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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4288/2011 & CM.8796/2011

% **Judgment dated 28.02.2013**

BSES RAJDHANI POWER LIMITED Petitioner
Through: Mr.Sandeep Sethi, Sr. Advocate with
Mr.Anupam Verma and Mr.Nikhil Sharma,
Advocate

versus

SK BHATIA AND ORS Respondent
Through: Mr.N.K. Jha, Advocate for the MCD along
with Mr.V.D. Sharma, A.E. (SDMC)
Mr.R.L. Bhatia, Adv. for the R=1

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. By the present petition, petitioner seeks to challenge the legality, validity and propriety of the order dated 2.5.2011 passed by the Consumer Grievance Redressal Forum by which on a complaint filed by respondent No. 1 the CGRF has directed the petitioner to shift an Electric Pole being an LV Main Pole near House No. 3/105 in Subhash Nagar area of New Delhi falling within the area of supply of the petitioner, without insisting for any cost for shifting of the Electric Pole. According to the petitioner, the impugned order is against the mandate of the Electricity Act, 2003 and the Regulations and Rules framed thereunder.
2. The respondent no.1 had filed a complaint by way of an e-mail dated 15.3.2011 seeking re-location of the LV Main Electric Pole carrying conductors and wires of the distribution network near house No.3/105, Subhash Nagar, New Delhi on the ground that the pole stands in the middle of the road and thus causing disruption of the traffic in the area.

3. It is the case of the petitioner that the Commission did not have the jurisdiction to entertain such a complaint which was in the nature of a Public Interest Litigation, however, in law the petitioner is not under any obligation to shift the electric pole or alter the over-head line on the grounds as alleged by respondent no.1 and to bear the cost for the shifting of the pole, which in this case is approximately Rs.68,000/- and further if this amount is paid by the petitioner it would be reflected in the annual revenue requirement and in turn the consumers of electricity in the NCT of Delhi would be burdened with additional costs for no fault of theirs.
4. It is further the case of the petitioner that in case the LV Main Electric Pole is to be shifted, the cost of such shifting and re-location would have to be borne either by respondent no.1 or the land owning /maintaining authority, which is the Municipal Corporation of Delhi, respondent no.3 herein; moreover for shifting of any pole and re-location, permission for road cutting and excavation to carry out the work is required from the MCD.
5. Learned senior counsel for the petitioner has placed reliance on Central Electricity Authority Regulations, New Delhi, the 20th September, 2010 and more particularly Regulation 63(2) and 63 (3), to show that any person, who seeks erection or alteration of buildings structure etc. will give an estimate to the Electricity Inspector. Regulation 63(2) and 63 (3), read as under:

“63. Erection or alteration of buildings, structures, flood banks and elevation of roads.- (1) If at any time subsequent to the erection of an overhead line, whether covered with insulating material or not, any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building, or structure or flood bank or road, any permanent or temporary addition or alteration, he and the contractor

whom he employs to carry out the erection, addition or alteration, shall, give intimation in writing of his intention to do so, to the supplier or owner and to the Electrical Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road or any addition or alteration and scaffolding thereof required during the construction.

(2) On receipt of such intimation, the supplier or owner shall examine,-

- (i) Whether the line under reference was laid in accordance with the provisions of these regulations and any other law;
- (ii) Whether it is technically feasible;
- (iii) Whether it meets the requirement of Right of Way (ROW);
- (iv) Whether such person was liable to pay the cost of alteration of the overhead line and if so, send a notice without undue delay, to such person together with an estimate of the cost of the expenditure likely to be incurred to so alter the overhead line and require him to deposit, within thirty days of the receipt of the notice, with the supplier or owner, the amount of the estimated cost.

6. Counsel for the petitioner has also placed reliance on the Policy of the NCT of Delhi dated 3.12.2007, pertaining to shifting of over-head transmission electricity lines. Paragraphs (iv) and (v) of the Policy of the NCT of Delhi dated 3.12.2007, reads as under:

“(iv) In respect of unauthorized colonies, including urbanized villages, regularized, unauthorized colonies and resettlement colonies, 50% of the cost of shifting will be borne from the MLA fund and the balance 50% would be borne by the Government from the budget of the Power Department.

(v) In the case of HT/LT Lines passing through Government institutions, public authority buildings, schools, (illegible) colleges of public nature and which are owned by the Government, 100% of

the funding would be made by the concerned Department agency for shifting of the lines.”

7. Mr.Sethi contends that 50% cost of shifting is to be borne from the MLA fund and balance 50% is to be borne by the Government from the budget of Power Department. Counsel for the petitioner also submits that as per the paragraph (v) mentioned above, 100% is to be paid by the Government, as the pole is on public land. Reliance is also placed on the letter dated 6.10.2008 under subject “Statutory Advice under section 86 (2) of the Electricity Act, 2003 – Shifting of overhead lines”, which has been issued by the Secretary of Regulatory Commission to the Secretary, Power, GNCT of Delhi. Reliance is also placed on paragraph 8 of this communication, to show that the payments for shifting should be made upfront so that the expenditure is not passed on to the consumers of GNCT of Delhi.
8. Mr. Sethi next contends that even in the past whenever the poles were shifted for the purpose of widening of the road etc, the poles were shifted by the petitioner at the request of the MCD and cost of shifting was also borne by the MCD.
9. Reliance is also placed by counsel for the petitioner on a communication dated 1.6.2011 addressed by the MCD for shifting of 102 poles, wherein the MCD had agreed to pay the cost of shifting. Communication dated 1.6.2011 reads as under:

“To,

Shri Ashok Kumar,
Dy.G.M.(O&M), JKP,
B.S.E.S. Rajdhani Power Ltd.
G-8 Area, Hari Nagar,
New Delhi

Sub: Removal / shifting of electric poles coming in the right of way of the road in carriageway in 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17-Block, Subhash Nagar, Cambridge road, Ramlila Park 6-Block, Community Centre 7-Block, Park in 13-Block, Park in 14-Block, Park in 16-Block, Subhash Nagar and from other main roads.

Sir,

In compliance of the estimate submitted earlier as well as cleared from ETC meeting held on 11.1.2011 duly undertaken by the officers in the meeting Sh.Ashok Kumar, DGM (O&M)JKP, BRPL, Sh.V.P. Dutta, G.M. (Stores) DTL and Shri R.Narula, S.E. (Elect-II), MCD, the cheque bearing No.756241 dt.31.5.11 for amounting to Rs.40,65,000/- drawn in favour of B.S.E.S. Rajdhani Power Ltd. for the removal of electric poles from the above mentioned sites is enclosed herewith and the same may be acknowledged.

Since lot of works has been held up due to want of shifting of poles and has become prone to accident being erected in the right of way of the roads.

An early action in the matter shall be highly appreciated.

(AJAY GAUTAM)
Executive Engineer (M)-I/WZ”

10. Counsel for the MCD submits that the MCD is not liable to pay any cost of shifting as no such request has been made by the MCD in this case. Counsel for the MCD also submits that since the pole is maintained by the petitioner it is for the petitioner to shift the pole which has been installed by them in the middle of the road. Counsel for the MCD further submits that the request made by the petitioner for cutting the road and excavation has been granted and they had agreed to pay the cost of cutting which is amounting to Rs.8,621/- and also to repair the road.
11. Counsel for the respondent no.1 (private respondent) submits that he is

not concerned as to who is to pay the cost for shifting the pole, but the pole should be removed expeditiously, so there is no loss of life or traffic disruption.

12. I have heard counsel for the parties and considered their rival contentions. The respondent no.1 has made a complaint to the Forum for Shifting of Pole as it was fixed in the middle of the road and causing traffic hazard. It is not in dispute that the pole belongs to the petitioner herein and the same is maintained by them. It is also not in dispute that the road on which the pole has been erected is maintained by the MCD and also common areas in the colony where the pole is installed. Apparently there is no distinction between the situation where the MCD seeks re-location of the pole and the present case at hand, as the purpose is the same.
13. The request for removal / shifting of electricity poles are normally made by the MCD when the poles are coming in the right of way or when the width of the road is to be increased, which is evident from the communication dated 1.6.2011 addressed by the MCD to the petitioner herein with regard to the removal / shifting of electricity poles of Subhash Nagar area. Accordingly, the present petition is allowed. Order of the Consumer Grievance Redressal Forum dated 2.5.2011 is modified to the extent that the MCD will pay the cost of shifting of the pole in question and a further direction to the petitioner to complete the shifting within two weeks of receipt of the amount from the MCD. The MCD is directed to make the payment within four weeks from the date of receipt of this order.
14. Petition and the application stand disposed of, in above terms. DASTI to counsel for parties.

G.S.SISTANI, J

FEBRUARY 28, 2013 /ssn