him but, as pointed out earlier, in the case of Suresh Koshy George v. The University of Kerala and others, such an opportunity is not the requirement of the principles of natural justice and as held in Associated Cement Companies Ltd. v. T. C. Shrivastava and others neither the ordinary law of the land nor industrial law requires such an opportunity to be given. The Opportunity of showing cause against the proposed penalty was only the result of the interpretation placed by the Judicial Committee of the Privy Council in Lall's Case upon section 240(3) of the Government of India, 1935, which was accepted by this Court in Khem Chand's Case. If, therefore, an inquiry held against a government servant under clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a

> case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it."

17) From the aforesaid enunciation of law, it is trite that the principles of natural justice constitute basic element of fair hearing having their roots in the innate sense of man for fair play and justice. The *audi alteram partem* rule in its complete sense would mean that a person against whom an order to his prejudice may be passed should be informed of the allegation and charges against him, be given adequate opportunity of submitting his explanation thereto both oral and documentary, and shall have the right to know the material by which the matter is proposed to be decided against him. Any action by the State or a public body which visits a person with civil consequences is to be taken in compliance with the principles of *audi alteram partem*. It is true that *audi alteram partem* rule is not rigid and inflexible principle to be applied in all situations. As rightly observed in **Tulsiram Patel** (supra) that they are not cast in a rigid mould nor can they be put in a legal straight jacket. They do not apply in the same manner to two situations, which are not alike. Their applicability can be excluded by express words of statute or by necessary intendment. Similarly, in the case of Smt. Maneka Gandhi (supra), it has been observed that even where there is no specific provision for showing cause, yet in a proposed action which affects the right of an individual, it is duty of the authority to give reasonable opportunity of being heard. This duty

is said to be implied to nature of functions to be performed by authorities having power to take punitive or damaging action.

18) **Delhi Transport Corporation v. DTC Mazdoor Congress, 1991 Supp. (1) SCC 600**, is another Constitution Bench judgment, which throws considerable light on the observance of principles of natural justice in particular *audi alteram partem* rule. In the aforesaid case, it has been held that the *audi alteram partem* rule, which, in essence, enforces the equity clause of Article 14 of the Constitution, is applicable not only to quasi judicial orders but to administrative orders affecting prejudicially the party in question unless application of rule has been expressly excluded by Act or regulation or rule. The rule of principles of natural justice does not supplant but supplement the rules and regulations and it is the demand of the rule of law, which permeates our constitution that the rule is observed both substantially and procedurally. It is, thus, trite that any action prejudicial to a citizen, which is taken by the State or public authority without affording him an opportunity of being heard would be unfair and arbitrary. An action which is unfair and arbitrary would fall foul of rule of equality, which is soul and spirit of Article 14 of the Constitution. It is only in exceptional cases like where there is no prejudice caused to a person against whom an order is passed or the compliance of principles of natural justice particularly the rule of *audi alteram partem*, even if observed would not change the position and would be a mere useless formality, its strict adherence is excluded.

19) Recently the Supreme Court in the case of **State of U.P. v. Sudhir Kumar Singh, 2020 SCC Online SC 847** elaborately dealt with the

scope and applicability of *audi alteram partem* rule. Hon'ble the Supreme Court after surveying the entire case law, in paragraph No.39 held thus:-

> "39. An analysis of the aforesaid judgments thus reveals:
>
> (1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
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> (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
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> (3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
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> (4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.
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> (5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite

inference of likelihood of prejudice flowing from the non-observance of natural justice.

20) Applying the aforesaid principles to the instant case, it is abundantly clear that the impugned bill has resulted in serious breach of *audi alteram partem* rule in its entirety. The petitioners have been condemned unheard and the impugned order has visited them with serious civil consequences. Had the respondents put the petitioners on notice and supplied them all the material relied upon for drawing the bill impugned, the petitioners would have got an opportunity to explain, rebut or contradict the same. A serious prejudice has been caused to the petitioners by denying them an opportunity of being heard and by passing an ex-parte order. As is apparent from reading of the averments made in the writ petition, the petitioners have set up a fairly probable case in their defense but have been disabled to put it up before the respondents because of unilateral and behind the back action of the respondents. I have, therefore, no doubt in my mind that in the instant case by not complying with the *audi alterlam partem* rule, the respondents have caused serious prejudice to the petitioners and have acted in a manner, which is unfair and arbitrary and, therefore, violative of Article 14 of the Constitution.

21) In the instant case, the petitioners have been held liable to a huge amount running into lakhs and they are not even aware of the basis therefor. Plea of the respondents that there is an alternative remedy available under the Act would pale in insignificance. It is now well settled that if an order is in flagrant violation of principles of natural justice, the same is amenable to challenge under Article 226 of the Constitution of

India, availability of equally efficacious statutory remedy notwithstanding. Reference in this regard is invited to para 15 of the judgment of the Supreme Court in the case of **Whirlpool Corporation vs. Registrar Of Trade Marks, Mumbai & Ors.(1998) 8 SCC 1**, which, for facility of reference, is reproduced as under:

> "Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

22) It is, thus, trite that normally where a statute itself prescribes a remedy, resort must be had to that particular statutory remedy before invoking the extraordinary writ jurisdiction of the High Court and the High Court while exercising its writ jurisdiction under Article 226 of the Constitution may decline to grant relief in the writ petition until such

statutory remedy is exhausted. This rule of exhaustion of statutory remedy is, however, a rule of policy, convenience and discretion and not a rule of law nor does it bar jurisdiction of the High Court in granting relief in an appropriate case and in exceptional circumstances. Violation of principles of natural justice is one such appropriate case where exception is to be taken to the general rule. This is what has been put succinctly by the Supreme Court in **Whirlpool Corporation** (supra).

23) In the given facts and circumstances where the petitioners have been slapped with a huge electricity bill running into lakhs without even giving them an opportunity of being heard, relegating the petitioners to the alternative remedy available under the Act would be a travesty of justice.

24) Equally ill founded is the argument of learned counsel for the petitioners that the respondents have not adhered to the provisions of Section 126 of the Electricity Act for making assessment.

25) From a bare reading of Section 126 of the Act, it clearly transpires that the Section applies to a case where a consumer is found to have indulged in unauthorized use of electricity. In the instant case there is no allegation of unauthorized use of electricity or theft of electricity supply by the petitioners for which they need to be assessed under Section 126 of the Act.

26) For the foregoing reasons, I find merit in this petition and, accordingly, the same is allowed. The impugned bill in so far it pertains to the demand of Rs.17,00,556.00, is quashed. The petitioners shall,

however, deposit the monthly bill for the month of January, 2020, as also for the subsequent months within a period of one month without any fail.

27) Notwithstanding that this Court has quashed the impugned bill to the extent aforesaid, the respondents shall be free to proceed in the matter for recovery of excess load charges, if any, after providing an adequate opportunity of being heard to the petitioners and to present their case before the respondents. Needless to say that providing of adequate opportunity to the petitioners would mean supplying them all the requisite documents including inspection report and the basis of applying the multiplying factor of (3) to the case of the petitioners and then passing a speaking order after taking into consideration the reply, if any, submitted by the petitioners.

(Sanjeev Kumar)
Judge

Jammu
16.06.2021
"Bhat Altaf, PS"

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

Judgment pronounced today on 16.06.2021 in terms of Rules 138 (3) of the Jammu and Kashmir High Court Rules, 1999.

(Javed Iqbal Wani)
Judge