

(2010) 02 DEL CK 0048

In the Delhi High Court

Case No : Writ Petition (C) 11437 of 2009

Kishore Kumar Kaul

APPELLANT

Vs

BSES Rajdhani Power Ltd.

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0048

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Jayant Nath and B.C. Pandey, for the Appellant; I.S. Alag, J.S. Lamba, Rishabh Bhutani and R.S. Bisht, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioner claims that he is owner of the House No. 12, Main Road, Bhawani Kunj behind D-II, Vasant Kunj, New Delhi-110070 on the basis of general power of attorney, agreement to sell etc.

2. He has filed the present writ petition for shifting of electricity transformer installed outside his house.

3. Learned senior counsel appearing for the petitioner accepts that the electricity transfer was installed in 2001 but states that the respondent, discom is now going to enhance and replace the existing transformer of 100 KVA with a bigger transformer of 400 KVA capacity. It is accordingly submitted that this furnishes cause of action to ask for shifting of the transformer.

4. Counsel for the petitioner was asked to pinpoint and specify the relevant rule or regulation, which is being violated by the respondent, discom by having a transformer on public land outside his property or by increasing the capacity of the said transformer.

5. Counsel for the petitioner relies upon Rule 64(2) of the Indian Electricity Rules, 1956 (for short the Rules), which reads as follows:

(2) The following provisions shall be observed where energy at high or extra-high

voltage is supplied, converted, transformed or used:

(a)(i) Clearances as per Indian Standards Code shall be provided for electrical apparatus so that sufficient space is available for easy operation and maintenance without any hazard to the operating and maintenance personnel working near the equipment and for ensuring adequate ventilation.

(ii) The following minimum safety working clearance shall be maintained for the bare conductors or live parts or any apparatus in outdoor substations excluding overhead lines of HV and EHV installations.

High system Voltage (kv)	Safety working clearance (meters)
12	2.6
13	2.8
72.5	3.1
145	3.7
146	4.3
146	6.4
148	10.3

Notes:

(3) "Safety Working Clearance" is the minimum clearance to be maintained in air between the live part of the equipment on one hand and earth or another piece of the equipment or conductor or which it is necessary to carry out the work, in the other.

6. The aforesaid Rule prescribes minimum safety clearances, which have to be maintained for bare conductors or live parts or any apparatus in sub-stations. Transformer is not a sub-station. The term "safety working clearance" has been defined to mean minimum clearance between the earth or other equipment installed. There should be sufficient space to carry out work i.e. repair etc. It is not possible to accept the contention of the counsel for the petitioner that the term "earth" will mean any permanent structure attached to earth or wall of the petitioner's house in the present case. The term "earth" in common parlance will mean the ground level. In fact the Rule 2(q) of the Rules specifically defines the terms "earth in" or "connected to earth". Thus the Rules draw a distinction between the said terms and the word "earth". The relevant portion of the Rule 64(2) quoted above uses the term "earth" and not the term "earth in" or "connected with earth".

7. Counsel for the respondent, discom has drawn my attention to Rule 79 of the Rules, which specifically deals with clearances from buildings of low and medium voltage line and services lines. The said Rule is not applicable as it deals with minimum norms which have to be followed in case of overhead lines, which are adjacent to or near any building.

8. The transformer in question admittedly has been in existence since 2001 and is in operation since then. There have been no untoward incident or problem with the said transformer for the last 9 years. The necessity and need to have a transformer cannot be denied. Shifting will lead to protest and objection from others. It is noted that the colony in question is an unauthorized colony, which is slated for regularization. The petitioner has purchased his house in an unauthorized colony on power of attorney basis. Thus prayer for removal of the transfer is rejected.

9. The respondent, discom is bound to comply with safety norms as prescribed in

the relevant enactments, rules and regulations. They have to ensure that no harm and damage is caused to the property of the petitioner.

10. Counsel for the petitioner has relied upon observations made in paragraph 66 of the judgment in Assn. of Victims of Uphaar Tragedy and Others Vs. Union of India (UOI) and Others, and has also made reference to the photographs enclosed with the writ petition. Paragraph 66 in the case of Association of Victims of Uphaar Tragedy (supra) records that a transformer before installation requires inspection and approval of the Electrical Inspector. It is further submitted that it is the duty of the respondent, discom to ensure that the transformer is not defective and in case they fail in their duty, they will be guilty of negligence. In this connection, counsel for the petitioner relies upon Rule 63(3) of the Rules, which reads as under:

(3) The owner of any high or extra-high voltage installation who makes any additions or alternations to his installation shall not connect to the supply his apparatus or electric supply lines, comprising the said alterations or additions unless and until such alterations or additions have been approved in writing by the Inspector.

11. The respondent will ensure that they comply with the Rule 63(3) of the Rules. The Electrical Inspector will be entitled to examine and go into the question whether the installation of the transformer of the higher capacity at the said location poses any safety hazard and will be contrary to the provisions of the enactments, rules and regulations.

12. It is stated by the respondent-discom that the photographs annexed with the writ petition were taken at the time when the said respondent had started process of installation of new transformer and therefore cables were cut etc.

13. It is accordingly directed that the new transformer will not be activated till permission is obtained from the Electrical Inspector in terms of the Rule 63(3) of the Rules.

14. Counsel for the respondent states that the transformer in question will be inspected and necessary remedial steps will be taken within 30 days to remove the bare and loose electrical wires/cables.

15. He further states that they will ensure that the transformer does not pose any safety risk or danger to the property of the petitioner. It is for the respondent, discom to ensure that the petitioner or any third person does not suffer because of the installation of the transformer at the said location or because of loose/open/cut cables. The respondent, discom will be held responsible in case they do not act as per Rules or are negligent and any incident takes place.

The interim order stands vacated and modified to the extent indicated above and the parties will be governed by the order passed today.

The writ petition is disposed of.