IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-17033-2021
Date of decision: 14.05.2024

BALDEV KRISHAN MEMORIAL CHARITABLE SOCIETY AND ANOTHER

......Petitioner

VERSUS

STATE OF HARYANA AND OTHERS ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Vikas Kuthiala, Advocate
for the petitioners.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Ashish Yadav, Advocate
for respondent No. 3.

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VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present writ petition is for seeking issuance of directions to respondents to clear the outstanding liability of Rs. 19,33,304/- for the usage of the electricity connection of the petitioner College bearing Account No. BS05-13-M used, utilized and managed exclusively by the respondent-State for the treatment of Covid-19 patients from April 2020 to July 2021.

2. Counsel for the petitioner contends that the Petitioner-Society had established a dental college in the year 1992 and was granted recognition to run the Bachelor of Dental Surgery course by the Union of India on

recommendations of the Dental Council of India in the year 1999. The petitioner-College was affiliated to the Kurukshetra University, Kurukshetra, however, on notification and establishment of the Pt. B.D. Sharma University, a fresh recognition was granted to run the course, in the year 2013. The institute began imparting education in Post Graduate Dental Courses in 5 specialties in the year 2007.

3. He submits that during the spread of Covid-19 pandemic, the National Disaster Management Act, 2005 was invoked and enforcement thereof was ordered by the Government of India, Ministry of Home Affairs. The College Campus at Village Sultanpur-Jalouli, Tehsil Barwala, District Panchkula was requisitioned by the Deputy Commissioner, Panchkula-respondent No.2, being the competent authority under the provisions of the National Disaster Management Act, 2005 for establishing a Covid facility. At the time of requisition of the entire infrastructure of the college, the electricity connection of the petitioner College bearing No. BS05-13-M was already disconnected by the respondent No.3-Distribution licensee due to non-payment of the electricity dues/charges amounting to Rs. 3,52,464/-. The electricity supply was restored and reconnection of the electricity supply was given by the distribution licensee by installation of new electric meter by the respondent-State. He submits that the said electricity meter was used solely for the Covid facility being run by the respondent-State itself, on requisition of the property of the petitioner-Society-College and after the facility was vacated, the said electricity meter was also removed from the premises.

4. Later, inspection and checking of the electrical meter was carried out by the distribution licensee and as per the copy of the testing report, the said electricity meter was found to be running slow by about 33%. It is submitted that as the respondent-State was in occupation and possession of the property of the College for the above said duration from May 2020 to July 2021, hence, the entire electricity consumption was undertaken by the State itself and that the revised electricity liabilities against the said consumption of electricity was to be discharged by the respondents. Hence, any demand being raised on revision of bills on account of the electricity meter being slow, the said liabilities are also required to be cleared by the respondent-State itself.

5. When the petition came up for hearing on 07.09.2021, the following order was passed:-

> *This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.*
>
> *Learned counsel for respondent No. 3 submits that it is the State which shall discharge the liability for the period from April 2020 to July 2021 but it is the petitioners, who have to discharge the liability prior thereto i.e. a sum of Rs.3,52,464/- besides a sum of Rs.5,15,111/- (Annexure P6).*
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> *Learned counsel for the petitioners, however, disputes the amount of penalty of about Rs. 5 lakhs, while submitting that such a demand is unjustified, keeping in view the fact that reliance is being placed on an inspection carried out in May 2020 when the premises stood requisitioned by the State.*

List on 15.12.2021.

Reply be filed before the next date of hearing.

Subject to deposit of Rs.3,52,464/-, temporary/provisional electricity connection be released to the premises of the petitioners. Needless to say, no vested right shall accrue to the petitioners to claim reconnection by virtue of this order.

6. Reply had been filed by the Civil Surgeon, Panchkula on behalf of respondent No.1 wherein it is admitted that the District Magistrate, Panchkula, in exercise of the powers conferred under Section 16 of the Haryana Requisition and Acquisition of Immovable Property Act, 1955 requisited the immovable property of BRS Dental College & General Hospital, Village Sultanpur, Barwala vide office order bearing Memo No. 11504-534/MA/MC-1 dated 10.05.2020 and that the Health Department was not aware of any subsequent correspondence. The aforesaid reply is relevant only for corroborating the stand of the petitioner to the effect that the property in question had been requisitioned by the State.

7. A separate short reply had also been filed on behalf of respondent No.2 which is the Deputy Commissioner, Panchkula through Harinder Pal, Naib Tehsildar, Barwala wherein they admit that the Administration had temporarily requisitioned the College building of the petitioner as COVID-19 treatment Center for common public in public interest. It is also averred that a disputed question of fact arises for consideration since the State had taken possession of 17 rooms of the hospital building, 35 rooms of Girls Hostel and 01 room of Mess and it was not in occupation of the entire building.

8. On a pointed query, it is not in dispute that as per the order of requisition all the immovable property of the petitioner-Dental College was taken into possession. It was also not mentioned or clarified in the above said affidavit as to whether there was any other immovable property in the College or not. Further, it cannot be lost at sight that during the pandemic period, the School and Colleges were not being operated from the premises and only online classes were being conducted. Thus, the actual physical possession of the property could have never remained with the petitioner-Society. Further, the order of requisition also does not talk of any partial occupation or partial requisition of the said property. The averment contained in Para No.7 of the petition seems to be an afterthought, which is not corroborated by any contemporaneous correspondence or communication. It is not even the case that any other infrastructure was available at site. What is further peculiar is that the electricity supply to the premises had been disconnected and the supply was restored only after requisitioning of the property. The meter was installed thereafter and was removed from the premises when it was vacated. Thus, the consumption recorded in the meter, for which demand was raised, was with respect to the period when premises were in possession of respondents.

9. Taking into consideration the circumstances of the case and also that the immovable property of the petitioner No.2-College was requisitioned by the State for the usage of Covid facility for the larger public welfare, the liability to pay the electricity consumption charges lay on the State. In the event of any subsequent revision of the electricity charges on verification/inspection of the meter, if any arrears are demanded, such arrears are also required to be

cleared by the State itself and the Society or the College cannot be fastened with the additional liability/demand that has been raised by the distribution licensee due to a defect in the meter. The respondent-State is accordingly directed to clear the additional demand raised by the distribution licensee for the period from May, 2020 till July 2021 i.e. the period during which the premises remained in possession of the respondent-State. Let the arrears be cleared within a period of 02 months of the receipt of certified copy of this order.

10. It is further clarified that in the event the petitioner-Society deposits the above arrears alongwith the statutory charges for reconnection of supply, the supply shall be restored without prejudice to the right of the petitioner to recover the same from the respondent-State. The revised bill/demand shall thus be released to the petitioner-Society.

11. In case the said amount is not released within a period of two months of the date of receipt of certified copy of this order, the respondent-State would be liable to pay interest @6% per annum from the date of filing of petition till its actual release.

The writ petition is accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 14, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No