IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.7360 OF 2020(GM-CON)

BETWEEN:

IJM CONCRETE PRODUCTS PVT. LTD.
SY. NO.35, MANDUR VILLAGE
BIDARAHOBLI
BENGALURU-560 049
(REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. JAYESH KRISHNAN .T .M)

....PETITIONER

(BY SRI. A.V. AMARNATHAN, ADVOCATE)

AND:

1 . BESCOM
AVALAHALLI SUB DIVISION
HOSKOTE DIVISION
HOSKOTE-562 114
(REP. BY ITS ASSISTANT
EXECUTIVE ENGINEER)

2 . CHAIRMAN
CONSUMER GRIEVANCES
REDRESSAL FORUM
BENGALURU RURAL
5TH MAIN, HRBR LAYOUT
2ND BLOCK

KALYANAGARA
BENGALURU-560 043

3. MANDUR GRAMA PANCHYATH
MANDUR, BIDARA HOBLI
BENGALURU EAST TALUK
BENGALURU - 560 049
(REP. BY ITS PANCHAYATH
DEVELOPMENT OFFICER)

IMPLEAD AS RESPONDENT NO.3
AS PER HON'BLE COURT VIDE
ORDER DATED 08.06.2020

….RESPONDENTS

(SRI. PRASHANT T. PANDIT, ADVOCATE FOR R1
SRI. B.J. SOMAYAJI, ADVOCATE FOR R3,
V/O DATED 16.06.2020 NOTICE TO R2 IS D/W)

THIS PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-1 TO RESTORE THE ELECTRIC CONNECTION TO THE PETITIONER UNIT FORTHWITH AND SET ASIDE THE ORDER PASSED BY THE R-2 DATED 30.03.2020 AS PER ANNEXURE-J AND GRANT AN INTERIM ORDER TO DIRECT THE R-1 TO RESTORE THE ELECTRICAL CONNECTION TO THE PETITIONERS INDUSTRY AND ETC.

THIS PETITION COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed seeking for issuance of a writ of mandamus directing the first respondent to restore the electric connection to the petitioner unit forthwith and has also sought to quash the order dated 30.3.2020 passed by the second respondent in case No.CGRF/3/2019-2020/6879 as per Annexure-"J".

2. The facts leading to the case are as under:

The case of the petitioner is that he has taken a land bearing Survey No.35 measuring 2 acres 21 guntas at Mandur village, BidarahalliHobli, Bengaluru East Taluk, Bengaluru district to install a concrete mixing unit. The said land is declared as an Industrial area by the Karnataka Gazette Notification dated 7.2.2007, which is produced at Annexure-"A" to the writ petition. The petitioner has also stated that he has obtained licence from industry boilers, industrial safety and health department on 16.04.2018, copy of which is produced at Annexure-"B" to the petition. Further, the

petitioner has also obtained consent from the Karnataka State Pollution Control Board vide consent letter dated 21.08.2019 for a period of 15 years, copy of which is produced at Annexure-"C" to the writ petition. It is also stated that the first respondent has accorded sanction for installation of electric connection to an extent of 180 KVA by order dated 3.12.2018, the copy of the said power sanction is produced at Annexure-"D" to the petition. The petitioner has further contended that the petitioner's unit is situated within industrial area and as such licence from the third respondent is not at all required. However, the petitioner has secured general licence from the Mandur Grama Panchayath by letter dated 20.07.2016. It is also stated that the petitioner had requested for renewal of the same by letter dated 24.2.2019. The third respondent has neither rejected nor communicated to the petitioner within 60 days on the application submitted for renewal and thereby, it is contended that under the provisions

of Section 70(2C) of the Karnataka Panchayath Raj Act, 1996, there is a deemed sanction.

The grievance of the petitioner before this Court is that the third respondent with an ulterior motive has sent a communication to the first respondent to disconnect the electric supply, on the basis of which, the first respondent issued a show-cause notice calling upon the petitioner to obtain licence from the third respondent-Grama Panchayath. The petitioner has offered an explanation by replying to the said notice and it was brought to the notice of the first respondent that since the unit is situated in an industrial area the question of seeking licence from the Grama Panchayath is not at all required. The petitioner has further stated that without considering the reply issued by the petitioner, the first respondent has disconnected the power supply. Being aggrieved by the action of the first respondent the petitioner was compelled to approach the Consumer Grievance and Redressal Forum, Bengaluru. The petitioner has specifically

stated that he could not furnish the official gazette before the second respondent on account of lockdown and by the time the petitioner obtained the certified copy and produced before the second respondent on 18.5.2020, the second respondent had passed the final order on 30.3.2020 as per Annexure-"J" without affording an opportunity to the petitioner to furnish Gazette notification to demonstrate that the unit is situated within industrial area. The petitioner being aggrieved by the communication sent by the third respondent to the first respondent and consequent order passed by the second respondent-forum is before this Court seeking for issuance of a writ of mandamus directing the first respondent to restore the electricity connection to the petitioner unit and also for setting aside the order passed by the second respondent-forum as per Annexure-"J".

3. On receipt of notice, the first respondent has filed statement of objections and has specifically contended that since the communication was received from the third

respondent-Grama Panchayath, the first respondent pursuant to the communication has proceeded to disconnect the electricity connection. The contention of the first respondent is that any person who is desirous of availing power supply has to fulfill the conditions enumerated in Clause 4.02 of the Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka. At para 8, the first respondent has specifically contended that pursuant to the letter issued by the third respondent-Grama Panchayath, the first respondent has proceeded to disconnect the power supply since the petitioner failed to produce the licence issued by the third respondent-Grama Panchayath. The third respondent has filed statement of objections on 19.6.2020. The contention of the third respondent is that the petitioner has not secured permission from the Planning Authority and the land where concrete mixing unit is installed is not converted. Further, the petitioner has not obtained building licence. At para 5, it is also stated that the petitioner has not secured to establish or

run the mixing plant from the Local Authority as contemplated under Section 70 of the Karnataka Grama Swaraj and Panchayat Raj Act, 1993. Further, it is contended that the petitioner did not apply for grant or renewal of any licence at any point of time. The present writ petition is not maintainable since the petitioner has indulged in carrying on illegal activities without seeking permission or approval or licence from the competent authority. It is also contended in Para 8 of the written statement that the petitioner has secured power connection from the first respondent by producing tampered documents before the first respondent and that the disconnection of power supply by the first respondent and the order passed by the second respondent as per Annexure-J are in accordance with law.

4. Heard the learned counsel for the petitioner and the counsel appearing for respondents 1 and 3.

5. I have meticulously examined the materials placed on record as well as the statement of objections filed by the respective contesting parties. The first respondent has proceeded to disconnect the power connection pursuant to the communication issued by the third respondent-Grama Panchayath. Though the third respondent-Grama Panchayath has filed statement of objections, however, for the reasons best known to it has not placed on record the communication sent to the first respondent. However, the first respondent along with the statement of objections has produced the proceedings of the third respondent-Grama Panchayath dated 30.11.2019. On perusal of the communication it is forthcoming that the third respondent-Grama Panchayath has resolved to issue a communication to the first respondent to disconnect power supply to the crushing unit. The third respondent-Grama Panchayath in its resolution is of the view that there were several complaints that on account of the crushing unit being run within the vicinity of the Grama

Panchayath, it is causing health hazards and thereby it is resolved in the said resolution not to renew the licence to the crushing units situated within the jurisdiction of the third respondent-Grama Panchayath. Based on these material facts, the third respondent-Grama Panchayath has issued the communication as per Annexure-R1 to disconnect power supply. It appears based on this communication, the first respondent has disconnected the power connection. However, the third respondent on receipt of notice has filed statement of objections. The grounds raised in the statement of objections run contrary to what is stated and resolved in the communication as per Annexure-R1. The third respondent has tried to make out a new case by contending that the petitioner's crushing unit has not secured permissions from the competent authorities.

6. The petitioner’s contention is that the crushing unit being run by the petitioner is situated within the industrial area and thereby the third respondent-Grama Panchayath has

no control or jurisdiction over the crushing unit situated within the industrial area. On perusal of the material on record, it is forthcoming that the third respondent-Grama Panchayath has unilaterally resolved and thereafter has communicated to the first respondent to disconnect power supply. Even in the present writ petition, the third respondent has not produced the copy of the communication sent to the first respondent, but however the first respondent has placed on record the aforesaid communication. The reasons assigned in the resolution as per Annexure-R1 and the one stated in the statement of objections are totally different. Even otherwise, I am of the view that the action of the third respondent in issuing a direction to the first respondent to disconnect the power supply is in gross violation of the principles of natural justice. On examining the material on record, it is clearly evident that the petitioner was never notified. There is absolutely no enquiry conducted by the third respondent-Grama Panchayath. The petitioner has taken a specific

contention in the present writ petition that provisions of Section 66 of the Karnataka Grama Swaraj and Panchayath Raj Act, 1993 are not all applicable to the petitioner's crushing unit and the running of the petitioner's crushing unit is governed by the provisions of Air(Prevention and control of Pollution)Act, 1981 and as per the provisions of Section 31 A of the said Act, it is only the Karnataka Pollution Control Board which has the power to issue appropriate direction to the authorities . The material on record indicates that neither the petitioner was heard before passing the resolution as per Annexure-R1 nor an opportunity was afforded.

7. Para 5 of the statement of objections filed by the first respondent-BESCOM clearly indicates that the first respondent has proceeded to disconnect the power supply on the basis of the letter issued by the third respondent-Grama Panchayath as per Annexure-R1. It is seen that even the first respondent has not afforded reasonable opportunity to the petitioner to produce documents. The contention of the first

respondent is that any person who is desirous to avail power supply has to fulfill the conditions laid down in Clause 4.02 of "Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka" and that the said condition is also clothed with an exemption and the same is culled out as follows:

> *"However, there is no necessity of production of the licence from the local authority when the supply is required for an Industry to be set up in an Industrial estate established by KIADB/KSSIDC/KEONICS/Other Industrial Estates approved by the Government of Karnataka."*

If the petitioner's unit is set up in an industrial estate as contended by the petitioner then the "Note" contemplated to condition No.4.02 would clearly indicate that the industrial units which are set up within an industrial estate are exempted from seeking licence from local authorities. All these material aspects are not at all considered either by the first respondent or the third respondent-Grama Panchayath.

8. On this count itself, the action of the third respondent in issuing a direction to the first respondent is contrary and the same is not at all sustainable. The consequent order passed by the second respondent is based on the direction issued by the third respondent-Grama Panchayath to the first respondent. In that view of the matter, this Court is of the view that the action of the third respondent in issuing communication is without issuing show cause notice to the petitioner and the consequent action of the first respondent in hurriedly disconnecting the power connection is arbitrary and the same is not at all sustainable.

9. The action of the first respondent and the resolution passed by the third respondent-Grama Panchayah as per the directions of the first respondent are in gross violation of the principles of natural justice. One of the Rule to be construed is that the principle of natural justice is the rule of *audi alteram partem.* The Hon'ble Apex Court in catena of

judgments held that aim of Rules of natural justice is to secure justice or put it negatively to prevent miscarriage of justice. The justice in a society which has accepted socialism as it is article of faith in the Constitution needs to be dispensed not only by the judiciary but also by quasi judicial authorities and local authorities. This Rules requires an opportunity to be heard to be given to a person likely to be affected by the decision.

10. Further, before initiating any action, the first respondent is also required to consider condition No.4.02 of "Conditions of Supply of Electricity of the Distribution Licensees in the State of Karnataka" and also examine as to whether the petitioner's unit falls under exemption and thereafter take appropriate action in accordance with law.

11. For the reasons stated supra, the writ petition is allowed. The impugned order dated 30.3.2020 passed by the second respondent in case No.CGRF/3/2019-2020/6879 as per

Annexure-"J" is quashed. The first respondent is directed to restore the power connection to the petitioner's unit forthwith.

However, this order will not come in the way of the third respondent-Grama Panchayath, if it intends and finds that the prescribed Rules and conditions are violated to hold an enquiry by strictly following the procedure contemplated under the provisions of Karnataka Grama Swaraj and Pachayath Raj Act,1993, and this exercise has to be done only after affording a reasonable opportunity to the petitioner in the case.

All contentions are kept open.

Sd/-
JUDGE

*alb/-