
(2011) 10 DEL CK 0122
In the Delhi High Court
Case No : Writ Petition (C) 7524 of 2011

Khema Dhar

APPELLANT

Vs

Bses Yamuna Power Ltd.

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 10 DEL CK 0122

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Prag Chawla, for the Appellant; K. Datta, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the petitioner praying inter alia for issuance of a writ of mandamus to the respondent/BSES Yamuna Power Ltd. to re-install the earlier electricity meter and supply electricity from the said meter at her premises bearing No.19A, Manavsthal Apartments, Vasundhara Enclave, Delhi.

2. It is the contention of the counsel for the petitioner that the premises of the petitioner was inspected on 29.10.2005, and a case of theft was alleged against her pursuant to which a theft assessment bill of Rs. 2,20,604/- dated 26.7.2005 was raised on her. It is further stated that the petitioner being a senior citizen and not in a position to enter into a litigation, deposited a sum of Rs. 95,000/- with the respondent and got the matter settled. After a period of 6 years, the petitioner was served with a disconnection notice dated 19.7.2011. It is stated that the respondent disconnected the electricity supply to the premises of the petitioner on the very same date itself, i.e., 19.7.2011, even though the impugned disconnection notice had stated that the petitioner would get 2 days time to pay the alleged demand.

3. Counsel for the respondent, who appears on advance copy, states that the

petitioner has withheld material information from this Court and has not divulged the relevant facts, which in itself should be considered sufficient ground to disentitle the petitioner from the relief sought in the present petition. He submits that in the present case, the petitioner approached the respondent through her son, Shri Pankaj Dhar, on 14.10.2011, for settlement of the case, subject matter of the impugned disconnection notice dated 19.7.2011 in respect of an inspection carried out on 29.10.2005. He hands over a letter dated 14.10.2011, duly signed by the son of the petitioner, who claims to be her authorized representative, agreeing to settle the matter with the respondent by paying a sum of Rs. 95,000/- in full and final settlement of all the claims against the sum of Rs. 2,20,604/- demanded by the respondent. It was further agreed that a sum of Rs. 40,000/- would be paid by the petitioner on the same day and the balance amount would be paid in three equal monthly installments of Rs. 15,000/- each starting from 19.10.2011. He submits that this was followed by an e-mail sent on the same date by the son of the petitioner seeking grace time upto 19.10.2011 for arranging the first installment of Rs. 40,000/- and stating that he was depositing a post dated cheque dated 19.10.2011 as a guarantee for the same, which has not been encashed by the department in light of the present petition.

4. Lastly, counsel for the respondent relies on e-mails dated 10.10.2011 and 12.10.2011 sent by the son of the petitioner to the respondent stating categorically that the Enforcement Cell of the respondent had disconnected the electricity in the premises of the petitioner on 7.10.2011. It is submitted by the counsel for the respondent that the specific averment made by the petitioner in the present petition that the electricity in the premises of the petitioner was disconnected on 19.7.2011 is thus patently false.

5. Counsel for the petitioner states that the present petition was filed on 14.10.2011 and came to be listed on 17.10.2011, but the settlement which was arrived at with the respondent, was in the evening of the same date, i.e., 14.10.2011. He states that for this reason, no averment was made in the petition with regard to the subsequent settlement and that the said settlement is of no consequence for the reason that it was arrived at under coercion and therefore does not bind the petitioner.

6. The aforesaid explanation sought to be offered by the counsel for the petitioner does not cut any ice as the son of the petitioner had admittedly been corresponding with the respondent, with regard to the disconnection notice dated 19.7.2011, even prior to filing of the present petition as is evident from the e-mails dated 10.10.2011 and 12.10.2011. The attempt on the part of the petitioner to conceal material facts from this Court can be ascertained from the fact that no averment has been made in the writ petition regarding the aforesaid e-mails. Furthermore, it was incumbent on the part of the petitioner to place on record the e-mail dated 14.10.2011, whereunder the factum of the negotiated settlement was mentioned by son of the petitioner. The fact that the settlement was entered into subsequent to the filing of the writ petition would not be of any

assistance to the petitioner as the petition came to be listed only on 17.10.2011, and there was ample time for the petitioner to have revealed such a fact. Hence, for the petitioner to now contend that she was compelled to settle with the respondent against her will is not acceptable.

7. Furthermore, the averment made in the petition that the electricity supply to the premises of the petitioner was disconnected on 19.7.2011 and has remained disconnected, also appears to be patently false made with the sole purpose of evoking equity from this Court, in as much as in the e-mails dated 10.10.2011 and 12.10.2011, the son of the petitioner had clearly stated that the date of the disconnection was 07.10.2011.

8. From the aforesaid facts and circumstances, it is apparent that the petitioner has approached the Court with unclean hands and has deliberately concealed material facts and tried to mislead this Court. It is settled law that the writ jurisdiction of this Court in Article 226 of the Constitution of India is to be exercised only in extraordinary circumstances. Where the party approaches the Court under the writ jurisdiction, it is imperative that it does so with clean hands by revealing all material facts, otherwise the writ petition filed is liable to be dismissed in limine without going into its merits. In the light of the aforesaid observations, this Court is not inclined to exercise its discretion in favour of the petitioner. The present petition is accordingly dismissed with costs of Rs. 10,000/- to be paid to the respondent within four weeks.