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

+ **W.P.(C) 12146/2024**

SH SHAILASH KUMAR SINGHPetitioner

Through: Mr. Rajeev Ranjan Pandey, Mr.
Mukesh Kumar Pandey and Ms. Kirti
Yadav, Advs.

versus

BSES RAJDHANI POWER LIMITED & ANR.Respondents

Through: Mr. Rishab Raj Jain, SC for BSES
with Mr. Sharique Hussain, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **06.09.2024**

CM APPL 52143/2024 (for Restoration)

1. The present application has been filed under Section 151 CPC on behalf of the petitioner seeking restoration of the petition.
2. Heard.
3. Having perused the reasons for non-appearance of the petitioner on 02.09.2024 as stated in the instant application, the Court finds the reasons provided for non-appearance on the earlier date to be *bonafide*.
4. Accordingly, the application stands allowed and the petition is restored to its original number.
5. The application stands disposed of.



W.P.(C) 12146/2024

1. The prayer sought in the instant petition reads as under:-

“a) Issue an writ In the nature of mandamus order or direction to respondent no. 1 to provide temporarily electricity connection to the petitioner or in the portion of premises H.N.D-311,GF, BindaPur, DDA Flats Pocket-3, Uttam Nagar, New Delhi- 59 which is under occupation of the petitioners-tenants”

2. Having considered the nature of the relief sought, the Court is of the considered opinion that the grievance raised in the instant writ petition can be ventilated before the Consumer Grievance Redressal Forum (CGRF) in terms of Section 42(5) of the Electricity Act, 2003.

2. The Court, dealing with a similar set of facts in W.P.(C) 10079 of 2024 in a case titled as ***Amrit Singh v. BSES Rajdhani Power Ltd***, vide order dated 24.07.2024 has held as under:-

“10. Admittedly, in the instant case, neither the petitioner has approached the Consumer Grievance Redressal Forum [‘CGRF’] as envisaged under Section 42 (5) of the Act of 2003, nor he has approached the Ombudsman as provided under Section 42 (6) of the Act of 2003.

11. Undoubtedly, the grievance which has been put forth by the petitioner can still be examined by the CGRF in an effective manner. It is also equally well settled that a writ petition is a discretionary remedy which can be declined if there is an equally efficacious alternate remedy.

*12. The aforesaid position of law has been settled by the Supreme Court in a series of judicial pronouncements. The decision of the Supreme Court in the case of **M/S Radha Krishan Industries v. The State Of Himachal Pradesh**⁵ vividly encapsulates the aforesaid position and the relevant extract of the said decision is culled out as under:-*

“The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;



(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(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.”

13. In the case of **Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd.**⁶, the Supreme Court held that since the Act of 2003 has created CGRF, all the individual grievances of consumers have to be raised before such forum only. While affirming the decision passed by this Court in **Suresh Jindal v. BSES Rajdhani Power Ltd. & Ors.**⁷ and **Dheeraj Singh v. BSES Yamuna Power Ltd.**⁸, wherein, it was held that the CGRF and the Ombudsman has the authority to pass an interim order as well, the Supreme Court further held that Sections 42(5) and 42(6) provide a complete machinery for redressal of grievances of the consumers. The Supreme Court in the said case remitted the matter back to the CGRF for adjudication on merits. The relevant paragraphs of the decision in *Reliance Energy* (supra) are extracted as under:-

“33. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as “the 2003 Regulations”) and created Consumer Grievance Redressal Forum and Ombudsman. **Under these 2003 Regulations a proper forum for redressal of the**



grievances of individual consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in Suresh Jindal v. BSES Rajdhani Power Ltd. [(2006) 132 DLT 339 (DB)] and Dheeraj Singh v. BSES Yamuna Power Ltd. [Ed. : (2006) 127 DLT 525 (DB)] and we approve of these decisions. It has been held in these decisions that the forum and ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Sections 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a forum/ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act.

34. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) read with the Regulations of 2003 as referred to hereinabove.”

3. Leaving the aforesaid liberty reserved in favour of the petitioners, the instant petition stands disposed of alongwith pending application. All rights and contentions are left open.

PURUSHAINDRA KUMAR KAURAV, J.

SEPTEMBER 6, 2024

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