

(2012) 09 DEL CK 0461
In the Delhi High Court
Case No : Writ Petition (C) 6096 of 2012

Bses Rajdhani Power Ltd.

APPELLANT

Vs

Arjunjay Prasad Singh and Another

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135, 139, 143

Citation : (2012) 09 DEL CK 0461

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Gaurav Pachnanda with Mr. Sunil Fernandes, Mr. Deepak Pathak, Mr. Raghav Chadha and Mr. Shodhan Babu, for the Appellant;

Final Decision : Disposed Off

Judgement

G.S. Sistani, J.

CM APPL. 16441/2012 in W.P.(C) 6096/2012

CM APPL. 16443/2012 in W.P.(C) 6097/2012

CM APPL. 16445/2012 in W.P.(C) 6098/2012

1. Exemptions allowed subject to all just exceptions. Applications stand disposed of.

W.P.(C) 6096/2012, W.P.(C) 6097/2012 & W.P.(C) 6098/2012

2. Present petitions have been filed by petitioners under Article 226 of the Constitution of India seeking a direction to quash the impugned notice issued by Consumer Grievance Redressal Forum to the petitioners.

3. For the sake of convenience the facts in the case of W.P.(C) 6096/2012 are being noticed, however, the grievance of the petitioners is common in all the three matters.

4. Petitioner is aggrieved by the notice dated 5.3.2012 by which the Consumer Grievance Redressal Forum (herein after referred to as CGRF) had called upon the petitioner to appear before the CGRF on 29.3.2012. On receipt of this notice, the petitioner had made an application to the CGRF raising a preliminary objection with regard to the maintainability of the complaint, as the jurisdiction of the CGRF is ousted by Regulation 8 of Delhi Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievance of the Consumers and Ombudsman) Regulation, 2001, (hereinafter referred to as the Regulations). As per Regulation 8 the Forum is at liberty to take up any kind of grievance concerning with the electricity supply to the consumers except the grievances arising out of Sections 126, 127, 135, 139, 143, 152 and 161 of the Act.

5. Learned senior counsel for the petitioner has drawn the attention of the Court to the speaking order dated 28.6.2007 passed by petitioner in this case against respondent no. 1. Senior counsel further submits that a bare reading of the speaking order would show that prior to the passing of the speaking order a show cause notice was issued to respondent no. 1 for theft of electricity on 16.5.2007. The speaking order would also clearly reveal that an inspection was carried out at the premises of respondent and the joint inspection team observed that illegal soldering was found on the calibration of the ladder of the PCB for suppressing recording of consumption by the meter. Senior counsel next submits that the CGRF has even in the past passed final orders in the matters in which a preliminary objection with regard to maintainability was raised and one such petition, being W.P. (C) 6099/2012, is also listed before this Court today.

6. I have heard learned senior counsel for the petitioner and also perused the relevant material placed on record including the Notice dated 5.3.2012 issued by Consumer Grievance Redressal Forum and the Speaking Order dated 28.6.2007 passed by the petitioner. The concluding portion of the speaking order records that the theft of electricity is established and, thus, a bill for theft of electricity was raised upon respondent no. 1. On receipt of the notice from the CGRF the petitioner has made an application to CGRF on 16.3.2012, a copy of which has been filed on record, and raised a preliminary objection citing the judgment rendered by a Division Bench of this Court in Sh. Suresh Kakkar and Another Vs. Sh. Mahender Nath Kakkar and Others, . It was further stated in the application that it is the Special Court alone which has the jurisdiction to entertain such a dispute. As many as 21 orders passed by the High Court in various petitions were cited in the said application. It was prayed in the application that the complaint be dismissed on the ground of non-maintainability.

7. It is surprising that despite 21 orders, passed by the High Court in various petitions, having been brought to the notice of the CGRF, the CGRF continues to entertain complaints, which are barred under Regulation 8. What is also surprising is that the CGRF has not considered the preliminary objection, which has been raised by the petitioner and should have decided at the first

opportunity available.

8. In view of Regulation 8, the decision reported in the case of B.L. Kantroo (supra) and taking into consideration the various orders passed by High Court, copies of which have been filed along with the present writ petitions, I deem it appropriate to direct the CGRF to consider the applications filed by petitioners herein raising a preliminary objection at the first instance after hearing the petitioner and the complainant before passing any order on the complaint, which has been made by respondent no. 1.

9. In view of above, no further orders are required to be passed in these writ petitions and the same are accordingly disposed of at this stage.

CM APPL. 16440/2012 in W.P.(C) 6096/2012

CM APPL. 16442/2012 in W.P.(C) 6097/2012

CM APPL. 16444/2012 in W.P.(C) 6098/2012

10. Applications stand disposed of in view of the order passed in the writ petitions. Let a copy of this order be sent directly by the Registry to the Consumer Grievance Redressal Forum. Dasti.