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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 29th April, 2015

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W.P.(C) 4283/2015

BSES YAMUNA POWER LTD.

..... Petitioner

Represented by: Mr. K. Datta, Mr. Manish
Srivastava and Mr. Rahul
Malhotra, Advocates.

Versus

DEEPAK SARAN

..... Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

W.P.(C) 4283/2015 & CM Nos. 7771/2015 & 7772/2015

1. Vide the present petition, the petitioner has assailed the order dated 01.12.2014 passed in Appeal No. F./ELECT/Ombudsman/2014/614.

2. Learned counsel appearing on behalf of the petitioner submits that during the joint inspection dated 18.06.2014, respondent agreed to pay the requisite and estimated charges for shifting the electric pole from one place to another. Despite, the learned Ombudsman held that since numbers of other consumers are getting electricity, therefore, the respondent alone is not responsible to pay the charges.

3. In the impugned order, it is recorded that a few meetings were held and even a joint inspection was carried out and there appeared to be an agreement on both sides. Afterwards the DISCOM sent a demand note of Rs.4.72 lakhs which appeared exorbitant and not commensurate with the work of shifting of one pole. It appeared that apart from asking the respondent to deposit the said amount, lot of riders were attached stating that NOC from various Government/Private Agencies will have to be obtained for the work which could further delay matters.

4. It is further recorded that another meeting was fixed to clarify matters but no details of the estimate of Rs.4.72 lakhs for shifting of pole were given. After further postponement, meeting was held on 24.09.2014 but no final decision could be arrived at as the person representing DISCOM showed his inability to finalize most of the issues under consideration and claimed only responsibility for preparing the estimate.

5. During arguments before the learned Ombudsman, DISCOM was asked to clarify the issue whether an individual resident can be asked to pay for moving a pole outside his premises when normally such poles servicing multiple connections in any planned colony. It is often the case that the initial infrastructures for electricity, including poles, often have to be shifted from time to time till the final distribution infrastructure is achieved. The overall expenditure on upgrading infrastructure in planned colonies is expected to be added up by DISCOM and made part of its ARR (Annual Revenue

Requirement) which is presented to the DERC for fixation of tariff based on both fixed costs incurred in upgrading infrastructure and the variable cost involved in buying and selling power.

6. It is pertinent to mention here that the learned Ombudsman specifically recorded that the respondent offered to pay for shifting of pole by 2 feet but the DISCOM need not have sent him an estimate of Rs.19,162/- to begin with, which was later enhanced to Rs.4.72 lakhs and the matter was delayed too for long.

7. The learned Ombudsman had seen the photographs of the location to understand the issue, whereby established that pole cannot continue to be at its present location and should be shifted towards the common boundary of the two properties so as to be on one side.

8. Accordingly, the learned Ombudsman ordered that the petitioner should shift the pole to the common boundary of the two properties without seeking any cost from the respondent, even though he was initially willing to pay a lower amount, and to recover this expenditure through their overall recovery of capital costs through the tariff fixation exercise carried out by the DERC. The offer of respondent to pay, at the initial stage, goes to his credit and shows his desperation to get the pole shifted but is now irrelevant as the cost has gone up many times and each individual should not be asked to pay for upgrading common infrastructure in the colony.

9. Accordingly, the petitioner was directed to take action within 21 days to initiate the process of the shifting of the pole and to carry out the complete exercise within two months thereafter.

10. I note, the aforesaid order was passed on 01.12.2014. Till date, no steps have been taken by the petitioner in this respect except filing of the present petition and that is after more than four months.

11. In view of the facts recorded above, I do not find any merit in the instant petition. Therefore, the same alongwith pending applications stand dismissed.

SURESH KAIT, J.

APRIL 29, 2015

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