



\$~31

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

+ **W.P.(C) 13213/2024 & CM APPL. 55158/2024**

KALYAN KUMAR BHATTACHARJEE

.....Petitioner

Through: Mr.Ashim Shrihar and Ms.Radhika
Gupta, Advs.

versus

BSES RAJDHANI POWER LTD. & ORS.

.....Respondents

Through: Mr.Raghav Awasthi and Mr.Rishab
Raj Jain, SC for R-1.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **20.09.2024**

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

“Issue a writ in the nature of mandamus or any other appropriate writ/order or direction 'in favour of the Petitioner directing the Respondent No. 1 i.e. BSES Rajdhani Power Ltd. to provide electricity connection at the subject matter property i.e. B-5, second floor (left side portion),, Wing 1, area measuring 60 sq. yds., Plot No. F-44, out of total land measuring approximately 500 Sq. yds., Khasra No. 62 Min, Ber Sarai, Tehsil Mehrauli, New Delhi - 110016.”

2. Upon examining the prayer clause, it is seen that the prayer essentially relates to grant of an electricity connection. A perusal of the provisions enshrined in the Electricity Act, 2003, more specifically Section 42(5) therein, would indicate that the petitioner may approach the Consumer Grievance Redressal Forum [CGRF] for agitating the grievance made in the instant writ petition.



3. When posed a question as to why this Court should exercise its extraordinary jurisdiction when an efficacious alternate remedy is available, the learned counsel appearing on behalf of the petitioner has placed reliance on a decision of this Court in the case of ***Real Anchors Projects LLP & Ors. v. NCT of Delhi and Ors.***¹, wherein the Court has directed for the grant of electricity connection. However, upon perusing the said order, it is seen that the Court has not considered the alternate remedy available under Section 42(5) of the Electricity Act, 2003.

4. In W.P(C) 10079/2024, *vide* order dated 24.07.2024, this Court has considered the aforesaid aspect and has passed the following directions:-

“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 Pradesh⁵ 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*

¹ 2023 SCC OnLine Del 114.



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., 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. and Dheeraj Singh v. BSES Yamuna Power Ltd., 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.”

14. Notably, the decision of this Court in the cases of Abhijit Anand v. Chairman Delhi Electricity Regulatory Commission and Ashok Yadav v. BSES Rajdhani Power Limited also aid to the similar position of law as has been rendered in the case of Ram Kishan (supra).

15. It is thus safely discernible from the aforementioned decisions that the submissions which have been made by the petitioner in the instant petition can also be looked into by the concerned authority which is provided under the Act of 2003.

5. In view of the aforesaid, the Court is not inclined to entertain the instant writ petition and instead grants liberty to the petitioner to approach the CGRF.

6. In view of the aforesaid, the instant writ petition, along with pending application, stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 20, 2024/MJ