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

W.P.(C) 3379/2022

Date of Decision: 08.07.2022

IN THE MATTER OF:

M/S KOLMET ENTERPRISES ..... Petitioner

Through: Mr. Akhil Hasija and Ms. Aditi Tuteja, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL ..... Respondent

Through: Mr. Vaibhav Agnihotri, Mr. Vikrant Pachnande, Mr. Mukul Katyal and Mr. Ankit Khera, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks directions to the respondent - (i) to refund the amount of Rs.15,74,941/- deposited by it, alongwith interest @ 16% p.a. compounded every 6 months for the period of deposit till the amount is refunded, in compliance of Regulation 59(4) of the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 (hereinafter, referred to as the *'DERC Regulations'*) as well as in consonance with the order dated 15.02.2021 passed by the learned Additional District Magistrate, Jam Nagar, New Delhi, and (ii) to revise all the Bills for the period July, 2019 to February, 2022 in

accordance with the aforesaid order.

2. Learned counsel for the petitioner submits that the respondent had issued a Notice/communication dated 10.07.2019 to the petitioner, alleging unauthorized use of electricity at *Shop No.F-8, Connaught Place, New Delhi – 110001* (hereinafter, referred to as the *'subject premises'*) and claiming Misuse charges. Aggrieved by the issuance of the said Notice/communication, *inter-alia*, the petitioner preferred Appeal Nos. 9/2019 and 11/2019 before the Appellate Authority, wherein the order dated 15.02.2021 came to be passed by the learned Addl. District Magistrate (New Delhi)/Presiding Officer thereby setting aside the Notice dated 10.07.2019. However, the order has not been acted upon by the respondent till date.

It is further submitted that in terms of Regulation 59(4) of the DERC Regulations, the respondent is required to make a refund of Rs.15,74,941/- deposited by the petitioner, alongwith interest, for the period of deposit till the amount is refunded. It is also informed that the order dated 15.02.2021 passed by the learned ADM has remained unchallenged till date.

3. On the other hand, though the respondent has not filed any Reply, it has opposed the prayer made in the petition. Mr. Vaibhav Agnihotri, learned counsel appearing for the respondent, has disputed the submissions made on behalf of the petitioner, however on instructions, he has submitted that the amounts toward the actual user charges were paid by the petitioner in time.

4. I have heard learned counsels for the parties as well as perused the material placed on record.

5. From the conspectus of the case, it is apparent that the petitioner is a partnership firm running a restaurant under the name and style of *'The Host'* from the subject premises since the year 1979. It is stated to be a registered

consumer of electricity supplied by the respondent at the subject premises through electricity connection bearing *No. K-64233* installed vide *CA No. 1007748.*

6. On the basis of an inspection carried out by the respondent on 08.01.2019 at the subject premises, a Show Cause Notice dated 30.01.2019 was issued to the petitioner regarding unauthorized use of electricity from the electricity connection at the said premises. It was alleged that during site inspection, the electricity connection was found to have been used *'for the premises or areas other than those for which the supply of electricity was authorised'.*

7. The Inspection Report dated 08.01.2019 read as under:-

> *"During the inspection of premises it is found the same is being used for Restaurant Purpose in the name of Host. The electricity is being used through energy meter BE-83480 CT operated installed at the site. There is no theft of electricity found at the site at the time of inspection But as per Physical verification it is found that the electric supply is <u>extended to back portion</u> in open space and used for Kitchen Staff dining purpose and electricity is also used through said energy meter Hence consumer found indulged in unauthorised use of electricity as per electricity Act 2003."*

8. In response to the Show Cause Notice dated 30.01.2019, a Reply dated 13.02.2019 was sent by the petitioner contesting the allegations. It was claimed that the electricity connection was used only for running the business from the subject premises and there was no unauthorized use, as alleged in the Show Cause Notice. It was also clarified that the subject premises included a store at the back side, which might have been presumed by the inspection team to not be a part of the subject premises and led to

issuance of the Show Cause Notice. It was further stated that the said store was not an unauthorized area, and in this regard, reference was made to the decision of this Court in M/s Kolmet Enterprises *v.* New Delhi Municipal Council, **W.P. (C) 4041-42/2006**.

9. A perusal of the order dated 15.02.2021 would show that the case of the respondent before the Appellate Authority was that during the first inspection of the subject premises on 08.01.2019, electricity supply was found to have been extended to back portion in open space, where it was being used for kitchen staff dining purpose. Thereafter, a Reply was received by the respondent from the petitioner which led to re-inspection of the subject premises on 20.02.2019, when no theft or unauthorized use of electricity supply was noted. When the case was put up for withdrawal of Show Cause Notice before concerned authority, it directed re-inspection of the subject premises as also determination of whether solar panel was being used for back yard. The re-inspection was conducted on 21.06.2019, when no solar panels were found in the back yard; instead, electricity supply from the abovementioned electricity connection was found to be under unauthorized use for the back yard portion of the restaurant as well as the guard room/security cabin (where a solitary fan and bulb were found). The respondent issued communication dated 10.07.2019 to the petitioner, alleging that the electricity connection at the subject premises was found to still be under misuse in terms of Section 126(6)(b)(v) of the Electricity Act, 2003 (hereinafter, referred to as *'the Act'*). In addition, the respondent claimed Misuse charges @ 50% on relevant use type of tariff w.e.f. 08.01.2018 to 25.06.2018 and @ 100% w.e.f. 26.06.2018 (i.e., one year prior from the date of inspection of premises) onwards till such time the

aforesaid misuse was stopped.

In its Reply dated 31.07.2019, the petitioner disputed the above claims and brought to the notice of the respondent that the use of electricity supply from the abovementioned electricity connection for the guard room/security cabin had been discontinued and requested it to re-inspect the subject premises to verify the same.

10. In spite of the aforesaid, on 20.08.2019, the petitioner received an Electricity Bill dated 31.07.2019 for the period 08.06.2019 to 10.07.2019, wherein the respondent had raised demand of Rs.4,45,943.76/- towards consumption charges of 25,000 units. Besides actual user charges to the tune of Rs.2,30,235/-, misuse charges to the tune of Rs.2,15,709/- were levied in the bill.

Vide letter dated 20.08.2019, the petitioner again made representation to the respondent and requested immediate inspection of the subject premises. The petitioner also deposited the actual user charges of Rs.2,30,235/- vide Cheque No. 713562 and 50% amount towards the alleged Misuse charges of Rs.1,70,854.50/- vide Cheque No. 713563 both dated 31.08.2019. However, the latter was never encashed by the respondent.

Aggrieved by the Bill dated 31.07.2019, the petitioner filed an appeal bearing No. 9/2019 under Section 127 of the Act before the Appellate Authority on 03.09.2019.

11. Another Electricity Bill dated 30.08.2019 for the period 10.07.2019 to 09.08.2019 was issued by the respondent, whereby a demand of Rs.31,88,167/- against consumption of 23,400 units was raised. The said amount of Rs.31,88,167/- reportedly included User Charges of Rs.1,90,974.20/-, Misuse Charges of Rs.1,90,974.20/-, Late Payment

Surcharge of Rs.879.67/- and Arrears of Rs.27,61,630.53/-.

Though the petitioner paid the actual user charges of Rs.2,20,565/- and 50% amount towards the alleged Misuse charges of Rs.1,02,986/- vide Cheques dated 25.09.2019, it also preferred a second appeal before the Appellate Authority bearing No. 11/2019. By way of W.P.(C) 11832/2019, the petitioner impugned the Bill dated 30.08.2019 before this Court.

12. A re-inspection of the subject premises was conducted by the respondent on 03.09.2019, when the electricity supply to the backyard portion adjacent to the kitchen and one security cabin were found to be supplied through solar panels exclusively.

13. On 20.10.2019, the petitioner received yet another Bill dated 30.09.2019 for the period 11.08.2019 to 09.09.2019 showing consumption of 18,800 units and raised a demand of Rs.33,59,570/- including User Charges of Rs.1,59,800/-, Misuse Charges of Rs.1,59,800/-, Late Payment Surcharge of Rs.42,702.92/- and Arrears of Rs.29,57,931.72/-. On 22.10.2019, the petitioner deposited the entire electricity user charges of Rs.1,86,520/- and 50% amount towards the alleged Misuse charges of Rs.86,208/-.

Subsequent thereto, it received a Notice dated 25.10.2019 bearing No. NDMC/EW/RATES/433 from the respondent, in terms of Section 56 of the Act and Regulation 49 of the Delhi Electricity Supply Code and Performance Standards Regulation, 2007, vide which it was asked to deposit a sum of Rs.30,36,019/- towards electricity dues within 15 days from the receipt of the Notice. Failing the same, the electricity supply was to be disconnected without any further notice.

14. Vide order dated 08.11.2019 passed in W.P.(C) 11832/2019, this

Court directed that subject to the petitioner depositing 50% of the assessed amount with the respondent within four weeks, no coercive action be taken against it and the appeal of the petitioner be entertained in accordance with law.

15. After hearing the respective stands of the parties, the learned ADM vide order dated 15.02.2021 set aside the order/communication dated 10.07.2019 and held as under: -

> *"The following issues require examination for deciding the appeal.*
>
> *a) Whether the use of electricity to the store located on the backyard portion / back yard portion of restaurant used for dinning purpose of kitchen staff can be considered as unauthorized use of electricity i.e premises or areas other than those for which the supply of electricity was authorized?*
>
> *b) Whether the use of electricity to the security cabin used for protecting the restaurant can be considered as unauthorized use of electricity i.e premises or areas other than those for which the supply of electricity was authorized?*
>
> *c) Whether the respondent followed the mandatory provisions of Section 126 of The Electricity Act, 2003 and Rule 55, 57 and 58 of DERC (Supply Code and Performance Standards) Regulations, 2017 while issuing the order under Section 126 of The Electricity Act, 2003 and raising the demand for misuse of electricity?*
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> *As per the electricity bill dated 31.07.2019; the date of energization of consumer number 1007748 having the electricity connection number K64233 is mentioned as 28.06.2008. The respondent proved that the store located in the backyard of the restaurant exists since 1983 and ruled as part of the restaurant by Hon'ble Delhi High Court in W.P. (C) No.4041 of 2006. When the store existed since 1983 much before the energization date, the respondent failed to give any plausible reason for not considering it as part of the restaurant premises except simply saying the use of electricity to the backyard portion of restaurant*

is an unauthorized use. They respondent is also not given any rule position or facts in support his case.

Similarly, the respondent failed to give any reason on how and why they considered the use of electricity to security cabin established to protect the restaurant as use of electricity to the premises or areas other than those for which the supply of electricity was authorized. The respondent also failed to quote any relevant provisions of law under which such classification has been made by the respondent.

The respondent also failed to give any plausible reason for not following the mandatory provisions of Section 126 of The Electricity Act, 2003 and Rule 55, 57 and 58 of DERC [Supply Code and Performance Standards) Regulations, 2017 while issuing the order under Section 126 of The Electricity Act, 2003 and raising the demand for misuse of electricity. No reason was given for not issuing the show cause notice after the inspection dated 21.06.2019. Similarly, no provisional assessment order and provisional assessment bill as mandated by Rule 58 of DERC (Supply Code and Performance Standards) Regulations, 2017 was issued after the inspection dated 21.06.2019. No plausible reason was given for not giving the opportunity of personal hearing as mandated by Section 126 of The Electricity Act, 2003 and Rule 58 of DERC (Supply Code and Performance Standards) Regulations, 2017. No reason for rejecting the contention of the appellant was mentioned in the communication dated 10.07.2019. Thus, it was clearly established that the respondent had not followed the mandatory provisions of Section 126 of The Electricity Act, 2003 and Rule 55, 57 and 58 of DERC (Supply Code and Performance Standards) Regulations, 2017 while issuing the order under Section 126 of The Electricity Act, 2003 and raising the demand for misuse or electricity."

16. It is worthwhile to note that in exercise of the powers conferred by Section 46, 50 read with Section 57 and 181 of the Act, the Delhi Electricity Regulatory Commission has framed the DERC Regulations. Regulation 59

thereof reads as follows:-

> *"**59. Appeal before Appellate Authority under Section 127 of the Act:-***
> *(1) If the consumer is aggrieved by the final assessment order issued by the Assessing officer, he may after depositing half of the assessed amount as specified under sub-section (2) of Section 127 of the Act, file an appeal before the Appellate Authority under Section 127 of the Act, within 30 (thirty) days from the date of issuance of such order, in the form and manner as prescribed in Commission's Orders:*
>
> *Provided that no appeal shall lie to the appellate authority against the final assessment order of the Assessing officer, if same is passed with the consent of the parties.*
>
> *(2) The Appellate Authority, based on the evidence and the facts presented and after hearing the parties shall pass an appropriate speaking order and send a copy of the order to the Assessing officer and the appellant.*
>
> *(3) The order passed by the Appellate Authority shall be final.*
>
> *(4) In case the Appellate Authority holds that no case of unauthorized use of electricity is established, no further proceedings shall be initiated or continued by the Licensee in this regard and the amount deposited by the appellant shall be refunded along with interest at the rate of 16 (sixteen) percent per annum compounded every 6 (six) months for the period from the date of deposit till the amount is refunded.*
>
> *(5) In case the Appellate Authority holds that a case of unauthorized use of electricity is established, the Licensee shall serve the revised bill to the consumer for charges of unauthorized use of electricity as per the final order issued by the Appellate Authority.*
>
> *(6) The bill so prepared based on the final order issued by the Appellate Authority shall be payable by the consumer within 30*

(thirty) days from the date of service. The Licensee may extend the last date of payment of the assessed amount or allow the payment in installments subject to payment of interest on the unpaid amount for the extended period beyond 30 (thirty) days at the rate of 16 (sixteen) percent per annum compounded every 6 (six) months as per sub-section (6) of Section 127 of the Act.

(7) In case the amount payable as determined by the Appellate Authority is less than the amount already deposited by the consumer at the time of filing the appeal, the excess amount shall be refunded by the Licensee within 30 (thirty) days:

Provided that if the refund is delayed by the Licensee, interest at the rate of 16 (sixteen) percent per annum compounded every 6 (six) months shall be paid for the delayed period."

17. In the present case, unauthorised use of electricity supply was allegedly made by the petitioner with respect to two areas – (i) the backyard portion of the restaurant, and (ii) the security cabin/guard room. Out of the two, the first area has reportedly been declared authorised area by this Court vide order dated 08.11.2019 passed in W.P.(C) 11832/2019.

The second area i.e. the security cabin, as per the petitioner, was set up in June, 2019. The contention is lent support by the fact that the Inspection Report dated 08.01.2019 does not allege unauthorised use of electricity in relation to any security cabin/guard room. The allegation of unauthorised supply of electricity to the security cabin appears to have been made by the respondent for the first time vide Notice dated 10.07.2019.

Though the petitioner disputed the characterization of the practice as *'unauthorised'*, it informed the respondent vide Reply dated 31.07.2019 that the said use had been discontinued and requested verification of the same by re-inspection. On re-inspection by the respondent, the security cabin and in fact the backyard portion of the restaurant as well were found to be utilizing electricity from solar panels exclusively.

18. As per the admitted case of the parties, an amount of Rs.15,74,941/- towards alleged Misuse charges was deposited by the petitioner in the following manner:-

Sl. No.	Date	Cheque No.	Amount
1.	25-09-2019	990516	1,02,986.00
2.	22-10-2019	758519	86,208.00
3.	04-12-2019	367914	13,85,747.00
		Total	Rs.15,74,941/-

19. Keeping in view the aforesaid as well as Regulation 59(4) of the DERC Regulations, it is directed that the amount of Rs.15,74,941/- be refunded by the respondent to the petitioner alongwith interest @ 16% p.a. The respondent is further directed to not include the Misuse charges in the subsequent Bills issued by it as well as to revise the Bills for the period July, 2019 to February, 2022 in accordance with the order passed by the learned ADM.

20. The petition is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

JULY 8, 2022
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