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

+ **W.P.(C) 7507/2021 & CM APPL. 23563/2021**

TARA CHOPRA

.....Petitioner

Through: Mr.Paresh B.Lal and Mr.Nikhil
Parikshit, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Ms.Sriparna Chatterjee ASC, Mr.
Soumitra Chatterjee and Mr. Manish,
Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **21.08.2024**

1. The petitioner in the instant writ petition has prayed for the following reliefs:-

“A. Issue a writ of Mandamus or any other appropriate writ /order / direction directing the Respondent to permanently cease and desist from imposing misuse electricity charges on the Petitioner for the electricity consumed at her premises.

B. Issue a writ of Mandamus or any other appropriate writ / order / direction directing the Respondent to compensate the Petitioner for the illegal misuse electricity charges paid by her amounting to Rs. 76,581.23 (Rupees Seventy Six Thousand Five Hundred and Eighty One and Twenty Three Paisa) and interest at the rate of 12 per cent per annum .

C. Pass any such Order(s) as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case.”

2. The facts of the case indicate that the petitioner is the owner/occupier of the premises situated at B-13, Sujan Singh Park, New Delhi – 110003.



The premises in question were being used as a play school at the relevant point of time in the name of 'The Learning Tree Play School'.

3. The respondent-NDMC appears to have sealed the said premises on the ground that the 'mixed-use' activity i.e. running of a play school was being carried out from the said premises. Pursuant to sealing of the back-garden of the said premises, the functioning of the play school came to a halt and the school appears to have been discontinued, as has been claimed by the petitioner.

4. Thereafter, the petitioner had filed an application before the Monitoring Committee for de-sealing of the said premises and he had also undertaken that neither any 'mixed-use' activity was being carried out post sealing of the premises nor any such activity would be continued in future.

5. Thereafter, the application of the petitioner for de-sealing was considered by the Monitoring Committee on 03.09.2020. Eventually, on 22.01.2021, the Monitoring Committee disposed of the said application directing the petitioner to deposit the penalty amount calculated by the respondent-NDMC as a condition for de-sealing of the back-garden of the premises.

6. It appears that the respondent-NDMC imposed certain misuse charges upon the petitioner for the electricity allegedly consumed at the said premises.

7. Learned counsel appearing on behalf of the petitioner, while taking this Court to the Inspection Report/Status Report and various other documents, tries to indicate that the respondent-NDMC has arbitrarily raised the impugned demand, although, the same has been satisfied under protest. He, however, contends that the petitioner is entitled for recovery of the



aforesaid electricity charges to the tune of Rs.76,581.23/- along with necessary interest.

8. The respondent-NDMC, upon issuance of notice, placed its Status Report on record alongwith the status of the electricity connection with respect to the meter which was installed at the premises in question.

9. Paragraph no.2 of the Status Report gives the following background of the meter in question :-

"That the status of the electricity connection against No. K-76616UD and K-No. 76617PID in respect of premises bearing No. B-13, Sujan Singh Park, New Delhi, in the name of the Tara Chopra is as under:-

Sr. No.	DATE	EVENTS
1.	02.02.2005	A complaint note was received from EE (D/S) of Electricity Department on 02.02.2005 regarding inspection of the premises bearing No. B-13, Sujan Singh Park, New Delhi, mentioning therein, a school is being run from there. A true copy of the complaint received from EE (D/S) of Electricity Department on 02.02.2005 is marked as Annexure R-1.
2.	09.02.2005	On the basis of the Above complaint received from EE (D/S), the premises at B-13, Sujan Singh Park, New Delhi was inspected by the then Enforcement Cell of the Commercial Department on 09.02.2005 and at the time of inspection it was found that the premises was being used for running school in the name of "Learning Tree" and the electricity supply was being used through electricity connection bearing no. K-76616L/D for non-domestic purpose and the premises was also found unauthorizedly extended. A true copy of the inspection Report is annexed herewith and marked as Annexure R-2.
3.	22.03.2005	With the approval of the competent authority i.e. Director (Commercial), a show cause notice was issued to the consumer vide reference no.D9I/AEE(C) dated 22.03.2005 against the electricity connection K-76616L/D on account of unauthorized use of electricity i.e. domestic connection being misused for non-domestic purpose. A true copy of the show cause notice dated 22.03.2005 issued by the Respondent is annexed herewith and marked as Annexure R-3.



4.	20.06.2005	<i>Since. the show cause notice dated 22.03.2005 was not replied to by the Consumer, with the approval of the Director Commercial, a final letter of levying of misuse charges @ 50% on the nondomestic tariff against electricity connection bearing No. 76616L/D with effect from 09.11.2004 (i.e. from the date of three months prior to inspection) onwards was issued to the Consumer. A true copy of the letter for levying of misuse charges is annexed herewith and marked as Annexure R-4.</i>
5.	16.01.2020	<i>That thereafter a request letter dated 16.01.2020 was received from Tara Chopra Resident of B-13, Sujana Singh Park, New Delhi regarding removal of misuse and non-domestic tariff against Consumer Account No. 1013775. A true copy of the request letter dated 16.01.2020 received from the Petitioner is annexed herewith and marked as Annexure R-5.</i>
6.	28.01.2020	<i>On the basis of the representation dated 16.01.2020, inspection of the premises in question was carried out by the Enforcement Cell of Commercial Department on 28.01.2020 and it was found that the electricity supply of the entire premises was being used through two electricity connections i.e. K-76616L/D & K-76617P/D and at the time of inspection, it was found that the electricity supply against electricity connection K-6616/LD bearing GP 4572776 (Singe Phase) was being used in the main premises for domestic purpose but the electricity supply of the other electricity connection K76617/P/D bearing energy meter GP 1044676 (Polly Phase) was being used in the main premises as well as in the unauthorizedly extended open lawn area which exist at the back side of the said premises. Further, it was observed that there are store room and five (small and big sized) shed/classrooms which were fully furnished with student furniture constructed in the lawn area. Although, at the time of inspection, the same were found sealed excluding the store room but electricity supply of the lawn area was still energized through electricity connection no. K-76617/P/D bearing energy meter GP 1044676. A true copy of the inspection report dated 28.01.2020 is annexed herewith and marked as Annexure R-6. of inspection, the same were found sealed excluding the store room but electricity supply of the lawn area was still energized through electricity connection no. K-76617/P/D bearing energy meter GP 1044676. A true copy of the inspection report dated 28.01.2020 is annexed herewith and marked as Annexure R-6.</i>



7.	22.05.2020	<i>While, the case was still being processed, another request from the consumer dated 22.02.2020 was received in the office vide reference number 1451/AEE/(C) dated 22.02.2020, Computer No.325600 regarding request for reversal of the misuse charges and non-domestic tariff against CA number 1013775.</i>
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10. It is thus seen that the respondent-NDMC has contested the assertion of the petitioner that ever since the back-garden of the premises in question was sealed on 06.12.2019, the electricity connection was being used exclusively for domestic/residential purpose. According to the respondent-NDMC, the aforesaid submission is wholly incorrect and improper.

11. It is also stated by the respondent-NDMC that the electricity charges from November, 2019 to February, 2021 have been valued strictly in accordance with the inspection report and the extant rules and regulations.

12. A perusal of the facts and circumstances clearly illustrate that the Court is required to consider various aspects i.e., the actual use of the premises in question, whether the electricity connection was used for residential or commercial purpose for the relevant period, whether the meter in question remained functioning, applicability of the relevant rules and regulations under the facts of the instant case etc. However, this Court, in exercise of powers under Article 226 of the Constitution of India is unable to decipher the correctness of the submissions made by the respective parties as the same may require leading of evidence by the parties to substantiate their claims.

13. Recently, this Court *vide* decision dated 16.08.2024 in the case of ***Resident Welfare Association 12 Block Subhash Nagar v. Kishan Devnani***



Executive Engineer, South Delhi Municipal Corporation & Ors.¹ has taken a view that a petition wherein the rights involved are not clearly exposited and are in fact, rooted in complexity of disputed facts, the Court is constrained to start a roving enquiry and that may not be an appropriate recourse while exercising the writ jurisdiction. The relevant paragraphs of the said decision read as under:-

“Writ Jurisdiction in Cases involving disputed questions of facts

27. Yet another facet of the writ remedy under Article 226 of the Constitution of India is that **the Constitutional Courts cannot be expected to conduct a roving or fishing enquiry in cases where contentious issues of facts exist.** The Supreme Court in the case of *Radha Krishan Industries v. State of H.P.* has held that in cases where the disputed questions of facts are involved, the Court may decline to entertain the writ petition on that perspicuous count. The relevant extract of the said decision reads as follows:-

“(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with. ”

28. The Supreme Court in the case of Shubhas Jain v. Rajeshwari Shivam , has held that the Constitutional Courts, while exercising the writ jurisdiction, should restrain themselves from adjudicating the hotly disputed question of facts. The Court held as under:-

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

29. Furthermore, in the case of *Union of India v. Puna Hinda*, the Supreme Court has observed that in cases where disputed questions of facts are involved, the writ jurisdiction is not amenable. The relevant

¹ 2024:DHC:6204



observations of the Supreme Court as observed in the said case read as under:-

“24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads.”

30. At this juncture, it is apropos to lend credence to the observations of the Constitution Bench decision of the Supreme Court in the case of Thansingh Nathmal v. Supdt. of Taxes which reads as under:-

“The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to



correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

31. This Court as well, in the case of Harpati v. State (NCT of Delhi), has held that where there are disputed questions of facts involved, the High Court should not be entertaining the writ petition. The relevant extract of the said decision reads as under:-

“22. A reading of the aforesaid judgments makes it clear, that it is well settled proposition of law that when there are disputed question of facts involved in a case, the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India. Particularly in cases where tortious liability and negligence is involved, it has been held that the remedy under Article 226 may not be proper. In the instant case, the relief of compensation sought by the petitioners is contingent upon the resolution of the disputed question of facts raised, and these questions cannot be adjudicated only on the basis of affidavits. In view of the aforesaid, it would not be appropriate for this Court to entertain the instant writ petition as there are disputed questions of fact involved, the resolution of which is necessary, as an indispensable prelude to the grant of the relief sought.”

32. An upshot of the above discussion clearly elucidates that the Constitutional Courts while exercising the extraordinary powers under Article 226 of the Constitution of India inter alia have to scrupulously ascertain i) whether the petition has been filed with any oblique motive or vested interest, ii) whether disputed and complex questions of facts are involved that require a shred of evidence, iii) whether there exists an alternate and equally efficacious remedy to address the grievance, iv) whether any individual or legal right of the petitioner has been violated along with consequential breach of obligations on part of authorities concerned thereto, v) whether the nature of action and nature of activity under question falls in the domain of public law etc. The aforesaid exigencies are only illustrative in nature and not exhaustive. Without such a meticulous exercise, if writ petitions are being readily entertained, then the Constitutional Courts would be committing a breach of trust against



the genuine and bonafide litigants who have reposed faith in the constitutional machinery and have been longing since ages in the hope of justice. Undoubtedly, the scheme of Article 226 of the Constitution of India does not envisage such a practice and therefore, the Courts should be mindful while exercising the extraordinary writ jurisdiction. This self-imposed fetter on the discretionary extraordinary power of the Constitutional Courts was kept keeping in mind the spirit of Article 226 of the Constitution of India.

33. Any petition wherein the rights involved are not clearly explicated and are in fact, rooted in complexity of disputed facts, the Court is constrained to start a roving enquiry and that may not be an appropriate recourse while exercising the writ jurisdiction. Writ being discretionary and prerogative in nature, should not be exercised liberally without establishing the individual or legal rights and consequential breach of obligations on the part of the authorities concerned.

34. On this fulcrum, this Court also expresses its displeasure when petitions with vested interests are being filed under the writ jurisdiction. These cases lead to an undesirable docket explosion and often end up burdening the already saddled judiciary. Moreover, entertaining such writ petitions results in a domino effect and propels other litigants to file similar cases by frequently knocking on the doors of Constitutional Courts under Article 226 of the Constitution of India. Consequentially, these writ petitions, if being entertained, will consume not only judicial time but also resources, which can effectively be utilised in cases where parties have been awaiting the fate of their cases since ages. *In a judicial system with mounting pendencies, it is necessary for the Courts to ensure that judicial time is used judiciously. Judicial time, in principle and in fact, is public's time and the principles discussed above are only meant to ensure that it goes to the deserving causes so that the constitutional promise of guaranteed protection of rights is fulfilled in a time-bound manner.* This Court, in the W.P. (C) No. 9828/2015 titled as Kotak Mahindra Bank Ltd. v. Bank of Baroda, has considered the consequences of the liberal approach being adopted while entertaining the writ petitions under Article 226 of the Constitution of India. The relevant extract of the said decision reads as under:-

“The jurisdiction of the High Court under Article 226 of the Constitution of India is an extraordinary remedy, to be not invoked or allowed to be invoked ordinarily, as is found being done increasingly, leaving very little time for the High Court to deal under Article 226 with issues really deserving consideration



there under. Supreme Court, as far back as in Rashid Ahmed v. Municipal Board, Kairana 1950 SCC 221 : AIR 1950 SC 163 and Nain Sukh Das v. The State of Uttar Pradesh AIR 1953 SC 384 held that prerogative writs are extraordinary remedies intended to be applied in exceptional cases in which the ordinary legal remedies are not adequate but in the last over half century the said principle appears to have been forgotten, with the writ remedy being considered as a cure for all ordinary ailments also and for which the ordinary legal remedies under the civil law are adequate. The same has resulted in the High Court being inundated with writ petitions, the disposal whereof axiomatically is found to be taking, in most cases, as much time as the disposal of an ordinary civil lis, and which has resulted in the High Court facing difficulty in providing immediate relief even in deserving cases in writ jurisdiction and/or being left with little time to ponder over the important constitutional issues coming before it in the writ jurisdiction. In my humble view, a time has thus come for the High Court to send out a clear message of the writ remedy being an extraordinary remedy not available as an alternative to the remedy already available under the civil and general laws.”

35. This Court as well, in W.P.(C). 2873/2022 titled as Purandeep Singh v. BSES Yamuna Power Ltd., has noted the detrimental effect of entertaining the writ petitions wherein disputed questions of facts exist or where the alternate remedy was not exhausted before approaching the writ Court.”

14. In view of the aforesaid, the instant petition stands dismissed with a liberty to the petitioner to resort to appropriate remedy, if available, under the Electricity Act, 2003 or to institute a Civil Suit for recovery of the aforesaid amount.

15. The pending application also stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 21, 2024/MJ