

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.23009 of 2019(O&M)
Date of Decision:07.04.2021

**M/S IMPACT PROJECTS PRIVATE LIMITED
AND ANOTHER**

...Petitioners

Versus

**PUNJAB STATE POWER CORPORATION LIMITED
AND OTHERS**

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. J.S.Gill, Advocate,
for the petitioners.**

**Mr. Naveen S. Bharadwaj, Advocate
for the respondents.**

ANIL KSHETARPAL, J.

1. Through this writ petition, filed by two separate companies having a common management, the following substantive reliefs have been sought:-

- “i. *Summon the entire record of the case. i. Issue of writ in nature of Mandamus directing the respondent no. 1 to release the electricity connections to the residents of the colonies established/built by the petitioners as in relation to two colonies namely Garden Enclave Extension-1 and Garden Enclave Extension I the petitioners have already completed the installation of LD system and as far as the remaining colonies, wherein NOCS have been issued by Corporation, are concerned the petitioners are ready to deposit the bank guarantee in relation to incomplete LD system as per the letter dated 06.06.2019 (Annexure*

P-22).

- ii. *With further prayer for issuance of writ in the nature certiorari for quashing the letter dated 15.01.2018 (Annexure P-16), and 22.08.2019 (Annexure P-20) whereby the respondents in a completely illegal and arbitrary manner has directed the petitioners to obtain the NOC from respondent no. 1 afresh by treating six different approved colonies as one and by considering their combined load under Punjab State Electricity Commission (Electricity Supply Code and Related Matters Regulations 2014, whereas, these regulations are not applicable to the colonies of the petitioners as different colonies set up by the petitioner were approved by way of separate schemes and orders between 2002 to 2006 and all the six colonies were separately registered by the PUDA/Competent Authority under PAPR Act, 1995 and separate NOCS were already granted by the respondent no. 1 earlier i.e. between 2007 to 2008.”*

In the considered opinion of this Bench, the question which arises for consideration is:-

“If the Electricity Distribution licensee gives No Objection Certificate to set up a colony under Section 5 of the Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as 'the Regulation Act, 1995'), then subsequently, whether it is bound to supply the power/electricity under the Supply Code applicable at the time of issuance of the NOC irrespective of the time/period which has elapsed from the date of issuance of the NOC to the completion of the colony?

FACTS

2. The petitioners are developers and colonizers. They got the

approval/licence to develop various contiguous pieces of vacant land. The first project i.e. Garden Enclave with respect to land measuring 49.78 acres was approved on 04.01.2002 by the Punjab Urban Development Authority (hereinafter referred to as PUDA) for carving out 513 residential plots. Thereafter, on 28.07.2003, the petitioners got the approval of the second project i.e 'Garden Enclave Extension-I' with respect to the land measuring 18.83 acres. Subsequently, on the application of the petitioner, PUDA granted approval to develop 4.84 acres of land vide a communication dated 10.09.2004. Thereafter, on 30.06.2006, the fourth project i.e. 'Impact Park' comprising an area of 8.84 acres was approved by the PUDA. Thereafter, on 11.08.2006, the fifth project under the name of 'Impact Estates' with respect to a land measuring 9.64 acres was also approved by the PUDA. Lastly, petitioner no.2 also got an approval to develop a project (Garden Estates) with respect to a land measuring 9.04 acres, on 14.08.2006.

2.1 The respondents in their written statements have tabulated the aforesaid information which is extracted as under:-

Sr. No.	Name of Colony	Licence issued by PUDA	Licence date of issue	Licence valid upto	NOC issued by PSEB (PSPCL)	Date of issue (NOC)	NOC valid upto
1.	Garden Enclave	LDC2002/88	04.01.2002	03.01.2005	No NOC applied.	-	-
2.	Garden Enclave Ext.1	LDC2004/136	28.07.2004	27.07.2007	3420	28.12.2007	-
3.	Garden Enclave Ext. 2	LDC2004/143	10.09.2004	09.09.2009	3423	28.12.2007	-
4.	Impact Park	26/2006	30.06.2006	29.06.2009	1223	21.07.2008	20.07.2010
5.	Impact Extate	30/2006	11.08.2006	10.08.2009	1220	21.07.2008	20.07.2010
6	Garden Estate	31/2006	14.08.2006	130.08.2009	1226	21.07.2008	20.07.2010

2.2

It would be appropriate to notice that various No Objection

Certificates (hereinafter referred to as 'NOC') have been granted by the Punjab State Electricity Board (now re-named as Punjab State Power Corporation Limited) (hereinafter referred to as PSPCL) under Section 5 of the Regulation Act, 1995. The petitioners claim that when they approached the PSPCL to take over the complete management of the electricity supply of the afore-stated six projects, the same was refused and they have been directed on 15.01.2018 to apply for yet another NOC, by taking the combined load of all the six projects. This communication and other similar communications are the subject matter of challenge in the writ petition. The stand of the respondents is that these six areas form a part of an integrated colony being contiguous to each other, having common facilities with a single entry and exit gate. Even the developers are common and therefore, the entire area developed by the petitioners is required to be considered as one integrated unit as per regulation 6.7.1 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations 2014 (hereinafter referred to as 'the supply code 2014) and hence, the petitioners are liable to obtain a fresh 'NOC'.

This Bench has heard the learned counsel for the parties at length and with their able assistance perused the paper book. On liberty having been granted, the learned counsel for the petitioners has filed written synopsis along with a summary of the submissions.

ARGUMENTS

3. Learned senior counsel representing the petitioners while drawing the court's attention to the various permissions granted by the PUDA and the 'NOC'(s) issued by the PSPCL submits that these six projects are independent colonies in terms of Section 2(1)(i) of the 'Regulation Act,

1995' and therefore, clubbing of the expected demand of the electricity of all the six colonies is not permissible. He further submits that the petitioners cannot be directed to comply with the supply code, 2014, particularly when the 'NOC'(s) with respect to 5 colonies have already been granted to the petitioners before the year 2014. Further, with respect to the first colony, there was no requirement of obtaining a 'NOC' from the PSPCL at the relevant time. He further submits that the impugned communications do not have any statutory basis and therefore, the respondents cannot insist upon its compliance. Learned senior counsel, in support of his arguments, relies upon the judgment passed in *M/s Ansal Properties and Industries Limited vs. State of Haryana and another, (2009) 3 SCC 553.*

3.1 Per contra, learned counsel representing the PSPCL contends that the petitioners were granted the various 'NOCs' only for developing various projects from time to time. In the 'NOC' itself, it was indicated that the electricity connection shall be released as per the prevalent policy-regulations at the time of release of the actual electricity connection. He further submits that in more than one paragraphs of each 'NOC', it was specified that the electricity connection to the houses/buildings in the proposed projects shall be governed by the prevalent supply code at the time of actual release of the connection. He further submits that the petitioners did not complete the projects for a long time and therefore, various 'NOCs' do not confer any indefeasible right. He, while referring to Regulation 6.7 of the Supply Code, 2014, submits that the respondent-Power Distribution licensee has only directed the petitioners to comply with the regulations which have been framed by the Regulatory Commission. He further content that once it is shown that the developers are common and the land of all the

areas/projects is contiguous without any bifurcation or independent identification and all the projects have common facilities including a single entry and exit gate, then, the respondents are justified in clubbing the expected demand and requiring the petitioners to comply with the Supply Code, 2014.

This Bench has analyzed the arguments of the learned counsel for the parties and proceeds to adjudicate the dispute.

DISCUSSION

4. Section 82 of the Electricity Act, 2003 mandates that every State Government shall, within six months from the appointed date, by notification, constitute for the purpose of this Act, a Commission for the State. In exercise of the aforesaid powers, the Punjab State Electricity Regulatory Commission (hereinafter referred to as the 'Regulatory Commission') has been constituted. Further, Section 86 of the Electricity Act, 2003, enlists the functions of the 'Regulatory Commission'. There are various other provisions in the 2003 Act which enables the 'Regulatory Commission' to make regulations. The 'Regulatory Commission' has notified 'The Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulation, 2014 (in short the 'supply code 2014'). These Regulations have been made in exercise of the powers conferred under Section 181 read with Sections 43, 44, 45, 46, 47, 48, 50, 55, 56, 57, 58, 59, 126, 127, 135, 152, 154 and 163 of the Electricity Act, 2003. Regulation 6.7 lays down the procedure for supply of electricity to the individual consumers in the residential/multi-storey residential complexes developed under the by-laws/rules of the State Government. Clause 6.7 of the Supply Code 2014 is extracted as under:-

“6.7 Supply of Electricity to Individual Consumers in the Residential Colonies/Multi-Storey Residential Complexes Developed under bye-laws/rules of the State Govt.

6.7.1 *In the event of residential colonies/complexes developed by developers /builders /societies /owners /associations of residents/occupiers under bye-laws/rules of the State Govt. not covered under Regulation 6.6. above, the residents/occupiers of such colonies/complexes shall obtain individual connections directly from the distribution licensee. The release of such connections shall be governed by the following terms and conditions:-*

a) The developer/ builder/society/owners/ association of residents/ occupiers shall submit the complete lay out plan of the electrical network proposed to be erected in the colony and other documents prescribed by the licensee along with the processing fee as per Schedule of General Charges and obtain the preliminary NOC from the licensee. The NOC shall be issued by the licensee within 45 days of the receipt of proposal complete in all respects along with requisite documents. In case the developer/ builder/ society/ owners/ association of residents/ occupiers withdraw his request or fails to comply with the conditions within stipulated time, the processing fee shall be forfeited.

Note: The developer/builder/society/owner/association includes any agency whether Govt./ Local body or private that constructs the colony/ complex.

b) For planning the L.D system of such colonies/complexes or to issue NOC, the following guidelines may be adopted by distribution licensee for assessment of expected connected load/ demand of such colonies/complexes:-

S.No.	Name of category	Load(KW)
	Residential plots	
	1. Up to 100 (Sq. Yards)	5
	2. From 101- 200 (Sq. Yards)	8
	3. From 201-250 (Sq. Yards)	10
	4. From 251 -350 (Sq. Yards)	12
	5. From 351- 500 (Sq. Yards)	20
1	6. Above 500(Sq. Yards)	30

S.No.	Name of category	Load(KW)
	Residential flats	
	1. One Bedroom Set	5
	2. Dwelling unit (single room flat) under basic service to urban poor under JnNURM/EWS flats.	1.5
	3. Two Bedroom Set	7
	4. Three Bedroom Set	10
	5. Four Bedroom Set	12
2	6. Five Bedroom Set	15
	Commercial Area	10
	1. Shop	
	2. Other Commercial plot(s) for dispensary, school, hospital etc. including other common services falling under commercial category	35 Watts per sq. yard
3		
4	Other load for common services	As per requirement

Note: One third of the total residential load and 40% of all commercial load as calculated above will be taken as colony load, which will be further increased by 40% to take into account future growth of load. The load shall be converted in kVA by using a power factor of 0.90.

c) The developer/builder/society/owners/association of residents/occupiers shall deposit the estimated cost of LD system of the colony as per approved layout sketch & get it executed from the distribution licensee. The expenditure incurred by the distribution licensee for erection of 11 kV feeder(s) including breaker from the feeding sub-station to the connection point of the internal distribution system shall also be borne by the developer/builder/society/ owners/association occupiers. The expenditure of L.D system including service cable up to the metering point of each consumer & 11 kV system shall include cost of the material, labour plus 16% establishment charges there on. If the connection is released to of residents/ the colony/complex by tapping the existing 11kV feeder, the cost of service line and proportionate cost of common portion of line including breaker shall be recoverable. The phase wise development of LD system may be carried out by licensee as per requirement but any cost escalation over a period of time shall be borne by the licensee. The distribution licensee shall be responsible to release individual connections within the time frame specified in regulation 8. However, the developer/builder society/ owners/ association of residents/occupiers shall have the option to execute the works of internal L.D system of the colony/ complex of its own in accordance with the approved layout plan/sketch approved by the distribution licensee subject to payment of 15% supervision charges on the

labour cost to the licensee. After its completion and inspection by the Chief Electrical Inspector to Govt. of Punjab, the distribution licensee will take over the L.D system which will be connected to its distribution system. The distribution licensee shall thereafter maintain L.D system at its own cost. In case the developer requests for energisation of incomplete LD system, the same shall be allowed provided the developer furnish a Bank Guarantee (BG valid for 5 years) equivalent to 150% of the estimated cost of balance works. This amount of Bank Guarantee shall keep on reducing with the completion of remaining works of the L.D system. After submission of Bank Guarantee to the satisfaction of licensee, it shall be the responsibility of the licensee to release connections to the residents/occupiers of the colony/complex according to the time frame specified in regulation 8.

d) In case the expected demand of the colony/complex computed as per (b) above exceeds 4000 kVA, the developer/ builder/ society/ owners/ association of residents/occupiers shall also pay the 'System Loading Charges' as provided in the cost data approved by the Commission in addition to the charges payable as per regulation (c) above. In such a case, the erection or augmentation of grid sub-station, if required, shall be carried out by the licensee at its cost. However, in case the grid sub-station is required to be erected in the colony, the developer/ builder/ society/ owners/association of residents/ occupiers shall provide the space and right of way free of cost, if permissible or at nominal token money @ of Rs.1 per sq. metre. In case the cost of grid sub-station and/or HT/EHT line including bay/breaker has been deposited by an authority under the State Act viz. PUDA/GMADA/GLADA etc., the 'System Loading Charges' for the same shall not be recovered from the developer of such colony/complex."

4.1 As already noticed the aforesaid supply code 2014 has been made in exercise of the powers conferred under the Electricity Act, 2003 and hence it is a subordinate legislation/delegated legislations. The communications under challenge have been issued in accordance with the aforesaid Supply Code 2104. Therefore, the learned senior counsel is not correct in contending that the communications have been issued without any statutory basis.

4.2 Now, let's examine whether it is permissible to club the expected electricity demand of the various projects or not?

On careful reading of Regulation 6.7.1(c), it is apparent that the developer/builder/society/owners/association of residents/occupiers are required to lay down a local distribution system themselves or deposit the charges with the PSPCL to lay down the local distribution system for them. It is further provided that such area/colony would be given supply from 11KV feeder. The expenditure incurred by the distribution licensee for erection of 11KV feeder(s) including from feeding substation to the connection point shall also be born by the developer. It is further provided under clause (d) that in case the expected demand of the colony/complex, computed as per Clause (b) mentioned above, exceeds 4000 KVA, the developer /builder/ society/ owners/association of residents/occupiers shall also pay the system loading charges. In other words, if the premises in the colony developed is expected to have a demand exceeding 4000 KVA, the colonizers are also not only liable to pay the necessary charges but also required to comply with the requirements of the supply code 2014.

4.3 With regard to the first argument of learned counsel for the petitioners that there is no provision for clubbing, it may be noted that Regulation 6.6 provides that the distribution licensee shall provide a single point supply for residential colonies/complexes developed by developers /builders /societies /owners /associations of residents/occupiers under bye-laws/rules of the State Govt. not covered under Regulation 6.6. above on 11 Kv. feeder.. Clause 6.7 further lays down the manner in which the supply of electricity of individual consumers in the new residential colonies/multi-storey residential complexes, developed under the bye-laws and rules of the

State Government, shall be released. Regulation 6.7.1 do grant liberty to the residents/occupiers of such colonies/complexes to obtain individual connections directly from the distribution licensee. However, it obliges the developers/builders to make an arrangement for the compliance of the requirements specified in the Supply Code, 2014.

4.4 On careful reading of Regulation 6.7, it becomes clear that the supply of electricity to the individual consumers in the residential colonies/ multi-storey residential complexes developed by developers /builders/ societies/ owners/associations of residents/occupiers who are not covered under Regulation 6.6, shall be issued by the Distribution Licensee. However, before such connections are released, the developer has been given two options under Clause 'c' of Regulation 6.7.1. One is to deposit the estimated cost of laying the local distribution system of the colony with the Distribution Licensee. The expenditure incurred by the Distribution Licensee for erection of 11 KVA feeder including breaker from the feeding substation to the connection point of the internal distribution system shall also be born by the developer. Second option is that the developer can get the work of internal local distribution system executed at his own level. In that case, the developer would be required to pay 15% of the supervision charges on the labour cost to the licensee and thereafter get it inspected and approved from the Chief Electrical Inspector to the Government of Punjab. Clause-'d' provides that in case the expected demand of the colony/complex computed as per Clause 'b' exceeds 4000 KVA, the developer is also required to pay the system loading charges as provided. However, if a grid substation is required to be erected in the colony, the developer shall provide the space and the right of way free of cost. In other words, as per the supply

code, it is the duty/responsibility of the developer to bear the cost of not only of the local distribution system but also to pay the system loading charges. It may be noted here that the respondents have taken a specific stand that although six separate projects were got approved by the petitioners, however, this entire developed area is contiguous and there is no physical separation between the houses/buildings of these six projects. The entire area has common facilities. There is neither any separate entry or exit gate for the houses of each project nor the plots in these projects are separated by a boundary wall. In these circumstances, particularly when the distribution licensee is required to supply the electricity in the area, in which the expected demand is likely to exceed 4000 KVA, the petitioners, who are developers/colonizers, cannot be permitted to shy away from providing the infrastructure required for the supply of the electricity. As already noticed, the petitioners-society initially got the project approved for 49.781 acres and thereafter, kept expanding the same by getting the additional projects approved for contiguous area in a phased manner. As per the stand of respondents, the petitioners/developers have also not submitted any separate completion/occupancy certificates. Now, since the petitioners want to hand over the management of the electricity supply to a distribution licensee without completing the work as required under the supply code, therefore the respondents are justified in insisting the petitioners to comply with the requirements.

4.5 It may be noted here that the learned counsel appearing for the petitioners has emphasized on the definition of the word 'colony' as defined in Section 2(i) of the Regulation Act, 1995. No doubt, the colony as defined means an area of land not less than 1000 Sq. Mtr. divided or proposed to be

divided into plots/residents/ commercial/industrial purpose plots. However, the requirement is that the area of land should not be less than 1000 Sq. Mtrs. but there is no upper limit. Once, the colonizer/developer has converted agricultural land into a residential complex, then such developer cannot be permitted to avoid its responsibility as provided in the supply code 2014.

4.6 Learned counsel for the petitioners has relied upon the judgment in *Ansal Properties and Industries Ltd.*(supra). In the aforesaid case, the State had called upon the developer to pay an amount of Rs.61,000/- per gross acre towards the construction of internal community buildings. The Supreme Court, after examining the statutory provisions, found that there was neither any statutory basis nor there was any requirement under the licence to pay the amount. Hence, it was held that the demand of s.61,000/- per gross acre towards the construction of community buildings was unjustified. With greatest respect, the aforesaid judgment has no applicability, particularly when in the present case, the supply code, 2014 enables the distribution licensee to insist the developer/builder to fulfill its requirements.

4.6.1 There is also no substance in the next argument of the learned counsel for the petitioners that once the various 'NOCs' were issued for the 5 colonies, then the supply Code of 2014 shall not be applicable. The various 'NOCs' were issued to the petitioners under Section 5 of the Regulation Act, 1995. It is with reference to the proposal to develop the plain land into a complex. In exercise of the powers conferred by the Regulation Act, 1995, the Punjab Apartment and Property Regulation Rules, 1995 have been notified. Rule 10(1)(e)(xii) thereof requires a builder to obtain a 'NOC' from

the distribution licensee. This 'NOC' is granted only to take the opinion of the distribution licensee with respect to feasibility of the supply of electricity at the location where the project is proposed to be developed. The issuance of 'NOC' does not confer any right on the developer to get the electricity supply on the basis of the supply code applicable at its issuance. Still further, on careful reading of the 'NOC', it is apparent that the distribution licensee did notify that the instructions amended from time to time shall be applicable. In these circumstances, this Bench expresses its inability to accept the arguments of the learned counsel for the petitioners.

4.7 The learned counsel for the respondents is also correct while contending that the petitioners who got the 'NOC' in the year 2007-2008, but thereafter took 10-11 years to complete the projects cannot insist for supply of the electricity as per the supply code applicable in the year 2007-08. He is further correct in contending that while issuing the 'NOC', the distribution licensee had nowhere bound itself to supply electricity as per the old supply code.

4.8 It may be noted here that it is not disputed by the petitioners have failed to completely develop the local distribution networks in most of the projects as the occupancy is low. The petitioners want to hand over the incomplete projects to the distribution licensee and walk away. In such circumstances, the distribution licensee is entitled to insist upon the petitioners to comply with the necessary requirements, so that the infrastructure for the expected demand of electricity is in place before the petitioners hand over the management of the electricity distribution to the PSPCL. No doubt, individual electricity connections have been issued to the occupiers/buyers/individual owners of the residential premises, however,

that would not absolve the petitioners from fulfilling the requirements of the supply code, 2014.

4.9 This matter can be examined from yet another perspective. If in the absence of complete infrastructure, the distribution licensee is forced to take over the incomplete local electricity distribution network, the consumers are likely to suffer. The developer after handing over the complete management would walk away from the project and the distribution licensee would be then either be unjustifiably required to invest in the infrastructure which is the responsibility of the developer as per supply code, 2014 or the occupier will get proper supply of the electricity.

In these circumstances, the petitioners-developers are not entitled to the writ as prayed for.

Hence, dismissed.

7th April, 2021

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO