
(2019) 10 DEL CK 0123

In the Delhi High Court

Case No : Civil Writ Petition No. 400 Of 2017

Kailash Aggarwal & Associates

APPELLANT

Vs

TATA Power Delhi Distribution Ltd

RESPONDENT

Date of Decision : 09-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 DEL CK 0123

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Vinay Gautam, Rijul Taneja

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. The dispute here is a limited dispute, namely, challenge to letter dated 29.6.2015 by which the respondent has demanded a sum of Rs.79,551/- from the petitioners. The case of the petitioners is that the petitioners sought a new connection in the premises at 7A/3A, Rajpura Road, Delhi. The scheme for electrification was framed and a Demand Note was issued for Rs.10,52,313/- on 21.1.2007. It is claimed that this amount was deposited by the petitioner. Subsequently, now the grievance of the petitioner is that the respondent has now enhanced the costs of the project to Rs.11,33,551/-whereas the original estimate was issued for Rs.10,54,000/-.

2. Learned counsel for the respondent has pointed out that originally the estimate was for Rs.21,04,626/- out of which the share of the petitioner was Rs.10,52,313/-. However, subsequently the revised estimate was of Rs.22,67,102.88 and the share of the petitioner was Rs.11,33,551. Hence, it is pleaded that the petitioner was asked via communication dated 29.6.2015 to make payment of the said sum of Rs.79,551/- being the difference.

3. Learned counsel for the petitioner has made various submissions stating that

the length of the wires used by the respondent stated in the estimate is incorrect. Relying upon the estimate given by the electricity inspector he has also tried to argue that essentially the bill being raised by the respondent is inflated.

4. In a petition filed under Article 226 of the Constitution, it is not for the court to go into disputed question of fact namely as to on what premises the bill has been raised by the respondent. In this context reference may be had to the judgment of the Supreme Court in the case of Real Estate Agencies vs. State of Goa and Others, (2012) 12 SCC 170 where the Supreme Court held as follows:-

"17. However, there is no universal rule or principle of law which debars the writ court from entertaining adjudications involving disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under Article 226 of the Constitution, normally would not entertain a dispute which would require it to adjudicate the contested questions and conflicting claims of the parties to determine the correct facts for due application of the law. In ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [(2004) 3 SCC 553] , the precise position of the law in this regard has been explained in paras 16, 17 and 19 of the judgment in the course of which the earlier views of this Court in Gunwant Kaur v. Municipal Committee, Bhatinda [(1969) 3 SCC 769] and Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582] has been referred to.

18. The aforesaid paragraphs of the judgment in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [(2004) 3 SCC 553] may, therefore, be usefully extracted below: (SCC pp. 567-69)

"16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in Gunwant Kaur v. Municipal Committee, Bhatinda [(1969) 3 SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)

?14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to

try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

5. Keeping in view the legal position, I am not inclined to adjudicate upon the facts relating to the material consumed by the respondent when laying the electricity line to the premises of the petitioner and its costs etc. On the respondent filing detailed accounts on affidavit, petitioner thereafter may pay the said outstanding amount as claimed within four weeks. No coercive steps will be taken by the respondent till the said period.

6. Petition stands disposed of.