



\$~R-17, 34, 35, 37 & 48

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

+ W.P.(C) 9215/2007

KISHAN SINGH SHOKEEN

..... Petitioner

Through: Mr. V.K. Goel, Advocate

versus

B.S.E.S.RAJDHANI POWER LTD.

..... Respondent

Through: Mr. Raghav Awasthi and Mr. Harshad
Arora, Advocates

34

+ W.P.(C) 9373/2009

SURAJ SHARMA

..... Petitioner

Through: Mr. V.K. Goel, Advocate

versus

NDPL

..... Respondent

Through: Mr. Manish Kumar Srivastava, Mr. Moksh
Arora, Mr. Santosh Ramdurg, Advocates
alongwith Mr. Amit Singh, AGM Legal for
Tata Power Delhi Distribution Limited

35

+ W.P.(C) 10027/2009

VISHAL MACH WORKS

.... Petitioner

Through: Mr. V.K. Goel, Advocate

versus

BSES YAMUNA POWER LTD.

..... Respondent

Through:



37

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W.P.(C) 10687/2009
ATMA RAM GOEL

..... Petitioner

Through: Mr. V.K. Goel, Advocate

versus

NDPL

..... Respondent

Through: Mr. Manish Kumar Srivastava, Mr. Moksh
Arora, Mr. Santosh Ramdurg, Advocates
alongwith Mr. Amit Singh, AGM Legal for
Tata Power Delhi Distribution Limited

48

+

W.P.(C) 4335/2010
SUSHMA BANSAL

..... Petitioner

Through: Mr. V.K. Goel, Advocate

versus

NDPL

..... Respondent

Through: Mr. Manish Kumar Srivastava, Mr. Moksh
Arora, Mr. Santosh Ramdurg, Advocates
alongwith Mr. Amit Singh, AGM Legal for
Tata Power Delhi Distribution Limited

CORAM:

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV**

ORDER

01.07.2024

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1. Since the issue involved in the instant petitions is similar, therefore, the same are being decided by common order.
2. For the sake of convenience, the facts are taken from W.P.(C) 9215/2007. The petitioner seeks to challenge the impugned assessment bill for alleged theft of electricity amounting to Rs.30,37,015/- against K.No. 26300D150022 installed at the Khasra No. 7/24, Village Nilothi, New



Delhi-110041.

3. Mr. V.K. Goel, learned counsel appearing on behalf of the petitioner primarily assailed the impugned action of the respondent on the fulcrum that it is a violation of the statutory Rules and Regulations. He submitted that the petitioner had been regularly paying the electricity bill. He argued that the complaint regarding the malfunctioning of the meter was already lodged before the Respondent on 09.03.2007, however, the respondent did not take any action thereon. Furthermore, he assailed the impugned action on the anvil that no lab report regarding the irregularities in the meter was provided to the petitioner and thus, it violates the provisions of the Delhi Electricity Regulatory Commission (Performance Standards Metering and Billing) Regulations, 2002. He, therefore, submits that since the respondents have violated the statutory Rules and Regulations, therefore, this Court can entertain a writ petition.

4. *Per contra*, learned counsel appearing on behalf of the respondent vehemently opposed the submissions. He argued, at the outset that the averments made by the petitioner in the writ petition are incorrect and completely misplaced. He submitted that the burnt meter was sent to a lab for testing and as per the meter analysis report dated 21.04.2007, it was found that the meter was tampered. Moreover, when the respondent inspected the premises of the petitioner, the new meter connection was also found burnt and tampered. Pursuant thereto, a report was prepared as per the extant rules and regulations of meter tampering. The representatives of the petitioner were present during the entire process but refused to sign and receive a copy of the inspection report. Thereafter, on the basis of the meter analysis report, a show cause notice dated 05.04.2007 regarding the



Dishonest Abstraction of Energy (DAE) was issued alongwith the report. An opportunity of hearing was also accorded to the petitioner. He submitted that the assessing officer after considering all the facts and circumstances as well as the objections raised by the petitioner, found the case of meter tampering and theft of electricity under the Delhi Electricity Supply Code and Performance Standards Regulations, 2007 and Section 135 & 138 of Electricity Act, 2003.

5. I have heard the learned counsel appearing on behalf of parties and perused the record.

6. At the outset, it is imperative to point out that there is no gainsaying that Article 226 of the Constitution grants wide amplitude of powers to the constitutional courts however, such powers are not absolute and there are fetters imposed on the exercise of extraordinary writ jurisdiction. There is no dispute on the settled position of law that in cases where disputed questions of fact are required to be adjudicated in the writ proceedings, the High Court should not exercise the extraordinary powers vested in it by virtue of Article 226 of the Constitution.

7. The dictum laid down by the Supreme Court in ***Shubhas Jain v. Rajeshwari Shivam***,¹ is of also pertinent importance, wherein, the Court has held that the High Court while exercising the jurisdiction under Article 226 of Constitution, should not adjudicate on the disputed questions 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

¹ 2021 SCC OnLine SC 562.



comparative assessment of conflicting technical reports and decide which one is acceptable.”

8. Considering the case in hand, the dispute involves certain questions of facts like whether the meter itself was tempered and as to who was responsible for the same. These issues are highly contentious. Therefore, on the conspectus of the settled legal position as enunciated above, it is amply clear that since, the petitions at hand, involve various disputed questions of facts which would require a shred of evidence to be laid by the concerned party and a meticulous examination of such evidence before deciding such dispute. The Court, therefore, is not inclined to adjudicate such disputes in writ jurisdiction.

9. At this juncture, it is imperative to place reliance on the decision of the Supreme Court in SLP(C) No. 6883/2017 titled as ***North Delhi Power Limited v. Devinder Singh & Anr.***, wherein, the Court discussed the jurisdiction of the Civil Court in the context of the Electricity Act, 2003 and held that for disputes of such nature can be adjudicated by the Civil Court. The relevant paragraphs of the said decision are reproduced as under:-

*“ It is clear from a perusal of the aforesaid sections that the Special Electricity Court acts as a Court of Sessions and has been set up to try offences that are committed under the Act. **By no stretch of imagination can it be stated that a civil suit would be within the jurisdiction of such Court.** We are , therefore , of the view that the impugned judgment deserves to be set aside.*

10. This Court is not oblivious to the settled position of law that the presence of an alternate efficacious remedy by itself does not oust the jurisdiction of a writ court. However, such a position is also not absolute rather than subject to certain exceptions as enunciated by the Supreme Court



in the decision of ***Radha Krishan Industries v. State of H.P.***,² wherein, the Court observed as under:-

“27. The principles of law which emerge are that:

27.1. 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.

27.2. 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.

27.3. 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.

27.4. 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.

27.5. 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.

27.6. 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.

² (2021) 6 SCC 771.



28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad, (2003) 5 SCC 399] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions.”

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.

PURUSHAINDR KUMAR KAURAV, J

JULY 1, 2024

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