

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.3278/2019

Shahid Chanzeb

versus

National Electric Power Regulatory Authority & 06 others

Petitioner by: Mr. Riaz Hanif Rahi, Advocate.

Respondents by: Mr. Muhammad Asif Khan, IESCO.
Mr. Muhammad Irfan-ul-Haq, Legal Advisor,
NEPRA.

Date of Decision: 10.08.2020.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has prayed for following relief:

“In view of above mentioned circumstances, it is therefore, most respectfully prayed that the instant writ petition may kindly be accepted;

- a. By requiring the concerned respondents to pass order in favour of the citizens of Islamabad including the petitioner for the supply of electricity without requiring NOC of CDA or by ignoring any other bar contrary to the law.*
- b. Process the case of petitioner by issuing demand notice as codal formalities have already been completed.*
- c. Contempt proceedings be initiated against respondent No.2 to 4 for defiance of the order dated 06.05.2019 passed by this Hon'ble Court.*
- d. Any other remedy which this Hon'ble Court deems fit and proper may also be awarded to the petitioner.*

2. Learned counsel for petitioner contends that petitioner being owner in possession of Plot No.197, 198 & 199 of the Pakistan Medical Cooperative Housing Society, Islamabad (PMCHS) was allocated electricity connection by the IESCO (Respondents No.5 to 6) on temporary basis vide Consumer Reference No.081441271792300U. When the petitioner applied to the IESCO for supply of power with 400 KVA Electricity Transformer, a letter dated 08.02.2016 was issued by the Additional Manager P&E, IESCO (Respondent No.7) directing the petitioner to submit an NOC from the CDA. Feeling aggrieved thereby, the petitioner assailed the said letter before this Court in W.P. No.304/2018, whereby

the NEPRA was directed vide order dated 06.05.2019 to decide the pending complaint of petitioner within the period of three (03) months. The petitioner also filed R.A. No.22/2019, whereby this Court has disposed of the same with direction to respondent to consider the petitioner's complaint in accordance with law. The petitioner on getting no fruitful results despite earlier judicial proceedings has filed the instant writ petition with the contention that respondents are not proceeding with the electricity connection issued without the NOC of CDA.

3. Conversely, learned counsel for IESCO contends that the matter could only be considered in accordance with the requirement provided in Clause 2.3 of the Consumer Service Manual, whereby ownership proof of premises, affidavit of consumer/owner, NOC, CNIC and approved site plan are required for the electricity connection to consumer; that the Supreme Court of Pakistan passed a restraining order in C.P. No.3830/2018 along with other connected matters restricting provision of electricity and gas connection in absence of NOC from the CDA; that the Consumer Service Manual was revised/updated by the NEPRA on 08.07.2020 with certain new requirements and if the petitioner is ready to provide the said documents, his application will be decided accordingly.

4. Likewise, learned counsel for NEPRA contends that NEPRA is adjudicating upon the matter in accordance with law vide order dated 13.09.2019 and as such, the requirement of NOC by CDA is not mandated for IESCO to consider as a key factor, which is not required in the law before issuance of new consumer connection; that NEPRA has no objection on granting consumer connection to the petitioner subject to other requirements claimed by the IESCO department.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner is electricity consumer having temporary connection against his allotted Plots No.197, 198 & 199, situated in Pakistan Medical Cooperative Housing Society, Sector E-11/2, Islamabad, whereby he constructed multistorey building. The petitioner when applied for provision of electricity connection through 400 KVA Electricity Transformer as Sponsored Dedicated Distribution System (SDDS), the IESCO advised him to provide an NOC from the CDA for further processing of his case, however the petitioner contends that no NOC is required from the CDA for provision of the electricity connection. Besides this issue the NOC granted by the CDA in favour of the Pakistan Medical Cooperative Housing Society for its approved layout plan has already been cancelled and as such, the status of petitioner's application has to be considered independently and not with reference to the society as the petitioner has completed the construction. The matter was primarily initiated by the petitioner before the NEPRA and on the direction of this Court the NEPRA authorities have decided petitioner's complaint bearing No.13/2017 in the following manner:

"6. The case has been analyzed in detail in light of the documents made so available by the parties, arguments advanced in the hearing(s) and applicable law. Following are the facts of the case:

- i. The layout plan of PMCHS was approved by CDA on May 18, 2012. However, due to some violations the said NOC was cancelled by CDA on April 11, 2016.*
- ii. The Petitioner obtained a temporary electricity connection having reference No. 08-14127-1792300 from IESCO on January 16, 2014. The complainant applied to IESCO for permanent connection on August 02, 2016. Accordingly, IESCO vide its letter August 02, 2016 advised the complainant for fulfillment of some prerequisites for provision of connection i.e. approved layout plan, design for external electrification and other relevant documents. Later on, IESCO vide its letter dated September 08, 2016 advised the complainant to provide NOC from CDA for further processing of the case.*
- iii. Provision of electricity is a Fundamental Right of all citizens under Article 9 and 14 of the Constitution of Islamic Republic of Pakistan. Non-supply of electricity to a citizen, tantamount to deprivation of this Fundamental Right as well as Article 8 of the Constitution which says that any law, custom or usage having the*

force of law that is inconsistent or abridges a Fundamental Right is void and inoperable. The provision of electricity has also been interpreted as a Fundamental Right by the Supreme Court of Pakistan.

- iv. NEPRA Consumer Service Manual (CSM) and NEPRA Consumer Eligibility Criteria, 2003 envisage provisions of certain requirements/documents for provision of electricity connection. However, provision of NOC from CDA or any other such department is not required under the ibid documents.*
- v. The Islamabad High Court vide its Order dated January 23, 2015 in W.P No.4841 restrained IESCO and Sui Northern Gas Pipeline Limited (SNGPL) from giving connection till issuance/permission of NOC by CDA.*
- vi. The Supreme Court of Pakistan vide its Orders dated April 24, 2017 in Human Rights Case No. 6455-G of 2017 categorically directed IESCO & SNGPL not to provide electricity and gas connections to any building which has not been sanctioned by the competent authority in accordance with law. The said Orders were also maintained by the Supreme Court of Pakistan vide Orders dated February 13, 2018 in the said Human Rights Case No. 6455-G of 2017.*

7. In view of foregoing, according to the NEPRA Rules, Regulations and applicable documents there is no bar in providing connection to any applicant subject to completion of codal formalities. However, since the Honorable Supreme Court of Pakistan has restrained IESCO from providing connection without issuance of NOC by CDA or any competent authority, therefore IESCO may proceed subject to the decision of the Honorable Supreme Court of Pakistan in the said case."

7. While considering the above referred order of the NEPRA authorities passed on the petitioner's complaint, it has been observed that NOC from CDA or any other such department is not required in terms of NEPRA Consumer Service Manual and the NEPRA Consumer Eligibility Criteria, 2003. It was further highlighted in said order that this Court has separately passed restraining order in W.P. No.4841/2014 for supply of electricity and gas connection and at same time the apex Court in HRC No.6455-G/2017 has also restrained the IESCO authorities for provision of any new electricity and gas connection.

8. In view of above position, learned counsel for petitioner has gone through the order passed in H.R.C. No.6465-G/2017, dated 24.04.2017, and contends that same has specifically been passed with reference to Botanical Garden and

National Park situated in area around Korang Road, from Murree Road to Bani Gala, as such, the petitioner has taken the specific stance that said order is not applicable to PMCHS, Islamabad. However, during the course of arguments, I have also gone through order passed in H.R.C. No.6465-G/2017, dated 13.02.2018, whereby following directions have been passed.

“After hearing the learned counsel for the parties and perusal of the reports submitted by the concerned quarters, we direct the whistle blower in the instant case, Mr. Imran Khan Niazi, to submit before this Court the approved site plan of his building/residential premises situated in Banigala. In relation to other properties and in the present circumstances, we direct that:

- (a) no construction of any nature whatsoever shall be made in the bed and the banks of Nala Korang;*
- (b) all the private lands on which housing societies, are being developed cannot be put under any construction until and unless the said society is approved under the relevant laws;*
- (c) besides, such societies should also have the approval of the Environmental Protection Agency (EPA) under the provisions of the Pakistan Environmental Protection act, 1997;*
- (d) all construction to be made on the properties, including private properties in the area surrounding the Rawal Lake must only be undertaken pursuant to site plan as approved by the competent authority, which in these cases, we are told, are the relevant Union Councils/CDA; and*
- (e) till further orders, the prohibition prescribed by this Court regarding the provision of electricity and gas connections shall continue to be enforced.*

2. Mr. Tariq Fazal Chaudhry, Minister for CADD present in Court, voluntarily submits that he will establish a camp in Banigala area, particularly closer to Rawal Lake and shall ensure that no solid municipal, industrial or hospital waste pollutes the Lake water and if he himself cannot resolve the issue, he will earnestly report to this Court for initiation of further necessary steps to protect the health of people around the Lake and those who are being provide water from the said Lake. The imposition of Section 144 by the District Magistrate Islamabad is quashed.

3. Presentation by the concerned authorities including CADD, CDA, EPA and Local Government functionaries about the entire area shall be prepared and screened in this Court on the next date of hearing.

5. As per Mr. Shaiq Usmani, learned Sr. ASC, his clients have private lands on which they have developed housing societies which have been approved by the competent authority therefore, electricity and gas

connections should be provided, suffice it to say that such persons, who have developed housing societies, must apply to this Court through separate applications and once we are satisfied that those have been developed in accordance with law, prohibition on new electricity and gas connections will be relaxed.

6. *Re-list on 22.02.2018.*

9. The direction passed by the apex Court clearly establishes that the construction should be regulated in accordance with law, even in the developed housing society, appellants are directed to approach the apex Court through separate application and once the apex Court is satisfied that the society has been developed in accordance with law, prohibition on new electricity and gas connection will be relaxed.

10. The above mentioned *suo moto* proceedings are still pending before the apex Court and as such, the orders are in field. There is no cavil to proposition that electricity / gas connection is a facility and inalienable right of every citizen of Pakistan subject to rules and regulations. There is embargo and restriction imposed by the NEPRA for provision of electricity connection, however Clause 2.3.6 of the Consumer Service Manual, which has been revised on 08.07.2020 by the NEPRA authorities, refers specific documents i.e. approved map/site plan/layout plan or NOC by civic agency, even prevailing laws of civic agency are to be followed for provision of electricity/gas connection as such, the order of the NEPRA authorities, dated 13.09.2019, has exempted the obtaining of NOC from civic agency i.e. CDA for provision of electricity connection in Islamabad Capital Territory, but on the other hand the amended/revised Consumer Service Manual requires issuance of NOC from the CDA. Although, the petitioner's complaint is pending much prior to the revised Consumer Service Manual, however, the matter is still subjudice before the apex Court. In these circumstances, the NEPRA has already allowed the complaint of petitioner for provision of electricity connection subject to decision of the apex Court.

11. The above referred circumstances spell out that matter is subjudice before the apex Court and proprietary demands that this Court should not interfere with the matter, about which the apex Court has already taken cognizance, even passing of any order by this Court amounts to interference in the pending proceedings before the apex Court, which is not warranted under the law. Reliance is placed upon 2019 CLC 1069 Lahore (Muhammad Salman v. Election Commission of Pakistan, Islamabad), 2015 PTD 1799 Sindh (WAPDA v. Federation of Pakistan) and 2015 CLC 742 Lahore (Malik Shah Nawaz, etc. v. Faraqat Ali).

12. In view of above settled position and case law, the instant writ petition is hereby **DISPOSED OF** with direction to the petitioner to approach the apex Court in H.R.C. No.6465-G/2017 as well as in C.P. No.3830/2018, where other connected matters are still subjudice before the apex Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.