

ORDER BELOW EXH.05

This is an application filed by plaintiff for grant of temporary injunction against defendants restraining them from providing electricity connection from 33/11 KV Sub Center Manegaon to anybody without consent of plaintiff and from causing obstruction to single use of plaintiff from the said 33/11 KV line.

2. **The brief facts of plaintiff's case, in brief, are as under:-**

There is Indapur Dairy & Milk Product Ltd., Indapur, Sonai Group Indapur, Dist. Pune. The said group deals in collecting milk from various places. One of its branch namely Indapur Dairy & Milk Product Ltd., Indapur, Sonai Doodh Sankalan & Shitkaran Kendra, Manegon. One Dada Pandurang Nagtilak was looking after its affairs. The company has given authority to him for filing this suit.

3. The plaintiff has taken 11 KV express feeder for its above milk collection project from defendant Nos. 1 to 3 from their center of 33/11 KV, Sub-Station, Manegon, Tq. Madha, Dist. Solapur on 30-04-2015 by executing proper agreement in that regard with defendant Nos. 1 to 3. Previously, the said 11 K.V. feeder was with M/s. Indian Sugar Factory (Unit No.2). The said factory has taken the said 11 KV feeder from 132 KV Kurduwadi Sub-station on 19-02-2015 from Manegaon Sub-center. Thereafter, with consent and no objection of the said Sugar factory, the plaintiff has taken the said 11 KV feeder from defendant Nos. 1 to 3 for its project. The plaintiff has borne all expenses for it as per agreement. The

plaintiff has given all expenses incurred by the Indian Sugar Factory to it and thereafter, executed agreement with defendants. Since 30-04-2015, the plaintiff is using the said 11 K.V. feeder without objection and obstruction of anybody. Therefore, defendant Nos. 1 to 3 have no any right to give new electricity connection to anybody without consent of plaintiff. Even defendant No. 2 on 29-08-2018 has issued letter bearing No. शाखाधिकारी/महावितरण मानेगांव/१४७ in that regard to plaintiff. In said letter, it has been mentioned that without consent of plaintiff, no customer can get the electricity connection from said 11 KV express feeder. The plaintiff is paying the electricity bill regularly. However, the officer of defendant company i.e. defendant No.1 who is newly joined is giving trouble to plaintiff. He is saying that he will give new connection to third party from 11 KV express feeder. He has also issued one letter dated 10-03-2023 informing plaintiff that he has no right on 11 K.V. express feeder line and plaintiff cannot take objection for giving electricity connection to others. Hence, plaintiff is claiming injunction against defendants from giving connection from the said 11 KV express feeder to anybody without its consent.

4. Defendant No. 1 appeared and filed his Written Statement-cum-say at Exh.13, which was latter on adopted by defendant Nos. 2 and 3 vide their pursis Exh.29.

5. Defendants have denied all adverse allegations levelled against them by plaintiff. It is their contention that in the year 2012, the Indian Sugar Manufacturing Company Ltd. (Unit No.2) was in need of high-

tension electricity connection for their sugar factory. Therefore, they have obtained permission from Superintendent Engineer, Circle Office, Solapur, on 16-03-2013 and got 11 K.V. express feeder line from 33/11 KV Manegaon Sub-station for their sugar factory under 1.3% DDF scheme. Thereafter, executing handing over and taking over bond by the said Indian sugar factory to the Superintendent Engineer, Solapur, the said 11 KV line was started on 21-11-2013. Thereafter, the Indian sugar was in need of heavy high tension line and therefore, they have taken it from 132 KV Kuurduwadi Sub station on 19-02-2015. The 11 KV line which was taken by it from Manegaon Sub-station was closed.

6. The said 11 KV express feeder was sanctioned for the Indian sugar factory only. However, thereafter Indian sugar factory was not in need of said 11 K.V. express feeder, therefore, on 20-02-2015 the said factory has given no objection for giving connection from it to the plaintiff center. Therefore, defendant No. 1 has connected the electricity line from said Manegaon Sub-center 11 KV feeder from 19-05-2015 to plaintiff. Since then, the plaintiff was using the electricity from the said feeder, the 63 KVA electricity load has been sanctioned to plaintiff and it has been in working condition without any obstruction. The 11 KV feeder which was sanctioned to the Indian sugar factory was of 11 KV and having high-capacity feeder. From it only 63 K.V. load has been sanctioned to the plaintiff. Even the Indian sugar factory has executed handing over and taking over bond in favour of defendant No.1 prior to giving connection to plaintiff. As per the said handing over and taking over bond executed in favour of defendants, the said 11 KV express feeder line was of ownership of the customer for a

period of 5 years. As 5 years has been expired, the said 11 K.V. express feeder was transferred to ownership of defendants. Therefore, plaintiff has no right to take objection for giving the electricity connection from the said 11 KV express feeder to any other person. Even the plaintiff has taken the connection on 19-05-2015 and from the said date, 5 years have been expired and automatically said feeder has been transferred to defendants. The plaintiff has no any right over it. Even as per the circular of defendant company dated 20-12-2018 bearing O.No. CE (Dist.)/D-III/NCS/3001, if the load is below 60 percent, defendants have right to give connection to other customers from the said 11 KV line without consent of customer. Therefore, when defendant No. 1 was giving connection from said 11 KV express feeder to other customer, plaintiff was illegally obstructing defendant No.1 from doing so, though from 20-11-2018 the right of plaintiff was expired and said feeder was transferred to defendants. As the load of plaintiff society was only to 63 KV and if the other connections were joined to the said 11 K.V. express feeder, there is no loss to plaintiff nor supply of plaintiff will be obstructed. Even defendants are maintaining the said express feeder and doing the repair work of it. Thus, plaintiff has no any right to obstruct defendants from giving connection to other customers and claiming injunction against defendants. It is also contended that the circular bearing O.No. CE (Dist.)/D-III/NCS/3001 is binding on plaintiff. On all these grounds, defendants prayed to reject the application.

7. Heard the learned counsel for both sides. They have reiterated contentions raised by them in their pleadings in their arguments. Hence, those are not repeated again.

8. Following points arise for determination and I record findings against each of them for the reasons mentioned below :-

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff prove that it is having prima-facie case in his favour ?	No
2.	Whether he further prove that balance of convenience lies in its favour ?	No
3.	Whether the plaintiff prove that it would suffer irreparable loss, if the injunction as prayed is not granted ?	No
4.	What Order?	Application is rejected

REASONS

As to Point Nos. 1 to 3 :-

9. It is the contention of plaintiff that it has purchased the 33 K.V. line which was provided to Indapur Sugar Factory by defendants. It is also its contention that it has paid all expenses to Indian Sugar factory and also made agreement with defendants with for purchase of 11 K.V. feeder. From 30.4.2015 plaintiff is having exclusive rights on 11 K.V. express feeder and, therefore, defendants cannot give any electricity connection from the said feeder to anybody. Therefore, it is necessary to see what documents are filed on record by plaintiff to prove its above contentions.

(a) The plaintiff has filed one letter dated 20.2.2015 issued by Indian Sugar Manufacturing Company Limited to Assistant Engineer, Madha informing that they have no objection for use of express feeder by plaintiff dairy. However, this document does not show that 11 KV express

feeder was purchased by plaintiff from the sugar factory or from defendants.

(b) The letter dated 14.4.2015 issued by defendants' Solapur Office to Madha office shows that 1.3 % DDF Scheme 63 KVA, 3 HP load was sanctioned to plaintiff dairy. This document filed by plaintiff itself clearly goes to show that entire 11 K.V. express feeder line was not sanctioned to it.

(c) The another document is receipt dated 21.1.2015 about deposit of amount of Rs.20290/- by plaintiff with defendants, which also show that 13.5 HP load was sanctioned to plaintiff.

(d) The letter dated 30.4.2015 issued by defendants Solapur Office to Madha Office also shows that approval is given under DDF work of plaintiff dairy and 3 HP commercial connection is given to plaintiff.

(e) The Test report dated 8.5.2015 shows that 13.5 H.P. load was granted to plaintiff. The letter dated 6.5.2015 about inspection of work shows that 63 KVA from 11 KV voltage line is provided to plaintiff dairy. The letter dated 10.5.2015 issued by Solapur office of defendant to Madha office of defendant shows that 63 KVA transformer is provided to plaintiff from 11 K.V. Express feeder. Another document i.e. bill of Raut Electricals also shows that plaintiff company has purchased 63 KVA Transformer for Rs.80,000/- and other small articles. Another receipt also shows that 63 K.V.A. box was purchased by plaintiff.

(f) Another letter filed by plaintiff shows that it was addressed by

plaintiff to Executive Engineer Solapur requesting to give immediate sanction for working by Electrical Company, Mohol,

(g) The letter dated 15.5.2015 is written by Raut Electricals to plaintiff dairy thereby submitting bill of work done by it, which also shows that Raut Electricals has done work 63 KVA DTC for plaintiff dairy.

(h) Affidavit given by plaintiff dairy to Executive Engineer, M.S.E.B., Madha also shows that the plaintiff demanded 3 phase line and sworn affidavit of bearing expenses. Another affidavit sworn by plaintiff is dated 12.11.2014 is about taking new connection and admitting about rules and regulations of defendants.

(i) Plaintiff has also filed one extract of ledger account to show that it has paid huge electricity bills. It shows that plaintiff has paid amount of bill of amounts in between 20 to 35 thousand at various times. However, from it, it cannot be said that total 11 K.V. express feeder was provided to plaintiff. Plaintiff is a dairy and 63 K.V. connection is provided to plaintiff, therefore, that much bill is natural one and from it, it cannot be said total 11 KV express feeder was purchased by plaintiff.

(j) The letter issued by Solapur office to Madha office dated 25.3.2021 shows that 100 H.P. load is sanctioned to Babanrao Shinde Sugar Factory by defendants from 133 K.V. under 1.3% DDF scheme. Thus, this document itself shows that even to the Sugar Factory from whom plaintiff is alleging that it has purchased the 11 K.V. express feeder, only

100 HP load was granted and scope of work is DTC -200 KVA and whole feeder was not given to sugar factory also.

(k) The letter of M.S.E.B. addressed to plaintiff dated 10.3.2023 clearly shows that plaintiff has without consent and permission of defendants has paid the amount to sugar factory. Even it appears that the line granted to sugar factory was valid till 20.11.2018 i.e. for five years and even the maintenance and repairs of said 11 k.v. line is done by Mahavitaran i.e. defendants company. Even it appears from said letter that the sugar factory has only given permission to use the line to plaintiff. Even as per letter No.CE(Dist)D-111/NSC/30011 dated 20.12.2018, it is clear that that if load of customer is below 60% on 11 K.V. express feeder , then new connection can be given without consent. It is pertinent to note that plaintiff has not come with a case that his load is higher than 60% of 11 K.V. express feeder nor it has filed any contract between defendants and plaintiff factory or filed any document executed between it and sugar factory.

(l) The plaintiff has also filed one letter dated 21/07/2015 issued by Sugar factory to plaintiff demanding payment of electric poles, etc. and statement of account shows that the amount was paid by plaintiff to said sugar factory. However, this document is also not helpful to plaintiff to prove that total 11 K.V. express feeder was sold to it. Even it is admitted fact that power generating company is defendants, unless there is express agreement between plaintiff and defendants, whatever transaction done by plaintiff with third party are not helpful to the plaintiff.

10. Documents filed by defendants below list Exh.34 i.e. letter dated 19.11.2013 issued by Sugar Factory to Executive Engineer, Solapur also show that sugar factory is seeking supply from 11 K.V. express feeder. Affidavit sworn by Indian Sugar Factory in favour of Executive Engineer, also speaks about supply of 11 K.V. express feeder. Even the agreement dated 20/11/2013 between Sugar factory and defendants, Clause 17 (b) of it made it very clear that defendants company has power to curtail, staggered or cut off the supply in case of emergency or in any other situation. Thus, on the basis of which plaintiff's whole suit is based is that he has purchased the 11 K.V. express feeder from Sugar factory, however, this agreement of sugar factory itself does not give any power or right to the sugar factory over whole 11 K.V. express feeder and all rights are reserved with defendants, then question of ownership of plaintiff over entire 11 KV express feeder and not giving any connection without consent of plaintiff to anybody does not arise, particularly when plaintiff failed to file any document of agreement/contract with defendants as alleged by it.

11. The learned counsel for plaintiff has vehemently argued and given much stress on the letter issued by the Assistant Engineer of Madha office dated 29.9.2018 which says that without permission of plaintiff no any connection can be given to anybody. It is pertinent to note that plaintiff is coming with a specific case that after taking no objection from sugar factory, plaintiff has entered into an legal agreement with defendants for purchase of 11 K.V. feeder line. The plaintiff has filed the letter dated 29.9.2018, however suppressing other documents i.e. agreement/contract

executed between plaintiff and defendants. Had the plaintiff has filed agreement/contract, it will be clear that whether defendants have sold 11 k.v. express feeder to plaintiff and what was the terms of contract, particularly when defendants are coming with a case even if there is agreement, it is valid for 5 years. It is settled law that one who seeks injunction must come before Court with a clean hand. However, plaintiff though contending that there was agreement /contract between plaintiff and defendants that 11 KV express feeder is purchased by it and without consent of it connection cannot be given to anybody, but suppressing those documents of contract/agreement from Court. Thus, merely letter dated 29.9.2018 is not helpful to the plaintiff, particularly when documents filed by plaintiff himself shows that 63 KVA transformer is only granted to the plaintiff and even defendants did not give any ownership right even to the sugar factory over entire 11 KV line and all rights are reserved with defendants company,

12. The learned counsel for plaintiff has much argued that plaintiff is a licensee of defendants and invited my attention to various provisions of The Electricity Act, 2003 (here-in-after referred to as “The Act”). As per Section 2(39) “licensee” means a person who has been granted a licence under Section 14. Therefore, it is necessary to see what is Section 14 of the Act. I would like to reproduce Section 14 of the Act which reads as follows:-

“14. Grant of licence- The Appropriate Commissions may, on an application made to it under Section 15, grant a licence to any person:-

- (a) To transmit electricity as a transmission licensee; or
- (b) To distribute electricity as a distribution licensee; or
- (c) To undertake trading in electricity as an electricity trader,

In any area as may be specified in the licence;.....”.

13. Thus, as per above definition of licence, plaintiff does not come within the definition of licensee as per Section 14 of the Act, because it is merely an customer and not dealing with business of transmission, distribution and trading of electricity. Therefore, whatever provisions cited by learned counsel for plaintiff i.e. the word utility, Section 10 of the Act which deals with duties of generating companies, Section 15 Procedure for grant of licence, Section 17 licensee not to do certain things, Section 20 Sale of utilities of licensees, Section 21 vesting of utility in purchaser, Section 32 Functions of State Load Dispatch Centers, Section 39 State Transmission Utility and functions, Section 49 Agreements with respect to supply of purchase of electricity, are not applicable to the case of plaintiff, because it is not coming within the definition of licensee as per the Act.

14. The learned counsel for defendants has argued that as five years have been expired after the agreement of Sugar factory, the 11 KV express feeder atomically merged to the ownership of defendants. On the contrary, the learned counsel for plaintiff has invited my attention to clause 8 of Section 15 of the Act and argued that a licence shall continue to be in force for a period of twenty-five years, unless such licence is revoked. I have already held above that plaintiff or the sugar factory does not come within definition of licensee as per the Act, therefore, Section 15 of the Act

is not helpful to plaintiff.

15. The learned counsel for defendants has argued that this Court has no jurisdiction to entertain this suit as per provisions of Section 145 of The Electricity Act, 2003. He has placed his reliance on the Judgment of Hon'ble Punjab & Haryana High Court in a case of **Parminder Kaur @ Satinder Kaur Vs. Punjab State Power Corporation Ltd. And others (2016) 04 P&H CK 0205.** I have gone through the above case and found that there is question of acquisition of land of plaintiff. However, there are no such facts. Moreover, as per Section 145 of the Act, Civil Court has no jurisdiction to entertain suit in respect of matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act to determine the electricity charges. However, in this suit the assessment of electricity charges is not challenged by plaintiff. Hence, I find no substance in the argument of learned counsel for defendants.

16. The learned counsel for defendants has argued that Notice under section 80 of the Civil Procedure Code is not issued to defendants. He has placed his reliance on the Judgment of Hon'ble Punjab & Haryana High Court in a case of **Power Grid Corporation of India Vs. Rajbir Singh and others in Civil Revision No.5152 of 2008.** I have gone through it and found that in the said case, Secretary, of Minister of Power was added as a party. However, in this case, defendants are officers of Maharashtra State Electricity Distribution Company. Hence, with due respect facts of cited case and this case are different.

17. In view of above discussion, I hold that plaintiff had suppressed material documents i.e. agreement/contract executed between it and sugar factory so also between it and defendants, though as per its own contention those are executed between it and defendants. Thus, it appears that plaintiff did not come before the Court with clean hand and suppressing material facts & agreement/contract from the Court. Therefore, also plaintiff is not entitled for the discretionary relief of temporary injunction. Hence, I hold that the plaintiff failed to prove that prima-facie case and balance of convenience lies in its favour. As regards irreparable loss is concerned, it is not the case of plaintiff that due to new connection its electricity line is going to be disturbed or it will receive less electricity. Rather though only 63 KVA transformer was given to it from 11 K.V. line, it is restraining other people from getting connection which is against public policy. Hence, if injunction is granted against defendants, public at large will suffer and they will be deprived from receiving the electricity connection. Therefore, if the injunction is granted general people will suffer at large and, they will suffer irreparable loss i.e. they could not get the electricity connection for their business, which is against public policy. Consequently, plaintiff also failed to prove that it will also suffer irreparable loss if injunction is refused. Hence, I have recorded *negative* findings of Point No. 1 to 3.

As to point No. 4:-

18. All observations and discussion made above are prima-facie in nature and made only to decide this application. They do not affect merits

of the case. In view of negative findings to Point No. 1 to 3, I proceed to pass following order:-

ORDER

1. The application (Exh.05) is rejected.
2. Costs in main cause.

Date : 27/02/2024.

(G. V. Gandhe)
2nd Jt. Civil Judge, Jr. Dn.,
Madha.

CERTIFICATE

I affirmed that, the contents of this PDF file order are same word to word as per original order.

Name of Stenographer : A. A. Jadhav (Grade-3)

Court Name : Shri. G. V. Gandhe, 2nd Jt. C.J.J.D.
and J.M.F.C., Madha.

Order signed by P.O. : 27/02/2024

Order uploaded on : 28/02/2024