

\$~A-37

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

Reserved on: 18.01.2016

%

Pronounced on: 25.01.2016

+ LPA 39/2016

M.S. JADHAV

.....Appellant

Through Appellant in person

Versus

BSES RAJDHANI POWER LTD.

....Respondent

Through Mr.Deepak Pathak, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed seeking to impugn the order of the learned Single Judge dated 06.10.2015 passed in W.P.(C) No.9510/2015.
2. The appellant filed the writ petition seeking an order for *setting aside* the rejection orders (for grant of electricity connection) dated 18.04.2013 and 25.02.2015 passed by respondent No.1. Further directions were sought seeking compensaton @ Rs.1000.00 per day for the period of default by the respondent under Regulation 65 of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 (*hereinafter referred to as the 'Regulations'*).
3. Essentially the issue is that the appellant does not have an electricity connection at Flat No. VII/2, Delhi Transco Colony, Kilokari,

New Delhi, Opp. Maharani Bagh, New Delhi (*in short the 'flat'*). The appellant is said to have submitted an agreement/undertaking for a new connection on 11.03.2013 for domestic electricity supply at the flat but to no effect.

4. The appellant filed a complaint on 21.04.2014 before the Delhi Electricity Regulatory Commission seeking an order for release of an electricity connection at the flat. The Commission heard the appellant and on 01.08.2014 dismissed the complaint of the appellant stating that to enable the respondent to release the new connection proof of ownership/allotment letter is required to be filed by the appellant and as needful was not done the application of the appellant has been rightly rejected.

5. In the meantime, the respondent booked the appellant for theft of electricity and an assessment bill of theft (direct theft) for Rs.2,09,167.00 was raised on the appellant. The respondent also filed a criminal complaint under Section 154 (3) read with Section 135 of the Electricity Act, 2003 for theft of electricity. As per the complaint, an inspection was carried out at the said flat on 13.03.2014 by a team of the respondent. During the inspection, the team observed that there was no meter installed at the site and that the users were found indulging in direct theft of electricity by illegal tapping from the main service cable to feed load directly. Necessary videography is said to have been made.

6. On 07.10.2014, Special Judge, Electricity, Saket, New Delhi took cognizance of the complaint and issued summons to the appellant. The appellant, thereafter filed a petition under Section 482 Cr.P.C. before this court for quashing of the summons and proceedings before the Special

Judge, Electricity, Saket, New Delhi. It appears that thereafter the matter was sorted out between the parties and the theft bill raised by the respondent was settled for Rs.1,05,000.00, which amount was duly paid by the appellant. Thereafter the criminal complaint proceedings were disposed off accordingly.

7. The appellant thereafter applied for a new connection again and submitted a fresh set of documents. However, the application of the appellant was rejected vide impugned rejection letter dated 25.02.2015 for the reasons “NOC from Delhi Transco Ltd is required.”

8. The learned Single Judge noted that the appellant had failed to place on record any allotment letter or lease or licence agreement to show as to how he is in occupation of the said flat. Hence, the court held that the appellant is not entitled to any relief in writ jurisdiction as electricity cannot be granted to a person who is in illegal and unauthorised occupation of a public/government property.

9. We have heard the Appellant who appears in person and the learned counsel for the respondent and perused the record.

10. In response to a query from the court as to how he has come in occupation of the flat in as much as the flat appears to belong to Transco, an undertaking of the Govt. of NCT of Delhi dealing with transmission of electricity in Delhi, the appellant stated that he was previously an employee of Transco and that now he has resigned and is practicing as an advocate in Delhi courts. He was allotted the flat then being an employee of Tansco.

11. The appellant who appears in person submits that on a request for an electricity connection by the appellant it is obligatory on the part of the

respondent under Section 43 of the Electricity Act, 2003 to provide him an electricity connection as he is in settled possession and not a trespasser. The appellant relied upon the following judgments in support of his contentions:

- i) Rame Gowda (D) by Lrs v. M.Varadappa Naidu (D) by Lrs., 2004 AIR (SC) 4609;
- ii) Special Officer, Commerce, North Eastern Electricity Company of Orissa (NESCO) & Anr. v. Raghunath Paper Mills Private Limited & Anr., 2012 (11) JT 289;
- iii) Sri Chandu Khamaru v. Nayan Malik & Ors., 2011 AIR (SC) 2897;
- iv) Abhimanyu Mazumdar v. Superintending Engineer & Anr., 2011 AIR (CAL) 64 and
- v) Renu Suri v. State of U.P. & Ors., 2012 (92) ALR 413

12. The learned counsel for the respondent submitted that the respondent is only observing the statutory provision namely Delhi Electricity Supply Code & Performance Standards Regulations, 2007 framed under the Electricity Act, 2003. As per the said regulation the appellant is bound to produce necessary documents showing legal possession of the property in question.

13. We may first see the concerned regulation. Regulation 16(i) of the Regulations provide that an applicant who seeks a new connection has to submit an application as prescribed in Annexure I to the regulations. Annexure I provides that alongwith the application, proof of ownership/occupancy has to be provided, i.e. either, a) GPA, or b) Possession Letter, or c) Rent Receipt as proof of ownership of landlord or d) Lease Agreement. The appellant is unable to produce any of these

documents stipulated in the regulations and is hence ineligible for electricity connection.

14. The Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd. & Ors. v. M/s DVS Steels & Alloys Pvt. Ltd. & Ors.*, **JT 2008 (12) SC 672 (MANU/SC/8234/2008)** held that 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. Relevant portion of the judgment reads 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 fulfillment 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.”

15. In view of the legal position as stated by the Supreme Court, the respondent company was well within its right to reject the application of the appellant as being not in compliance with the applicable regulations.

16. The judgments relied upon by the appellant would have no application to this case in as much as in none of these judgments, the

regulations which are applicable in Delhi, were being considered.

17. There is another factor which would have a bearing on this case “He who seeks equity must do equity.” Admittedly, the appellant is sitting on government property without any basis or explanation as how he continues to occupy the flat. Prima facie, he also appears to have indulged in illegal tapping of electricity. Now he is demanding an electricity connection to enable him to continue to illegally occupy and enjoy the said property. In this context, reference may be had to the judgment of a Division Bench of this Court in ***D.T.T.D.C. vs. D.R.Mehra and Sons, AIR 1996 Delhi 351(MANU/DE/0976/1996)*** where this Court held as follows:-

“(18) In our view injunction is an equitable relief and the Court must see whether a person who is a trespasser can seek the helping hand of the Court for protecting his unlawful possession as against the owner. A person who seeks equity must do equity. He must also come to Court with clean hands. When he does these things there will be no occasion for him to seek an injunction in as much as the trespass would have automatically stood vacated. If he does not do these things, he cannot at the same time ask for the helping hand of the Court to protect his illegal possession.

(19) It is argued for the appellant that this may be anomalous .It is said that the trespasser has a "right", to an injunction against the true owner, and this is complementary to the duty of the owner not to evict the trespasser outside the judicial process. In our view, there is no anomaly. Each of these is based on a different legal principle. If the plaintiff wants the defendant to act in accordance with law he must first abide by the law himself and vacate the property as one would expect a law abiding citizen to behave.”

18. In the light of the above, we otherwise also see no reason to grant any relief to the appellant.

19. We see no infirmity in the impugned order. The appeal is dismissed.

(JAYANT NATH)
JUDGE

(CHIEF JUSTICE)

JANUARY 25, 2016
v