(1986) 03 DEL CK 0057

In the Delhi High Court

Case No : C.W.P. No. 61 of 1986

Pawan Kumar Tandon APPELLANT

Vs

New Delhi Municipal Committee RESPONDENT

Date of Decision : 24-03-1986

Acts Referred:

Electricity Act, 1910 — Section 2, 22B, 24, 25, 3(2)
Punjab Municipal Act, 1911 — Section 47

Citation : AIR 1986 Delhi 454

Hon'ble Judges : Yogeshwar Dayal, J;S. Ranganathan, J

Bench : Division Bench

Advocate : Govind Mukhoty and Ajit Singh, for the Appellant; B.J. Nayyar and R.K. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

1. These two writ petitions arise out of similar facts and can be disposed of by a common order. They raise the question whether the disconnection of supply of electricity to shop Nos. 263 and 264 in the Palika Bazar at Connaught Place, New Delhi is justified or not.

2. The shops in Palika Bazar are owned by the New Delhi Municipal Committee (''NDMC'' for short) which is also the ''Licencee'' under the Electricity Act responsible for supply of electricity in New Delhi area. The NDMC had granted licences in respect of shop Nos. 263 and 264 in favour of (a) Pawan Kumar Tandon and (b) Babu Shah Snacks Bar, a partnership comprising of two partners, namely, Bharat Bhushan Bansal and Mahesh Chand Rastogi respectively. The licence was in terms of two licence deeds containing the same terms and conditions the relevant provisions of which are set out below:

1. That the licence should be for a period of five years from 27-1-1979/5-3-1979 and thereafter will be renewable (sic) to increase the rate of licence fee by 10% and on the terms and conditions as may be laid down by the licenser.

6. That the licensee.(s) shall not permit the allotted premises or any part thereof being used by any other person for any purpose, whatsoever, without previous consent in writing of the licenser and in default thereof shall be liable for ejectment. The licensee(s) shall not introduce any partner nor the licensee(s) otherwise carry on the business in the premises with any other person, or assign, transfer change or otherwise alienate his interest in the premises.

8. That the licensee shall not cook, manufacture or prepare any food in or outside the shop/stall or in the verandah outside thereof nor shall he suffer or allow any person to do so.

17. That the licensed premises have been provided with electrical installations excluding fans and liting (sic) fixtures and the same shall be handed over on "as is where is basis". The licensee(s) shall have to obtain electric connections in his/ their name after completing all the formalities like deposit of new connection fee and security etc. as may be applicable. The energy consumption charges shall also be borne by them. If any addl. load is required the licensee shall apply on prescribed pro forma to electricity department of NDMC along with No Objection from Secretary, NDMC. Their request shall be examined as per the prevailing rules.

3. In compliance with the terms of the licence deeds each of the licensees applied for electricity connection from the NDMC. There is no dispute that according to the registers of the NDMC (Electricity Department) Babu Shah Snacks Bar and Pawan Kumar Tandon are the consumers of electricity in respect of these two premises. The grievance made in these writ petitions is that the electricity connection has been suddenly disconnected on 4th Jan., 1986 without serving any show cause notice and that the electric supply has not been restored despite several representations made in this regard. It is stated that on making enquiries it appears that the electricity connection had been disconnected on the ground that "since 263 and 264 are working as one unit and using gas stove/ kerosene, the current need not be restored till they remove these inflammable material". This indeed is confirmed by a noting made in the NDMC and orders passed thereon by the Administrator on 9-1-1986. It is stated further in the writ petitions that though subsequently undertakings have been duly given that no cooking will be done in the premises, the electric supply has not been restored. A grievance has been made of the fact that electric supply has been restored to one of the premises, namely, shop No. 255 whereas it has not been restored in the case of the shops presently in question. The petitioners, therefore, pray that a direction should be issued to the NDMC directing them to restore the electric connection to the shops in question and restraining them from again disconnecting the electric supply without reason and without affording an opportunity to show cause in case of any complaint.

4. We found at the outset that one of the objections taken by the petitioners was that the electric supply had been disconnected without giving any opportunity to the petitioners of being heard. Quite apart from the provisions of Section 24 of

the Indian Electricity Act to which reference was made by counsel for the petitioners we were of opinion that the petitioners were entitled to an opportunity of being heard in the matter. When this was put to the learned Counsel for the NDMC, he also agree that the concerned officer, namely, the Administrator of the NDMC would hear the petitioners and then pass appropriate orders. The writ petitions were adjourned for this purpose on 18th Feb. 1986. Thereafter the petitioners were heard on 21st Feb. 1986 and again on 24th Feb. 1986 and an order was passed by the Administrator on 24th February, 1986 stating that it was not possible to restore the electricity to the petitioners for the reasons set out in the order which is in the form of a report to this Court. After the report was received we have heard the Learned Counsel. The writ petitions are at the admission stage but as the point involved is a very short one and having regard to the nature of the complaint made and relief sought in the petition, we have heard the learned Counsel for both the parties at some length and we have come to the conclusion that the writ petitions have to be dismissed.

5. The grounds on which the disconnection of supply of electricity as well as the denial of its restoration are sought to be justified are primarily two in number. The first objection, as already mentioned, is that the licensees were found guilty of violation of the terms and conditions of the licence agreement in that they were making use of gas chulhas or kerosene stove in the premises which were hazardous and likely to cause fire in the underground air-conditioned shopping centre. So far as this ground is concerned, ''counsel for the petitioners states that the petitioners have already given an undertaking and are willing to renew it, if necessary, in any appropriate terms to the effect that they will not use gas stove or kerosene stove on the premises. It is stated that even at the time of hearing before the Administrator they were asked to give and they have given an undertaking to the said effect. We are not quite sure how far an undertaking of this type will be of any help since it will be almost impossible for the NDMC to keep a daily surveillance in order to ensure that this undertaking is kept up by the petitioners. However, it appears to us that the writ petitions have to be dismissed for other reasons to be discussed below and so we are not going deeper into this aspect of the matter.

6. The principal complaint of the NDMC is that the licence to occupy the shops and run snack bars was given to the two persons whose names have been mentioned earlier but that the persons who have come to Court against the disconnection of electricity are two totally different persons (who are describing themselves as the attorneys of the original licensees but who are in fact persons in whose favour the original licensees have parted with their possession of the shops in question who are, in fact, running the business in these premises without any lawful right to do so). This parting of possession by the original licensees was specifically prohibited by the deeds of licence in their favour. Proceedings have been taken for this contravention in respect of both the shops and it is pointed out that, in the case of shop No. 263, eviction proceedings were launched before the Estate Officer, NDMC who has passed an eviction order on

31-12-1985 against the original allottees as well as the attorneys. According to the NDMC, the allottees are also in arrears of licence fee/damages for unauthorised occupation to the tune of Rs. 6,12,278.48 in respect of shop No. 263 and to the extent of Rs. 11,75,420.89 in respect of shop No. 264 as on 31-12-1985. The NDMC allege that the present occupants, Satinder Singh Sabharwal in the case of shop No. 263 and J.S. Anand and K.B. Singh in the case of shop No. 264, are unlawful occupiers of the premises having no right to occupy the premises and consequently no right to seek the supply of electricity for the said premises.

7. On behalf of the petitioners, however, it is submitted that the original allottees are still in occupation of the premises. Though it is admitted that the period of original licence has since expired, it is said that they were entitled to the renewal of the licence as per Clause 1 of the licence deed and that, therefore, their possession of the premises was not unauthorised. It is submitted that the Estate Officer (who was also the Secretary of the Electricity Undertaking) had passed the eviction order ex parte and that an appeal has been preferred to the Additional District Judge. It is submitted that the licence fee is being paid in accordance with the terms of an interim order passed in the appeal and that no amount of licence fee properly payable is in arrears. It is, therefore, submitted that the petitioners who are only being represented in the proceedings by their attorneys (namely, S.S. Sabharwal and J.S. Anand and K.B. Singh), have a legitimate grievance against the disconnection of electricity. It is contended that once the electricity has been supplied to any person, he becomes a ''consumer'' within the meaning of Indian Electricity Act, 1910 and that supply of electricity can be disconnected only for the reasons and in the manner set out in Section 24 of the said Act. If, according to NDMC, there is any other irregularity in the use of the electricity, its appropriate remedy, it is said, is to launch a prosecution, if permissible, u/s 39 et seq., but that the supply of electricity cannot be disconnected.

8. It may be mentioned at this stage that in C.W. 60/86, as well as in the application for interim stay accompanying the said petition, K.B. Singh has signed as the petitioner/applicant and the petition and application are also supported by the affidavit of said K.B. Singh. In the cause title of the writ petition, however, the name of the petitioner has been stated as Bharat Bhushan Bansal and Mahesh Chand Rastogi through K.B. Singh, Attorney''. Similarly, in the other writ petition, C.W. 61/86, though the petitioner is stated to be ''Pawan Kumar Tandon through Attorney Sri Satinder Singh Sabharwal'', Satinder Singh has signed as the petitioner/applicant in the writ petition as well as accompanying stay petition and has also sworn to the affidavits in support thereof. It does not appear that any power of attorney was filed along with the petition and it was only when this question was put to the petitioners during the course of the hearing that the powers of attorney in favour of Sri K.B. Singh and Sri S.S. Sabharwal were produced. The recitals in the original petitions proceed as if the grievance and the transactions pertained to K.B. Singh and S.S.

Sabharwal respectively and it is only at a later stage that in C.W. 60/86 an affidavit sworn to by Bharat Bhushan Bansal was filed. We do not wish to rest our decision on the technical question as to whether the petitions as presented are proper petitions on behalf of the original allottees or whether they should be treated as the petitions filed by the alleged attorneys on their own behalf and not on behalf of the original allottees. We shall also not go into the question whether the licence fee in respect of the premises has been regularly paid or whether there are any lapses or defaults in this respect as alleged on behalf of the Respondents. In a case of this type the NDMC is acting in a dual capacity: one as the landlord/licensor in respect of the premises and the second in its capacity as a licensee under the Indian Electricity Act. As Mr. Govind Mukhoty rightly pointed out, these two capacities are to be kept separate and the only question to which we have to confine ourselves is as to whether the disconnection of electricity supply to the two premises in question was valid and justified. It is to this short point that we shall address ourselves.

9. At the outset we may refer to one aspect which will perhaps justify the dismissal of the petitions straightway. We have mentioned that against the Estate Officer''s order evicting the persons in occupation of the premises under the Public Premises Act, the petitioners have preferred an appeal which is pending before the Additional District Judge. The supply of electricity to the premises is also, an amenity available to the lawful occupant of the premises. If it is the grievance of the petitioners that the NDMC which is the landlord has wrongfully terminated the supply of electricity, it is open to them to raise the issue before the learned Additional District Judge in the process of the appeal as a matter incidental to the subject matter of the appeal, Since the Additional District Judge is seized with the question whether the dispossession of the occupants of the property under the Public Premises Act is lawful or not, he can also decide whether, pending final decision in the matter, the supply of electricity as an amenity should be continued or not. Since the justification or otherwise of discontinuance of electricity would depend upon the correctness or otherwise of the finding that the original licensee has ceased to be the lawful occupant of the property, this will involve investigations on questions of fact which a writ Court would not like to undertake. We, therefore, think that the petitioners having an alternative remedy for the determination of the question, relief should not be granted to the petitioners in a writ petition. However, in view of the fact that the matter has been fully argued before us, we proceed to consider the issues involved and decide the writ petition.

10. The argument on behalf of the petitioner is that the petitioners are the ''consumers'' of electricity in respect of the premises in question as defined in Section 2(c) of the Indian Electricity Act, 1910. It is submitted that once a person is supplied with energy by a licensee and, thus, becomes a consumer, the electricity connection cannot be disconnected except for non-payment of the charges and even then not unless seven clear days'' notice in writing to such person is given. We are unable to accept this contention which seeks to restrict

the power of disconnection to the only circumstances outlined in Section 24 of the Indian Electricity Act.

11. We think that the matter has to be approached from a wider and a larger perspective. In order to have a proper appreciation of the correct position, let us start with the conditions necessary for supplying electricity to any premises in the first instance. The supply of electricity to a premises is made in pursuance of a contract between the licensee and an individual or concern which seeks such supply, having a right of occupation of the said premises whether as owner or tenant thereof. The provisions of the Schedule to the Indian Electricity Act which by virtue of Section 3(2)(f) of the said Act are deemed to be incorporated with every licence issued under the Act deal with this. Under Para VI of the said Schedule electricity is to be supplied by a licensee to the owner or occupier of any premises requiring the licensee to supply energy for such premises subject to the provisions contained therein which also envisage a discontinuance of the supply in certain circumstances outlined therein. These provisions envisage a commitment by the requisitionist to utilise the supply for at least two years (a provision which perhaps is out of date in modern conditions), to pay for service lines, to furnish security for due payment of charges and for proper use of the electricity supplied. The requisition has to be made in the form set out in Annexure VIII to the Indian Electricity Rules. This form also prescribes that the applicant should be either the owner or tenant of the premises and it also envisages the written permission of the landlord in cases where the applicant is not the owner of the premises. This requirement is also understandable for, quite apart from the financial liability of the consumer to pay the charges, it is very necessary in view of the risks involved in supplying such a dangerous, if useful, form of energy that the consumer should either be the owner or the lawful occupier of the premises to which the supply is made. Our attention has also been invited in this connection to the provisions of a notification issued by the Lt. Governor of Delhi u/s 22 B of the Indian Electricity Act, 1910. Para 4A(c) of this notification reads:

(c) Notwithstanding anything contained in any contract or agreement or in any licence granted under the Act or in any requisition, no licensee shall make fresh supply of energy increased supply of energy in case of commercial, domestic or industries load in favour of any consumer at any premises till the said consumer produces a completion certificate from the Municipal, a Local Authority concerned/ or document of title in respect of such premises, if he is the owner thereof, or produces a valid rent receipt/note or other valid documentary proof of being the lawful occupant thereof.

The provisions extracted above make it clear that energy supply in the first instance can be refused to a requisitionist unless the licensee is satisfied that he is the owner or a tenant or other person lawfully occupying the premises and, if necessary, after seeking the owner''s consent to the supply.

12. If we are correct in our initial assumption that the supply of energy in the

first instance can be applied for only by the owner or a lawful occupier of a premises, then it seems to us inherent in the scheme of the entire Act, rules and notifications that the supply of energy can be discontinued in situations where this basic requirement is not fulfilled. It is to be appreciated that supply of energy is meant for a particular person in respect of a particular premises and that, if the connection between the person and the premises is severed, then the basic postulate for the continued supply of electricity also disappears. To give a simple illustration, suppose ''A'' is the tenant of a particular premises and obtains an electricity connection in his name. Suppose, after some time, say, 3 or 4 years, he leaves the premises and goes away to settle, let us say, in foreign country. It is obvious that, if the licencee comes to know of this situation, the licensee can discontinue the supply of electricity because the person, for whom the electricity was supplied in respect of the premises, is no longer residing in that place. It will not be open to a successor tenant or to some other occupant of the property to claim that the energy should be continued to be supplied to the premises in the name of the original ''Consumer'' although he is no longer occupying the premises. We likewise think that it is open to a licensee to stop supply of energy to a premises when he is satisfied that the consumer to whom the electricity was being supplied under a contract is no longer in rightful occupation of the said premises. For this purpose, there is no special provision in the Act but this is a power which in our opinion is implicit in the very terms and conditions of supply of energy under the Act. We agree, however, that the discontinuance of electricity supply in such a case should be preceded by a notice to the consumer in the interests of natural justice. That is why in this case, we directed, during the pendency of the proceedings before us, that an opportunity should be given to the petitioners to put forward their case before the disconnection of electricity is upheld.

13. learned Counsel for the petitioners made a point that the statutory notice of seven days, as required u/s 24 of the Indian Electricity Act, has not been given and, therefore, the disconnection of electricity as bad. This is clearly a case which does not fall within the terms of Section 24 of the Indian Electricity Act or in any of the situations contemplated in Para VI of the Schedule of the Act. But, in our view, the provisions contained in Sections 24 and 25 as well as Para VI of the Schedule to the Electricity Act are only intended to provide for certain situations arising as between the requisitionist and the licensee in which the licensee will be entitled to disconnect or discontinue the supply of electricity. But we are unable to regard these provisions as exhaustive of all the circumstances in which the discontinuance of electricity can be justified. In our view, the basic scheme of the Act envisages a power to stop supply to a person who is neither the owner nor the occupier of the premises though in the first instance, he may have had such connection, on the basis of which the supply was initially agreed to. Such a power flows from the scheme of the provisions and so far as this disconnection or discontinuance of supply of energy is concerned, no specific notice is provided for in the Act and all that is necessary is that the provisions of

natural justice should be complied with and this we have ensured in the course of the proceedings before us.

14. Looking at the position in the present case in the light of the above discussion, according to NDMC the actual occupiers of the premises today are the persons who have come to Court describing themselves attorneys of the original allottees. If that is so, they are not ''consumers'' within the language of the Act and, therefore, they cannot seek the assistance of this Court to have electricity restored to the premises. But even if it is taken that the petitioner before us are the original licensees, we are of the opinion that they will not be entitled to ask the NDMC for continued supply or restoration of electricity unless they can satisfy the NDMC that they are in rightful occupation of the premises. The case of the Respondents, which is also supported by the order of the Estate Officer (though it is an Ex parte order), is that the original allottees have ceased to occupy the property and have put other persons into actual possession. This allegation of the NDMC also appears to derive support from the way in which the petitions have been drafted and placed before us. At no place in either of the petitions do the original allottees make a categorical assertion that they are continuing in possession of the premises and they are running the shop for which the premises were allotted to them. On the other hand, they refer to some resolutions of the NDMC authorising the "regularisation" of transfers of possession effected in contravention of the terms of the licence grated to them. These appear to be cases where (as usual in many other transactions in Delhi) other persons are allowed to take charge of the business and the premises under the wide umbrella of a comprehensive power of attorney.

15. But even assuming, for a moment, that the original licensees are continuing to be in occupation of the premises and that their appeal against the order of the Estate Officer is still to be considered by the District Judge and may terminate in their favour, we think that there is no justification for the supply of electricity to them. The licence under which they came into occupation of the premises terminated long back. It was under a licence deed that they came into the premises. This licence has not been renewed till today. Much less is there any licence deed drawn up in their favour subsequent to the date of the expiry of the original licence. u/s 47 of the Punjab Municipal Act, certain formalities have to be complied with before a valid contract can be entered into with or by the NDMC and these have not been complied with in the present case for extension of the licence. Thus, after the termination of the licence, there is no vestige of right in them or their attorneys to continue in occupation. In these circumstances, we are of opinion that the NDMC was fully within its powers in discontinuing the supply of electricity to these premises.

16. A question may arise as to whether a licensee under the Indian Electricity Act can arrogate to itself the power of determining the legality or otherwise of the occupation of the licensee and terminate the supply of electricity thereto. As discussed above, under the provisions of the Act it is open to the licensee to

insist upon some title in the occupier of the property before electricity supply is commenced. Equally, we think, it is open to the licensee to discontinue the supply of electricity if it is satisfied that a person for whom the electricity is supplied to the premises is not in lawful occupation of the premises. In the normal run of cases, the licenses for electricity will be different from the landlord and it may not take upon itself the responsibility to decide the question of title of the occupant to occupy the property so long as its bills duly paid and there is sufficient security in that regard/particularly where there is some dispute between the occupant and the landlord. But this indifference could not turn out to be risky in a case where the supply is not discontinued despite the requests of the owner in the event of there being a fire in which the property is damaged. However, whatever may be the attitude of a third party licensee, the position is different here. The NDMC is both the landlord of the premises as well as the supplier of electricity. It has chosen to take upon itself the right to decide whether the consumer continues to be in occupation of the premises or not and has decided to discontinue the supply. We do not find it possible to say that the NDMC as the licensee, does not have the jurisdiction to do this nor can their action be described as arbitrary or their conclusion as based on no evidence.

17. For the above reasons, we have come to the conclusion that these writ petitions should be dismissed. We direct accordingly. In the circumstances, we would make no order as to costs.