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**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**DECIDED ON: 04.09.2014**

+ **W.P. (CRL) 1709/2014, C.M. Nos.13046-13047/2014**  
RAM GOPAL & ANR ..... Petitioners  
versus  
LT GOVERNOR, GOVT OF NCT & ORS.. Respondents

**W.P. (C) 5587/2014, C.M. Nos. 13832, 13833/2014 & 14156/2014**

GOPAL SINGH & ORS ..... Petitioners  
versus  
LT. GOVERNOR & ORS ..... Respondents  
**W.P. (CRL) 1397/2014, C.M. Nos.10697-10698/2014**  
BIRMA NAND SHARMA ..... Petitioner  
versus  
LT GOVERNOR GOVT OF NCT & ORS .. Respondents

Appearance: Mr. Amit Sibal, Sr. Advocate with  
Mr. Manish Kaushik, Mr. Namit Suri and Mr. Gaurav  
Tanwar, Advocates for petitioners in all matters.

Mr. Sandeep Sethi, Sr. Advocate with Mr. Anupam  
Varma, Mr. Nikhil Sharma and Mr. Ameen Jauhar,  
Advocates for BYPL in W.P.(Crl.)1709/2014 and W.P.  
(C)5587/2014.

Mr. Sanjay Lao, Addl. Standing Counsel for R-1&2 in  
W.P. (Crl.) 1709/2014.

Mr. Saqib with Mr. M.P.Singh, Advocates for R-5 in  
W.P. (C) 5587/2014.

Mr. Ajay Digpaul, CGSC with Mr. Kunal Punj, Advocate  
for R-5 in W.P. (Crl.)1709/2014.

Mr. Dhruv Mehta, Sr. Advocate with Mr. Anupam  
Varma,

Mr. Nikhil Sharma and Mr. Ameen Jauhar, Advocates for

BYPL in W.P.(Crl.)1397/2014.

Mr. Anupam Varma, Mr. Nikhil Sharma and Mr. Ameen Jauhar, Advocates for NDPL (TPDDL)

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**S.RAVINDRA BHAT, J. (OPEN COURT)**

1. Issue notice. Mr. Anupam Varma, Advocate accepts notice on behalf of BYPL in all matters. Mr. Sanjay Lao, Addl. Standing Counsel accepts notice on behalf of R-1&2 in W.P. (Crl.) 1709/2014, Mr. Saqib, Advocate accepts notice on behalf of respondent no.5 in W.P. (C) 5587/2014 and Mr. Ajay Digpaul, Advocate accepts notice on behalf of R-5 in W.P. (Crl.)1709/2014.

2. With consent of counsel, the matter was heard finally.

3. The petitioners were employees of the erstwhile Delhi Vidyut Board (for short DVB), and in some instances, they were the employees of erstwhile Delhi Electricity Supply Undertaking (for short DESU), which was succeeded by the DVB. Consequent to the enactment of Delhi Electricity Reforms Act, 2000, (hereafter referred to as 'Reforms Act'), various divisions of the erstwhile DVB were re-organized into generation, transmission and distribution entities. Each of these were, in turn, handed over to different corporate entities. The distribution end was handed over to three companies, i.e., BSES Rajdhani Power Limited (for short BRPL); BSES Yamuna

Power Limited (for short BYPL) and North Delhi Power Limited (for short NDPL), which was subsequently renamed as Tata Power Delhi Distribution Limited (for short TPDDL). In each of these companies, the Government of NCT of Delhi continues to retain 49% share holding; the rest is owned by the private groups. The power generation, however, was retained under exclusive government control with two separate companies, i.e., Indraprastha Power Generation Company Ltd (IPGCL) and Pragati Power Corporation Limited (PPCL). Pursuant to a scheme formulated through Rules, various divisions and activities were transferred/handed over to each of these entities. The activity of each of these respective successive undertakings included devolution of assets and transfer of employees. The liability of funding certain trusts which were to take care of retired employees was also sought to be achieved through Rule 6 of the Reforms Act. In terms of Section 16 of the Reforms Act, all existing employees were transferred to the successor entities/companies.

4. The petitioners before this court are retired employees; most of them except Ram Gopal, the first petitioner in W.P. (Crl.) 1709/2014, Gopal, the second petitioner in W.P. (C) 5587/2014 and Ms. Meera Devi, the third petitioner in W.P. (C) 5587/2014, had already retired from DVB. These three petitioners, however, retired after the transfer - in two instances as the employees of NDPL, and in one as the employee of BSES. The common grievance of the petitioners in these three

petitions is that the respondents have without any authority of law initiated proceedings under Section 630 of the Companies Act with a view to secure their eviction from the premises which had been originally allotted to them by their erstwhile employers DVB and DESU. To this end, the petitioners more specifically challenged the validity of the Notification No.F-11/99/2001 - POWER/PF-III/2828 dated 13.11.2011 by which specific immovable properties - including the quarters in which the petitioners reside, were transferred to various successor distribution companies on license basis. The two-fold submission made in the present case is firstly that the Notification is arbitrary inasmuch, as, it enables the respondent/distribution companies to act in a discriminatory manner and initiate proceedings without authority of law and, secondly, that - without prejudice to the above submission, the respondents/distribution companies being separately created entities, were not successors to any company and, therefore, not entitled to maintain the proceedings under Section 630 of the Companies Act.

5. Learned senior counsel for the petitioners Mr. Amit Sibal argued that the Delhi Government had consistently, right from the year 1954 onwards, held out that the quarters occupied by employees of Undertakings and various local bodies such as Municipal Corporation of Delhi (for short MCD) will be ultimately handed over to the employees on ownership basis. To support this submission, he relied upon the Resolution

No.868 dated 14.01.1970 of the MCD and subsequent Resolution of 27.12.1989. It was submitted that the latter Resolution, in fact, transferred the quarters and flats in two localities, i.e., Tripolia Colony and Nimri Colony to the employees who had been originally allotted the quarters by the MCD. Learned counsel urged that the denial of similar relief to the petitioners - who fell within the same class, being original employees of the DESU, which was controlled by the MCD, is discriminatory. Further, learned counsel relied upon a letter of the Chief Minister of the Government of NCT of Delhi dated 11.04.1996, permitting the allottees of official residential accommodation, of the local bodies and DESU, to continue occupying the premises and not to evict them. Learned counsel urged that when the question of enforcement of such promises was considered by the Supreme Court in its decision reported as *Jagdish Prasad & Ors. v. MCD*, 1993 Supp (2) SCC 221, although the Court held that no such right or entitlement can be claimed, the decision was premised on the absence of any Resolution by the concerned local body. It was submitted that, as a matter of fact, there was a Resolution by the DESU in the present case dated 27.12.1989.

6. It was argued that the respondents' reliance upon the Notification - to say that they are entitled to invoke Section 630 and initiate summary proceedings under Section 630 of the Companies Act is without authority. Learned counsel submitted that Clause 2 (d) of the impugned Notification cannot be said to

authorize a company - which is a successor to a corporate entity other than a company, to initiate proceedings under Section 630 of the Companies Act. Learned counsel sought to rely upon various orders made by the Magistrate and certain order of this Court to say that the manner in which the respondents have relied upon the provisions of the Notification has resulted in their being precluded from questioning the jurisdiction of the Magistrate. Learned counsel submitted that for this reason, the Notification has to be declared as arbitrary, as the Magistrate has treated it as binding, in order to pre-empt any enquiry as to the Court's jurisdiction in respect of the proceedings initiated by the respondents/distribution companies. It is lastly contended that the impugned Notification could not have created license in favour of the distribution companies, given the fact that by the Resolution of 29.12.1989 and previous Resolutions, the petitioners, and others like them, were entitled to allotment.

7. Learned counsel relied upon the decisions reported as *Union of India v. Elphinston Spinning & Weaving Co. Ltd. and Others*, (2001) (4) SCC 139, *Baba Ji Konda Ji Garad v. Nasik Merchants Co-Operative Bank Ltd., Nasik and Ors.*, (1984) 2 SCC 50, and *Sri Ram Saha v. State of West Bengal and Ors.*, (2004) 11 SCC 497 for the proposition that the strict terms of the Statute should be respected by the Courts; in the guise of purposive interpretation, nothing should be added or subtracted from the words of the provisions themselves. Learned counsel also relies upon the decision reported as *State of Assam and*

*Ors. v. Banshidhar Shewbhagavan and Company*, (1981) 4 SCC 283, to say that the rules or provisions of Notifications cannot supply the terms of the Statute; reliance was lastly placed upon the decision in *BCPP Mazdoor Sangh & Anr. v. NTPC & Ors.*, AIR 2008 SC 336 for the proposition that the services of an employee could not be transferred to an outside body or entity without his consent. He also relies upon the decision in *Damodar Das Jain v. Krishna Charan Chakraborti and Anr.*, (1989) 4 SCC 531 to say that when complicated questions are involved, the Magistrate should not examine them under Section 630 and should relegate the parties to the competent Civil Court.

8. Counsel for the respondents urged that the issue of jurisdiction of the Magistrate under Section 630 ought not to be gone into. It was highlighted that, nowhere have the petitioners challenged the issuance of the Notification by which the distribution companies were constituted as licensee in respect of the assets. In these circumstances, whenever the authority of the Magistrate was questioned, the distribution companies were bound to rely upon the Notification to establish their title. However, as to whether the Magistrate could go ahead with the proceedings in the complaints made under Section 630, is a matter of jurisdiction best left to his discretion.

9. It is evident from the above discussion that the petitioners' grievance is in respect of the Notification dated 13.11.2001. The relevant provisions whereby the assets were

handed over to the distribution companies, *inter alia*, reads as follows: -

*“Delhi, the 13<sup>th</sup> November, 2001*

*No.F-11/99/2001-Power/PF-III/2828: - In consultation with Delhi Vidyut Board the government of NCT of Delhi has decided the classification and allocation of the residential colonies and sub-station flats of the Delhi Vidyut Board along with the existing amenities to the successor entities (of Delhi Vidyut Board) as under –*

1. (I) *Indraprastha Power Generation Co. Ltd. (GENCO).*

| <i>Sl. No.</i> | <i>Name of Colony</i>                  | <i>Type of Quarter</i> | <i>No. of quarters</i> |
|----------------|----------------------------------------|------------------------|------------------------|
| 1.             | <i>Sarai Kale Khan, N. Delhi-14</i>    | <i>I-IV</i>            | <i>592</i>             |
| 2.             | <i>Rajghat Power House, N. Delhi-2</i> | <i>IV</i>              | <i>12</i>              |
|                | <i>Total</i>                           |                        | <i>604</i>             |

(II) *Delhi Power Supply Co. Ltd. (TRANSCO)*

| <i>Sl. No.</i> | <i>Name of Colony</i>             | <i>Type of Quarter</i> | <i>No. of quarters</i> |
|----------------|-----------------------------------|------------------------|------------------------|
| 1.             | <i>New Kilokari, N. Delhi-14</i>  | <i>I-IV</i>            | <i>214</i>             |
| 2.             | <i>Old Kilokari, N.Delhi-14</i>   | <i>I-III</i>           | <i>32</i>              |
| 3.             | <i>Lodhi Road, N. Delhi-3</i>     | <i>I</i>               | <i>14</i>              |
| 4.             | <i>Sham Nath Marg, N.Delhi-54</i> | <i>VI-VII</i>          | <i>8</i>               |
| 5.             | <i>Timarpur, N.Delhi-54</i>       | <i>I-III</i>           | <i>35</i>              |
| 6.             | <i>Kalka Nagar, N.Delhi-3</i>     | <i>II</i>              | <i>1</i>               |
| 7.             | <i>Kalkaji, N.Delhi-19</i>        | <i>I</i>               | <i>1</i>               |
| 8.             | <i>Najafgarh, N.Delhi-43</i>      | <i>I-IV</i>            | <i>128</i>             |
|                | <i>Total</i>                      |                        | <i>433</i>             |

(III) Central-East Delhi Distribution Co. Ltd. (Discoi).

| Sl. No. | Name of Colony           | Type of Quarter | No. of quarters |
|---------|--------------------------|-----------------|-----------------|
| 1.      | Kabool Nagar, N.Delhi-12 | I               | 40              |
| 2.      | Mandawali, N.Delhi-91    | IV              | 96              |
| 3.      | Aram Bagh, N.Delhi-55    | II              | 10              |
| 4.      | S/Stn Flats, N. Delhi    | I-IV            | 5               |
| 5.      | Tripotia, N.Delhi-7      | I-IV            | 429             |
| 6.      | IARI Pusa N.Delhi-12     | I-III           | 13              |
| 7.      | Mou Nagar, N.Delhi-8     | II              | 6               |
| Total   |                          |                 | 599             |

(IV) South-West Delhi Electricity Distribution Co. Ltd. (DISCOM-II)

| Sl. No. | Name of Colony            | Type of Quarter | No. of quarters |
|---------|---------------------------|-----------------|-----------------|
| 1.      | Ridge Valley, N.Delhi-10  | I-II            | 12              |
| 2.      | Andhiria Bagh, N.Delhi-30 | I-II            | 10              |
| 3.      | R.K. Puram, N.Delhi-22    | II              | 4               |
| 4.      | Pakha Road, N.Delhi-58    | II              | 904             |
| 5.      | Okhla, N.Delhi-20         | I-IV            | 18              |
| 6.      | S.Stn. Flats, N.Delhi     | I-VII           | 107             |
| Total   |                           |                 | 1055            |

(V) North-West-West Delhi Electricity Distribution Co. Ltd. (DISCOM-III)

| Sl. No. | Name of Colony     | Type of Quarter | No. of quarters |
|---------|--------------------|-----------------|-----------------|
| 1.      | Rohini, N.Delhi-85 | II              | 132             |
| 2.      | Narela, N.Delhi-40 | I-IV            | 140             |

|    |                           |      |     |
|----|---------------------------|------|-----|
| 3. | Shalimar Bagh, N.Delhi-33 | I-II | 548 |
| 4. | S/Stn. Flats, N.Delhi     | I-IV | 26  |
|    | Total                     |      | 846 |

2. The above allocation will be subject to the following:

(a) No part of the land shall form part of the assets transferred under this allocation. The transferee shall be entitled to use such land as a licensee subject to the provisions of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 to be notified by the Government of NCT of Delhi."

10. The relevant provisions which authorised the licensee of immovable properties of the erstwhile DVB to the transferee companies read as follows: -

*"15. (1) With effect from the date on which a transfer scheme prepared by the Government to give effect to the objects and purposes of this Act, is published or such further date as may be specified by the Government (hereinafter referred to as "the effective date"), any property, interest in property, rights and, liabilities which immediately before the effective date belonged to the Board shall vest in the Government.*

*15 (2) The Government may transfer such property, interest in property, rights and liabilities to any company or companies established under section 14 for the purpose in accordance with the transfer scheme prepared therefore.*

*(3) Such of the rights and power to be exercised by the Board under the Electricity (Supply) Act, 1948, as the Government may, by notification in the official Gazette, specify, shall be exercisable by a company or companies established as the case may be, under section 14, for the purpose of discharge of the functions and duties with which it is entrusted.*

*(4) Notwithstanding anything contained in this section or any other Act, where: -*

*(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the Government, the scheme shall give effect to the transfer only after asset valuation; and*

*(b) where any transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties, even if such persons have not consented to it.*

*(5) The Government may require any transmitting or distributing company established under the provisions of sub-section (1) of section 14 (hereinafter referred to as "the transferor licensee") or any generating company to draw up a transfer scheme to vest in a further licensee or licensees (the "transferee licensee or licensees"), or any generating company, any property, interest in property, rights and liabilities which have been vested in the transferor licensee or generating company, as the case may be, under this section and publish the same in the official Gazette. The transfer scheme to be notified under this sub-section shall have the same effect as a transfer scheme under sub-section (2).*

*(6) A transfer scheme may-*

*(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements;*

*(b) define the property, interest in property, rights and liabilities to be allocated-*

*(i) by specifying or describing the property, rights and liabilities in question,*

*(ii) by referring to all the property, interest in property, rights and liabilities comprised in a specified part of the transferor's under-taking, or*

*(iii) partly in one way and partly in the other :*

*Provided that the property, interest in property, rights and liabilities shall be subject to such further transfer as the Government may specify;*

*(c) provide that any rights or liabilities specified or described in the scheme shall be enforceable by or against the transferor or the transferee;*

*(d) impose on any licensee an obligation to enter into such written agreements with, or execute such other instruments in favour of any other subsequent licensee as may be specified in the scheme;*

*(e) make such supplemental, incidental and consequential provisions as the transferor licensee considers appropriate including provision specifying the order in which any transfer or transaction is to be regarded as taking effect;*

*(f) provide that the transfer shall be provisional subject to the provisions of section 18.*

*(7) All debts and obligations incurred, all contracts entered into and all matters and things done by, with or for the Board, or a company or companies established as the case may be, under section 14 or generating company or distribution company or companies before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by, with or for the Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, continued or instituted by or against the Government or concerned transferee, as the case may be.*

*(8) In the event a licensee is required to vest any part of its undertakings in another licensee pursuant to sub-section (5), the Government shall amend the transferee licence in accordance with section 24 or revoke its licence in accordance with section 23.*

*(9) The Board shall cease to exist with the transfer of functions and duties specified and with the transfer of assets as on the effective date.*

*(10) The exercise by a licensee of any of Board's rights and powers may be made on such conditions as shall be specified in the transfer scheme including a condition that such rights and powers shall be exercised by the licensee only with the approval of the Commission/Government."*

11. At the outset, this Court notices that the petitioners do not question Section 15; nor do they state that the Notification is in any manner *ultra vires* the provisions of the Reforms Act, 2000. What is sought to be urged is that that the prior Resolutions of the Govt. of NCT of Delhi and in some instances the MCD and even DESU, resulted in superior entitlement of the petitioners to claim rights over the properties, precluding the creation of license in favour of the transferee companies. In this Court's opinion, the observations of the Supreme Court in the judgment reported as *Jagdish Prasad & Ors. v. MCD (supra)*, are conclusive; the same are as follows: -

*"5. We have considered the arguments advanced by Learned Counsel for the parties and have thoroughly perused the record. It is not in dispute that the petitioners were allotted the houses in view of the fact that they were employees of the DESU. It is also not disputed that the petitioners during all these periods were paying rent to the respondents. The petitioners have failed to show that any resolution was ever passed by the Delhi Electricity Supply Committee for selling of the quarters in question to the petitioners or had passed any resolution for giving such quarters on hire purchase basis. The petitioners have no legal right under the scheme of 1954 to claim any right of ownership in the quarters occupied by them.*

*Though it may be desirable and wishful thinking that the welfare state may provide house to every citizen and specially the persons belonging to low income group and falling in the lower strata of the society. However this is a stupendous task looking to the vast population of this country and the limited financial resources and as such no direction can be given by the courts in this regard on the basis of a broad submission that the petitioners were entitled to such right as an ordinary citizen. Resolution No. 868 dated 14.1.1970 was passed by Municipal Corporation of Delhi in respect of their own employees and the same cannot be applied to the employees of DESU. There is no question of applying the principle of equality in such matters where the employer of the petitioners is different and the DESU had not passed any resolution of transferring the ownership of the houses in respect of its employees. It is not the case of the petitioners that in respect of any other low paid employees of DESU similarly circumstanced as the petitioners had been given ownership of any houses.”*

The petitioners' submissions are that the above observations would not preclude examination by this Court as to their entitlement to claim allotment. Such an argument, in the opinion of this Court, is inadmissible and insubstantial. Irrespective of whether the Resolution was placed before the Court or not - an aspect which was emphasized during the course of submissions, the ratio in *Jagdish Prasad's* matter is categorical, in that, an employee cannot base his claim to the ownership of the properties of a public employer, merely on the basis of a Resolution - howsoever, benevolent the intention behind it might be. Furthermore, this Court is of the opinion that there are other public policy considerations which outweigh

such claims, i.e., that if the public employers are to be constrained to part with the immovable assets in the form of residential quarters and other such properties, to employees, they would be unable to cater to the residential needs of the existing employees. In these circumstances, the petitioners' submissions with respect to their alleged prior entitlement over the properties occupied by them, precluding the creation of license through the Notification, is without force.

12. The second submission - and the subsidiary one - appears to be that creation of licenses is itself arbitrary. At best, this is a vague argument, since it is premised upon the argument that the Notification, to the extent that it empowers the licensee distribution companies to take steps to maintain the properties and also includes the power of evicting unauthorized occupants and trespassers is arbitrary. Once the creation of licenses is authorized by Statute - which is not being questioned - the impact of that would necessarily be, that in exercise of the powers conferred under Clauses 2 (d) and 2 (e), the licensee has to take steps to ensure that the properties are secure.

13. As far as the third submission, i.e., with regard to the use by the distribution companies of Clauses 2 (d) and 2 (e) of the Notification is concerned, to say that Section 630 proceedings are maintainable, this Court is of the opinion that the issue would have to be seen from two angles. At the facial angle, i.e., at the threshold, the respondent distribution companies have to necessarily rely upon the impugned Notification to say that they

have the title to the properties. Once having upheld the respondents' authority as licensee (in view of the lack of challenge to the Notification on the ground of it being *ultra vires*), there can be no controversy as to their right - as licensee, to maintain such properties. We, therefore, overrule the submission of the petitioners at this threshold. The second aspect, i.e., as to whether proceedings under Section 630 are *ipso facto* maintainable as neither DESU nor DVB, the original entities which owned the properties were companies goes, that is the aspect which goes to the jurisdiction of the Magistrate. The petitioners' argument here is that neither DESU nor DVB were companies and, therefore, not entitled to invoke the provisions of Section 630 of the Companies Act. Factually, all the distribution companies are companies incorporated under the Companies Act. The question as to whether such successors of DESU/DVB are entitled to invoke the provisions when the original entity, i.e., transferors were allegedly unable to invoke them and, consequently, whether such proceedings can or cannot be maintained as against the former employees of the DVB/DESU, who never became employees of the successor companies, is a issue which would not arise for consideration by this Court in these proceedings where the petitioners have challenged the validity of the Notification. This Court is conscious of the fact that such issues appear to have been raised and mostly decided against the employees. In some cases, revision proceedings also have been concluded and the decision

rendered final. Having regard to these, and the fact that the issue of jurisdiction would require the examination of the Notifications and other materials, it would be inappropriate for this Court to examine the correctness of such contentions - especially under Article 226 of the Constitution of India. In these circumstances, this issue is kept open insofar as it is not concluded in any particular instance or cases. In other words, whenever the issue of jurisdiction of a Magistrate to proceed under Section 630 is raised on the grounds that the distribution companies are successors of the erstwhile DESU/DVB, which were not companies and/or that some of the accused/ex-employees were never the employees of the distribution companies, but retired as employees of the DVB/DESU, such issues would be gone into specifically by the Magistrate in all pending proceedings, and specific findings, after noticing the contentions of both parties would have to be rendered; the concerned Magistrate will have to decide the question of jurisdiction and the maintainability of Section 630 independently of the title conferred upon the respondents to the properties by virtue of the Notification. The rights and contentions of both the petitioners and respondents are kept open in this regard in respect of cases where the same has not been finally concluded inter parties.

14. In the light of the above discussion, we find no merit in the petitioners' challenge to the Notification dated 13.11.2001.

The writ petitions are, however, disposed of in terms of the above directions.

15. During the pendency of the proceedings in W.P. (Crl.) 1709/2014, although second petitioner had been physically evicted, the respondents during the pendency of the matter before this Court, restored the possession, pursuant to an understanding. Since the petitions have been disposed of, but in the light of the above clarification, the second petitioner shall handover possession to the respondents within one week failing which it is open to the respondents to give effect to the eviction order.

**S. RAVINDRA BHAT  
(JUDGE)**

**VIPIN SANGHI  
(JUDGE)**

**SEPTEMBER 04, 2014**  
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