
(1995) 05 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Appeal No. 1661 of 1995

Ramesh Kumar

APPELLANT

Vs

Delhi Electric Supply Uudertaking

RESPONDENT

Date of Decision : 26-05-1995

Acts Referred:

Electricity Act, 1910 — Section 22

Citation : (1995) RLR 488

Hon'ble Judges : Usha Mehra, J; Mahinder Narain, J

Bench : Division Bench

Advocate : H.L. Narula, Poonam Narula, A.M. Singhvi, Jayanth Nath and B.C. Pandey, for the Appellant;

Judgement

Mahinder Narain, J.

(1) Only a short question is involved in this petition. We issue Rule D.B. and proceed to decide this petition.

(2) The petitioner is a rural ice factory owner. The petitioner comes to Court saying that without giving any notice, the electricity supply to the ice factory has been disconnected, despite the fact that the petitioner holds a municipal license from the Health authorities regarding the ice factory, and also despite the fact that the water from the municipal supplies is used in the factory, and a laboratory approved by the Mcd has given a certificate that the ice produced is suitable for human consumption.

(3) Show cause notice (SCN) was issued by us to the respondents. Response to that has been filed contending inter alia, in para 12 as follows :

"THAT in view of the aforesaid situation, the policy decision was taken at the highest level to disconnect supply of all ice factories in Lal Dora area which are operating illegally. On account of the emergent situation, it was also necessary in public interest that no show cause notice be given prior to disconnection. It is respectfully submitted that the decision to disconnect the supply was taken in

public interest and also in accordance with the provisions of Deco and Condition of Supply."

(4) Even our request to produce the policy relied upon in the reply to the Scn in para 12, no policy decision taken at a high level has been produced before us. In the absence thereof, we cannot rely upon the assertion that there is a "policy decision" which has allowed discontinuation of supply of electricity to the ice factory.

(5) It has been been contended before us by Dr. Singhvi that in view of the judgment reported as Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , that a post decisional hearing can be given in this case which would meet the requirement of the principle of audi alteram partem.

(6) We have to note that there is a difference between the requirement, mentioned in that judgment, that the reasons for impounding of passport have to be communicated after the orders are passed, and the requirement of the Delhi Electricity Control Order (made u/S. 22(b) of the Indian Electricity Act) which requires by its clause (7) that notice of disconnection be given prior to disconnection, Different periods for disconnection notices are prescribed in the Deco for different situations.

(5) In the instant case, as stated in para 12 of the reply to the Scn no notice has been given at all.

(6) Another decision which has been relied upon for the purposes of post decisional hearing and meeting of the requirement of the principles of audi alteram partem is Union of India and Another Vs. Tulsiram Patel and Others, . That case related to service under the State. The Supreme Court particularly noted the right of appeal available to the Govt. servants, which was considered to be adequate to meet the requirement of the principle of audi alteram Partem. It is not contended before us that the petitioner has a right of appeal.

(7) Therefore, neither of the aforesaid judgments have any application to the facts of the present case.

(8) It is contended before us by (he respondents that the decision which was taken at the highest level was because the system was being severely over-loaded on account of mixing of the loads which were sanctioned to two or more persons; in addition, load in excess of what had been sanctioned to the petitioner is being used, and the petitioner is not allowing the staff of the respondent to look into the place where electric meters have been installed. Each of these meters could be subject matter of any Scn issued to the petitioner asking the petitioner to show cause as to why the electricity be not disconnected. The respondents have, however, chosen not to send any such notice of disconnection to the petitioner.

(9) In the absence of such a notice to the petitioner, we have no option but to hold that disconnection of electricity without notice is not proper and the same is

not in accordance with law, and that the petitioner is entitled to immediate and forthwith restoration of electric supply to him. We order that the electricity supply be restored to the petitioner forthwith.

(10) Before parting with the case, we must observe that anything stated by us in this order should not be taken to mean that D Su is, in any way, prevented from taking any steps in accordance with law if the electricity supply is to be disconnected. petitioner who is enjoying the interest accruing thereon. How can thus the petitioner be taken to have made out a case of special equity ?

(11) Next judgment is Nangia Construction India (P) Ltd. Vs. National Buildings Construction Corporation Ltd. and Others, . For our purpose, what para 170 of this judgment lays down is that if a bank guarantee eliminates default contingency then in that case it would be hit by section 23 of (he Contract Act. However, unfortunately for the petitioner the guarantees do not appear to me to be, what the judgment calls "an unconditional bank guarantee". The bank guarantees here appear to be neither vague nor non- default guarantees. They talk of "moneys payable by the contractor".

(12) To invite interference with the operation of the performance guarantee, it must be established to the Bank's knowledge that the demand for payment made or to be made would clearly be fraudulent and good prima facie evidence has to be not only with regard to the bank's knowledge but as to the fact of fraud as well. Let me extract a passage from General Electric Technical Services Company Inc. Vs. M/s. Punj Sons (P) Ltd. and another, . for it makes the position clear. It says :

"THE question is whether the Court was justified in restraining the Bank guarantee at the instance of respondent 1. The law as to the contractual obligations under the bank guarantee has been well settled in a catena of cases. Almost all such cases have been considered in a recent judgment of this Court in U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., , wherein Sabyasachi Mukherji, J. as he then was, observed (at p. 189): that in order to restrain the operation either of irrevocable letter of credit or of confirmed letter of credit or of bank guarantee, there should be serious dispute and good prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Otherwise, the very purpose of bank guarantees would be negated and the fabric of trading operations will get jeopardised". It was further observed that the Bank must honour the bank guarantee free from interference by the Courts. Otherwise, trust in commerce internal and international would be irreparably damaged. It is only in exceptional cases that is to say in case of fraud or in case of irretrievable injustice, the Court should interfere. In the concurring opinion one of us (K Jagannatha Shetty, J.) has observed that whether it is a traditional bond or performance guarantee, the obligation of the Bank appears to be the same. If the documentary credits are irrevocable and independent, the Bank must pay when demand is made. Since the Bank pledges its own credit involving its reputation, it has no defense except

in the case of fraud. The Bank's obligations of course should not be extended to protect the unscrupulous party, that is, the party who is responsible for the fraud. But the banker must be sure of his ground before declining to pay. The nature of the fraud that the Courts talk about is fraud of an "egregious nature as to vitiate the entire underlying transaction". It is fraud of the beneficiary not the fraud of somebody else."

(13) The petitioner establishes no fraud of an "egregious nature as to vitiate the entire underlying transaction". It establishes no special equity and surely refusal to grant injunction would cause no irretrievable injustice to the petitioner. It thus fails to make out a case for the grant of a restraint order as sought by it. The application is consequently dismissed.