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

+ W.P.(C) 8880/2019, CM Nos. 36626-36627/2019

SH. KHOSMENDIR SINGH GAHUNIA

..... Petitioner

Through: In person.

versus

BSES RAJDHANI POWER LIMITED AND
ANR.

..... Respondents

Through: Mr. Sunil Fernandes, Standing
Counsel with Ms. Anju Thomas, Adv.
for BSES.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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19.08.2019

CM No. 36627/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 8880/2019

This is a second round of litigation filed by the petitioner challenging the provisional assessment order dated May 1, 2018 and the final assessment order dated June 25, 2018. The first writ petition being W.P.(C) 7744/2018 was disposed of by this court on July 27, 2018 by stating as under:

“Learned counsel appearing for the respondents has taken an objection that the speaking order having been passed on June 25, 2018, the remedy for the petitioner is to approach the Appellate Authority, i.e. the concerned Additional District Magistrate. The petitioner who appears in person has drawn my attention to notices dated May 9, 2018 issued by the

respondents, which according to him are the disconnection notices received by the petitioner only three days back. He states, without there being a speaking order at least on May 9, 2018, the disconnection notices could not have been issued. Be that as it may, in view of the submission made by the counsel for the respondents, petitioner shall file an Appeal before the concerned ADM within four weeks from today. On such filing, the concerned ADM shall consider the appeal in accordance with law. Till such time, the matter is listed and heard by the concerned ADM, at the first instance, including the application for stay, respondent shall not disconnect the electricity in the property in question, i.e., P-18, Ground Floor, NDSE-II, New Delhi – 110049. Petition stands disposed of.”

Pursuant thereto, the petitioner had filed an appeal before the Additional District Magistrate (ADM), South, who noted the arguments advanced by the petitioner herein including that the order dated June 25, 2018 is not a final assessment order. This plea of the petitioner has been accepted by the learned ADM, who dismissed the appeal being beyond his jurisdiction.

Mr. Sunil Fernandes, learned Standing Counsel appearing for the respondent BSES on advance notice states that the order dated June 25, 2018 is in fact a final assessment order and no further order is required to be passed. He also states that the petitioner had rightly filed an appeal before the learned ADM and it appears that the learned ADM had wrongly construed the plea raised by the petitioner that the order dated June 25, 2018 being not a final order as such no appeal is maintainable.

The petitioner who appears in person has a further grievance that the maintainability of appeal pre-supposes a deposit of 50% of the bill amount. According to him, as there was no authorized use of the electricity, there is

no question for the petitioner making the pre-deposit for the ADM to entertain the appeal.

Noting the submissions including that of Mr. Fernandes that the order dated June 25, 2018 is a final assessment order passed under Section 126 of the Electricity Act, it must be held that the appeal was rightly filed by the petitioner before the ADM and the ADM was required to entertain the same even though a plea has been taken by the petitioner that there was no final order for an appeal to be maintainable, I deem it appropriate to remand the case back to the learned ADM.

I have been informed by the petitioner that he had filed an application for stay as well. If that be so, learned ADM shall consider the appeal and the stay application and decide the stay application in accordance with law. The petitioner shall be at liberty to rely upon such orders passed by the learned ADM in the past to support his contention that he is entitled to complete waiver of the pre-deposit. Parties shall appear before the learned ADM on September 2, 2019.

Till such time, the ADM hears and decide the stay application, respondents are restrained from disconnecting the electricity.

CM No. 36626/2019 (for stay)

Dismissed as infructuous.

Dasti.

V. KAMESWAR RAO, J

AUGUST 19, 2019/jg