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

+ **W.P.(C) 2387/2024 & CM APPLs. 9848/2024, 29863/2024**

MOHD AFSAR

..... Petitioner

Through: **Mr. Kshitiz Mahipal, Advocate**

Versus

BSES YAMUNA POWER LIMITED AND ORS..... Respondents

Through: **Mr. Harshad Arora, Advocate**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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02.07.2024

1. The petitioner in the instant writ petition is aggrieved by the order dated 23.01.2024 and also the consequent bill due to be paid on or before 27.02.2024.
2. Learned counsel appearing on behalf of the petitioner submits that the impugned order is bereft of merit and the same has been passed in gross violation of the principles of natural justice. According to him, the respondents have not extended any opportunity of hearing and have erroneously resorted to pass the impugned order.
3. The facts of the case would show that the petitioner had taken premises bearing No. H. No.58, J-Extn, second Floor, Laxmi Nagar, Delhi-110092, on rent from Sh. Haider Raza, (Owner) by way of security agreement dated 25.03.2022 for a period of 33 months. There appears to be 10 flats i.e., 2 flats on each floor and there were five floors on the above-mentioned property and the petitioner is tenant of one flat at second floor.



4. A perusal of the impugned order would indicate that the premises in question was inspected and the meter was found inside of the premises and locked with two number of locks. The meter was used for both domestic and non-domestic purposes. During inspection and on being tested in lab *vide* report dated 28.08.2023, it was found that the meter plastic seals and hologram seals were damaged. The photograph of the meter was also captured in the lab. The impugned order would further indicate that the petitioner, who appeared in the office of the enforcement cell on 13.09.2023 and submitted a written reply, had denied any tampering with the meter. In the impugned order, the name of the user is also mentioned to be of the petitioner.

5. Further, as per analysis of the electronic billing data, it was found that the meter was downloaded with inconsistent and erratic consumption and the same was not in consonance with maximum demand recorded by the meter. It thus reveals that not only the plastic seals and hologram seals were found damaged but various other irregularities were also recorded in the impugned order. Besides that, the meter was illegally shifted from pole to inside the premises and accordingly, the impugned action under Sections 135 & 138 of the Electricity Act, 2003 read with Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 has been taken against the petitioner.

6. It is thus seen that the impugned order records various aspects, veracity thereof cannot be delved into while exercising writ jurisdiction. It is well settled that in the proceedings of judicial review, the Courts are concerned with the evaluation of decision-making process and not the merits of the decision itself.



7. At this juncture, it is imperative to point out that this Court *vide* order dated 01.07.2024 passed in W.P.(C) 10687/2009, while deciding the similar controversy regarding dishonest abstraction of electricity, observed that invocation of extraordinary powers under Article 226 of the Constitution is not justifiable in such cases where alternate remedies are not only available but also efficacious. The relevant extracts of the said order are reproduced herein for reference:-

“11. However, the present is not the case where any of the exigencies as mentioned in the aforementioned paragraphs are met. More importantly, this is not the case wherein, any fundamental right of the petitioner was violated. Moreover, the petitioner has all the rights to approach the Civil Court. Having considered the nature of the grievance raised in the writ petition, it is found that the alleged violations of Rules and Regulations, if any can also be gone into by the concerned Court. Essentially the issue whether the petitioner was involved in the alleged theft of electricity or not perhaps may not be amenable to adjudication by this court in exercise of the extraordinary powers conferred under Article 226 of the Constitution.

12. Therefore, in view of the observations made hereinabove, the petitioners are granted liberty to approach the Civil Court or avail any other remedy, available as per law, for ventilation of his/her grievances.

13. In the present batch of cases, the matters remained pending for quite a long time. In some of the cases, the stay was operating while in others, the matters were also sent for mediation. The respondent admittedly has not recovered the amount in question, therefore, under the aforesaid circumstances, there shall be no recovery proceedings as well as no disconnection of supply for a period of 90 days from today as is also undertaken by learned counsel for the respondent. On the petitioner approaching the concerned Court, let the same be decided in accordance with law, without being influenced by the observations made hereinabove.

14. With the aforesaid observations, the petition stands disposed of.”



8. Learned counsel appearing on behalf of the petitioner, however, submits that since no opportunity of hearing was afforded to the petitioner, therefore, this Court must entertain the instant writ petition.

9. However, a bare perusal of the impugned order, as has been observed hereinabove, would clearly suggest that even the petitioner appeared in person and also submitted his reply. Thus, there is no force in the argument of the petitioner that he was not afforded any opportunity of hearing.

10. In view of the aforesaid, the Court finds that the instant writ petition is not entertainable under Article 226 of the Constitution of India and grant liberty to the petitioner to take any other alternate remedy as may be available, in accordance with law.

11. With the aforesaid observations, the petition stands disposed of alongwith pending applications.

PURUSHAINDRA KUMAR KAURAV, J

JULY 2, 2024

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