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

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Date of decision: 06.02.2020

+ W.P.(C) 2453/2019

MS. AZRA

..... Petitioner

Through Md.Aslam, Adv. with petitioner in person

versus

THE STATE (G.N.C.T. OF DELHI) & ORS. Respondents

Through Mr.Deepak Kumar Vijay and Ms.Neeru Sharma, Advs. for R-2/ BSES.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This writ petition is filed by the petitioner seeking an appropriate writ, order, or direction directing respondents No.2 and 3 to provide essential electricity supply to the petitioner and install a new electricity meter in the name of the petitioner on the second floor of the property bearing No.3418, Gali Maliyan, Bazar Delhi Gate, Darya Ganj, New Delhi-110002.
2. The case of the petitioner is that she has been residing on the second floor of the property in question for the past 3-4 years. She applied for a new electricity connection with the Respondent No. 3 on 28.08.2018. However, respondents No.2 and 3 have not acceded to the request to install a new electricity meter on the premise that the height of the property is higher than 15 meters.
3. Respondents No.2 and 3 have filed their counter affidavit. In the counter affidavit, it has been stated that the height of the building in

question, for which new electricity connection has been applied for, is more than 15 meters. It is pleaded that in terms of the building Bye-Laws if the total height of the building is more than 15 meters then the occupier who applies for new electricity connection, has to give a fire clearance certificate as per Delhi Electricity Regulatory Commission (*hereinafter referred to as the 'DERC'*) Guidelines. It is pleaded that within the building in question some of the other floors do have an electricity connection, however, notices for disconnection of these connections have been served on the said occupiers on 11.04.2019. It is further pleaded that there are large number of outstanding dues raised against the building in question, which in all, total Rs.6,14,153/- which are said to be pending. Reliance is placed on the judgment of the Supreme Court in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd.& Ors. v. DVS Steels And Alloys Pvt. Ltd. & Ors., (2009) 1 SCC 210*** and ***BSES Rajdhani Power Ltd. v. Saurashtra Color Tones Pvt. Ltd.; AIR 2010 DEL 14*** to contend that an electricity distributing company can refuse to supply electricity to the new purchaser of a premises, on account of the dues of the previous owner and the new owner of the premises can be compelled to clear the dues of the previous owner.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the petitioner has vehemently urged that as the other occupiers of the building in question have an electricity connection, the petitioner is also entitled to the same.

6. The DERC has in exercise of the powers vested under Regulation 84 and Regulation 87 of DERC (Supply Code and Performance Standards) Regulations, 2017 passed direction as follows, relating to supply of an electricity connection.

“5.That the building has been constructed as per prevalent building Bye-Laws and the total height of the building

(i) does not exceed 15 (fifteen) meters on the date of seeking service connection; Or

(ii) is more than 15 (fifteen) meters and Fire Clearance Certificate is available with the applicant.”

Hence, where the height of the building is more than 15 meters, Fire Clearance Certificate has to be obtained by the applicant.

7. In the counter affidavit, it is clearly stated that the height of the building is more than 15 meters. Admittedly there are five to six floors in the building i.e. the height is bound to be above 15 meters. However, merely because some of the occupants of the building have wrongly been given an electricity connection, it cannot be a ground for the court to direct respondents No.2 and 3 to further compound the wrong act and direct granting of a new electricity connection to the premises of the petitioner which is located in a building whose height is more than 15 meters. The petitioner is free to obtain the Fire Clearance Certificate and then approach the respondent BSES accordingly.

8. I also cannot help noticing that there are outstanding dues of Rs.6,14,153/- payable on the premises in question. The copies of the bills raised have been placed on record with the counter affidavit. These bills show that various bills have been raised after 2014, i.e. the date from which the petitioner claims to have occupation of the premises in question. The bills show that these are on the basis of assessment of theft of electricity being done. They are for the years 2016-2017. There is one bill in the name of Sh.Ashif, the brother of the petitioner, which is dated 22.11.2016; in the

name of Shana, which is dated 12.07.2016; and in the name of Smt.Nasreen, the mother of the petitioner, which is dated 06.04.2017. The bills show that as far as respondents No.2 and 3 are concerned, the petitioner and the family members are consuming the electricity illegally by theft.

9. I may also note that the judgment given by a Full Bench of this court in the case of **BSES Rajdhani Power Ltd. v. Saurashtra Color Tones Pvt. Ltd.** (supra), which held as follows:

“31 The position is now placed beyond any pale of doubt by the recent judgment of the Supreme Court in Paschimanchal Vidyut Vitaran Nigam Ltd. v. M/s. DVS Steels & Alloys Pvt. Ltd. (supra)

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The question before the Supreme Court was whether the supplier can recover the electricity dues from the purchaser of sub-divided plot. Answering this question in the affirmative, the Supreme Court held 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 fulfilment 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.

11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may, in this case, when the first respondent, who was the purchaser of a sub-divided plot, wanted a new electricity connection for its premises, the appellant informed the first respondent that such connection will be provided only if the electricity dues are paid pro rata. They were justified in making the demand. Therefore, it cannot be said that the collection of Rs. 8,63,451 from the first respondent was illegal or unauthorised. It is relevant to

note that when the said amount was demanded and paid, there was no injunction or stay restraining the appellant from demanding or receiving the due.

32. In the light of the above decision in Paschimanchal Vidyut Vitaran Nigam Limited the legal position that emerges is that where there are statutory rules governing the conditions relating to sanction of a connection for supply of electricity, the distribution company can insist upon prior fulfilment of the requirement of such rules and regulations before granting a fresh connection. Even if the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transaction and dealings. So long as such rules and regulations or terms and conditions are not arbitrary and unreasonable, the Courts will not interfere with them.”

10. There is another aspect which has been pointed out by the learned counsel for respondents No.2 and 3 that one Mr.Mohsin Khan has written to respondents No.2 and 3 on 24.12.2018 claiming himself to be the owner of the property in question of which electricity connection has been sought. He has also attached the copy of the title documents. He has claimed that the petitioner and the family have illegally occupied the building in question. However, it is needless to add that the learned counsel for the petitioner has denied the said allegation. She submits that she has been in occupation of the premises in question for the past 3-4 years. She submits that she paid some consideration for the same and part payment remains to be paid, for which some dispute is going on between them.

11. In view of the above, there are two aspects on account of which it is not possible to direct supply of electricity connection to the petitioner. One is the height of the premises/building in question is more than 15 meters due to which petitioner requires a NOC from the fire department and secondly

i.e. the outstanding dues of Rs.6,14,153/- are payable for the premises/building in question. Respondent is justified in denying electricity on this ground as per stated legal position.

12. In my opinion, it is not possible for this court to direct respondents No.2 and 3 to grant electricity connection in the absence of the fire clearance certificate and no dues certificate.

13. There is no merit in the petition. The same is dismissed.

FEBRUARY 06, 2020/v

JAYANT NATH, J.



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