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

% ***Judgment pronounced on: 13.05.2025***

\+ **W.P.(C) 17658/2022 and CM APPL.56425/2022**

SH. JOGINDER KUMAR GOYAL &ANR. .....Petitioners

Through: Mr. Ravi Sikri, Sr. Adv. along with Mr. Gaurav Goyal, Mr. Deepank Yadav, Mr. Rohit Agrawal, Ms. Kanak Grover, Mr. Abhinav Garg and Mr. Mihir Gujjewar, Advocates.

versus

BSES RAJDHANI POWER LIMITED &ANR. ..... Respondents

Through: Mr. Sandeep Sethi, Sr. Adv. along with Mr. Manish Srivastava, Mr. Moksh Arora, Mr. Santosh Ramdurg, Mr. Hardik Vashisht, Mr. Yash Srivastava, Ms. Shikha Jha and Ms. Riya Kumar, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioners under Article 226 of the Constitution of India, *inter alia*, praying as under :-

> *"a. Issue a Writ of Certiorari or any other appropriate Writ, order or direction for quashing and setting aside the Impugned Notice/Letter dated 29.08.2022 and direct the Respondents to convert the electricity connection (CA N0.153802145) allotted to the basement portion of the property bearing no. B-7 /118 (Extension), Safdarjung Enclave, New Delhi - 110029 from 'non-domestic' to 'domestic' category; and*
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> *b. Direct the Respondents to refund the amount paid by the Petitioners for the illegal bills issued by the Respondents since the electricity connection ought to have been under 'domestic' category; and*

c. Issue a Writ of Certiorari or any other appropriate Writ, order or direction for quashing and setting aside the Notice Ref No. FY22-23/HKS/ 153156404 dated 15.07.2022 issued by the Respondent No.1."

2. The petitioners are thus assailing the letter/notice dated 29.08.2022 (hereafter '*impugned notice dated 29.08.2022'*) whereby liability has been sought to be fastened on the petitioners to pay electricity charges under "non domestic" category with respect to the CA No.153802145 allotted to the basement of the property bearing no. B-7 / 118 (Extension), Safdarjung Enclave, New Delhi -110029. The impugned notice dated 29.08.2022 reads as under :-

> *"With reference to subject captioned letter - Basement is an integral part of the residential building and can be used for storage, parking etc. However as per Delhi Bye Law 4,4.3 - Basement shell not be covered under FAR of building, therefore cannot be utilized form residential purposes. And as per Provisions laid down by DERC Supply code and Tariff Order any other category of consumers not specified/ covered in any other category in this Schedule shall be charged under Non domestic category.*
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> *Hence in view of the above BSES can only provide Non-Domestic category to the connections issued in Basement as per prevailing DERC Tariff order and Bye Laws."*

3. The petitioners are further challenging the notice bearing no. FY22-23/HKS/153156404 dated 15.07.2022 (hereafter '*impugned notice dated 15.07.2022'*). The impugned notice dated 15.07.2022 reads as under :-

> *"1.Please note that you, being an electricity consumer, are mandated to comply with the provisions of the Electricity Act, 2003, all applicable laws, tariff orders and the Rules and Regulations framed thereunder including Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 (as amended from time to time) (CEA Safety Regulations) and the Delhi Electricity Regulatory Commission (Supply code and Performance Standards) Regulations, 2017 (Supply code as amended from time to time).*
>
> *2. Accordingly, the above-referred Notice dated 15.05.2022 was issued intimating that your sanctioned load is required to be enhanced to 4 kw/kV A based upon an average of maximum demand readings recorded as per the*

billing cycle covering any four consecutive calendar months in the previous financial year i.e. 01.04.2021 to 31.03.2022, against the aforementioned C.A. No. 153156404. As per DERC Supply Code, the security amount and all other applicable charges also need to be revised and therefore, future bill would be generated accordingly.

3. You would appreciate that health and safety of your installation are essential for not only maintaining reliable supply to your premises, but also for all other installations in your vicinity as well to ensure safety for you, your family and society at large (including BRPL Employees). Therefore, it is requested to kindly take immediate steps to ensure the compliance of abovementioned applicable laws/ regulation pursuant to the said revision in sanctioned load in regard to the following:

a. Test report mentioning load details including details of RCCB & MCB duly signed by consumer and electrical contractor.

4. Kindly submit the above document within 15 days from the receipt of this letter to the officer via. mail on brpl.customercare@relianceada.com or visit division office of your area.

5. In case of non-compliance/failure in submission of above documents within the above specified timelines, BRPL may take appropriate actions as per the applicable laws/regulations.

6. Further, you are also requested to retain the copy of such document with yourself for any future reference/requirement by any external agencies/authorities or otherwise."

4. The petitioner no. 1, Mr. Joginder Kumar Goyal, and petitioner no. 2, Mrs. Punam Goyal, are the owners of both the ground floor and basement of the property located at B-7/118 (Extension), Safdarjung Enclave, New Delhi – 110029. Respondent no.1, BSES Rajdhani Power Limited (BRPL), is a company incorporated under the Companies Act, 1956. It operates as a joint venture between Reliance Infrastructure Ltd. and the Government of the National Capital Territory of Delhi (GNCTD). BRPL, with its registered office at BSES Bhawan, Nehru Place, New Delhi – 110019, holds a license for the distribution and retail supply of electricity within its designated supply area. Respondent no.2 is the Assistant Manager (Power Supply) in

the Hauz Khas division of BRPL.

5. On 01.02.2022, the petitioners purchased the basement and ground floor of the residential property at B-7/118 (Extension), Safdarjung Enclave, New Delhi, from M/s Valmax Buildcon Pvt. Ltd. The purchase was formalized through a duly registered Sale Deed dated 01.02.2022, with the property classified as “residential”. It is submitted that the stamp duty, corporation duty and registration fee has also been charged under the residential category by the office of the Sub-Registrar-VII-A, Sarojini Nagar, New Delhi/Delhi.

6. The petitioners reside on the ground floor, with two separate electricity connections, CA No. 153802145 for the basement and CA No. 15704362 for the ground floor. The basement’s previous electricity connection, CA No. 135156404, was transferred to the petitioners under the new CA No. 153802145.

7. On 15.07.2022, a notice under Regulation 17(4) of the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017, was issued to M/s Valmax Buildcon Pvt. Ltd. (the erstwhile owner of the concerned property). The said notice was forwarded to the petitioners on 30.07.2022 by M/s Valmax Buildcon Pvt. Ltd.

8. Upon inspecting the electricity bills, the petitioners discovered that the basement’s connection was billed under the “non-domestic” category, despite the property being designated as residential.

9. The petitioners responded to the said notice dated 15.07.2022 on 01.08.2022, by stating that the notice was erroneously addressed to a non-existent consumer and connection, CA No. 153156404, which had been

replaced by CA No. 153802145 after the petitioners purchased the property. The petitioners further stated that the discrepancy with respect to the non-domestic connection was unnoticed earlier as the petitioners assumed that the electricity connection would fall under the "domestic" category, consistent with the property's classification. They clarified that the property, including the basement, is residential, as indicated by the Sale Deed and other documents, and is used solely for domestic storage, with no commercial activities taking place. They requested a joint inspection to verify the basement's usage, a reclassification of the electricity connection to "residential," and adjustments for the charges paid under the incorrect classification. They also asked for the load capacity to be increased to 11 KW and expressed willingness to pay the requisite charges.

10. Thereafter, the Assistant Manager (Power Supply) of BRPL (respondent no. 2) issued the impugned notice dated 29.08.2022. The petitioners responded to the said notice on 19.09.2022, clarifying that they use the premises solely for residential purposes and that the electricity tariff should reflect this as a domestic usage.

11. In the above background, the petitioners have filed the present writ petition seeking appropriate relief.

12. Mr. Ravi Sikri, Ld. Sr. Counsel on behalf of the petitioners, has submitted as under:

(i) The respondents have classified the electricity connection bearing CA No. 153802145 for the basement as "non-domestic," even though the basement is part of a residential property.

(ii) To support the contention that the basement is an integral part of the residential property and is used solely for domestic storage, rather than any commercial purpose, it was emphasized by Mr. Ravi Sikri that this fact has been acknowledged by the respondents in the impugned notice dated 29.08.2022, wherein it was explicitly mentioned that – "*Basement is an integral part of the residential building and can be used for storage, parking etc.*" It was further asserted that the basement floor is designated for domestic or household storage according to Master Plan for Delhi – 2021 ("MPD-2021") and the relevant building bye-laws. Further it has been submitted that the respondents have themselves admitted that the Regulation/Rule 7.4.11 of the Unified Building Bye-Laws Delhi, 2016 provides that a basement can only be used for storage of households, for other goods, for non-flammable material, dark rooms, strong rooms, bank cellars, stack rooms of libraries, air conditioning equipment/s and other machines used for services and utilities of the buildings etc. as per Master Plan for Delhi.

(iii) For countering the respondents' contention to the effect that terms from other statutes or regulations cannot be imported for the interpretation of the provisions of the Electricity Act, 2003 or the regulations framed thereunder, Mr. Sikri asserts that the impugned notice dated 29.08.2022 explicitly relies on Rule 4.4.3 of the Delhi Building Bye-Laws. This reliance was made specifically for the grant of a non-domestic electricity connection. It is the case of the petitioners that the respondents cannot now argue that the building Bye-Laws are not relevant for the purpose of the category of electricity connection to be granted. The officers of the respondents have themselves relied upon these rules and Bye-

Laws, establishing their applicability in this context.

(iv) Mr. Sikri, learned senior counsel for the petitioners further contends that, under the classifications set forth by the Delhi Electricity Regulatory Commission, consumers are categorized into various segments. The key issue highlighted by the Ld. Sr. Counsel is whether a property that does not engage in any commercial activity should be classified under the non-domestic category as per the applicable tariff order, despite its residential nature.

(v) The petitioners further contend that the term “domestic storage” is not explicitly defined in the building bye-laws. Nonetheless, the general understanding of domestic storage refers to the storage of household goods and items necessary for human needs and residential purposes. This includes items used daily by a family. The petitioners emphasized that the basement portion of the residential building in question is utilized solely for domestic storage and hence should fall under the domestic category for the purpose of determining the electricity charges.

(vi) The petitioners further asserted that the entire building plan, as approved by the South Delhi Municipal Corporation (SDMC), now known as the Municipal Corporation of Delhi (MCD), designates the property for residential use, with the basement specifically sanctioned for domestic storage. There is no basis for ascribing “non-domestic” or “commercial” category to the basement. Thus, learned Sr. Counsel for the petitioners submits that the respondents’ decision to provide an electricity connection under the non-domestic category is arbitrary and contrary to the sanctioned plan issued by the SDMC. The petitioners have also furnished the completion plan and occupancy certificate for the property, specifically for the basement, which indicates that it is designated exclusively for domestic or household purposes. Moreover, the petitioners pay house/property tax for both the basement and ground floor, affirming their use of the property as a residential dwelling. Even the water connection of the petitioners is being charged under the domestic category. Contrary to the respondents' allegations, no commercial activities are being conducted; the basement is used solely for domestic storage.

(vii) Mr. Sikri, has also invited the Court's attention to Clause 1 (a) and Clause 1 (p) of the Tariff Orders 2021 – 2022 (Hereafter *tariff orders*). According to the petitioners, these provisions explicitly allow for the granting of domestic electricity connections to various categories, including residential consumers under Clause 1(a) and professionals like doctors and lawyers under Clause 1(p).

(viii) It is the case of the petitioners that the petitioners are the residential consumers and are squarely covered in Clause 1 (a).

(ix) It is also the case of the petitioners that the petitioner no. 1 is an advocate. The petitioners asserted that if they choose to use the basement as a legal office in the future, the premises must still be granted a domestic electricity connection. To drive this point home, the learned Sr. Counsel for the petitioners has placed reliance on the decisions in ***B. N. Magon v. South Delhi Municipal Corporation,*** 2015 SCC OnLine Del 6819***, South***

Delhi Municipal Corporation v. B.N. Magon, 2023:DHC:4316-DB, ***Municipal Corporation of Delhi v. B.N. Magon,***SLP (C) No. 53916/2023***, Tehsil Bar Association v. U.P. Power Corporation Limited and Others,*** 2023 SCC OnLine All 566***, Arup Sarkar v. C.E.S.C Limited and Others,*** 2020 SCC OnLine Cal 295and ***V. Sasidharan v. Peter and Karunakar and Others,*** (1984) 4 SCC 230.

(x) In light of the aforesaid submissions, the petitions have countered the averments of the respondents, that the petitioners' use of the premises for household storage falls under Clause 2(o) of the non-domestic category of the tariff orders, by stating that the respondents' reliance on such an ambiguous term is baseless, prejudiced, and legally unsound. The petitioners have asserted that the respondents have deliberately overlooked specific categories, such as Clause 1(a) and Clause 1(p), under which the petitioners fall.

(xi) It is further argued that the respondents have failed to provide a valid basis for assigning a non-domestic electricity connection, offering no reasoning or justification in the impugned notices dated 15.07.2022 and 29.08.2022. According to the petitioners, the respondents had merely referred to Rule 4.4.3 of the Delhi Building Bye-Laws for asserting that basements in residential buildings cannot be used for residential purposes. However, the petitioners contend that Rule 4.4.3 does preclude basements from being considered as an integral part of the residential property. The petitioners further assert that the respondents' actions are based on an incomplete understanding and a misinterpretation of the Delhi Building Bye-Laws.

(xii) Lastly, as regards maintainability of the present writ petition, it is submitted that reliance on ***Ram Kishan v. NDPL,*** 2005 SCC OnLine Del 1281 is misconceived. It is submitted that this judgment is specifically related to disputes over billing issues. However, as per the petitioners the current matter does not involve billing discrepancies but rather centres categorisation of the petitioners' connection.

13. Mr. Sandeep Sethi, learned senior counsel on behalf of the respondents, has made the following submissions:

(i) The foremost objection of the respondents is that the present petition is not maintainable because the petitioners have an alternative remedy under Section 42(5) of the Electricity Act, 2003. The Ld. Sr. Counsel for the respondents has placed reliance on the decision of the Division Bench of this Court, in the case of ***Ram Kishan vs. NDPL*** (Supra), wherein it was held that writ petitions should not be entertained for disputes related to electricity, water, telephone, or other bills if a statutory forum is available for resolving such disputes.

(ii) It is further contended that the petitioners are challenging the provisions of the tariff orders, issued by the Delhi Electricity Regulatory Commission (DERC), through the present writ petition. It is submitted that such a challenge should not be brought before this Court, as there is an appropriate remedy available under Section 111 of the Electricity Act, 2003, to contest orders passed by the DERC.

(iii) Mr. Sethi also drew the Court's attention to Clause 2(o) of the relevant portion of the tariff order. It is submitted that the petitioners' use of the basement for household or domestic storage falls within the non-domestic category, as outlined in Clause 2(o). He argued that because household storage is not explicitly included in the domestic category of the tariff order, the basement should be treated as a separate non-residential premise. It is submitted that the definition of the domestic category, cannot be stretched to cover premises like the basement, which are not specifically mentioned in the tariff order.

(iv) In response to the petitioners' claim that their case falls under Clause 1(a) of the tariff order, which covers "Residential Consumers," the respondents assert that household or domestic storage does not fall within the ambit of the residential consumer and therefore cannot be categorized under Clause 1(a).

(v) To further support their position, the respondents argued that the basement in question cannot be classified or used as a residential unit because the Master Plan for Delhi 2021 (MPD 2021) does not permit basements to be used for residential purposes. According to MPD 2021 and the Unified Building Bye-Laws 2016, basements are allowed only for household storage.

(vi) The respondents also claimed that the basement has its own independent electricity connection, separate from the ground floor, indicating that the basement and ground floor are distinct premises. The Ld. Sr. Counsel for the respondents stressed that there is no evidence to suggest that the basement is integrally connected to the ground floor, which would justify treating it as part of a single residential unit.

(vii) The respondents further argue that just because the petitioners reside on the ground floor, it does not automatically render the basement a residential unit. Under the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations 2017, each floor or dwelling unit requires its own separate electricity connection. The respondents emphasized that while the MPD 2021 permits basements to be used for household storage, this is fundamentally different from residential use. They contended that "household storage" cannot be equated with "residential purposes," and therefore, the basement cannot not fall under the "domestic category" as defined by the tariff order.

(viii) Mr. Sethi also argued that under the Electricity Act, 2003, the distribution company (DISCOM) is required to charge tariffs set by the Delhi Electricity Regulatory Commission (DERC). The DERC, in accordance with sections 45, 50, and 62 of the Electricity Act, 2003, has the authority to establish and differentiate tariffs based on the nature and purpose of electricity usage.

(ix) The respondents emphasized that a review of the MPD 2021 and the Unified Building Bye-Laws for Delhi 2016 clearly indicates that basements cannot be used for residential purposes.

(x) Given these restrictions, the respondents asserted that basements cannot be classified as independent dwelling units or used for residential purposes under the tariff order. As a result, they argued that only non-domestic connections should be issued for basements.

(xi) Finally, the respondents have brought to the Court's attention a letter dated 08.04.2024, issued by DERC, which clarifies that basements are permitted for non-domestic connections. However, if basements are used solely for household storage, the existing residential electricity connection for the building may be extended to cover the basement.

ANALYSIS AND CONCLUSION:-

14. In the aforesaid conspectus, the issues that arise for consideration in the present petition are –

a. Whether the present writ petition is maintainable?

b. Whether a basement which is used for domestic or household storage, is exigible for electricity connection under the "domestic" category or under "non-domestic" category according to the Tariff Order 2021-2022?

15. The respondents argued that the petition is not maintainable, citing the availability of an alternative remedy under Section 42(5) of the Electricity Act, 2003, which mandates the establishment of a consumer grievance redressal forum by every distribution licensee. The said provision reads as under –

> *"(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission."*

16. Learned senior counsel for the respondents has also relied on the judgment in ***Ram Kishan vs. NDPL***[1], wherein the Division Bench of this Court has held that writ petitions should not be entertained for disputes related to electricity, water, telephone, or other bills if a statutory forum exists for resolving such disputes and has observed thus –

> *"2. We have heard the learned Counsel for the parties and perused the record. The dispute is regarding the electricity bills stated to be payable by the appellant.*
>
> *3. In our opinion all disputes regarding electricity bills should first go before the appropriate Forum provided for in Section 42(5) and thereafter to the Ombudsman under Section 42(6) of the Electricity Act, 2003 and only thereafter should writ petitions be entertained.*
>
> *xxx xxx xxx*
>
> *11. We are of the opinion that ordinarily no writ petition should be entertained regarding disputes relating to electricity, water, telephone and other kind of bills, if there is a Forum provided under the statute or rules or regulations thereunder for resolving such disputes."*

17. After perusing the said judgment, this Court finds force in the contention advanced on behalf of the petitioners that the ruling in ***Ram Kishan vs. NDPL*** (supra) pertains specifically to billing disputes, such as challenges to excessive charges. However, the current case does not involve billing discrepancies, but raises a fundamental issue as to the categorisation of the basement, which is a part of the composite property of the petitioners. It is contended that there is inherent arbitrariness in the manner in which "non-domestic" status has been conferred to the basement, despite the same being an inseparable part of the petitioner's residential premises. As such, it is contended that the petitioner's right under Article 14 of the Constitution

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[1] LPA No. 746/2004

have been seriously infringed.

18. Given the issues raised by the petitioners, it cannot be said that the present petition would be barred on the basis of the observations in ***Ram Kishan vs. NDPL*** (supra).

19. The respondents also opposed the maintainability of the present petition on the ground that an alternative remedy is available under Section 111 of the Electricity Act, 2003 which provides an appellate forum for the purpose of filing appeal against the tariff order issued by DERC. However, the said contention is also untenable inasmuch, the petitioner is not aggrieved by the tariff order, but by its (allegedly) arbitrary application and misconstruing thereof by the respondents.

20. The petitioners have raised a vital issue regarding the manner in which the basement premises are being wrongly categorized as "non-domestic" for the purpose of electricity connection/charges. The issue involved has far-reaching implications and directly impinges upon the fundamental rights of the petitioners.

21. The Supreme Court in the case of ***Radha Krishan Industries v. State of Himachal Pradesh & Ors.,*** 2021 SCC OnLine SC 334, has 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. <u>Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected</u>*

<u>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</u>.

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."

[Emphasis Supplied]

22. In the circumstances, it cannot be said that the present petition is not maintainable.

23. The substantive issue that arises for consideration is whether the basement, which is an integral part of the composite residential premises and is used for household storage purposes, can be classified under the "non-domestic category" for the purpose of the electricity connection in respect thereof.

24. The letter dated 29.08.2022, issued by the respondents, mentions that "*basement is an integral part of the residential building and can be used for storage, parking and etc*.". Thus, there is no controversy that the basement in question is an integral part/adjunct to the petitioners' residential premises. Admittedly, the electricity connection in respect of the ground floor has been granted under the domestic category on the basis that the petitioners' are the "residential consumers" as contemplated under the Tariff order.

25. The question is whether the petitioners cease to be "residential consumers" in respect of the basement, although the same is a part of the same composite residential property and which is used for domestic/household storage purposes.

26. The relevant portion of the Tariff Order 2021 - 2022 reads as under:

> *"1. **DOMESTIC CATEGORY***
> *1.1 Domestic Lighting, Fan and Power (Single Point Delivery and Separate Delivery Points/Meters)*
>
> ***<u>Available to following</u>:***
> *a. <u>Residential Consumers.</u>*
> *b. Hostels of recognized/aided institutions which are being funded more than 90% by Municipal Corporation of Delhi or Government of the NCT of Delhi or any other Government/local bodies [local bodies include NDMC and MCDs (North, South & East)].*
> *c. Staircase lighting in residential flats separately metered.*
> *d. Compound lighting, lifts and water pumps etc., for drinking water supply and fire-fighting equipment in residential complexes, if separately metered.*
> *e. In Group Housing Societies etc. for bonafide use of lighting/fan and power, subject to the provision that the supply is at single point delivery for combined lighting/fan & power.*
> *f. Dispensary/ Hospitals/ Public Libraries/ School/ College/ Working Women's Hostel/ Charitable homes run and funded by more than 90% by Municipal Corporation of Delhi or Government of the NCT of Delhi or any other Government/local bodies.*
> *g. Small Health Centres including Mohalla Clinics approved by the Department of Health, Government of NCT of Delhi for providing charitable services only.*
> *h. Recognized Centres for welfare of blind, deaf and dumb, spastic children, physically handicapped persons, mentally retarded persons, as approved by the Government of NCT of Delhi and other Government.*
> *i. Public parks except temporary use for any other purpose.*
> *j. Bed and Breakfast Establishments (Residential Premises) registered u/s 3 of the National Capital Territory of Delhi (Incredible India) Bed and Breakfast Establishments (Registration & Regulations) Act, 2007.*
> *k. Places of Worship.*
> *l. Cheshire homes/Orphanage.*
> *m. Shelter Homes (including Night Shelters) approved by Delhi Urban Shelter Improvement Board, GoNCTD.*
> *n. Electric Crematoriums.*
> *o. Gaushala Registered under GoNCTD.*

p. Professionals i.e. individuals engaged in those activities involving services based on professional skills, viz Doctor, Psychologist, Physiotherapist, Lawyer, Architect, Chartered Accountant, Company Secretary, Cost & Works Accountant, Engineer, Town Planner, Media Professional and Documentary Film Maker may utilize the domestic connection at their residence for carrying out their professional work in the nature of consultancy without attracting Non-Domestic tariff for the electricity consumed, provided that the area used for professional activity does not exceed the area permitted to be used for such activity in residential area under the Master Plan for Delhi, 2021 (MPD-2021), which as per MPD-2021 is permissible on any one floor only but restricted to less than 50% of the permissible or sanctioned FAR whichever is less on that plot or dwelling unit.
q. Available, for loads up to 21 kW, to farm houses for bonafide domestic self-use.
r. The consumers (owner, tenant or occupier of premises) running small commercial establishments including Paying Guest from their households (houses under Domestic Category) having sanctioned load upto 5kW under Domestic Category, shall be charged Domestic Tariff.
s. Cattle Farms/ Dairy Farms/ Dhobi Ghat with a total consumption of not more than 1000 units/month.

XXX XXX XXX

*2**. NON-DOMESTIC***
Available to all consumers for lighting, fan & heating/cooling power appliances in all Non-Domestic establishments as defined below:
a. Hostels/Schools/Colleges/Paying Guests (other than that covered under Domestic Category)
b. Auditoriums, Lawyer Chambers in Court Complexes, nursing homes/diagnostic Centres other than those run by Municipal Corporation of Delhi or the Government of NCT of Delhi (other than that covered under domestic category).
c. Railways (other than traction), Hotels and Restaurants
d. Cinemas
e. Banks/Petrol pumps including CNG stations
f. All other establishments, i.e., shops, chemists, tailors, washing, dyeing, drycleaner, beauty salon, florist, etc. which do not come under the Factories Act.
g. Fisheries, piggeries, poultry farms, floriculture, horticulture, plant nursery
h. Farm houses being used for commercial activity
i. DMRC for its commercial activities other than traction.
j. DIAL for commercial activities other than aviation activities.
k. Ice-cream parlours

l. Single Point Delivery for Commercial Complexes supply at 11 kV or above
m. Pumping loads of DDA/MCD
n. Supply to Delhi Metro Rail Corporation (DMRC) Ltd. for their on-going construction projects etc. and for commercial purposes other than traction.
o. <u>Any other category of consumers not specified/covered in any other category in this Schedule</u>."

[Emphasis Supplied]

27. The respondents do not dispute that the petitioners are the residential consumers for the purpose of the electricity connection in respect of the ground floor of the composite property owned by them. However, it is submitted that for the purpose of providing an electricity connection in the basement, the petitioners cannot be treated as residential consumers because "domestic/household storage" is not specifically set out/ enumerated under"domestic category".

28. The above contention of the respondents is wholly untenable.

29. The error arises from construing the expression "residential consumers" in a manner that defies common sense. In ***New Delhi Municipal Council v. Sohanlal Sachdev***, (2002) 2 Supreme Court Cases 494, the Supreme Court has observed as under –

> *"12. <u>The two terms "domestic" and "commercial" are not defined in the Act or the Rules. Therefore, the expressions are to be given the **common parlance** meaning and must be understood in their natural, ordinary and popular sense</u>. In interpreting the phrases the context in which they are used is also to be kept in mind. In Stroud's Judicial Dictionary (5th Edn.) the term "commercial" is defined as "traffic, trade or merchandise in buying and selling of goods". In the said dictionary the phrase "domestic purpose" is stated to mean use for personal residential purposes……."*

30. The petitioners do not cease to be residential consumers merely because they use the basement for household/domestic storage purposes, which is consistent with the permissible usage of residential premises as

provided under Regulation 7.4.11[2] of the Unified Building Bye Laws for Delhi, 2016.

31. A perusal of the applicable Tariff Order (reproduced above) indicates that it carves out distinction between "domestic" and "non-domestic". According to Black's Law Dictionary, revised fourth edition,the term "domestic" is defined as-

> *"Pertaining, belonging, or relating to a home, a domicile, or the place of birth, origin, creation or transaction".*

32. The word "residential consumers" is required to be construed in a pragmatic and practical manner and not in an unnatural, restricted sense, as sought by the respondents. The term certainly subsumes use of premises for "household/domestic storage", which is an adjunct to residential use.

33. The contention of the respondents that since "household/domestic storage" is not specifically enumerated under the domestic category, it must be deemed to fall under the non-domestic category, is liable to be rejected. A basement which is used for household storage, and is part of composite residential premises, cannot be treated to be "non domestic" simply because the words 'household/domestic storage' do not find a mention under the caption "domestic category". The absence of a specific mention does not detract from the fact that use of premises for household/domestic storage is clearly subsumed within "residential use", which admittedly falls under "domestic category". The scope and width of the expression "residential consumers" cannot be artificially curtailed or given a narrow, pedantic interpretation, as sought to be done by the respondent.

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[2] 7.4.11 The basement can be used for storage of households, for other goods, for non-flammable material, dark rooms, strong rooms, bank cellars, stack rooms of libraries, air conditioning equipment/s and other machines used for servicesand utilities of the buildings etc. as per MPD.

34. A basement forming part of composite residential premises, and which is used for household / domestic storage, cannot be treated to be falling under the residuary category under Clause 2(o) of the tariff order. A mere perusal of the Clause 2(o) of the non-domestic category shows that it is a residuary entry, intended to cover situations not covered elsewhere in the schedule. This implies that Clause 2(o) applies only when the premises cannot be categorized under any other specific clause within the domestic or non-domestic categories. It is a well settled principle that a residuary clause can be invoked only in exceptional circumstances. In ***Indian Metals and Ferro Alloys Ltd., Cuttack v. Collector of Central Excise, Bhubneshwar,***1991 Supp (1) Supreme Court Cases 125, the Supreme Court has observed as follows -

> *"16. One more aspect of the issue should be adverted to before we conclude. The assessee is relying upon a specific entry in the tariff schedule while the department seeks to bring the goods to charge under the residuary Item 68. It is a settled principle that unless the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the specific items mentioned in the tariff, resort cannot be had to the residuary item: see the Bharat Forge case4. This certainly is not the position in this case, particularly in the light of the department's own understanding and interpretation of Item 26-AA.*
>
> *17. For the reasons abovementioned, we are of the opinion that the appellant's contention that the goods in question are assessable to duty under Item 26-AA is correct and has to be upheld. The assessments in question will be modified accordingly and the appellant will be entitled to complete exemption or reduced duty in accordance with the provisions of Item 26-AA read with the relevant notifications, if any, extant at the various points of time with which we are concerned. The appeals are allowed accordingly. In the above view, it is not necessary to go into the other question regarding limitation which had been urged before the Tribunal by the assessee-appellant."*

[Emphasis Supplied]

35. Further, in ***Ecof Detergents (P) Ltd. v. Commercial Tax Officer and***

Another, 2001 SCC OnLine Mad 1187, the division bench of Madras High Court has observed that -

> *"10. The circumstances in which the residuary entry can be invoked are well-settled. The Supreme Court in the case of Bharat Forge and Press Industries (P) Ltd. v. Collector of Central Excise (1990) 45 ELT 525 a case which arose under the Excises and Salt Act, 1944 has observed thus, "The question before us is whether the Department is right in claiming that the items in question are dutiable under tariff entry No. 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item".*
>
> [Emphasis Supplied]

36. From the above it is evident that the residual entry should be invoked only if domestic/household storage is not inherently subsumed under any specific entry within the domestic category. In the present case, as noticed, domestic/household storage is clearly subsumed under Clause 1.1 (a).

37. The scheme of the Tariff order (as evident from the express language of the tariff order) is that "non-domestic" category is for *"all consumers for lighting, fan, heating / cooling power appliances in all* **non-domestic establishments***………"*. The non-domestic establishments have been then purported to be "defined". The scheme/categorization is to ensure that domestic usage is treated as distinct from non-domestic usage. The Tariff order cannot be construed in a manner, which results in the residual category under entry 2(o), being applied to any establishment, the use of which is consistent with "residential use".

38. This Court also finds merit in the petitioners' submission that the building plan of the petitioners' property as duly approved by the Municipal Corporation, designates the property for residential use with the basement

specifically approved for domestic storage. The same also dispels that the use of basement is for non-domestic purposes.

39. Significantly, it is not even respondents' case that the basement is used for any purpose other than household/domestic storage. Thus, the respondents' action in treating the premises as falling under "non-domestic" category, is *ex-facie* arbitrary.

40. The issue is clinched by the letter dated 08.04.2024 issued by the DERC. The said letter reads as under:-

> *"This has reference to Letter No. RA/2023-24/01/A/50 dated 07.02.2024 regarding clarification with respect to categorization of electricity supply at basements in residential buildings.*
>
> *2. In this regard, it is informed that as per DERC (Supply Code and Performance Standards) Regulations, 2017, basements are permitted for non-domestic connection. The DISCOMs have requested for clarification as the Guidelines are vague with respect to basements used as domestic storage.*
>
> *3.<u>It is clarified that if basements are utilized for domestic storage purpose, the existing connection in the same building may be extended to provide the supply</u>.*
>
> *4. This issues with the approval of the Commission."*

[Emphasis added]

41. It has been clarified that if a connection has been granted in respect of the ground floor of the premises under "domestic" category and the basement of the same property is utilized for domestic storage, then the existing connection can be extended to provide electricity to the basement as well.

42. Thus, it is recognized that the use of a basement for "domestic storage"qualifies it for utilizing the "domestic" connection existing in the ground floor, for the purpose of supply of electricity to the basement as well.

It is incomprehensible that it is permissible to extend the existing domestic connection in the ground floor (for the purpose of supplying electricity) to the basement, but the consumer is precluded from taking a fresh/ separate "domestic" electricity connection in respect of the same basement, as may be required. The same is *ex-facie* arbitrary and unsustainable in law.

43. In the circumstances, the letter dated 29.08.2022 is set aside. Let the categorization of electricity connection at the petitioner's premises, *inter-alia*, basement of property no. B-7/118 (Extension), Safdarjung Enclave, New Delhi – 110029 and the billing, be done on the basis of the findings rendered hereinabove.

44. Inasmuch as the notice dated 15.07.2022 has been issued on the basis of the petitioners' usage vis-a-vis the sanctioned load of the electricity meters, the petitioners are granted liberty to respond appropriately to the said notice and to take necessary steps for enhancement of the sanctioned load, if so required.

45. Accordingly, the present petition is allowed in the above terms. The pending application also stand disposed of.

SACHIN DATTA, J

MAY 13, 2025/*at, sv*