

(2011) 01 DEL CK 0160

In the Delhi High Court

Case No : Writ Petition (C) 5885 of 2010

Rajesh Mehra and Others

APPELLANT

Vs

B.S.E.S. Yamuna Power Ltd. and Another

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0160

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ashok Sapra, for the Appellant; K. Datta, Anupam Verma, Diggaj Pathak and Manish Srivastava for R 1 and Sumeet Pushkarna and Jitendra Kumar for DJB, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The fourteen Petitioners claim to be having their shops at Ajmal Khan Road Market, Karol Bagh, New Delhi. They filed this writ petition averring that the works, then, at the time of filing of this writ petition in September, 2010 being carried out by the Respondent No. 1 of laying of electricity cables for supply of electricity, including to the shops of the Petitioners, was being carried out in a dangerous manner. It was pleaded that the electricity cables were being laid in the sewer/water drains of the Respondent No. 2 Delhi Jal Board (DJB) and which was likely to result in leakage of electricity. It was also contended that the junction boxes were being installed between entrances to the two shops, also posing a hazard.

2. The writ petition came up before this Court on 8th September, 2010. The counsel for the Respondent No. 1 appearing on advance notice opposed the claim of the Petitioners on that date and contended that the work was being carried on in accordance with the norms and practices followed all over the world. It was also contended that the junction boxes to which objection was being taken, were to merely house the HRC fuses which are circuit breakers and which do not pose any danger.

3. It was as such enquired from the counsel for the Petitioners on 8th September,

2010 as to how the work of electrification should be carried out, if not in the manner being undertaken by the Respondents. It was the contention of the counsel for the Petitioners that the Court should appoint an expert for carrying out the said works.

4. This Court being not satisfied with the said plea of the Petitioners and the Petitioners having not placed before this Court any report of an expert to the effect that the works as being carried out pose any danger and prima facie finding the Petitioners to be indulging in frivolous litigation, the Petitioners were directed to deposit Rs. 50,000/- in this Court as costs of litigation and to also submit a report of an expert. The interim relief claimed of stoppage of the works was also not granted.

5. The said amount was deposited and the report of an expert filed.

6. The counsel for the Respondent No. 1 has since filed a counter affidavit in which the dangers and the flaws averred by the Petitioners as also the report of the expert of the Petitioners are controverted. It is pleaded that the underground cables have been laid in separate trenches and ducts for cables have been provided independent of the drainage/sewer pipes. It is inter alia also the contention in the counter affidavit that the writ petition is not maintainable in view of the alternative efficacious remedy provided in terms of Section 162 r/w 185(2)(c) of the Electricity Act, 2003 r/w Rules 29 & 52 of the Indian Electricity Rules, 1956. CM No. 674/2011 has also been filed by the Respondent No. 1 seeking disposal of the writ petition with direction to the Electrical Inspector, Govt. of NCT of Delhi to examine the works and in the alternative to await the report of the Electrical Inspector.

7. The counsel for the Petitioners has today contended that he is agreeable to the suggestion of the Respondent No. 1 of reference of the matter to the Electrical Inspector for evaluation. He however contends that instead of disposing of the petition, the petition be kept pending awaiting the report of the Electrical Inspector.

8. Section 162(1) of the Electricity Act, 2003 provides for appointment of a Chief Electrical Inspector or Electrical Inspector in respect of such class of works and electric installations as may be prescribed. Rule 29 of the 1956 Rules provides for all electric supply lines and apparatus to be of sufficient rating for power, insulation and estimated fault current and of sufficient mechanical strength required under the environmental conditions of installation, and to be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. It also requires the works to be carried out in accordance with the relevant Code of Practice of the Bureau of Indian Standards including National Electrical Code and the material and apparatus to conform to the relevant specifications of a Bureau of Indian Standards. Rule 52 provides that if any applicant for a supply or a consumer is dissatisfied with the action of the supplier on the ground that the installation is

defective or is likely to constitute danger, he may appeal to the Inspector to test the installation. It is not in dispute that the Petitioners are consumers within the meaning of Rule 52.

9. In light of the aforesaid provisions, the concession of the counsel for the Petitioners for reference of the matter to the Electrical Inspector is found to be legal and entitled to be allowed.

10. However, it has been enquired from the counsel for the Respondent No. 1 as to whether the Act/Rules provide for any remedy if the Petitioners are dissatisfied with order/report of the Electrical Inspector.

11. The counsel for the Respondent No. 1 has invited attention to Section 162(2) of the 2003 Act providing for an appeal from the decision of the Electrical Inspector to the appropriate Government or appropriate Commission. The counsel further states that in terms thereof if the Petitioners are dissatisfied with the report of the Electrical Inspector, the appeal would lie to the Secretary, Department of Labour of the Government of NCT of Delhi, who may either hear the appeal himself or refer the same to the Delhi Electricity Regulator Commission.

12. In view of the aforesaid, it appears that no purpose would be served in keeping the petition pending in as much as even if the Petitioners are dissatisfied with the report of the Electrical Inspector, their remedy there against would be by way of appeal as aforesaid and not to agitate the said report of the Electrical Inspector before this Court. Once the Petitioners agree to the Electrical Inspector, they cannot then contend that the provisions for appeal against the order/report of the Electrical Inspector should be given a go by and the writ petition should be revived.

13. The counsel for the Petitioners has contended that this petition is maintainable because fundamental rights of the Petitioners to life and security are involved. However before the fundamental rights can be said to have been breached, the finding of the works carried out by the Respondent No. 1 being contrary to Rule 29 of the Act is necessary. The legislature having provided for a complete mechanism in this regard, this Court is of the opinion that this writ petition would be not maintainable for the reason of the availability of alternative efficacious remedy and to part of which in any case the Petitioners agree.

14. Even otherwise the questions involved are of a technical nature and which are left to be best adjudicated by the technical experts rather than by this Court.

15. In the circumstances, the writ petition is disposed of with the reference of the grievances of the Petitioners to the works carried out, to the Electrical Inspector (the counsel for the Respondent No. 1 on instructions states that there is only one Electrical Inspector) of the Govt. of NCT of Delhi. The parties to appear before the said Electrical Inspector at 1500 hours on 7th February, 2011 and on such further dates as may be fixed. The parties shall have liberty to file,

besides the documents filed before this Court, other documents/pleadings also before the Electrical Inspector. The parties shall also be entitled to examine their respective experts before the Electrical Inspector. The Electrical Inspector to conduct the inquiry and submit the report on or before 31st May, 2011. Needless to state that the Petitioners shall have their remedies in accordance with law, if dissatisfied with the order/report of the Electrical Inspector.

16. The sum of Rs. 50,000/- deposited by the Petitioners in this Court together with interest if any accrued thereon are directed to be released to the Respondent No. 1 towards costs of this petition.