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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1134/2012

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Judgment dated 09.07.2012

RAJ KUMAR

..... Petitioner

Through: Ms.Neha Gupta, Advocate

versus

B.S.E.S. YAMUNA POWER LTD

..... Respondent

Through: Mr.Manish Srivastava, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The short question which comes up for consideration in this case is whether a fresh electricity connection can be denied to an applicant (tenant in this case), when there are outstanding dues with respect to the building where the electricity connection is sought.
2. Petitioner is stated to be a tenant with respect to the premises bearing No.X-3495, Raghubarpura No.2, Gandhi Nagar, near Shani Mandir, Delhi. The petitioner is aggrieved by the decision of respondent no.1 by rejecting his application for a new electricity connection on the ground that there are large number of electricity dues with respect to the premises in question. Counsel for the petitioner submits that some of the demands sought to be raised by the respondent, already stand quashed by the order of the Court. Counsel for the respondent submits that in case the demand stands quashed or paid, the same shall be deleted from the rejection letter, however, he submits that the demands of more than Rs.3.0 lacs are still

pending, in addition to the amount which according to the petitioner stands quashed. Counsel for the respondent submits that no relief can be granted to the petitioner, in view of the arrears of electricity dues, which remain unpaid with respect to meter installed at the subject property. Counsel for the respondent has relied upon a decision rendered by a Full Bench of this Court in the case of **BSES Rajdhani Power Ltd. Vs. Saurashtra Color Tones Pvt. Ltd. & Anr.** 161 (2009) DLT 28 (FB) and more particularly paragraph 31, which reads as under:

“31. The position is now placed beyond any pale of doubt by the recent judgment of the Supreme Court in *Paschimanchal Vidyut Vitaran Nigam Ltd. v. M/s. DVS Steels & Alloys Pvt. Ltd* (supra). In this case the appellant distribution company was one of the successors-in-interest of the UP State Electricity Board. The third respondent was a consumer receiving electricity supply from the Board to its industrial unit at Ghaziabad. It appears that the Board had raised certain supplementary bills against the third respondent towards the difference in tariffs, in respect of which the third respondent filed a civil suit disputing the said claim and obtained an order of injunction restraining the Board from recovering the said supplementary bills amount. Injunction was stayed in appeal preferred by the Board before the Allahabad High Court. The third respondent closed its unit. It sub-divided its industrial plot into 129 smaller plots of different sizes with the permission of Uttar Pradesh State Industrial Development Corporation. One of those plots was sold by the third respondent to the first respondent. The first respondent applied to the appellant for supply of electricity which came to be sanctioned subject to the condition that it should pay arrears due by the third respondent, in proportion to the area purchased by it, as a condition precedent for supply of electricity. Accordingly, the first respondent deposited a sum of Rs.8,63,451/- being the dues of the third respondent pro rata, subject to the condition that in the event of pending challenge to the demand being decided in favour of third respondent, the appellant shall refund the amount deposited by the first respondent. Later on, on the basis of certain orders passed by the UP State Electricity Regulatory Commission, the first respondent filed a writ petition seeking direction to the appellant to refund the sum of

Rs.8,63,451/- with interest @ 12% per annum. The High Court allowed the said writ petition and directed the appellant to refund the said amount with interest @ 6% per annum from the date of payment. The question before the Supreme Court was whether the supplier can recover the electricity dues from the purchaser of sub-divided plot. Answering this question in the affirmative, the Supreme Court held as follows:

“10. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfilment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the

interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may. 12. In this case, when the first respondent, who was the purchaser of a sub-divided plot, wanted a new electricity connection for its premises, the appellant informed the first respondent that such connection will be provided only if the electricity dues are paid pro rata. They were justified in making the demand. Therefore, it cannot be said that the collection of Rs.8,63,451 from the first respondent was illegal or unauthorised. It is relevant to note that when the said amount was demanded and paid, there was no injunction or stay restraining the appellant from demanding or receiving the due”

3. I have heard counsel for the parties and gone through the record. Having regard to the law laid down in the case **BSES Rajdhani Power (Supra)**, wherein it has been held that stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary; and in the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues, no relief can be granted to the petitioner herein. It is clear that

where there statutory rules governing the conditions relating to sanction of a connection for supply of electricity, the distribution company can insist upon prior fulfillment of the requirement of such rules and regulations before granting a fresh connection. Even if the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transaction and dealings. So long as such rules and regulations on terms and conditions are not arbitrary and unreasonable, the Courts will not interfere with them. Accordingly the present petition cannot be entertained, since the large amounts are due by the owner of the property to the respondent and the respondent has rightly rejected the application of the petitioner. Petition stands dismissed.

G.S.SISTANI, J

JULY 09, 2012
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