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

+ **W.P.(C) 2976/2013**

BSES RAJDHANI POWER LIMITED

..... Petitioner

Through: Mr. Sunil Fernandes, SC for BSES
RPL with Mr. Darpan Sachdeva, Ms.
Anju Thomas and Mr. Darpan
Sachdeva, Advs.

versus

DK GUPTA AND ANR

..... Respondents

Through: Mr. Mukul Dhawan, Adv. for R1

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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08.07.2019

1. The challenge in this writ petition is to an order dated July 27, 2012 passed by the Consumer Grievance Redressal Forum (in short 'Forum') in a petition filed by the respondent No.1, Sh. D.K. Gupta. The petition of the respondent No.1 before the Forum was for shifting of package type sub-station erected by the petitioner herein, which according to the respondent No.1 is falling in front of his house.
2. It was the case of the respondent No.1 before the Forum that he has taken up the matter with the petitioner for shifting of the sub-station about five meters from right side of the premises being B-4/1, Safdarjung Enclave, New Delhi in February, 2010. In his letter, he agreed to pay necessary estimate charges as per the Rules of BSES. Subsequently, the petitioner framed the estimates and communicated it to him on August 30, 2010. The estimated cost for shifting the package sub-station was ₹18,72,734/-. It appears that the respondent No.1 approached the Forum to contend that the

cost communicated for shifting of package sub-station is very high. He suggested that same package transformer unit should be shifted and in order to shorten the shut down period, a mobile transformer should be installed and he is ready to pay the rental charges on account of mobile transformer and labour cost for shifting the transformer / sub-station. It was also his case that in view of the fact that the road has been widened, this sub-station now exists almost in the middle of the road and it is essential to be shifted.

3. The case of the petitioner before the Forum was that after the estimate was communicated to the respondent No.1, the respondent No.1 did not approach them for shifting. It was the petitioner's case that the existing package sub-station cannot be shifted and a new package sub-station could only be installed. That apart, it was their case that a consumer could not be made to suffer for switching off the electricity for such a long time. It was conceded by the petitioner that MCD had widened the road and the MCD did not approach the respondent for shifting of the said package sub-station. They also stated that in case of such shifting at the request of the MCD, the estimated cost is paid for shifting of a transformer by the road owning agency. However, under the present condition, the shifting charges have to be paid by the respondent No.1 as he had made a request for shifting of the sub-station.

4. During deliberations before the Forum, it was represented on behalf of the petitioner that the estimate has since been revised and now the respondent No.1 is required to pay / deposit an amount of ₹25,98,914/- in view of escalation. It was the case of the respondent No.1 that he had only made a request for shifting of the sub-station but the petitioner has prepared the scheme for replacement of the sub-station instead of shifting. The

respondent No.1 reiterated that he is ready to pay the cost of men and material used for shifting of sub-station, which would cost about ₹2 lakhs only. He contested the estimate prepared by the petitioner on the ground that some of the charges included in the estimate, could not have been included. Be that as it may, the Forum while deciding the complaint, has in paras 1 and 6 directed as under:-

1. The cost of the S/Stn. package to be charged from the petitioner shall be Rs.23.6 lakhs (or the actual cost whichever is less) minus the cost of existing S/Stn. package already recovered by the licensee from the consumers, by way of ARR through tariff till date minus the reclamation credit of Rs. 10 lakhs being presently provided in estimates.

6. The licensee is also directed not to recover and add the cost of this S/Stn. in their capital investment / expenditure for the purpose of including in their ARR for determination of tariff and load the capital cost.”

5. I have pointed out the conclusion of the forum with regard to only paras 1 and 6 for the reason that the grievance of the petitioner in this petition is only qua those conclusions of the Forum.

6. Mr. Sunil Fernandes, learned counsel appearing for the petitioner would submit that there was no basis for the Forum to subtract the cost of existing sub-station package already recovered by the licensee from the consumer by way of ARR and also subtracting the reclamation credit of ₹10 lakhs. That apart, he states, even the direction in para 6 could not have been given, more so at the behest of the respondent No.1. In other words, it is his submission, if the petitioner is entitled to recover or add the cost of the sub-station in their capital investment / expenditure for the purpose of including

in the ARR for determination of tariff and load, the petitioner could not have been interdicted by the Forum.

7. That apart, Mr. Dhawan, learned counsel appearing for the respondent No.1 would submit that the case of the respondent No.1 is only for shifting and not installation of a new sub-station. According to him, the respondent No.1 is ready and willing to pay the charges as incurred by the petitioner as labour charges for such shifting. He states, in no way the respondent No.1 can pay an amount of ₹25,98,914/- for shifting of a sub-station.

8. Having heard the learned counsel for the parties, the plea of Mr. Fernandes that the finding of the Forum that the petitioner has already recovered from the consumers by way of ARR, the cost of the existing sub-station, is a perverse finding. In fact, on a specific query to Mr. Dhawan, as to what is the basis for the Forum to come to such a conclusion, he could not point out the same. I note, that except in para 4, where the Forum has noted the submission made by Sh. D.K. Gupta, AVP(O&M), South on behalf of the petitioner that the said sub-station was installed in the year 2005 and in all probability, the cost of sub-station must have been recovered through ARR, there is no conclusion of the Forum in that regard. Surely, unless it is averred by the respondent No.1 that such a cost has been recovered and not denied, rather accepted by the petitioner that such a cost has been recovered, the Forum could not have directed the subtraction of such an amount. In fact, Mr. Fernandes, during the submissions states, such a cost is not recovered. In view of the above, this conclusion of the Forum is perverse.

9. That apart, it is also not known, at what basis, the Forum has come to a conclusion that the cost of package sub-station to be charged from the respondent No.1 shall be ₹23.6 lakhs when the respondent No.1 has

represented that the existing package cost of sub-station is ₹25,98,914/-. In fact, I find that the conclusion of the Forum for subtracting reclamation credit of ₹10 lakhs from the amount of ₹23.6 lakhs is untenable, as while arriving at the figure of ₹25,98,914/-, the reclamation credit has already been given by the petitioner and the same can be seen from the following chart:-

“Part A Material

<i>Sl. No.</i>	<i>Description</i>	<i>Amount</i>
<i>1.</i>	<i>S/Stn. Package 990 KCA 11/0.433 KV</i>	<i>2361123.12</i>
<i>2.</i>	<i>Associated accessories / equipments</i>	<i>144351.13</i>
		<i>2505474.25</i>
	<i>Escalation charges 10%</i>	<i>250547.43</i>
		<i>2756021.68</i>
	<i>Contingency 3%</i>	<i>82680.65</i>
	<i>Total of Part A</i>	<i>2838702.33</i>

PART B LABOUR & TRANSPORTATION *90787.93*

Adding Part (A+B+C) *3129490.26*

Departmental charges 15% *469423.54*

Say Part D *3598913.80*

PART-E RECLAMATION CREDIT *100000.00*

<i>Deducting (Part-E Total of Part-D)</i>	2598913.80
<i>Total of net scheme</i>	2598914”

10. That apart, insofar as the submission of Mr. Fernandes with regard to direction in Sl. No. 6, I agree with the submission made by him that such a direction could not have been issued by the Forum when it is not the case of the respondent No.1 before it nor such a relief could have been claimed by him. The said conclusion need to be set aside.

11. I may state here, in view of the only submission made by Mr. Dhawan that the respondent No.1 is willing to pay the charges for shifting of the sub-station and not for re-installation of a new sub-station, and the petitioner has not challenged the orders, wherein re-installation of sub-station is accepted, the order of the Forum with regard to item Nos. 1 and 6 need to be set aside. Ordered accordingly.

12. The writ petition is disposed of.

V. KAMESWAR RAO, J

JULY 08, 2019/ak