

(2014) 09 DEL CK 0224

Delhi High Court

Case No: Review Petition No. 30/2012 and CM Nos. 605-606/2012 in W.P.(C) No.
5208/2010

Rakesh Kumar Sharma

APPELLANT

Vs

Bses Rajdhani Power Ltd.

RESPONDENT

Date of Decision: Sept. 19, 2014

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Sandeep Sethi, Sr. Adv., Nikhil Sharma, Rahul Kinra, Advocates John Mathews, Ranjan Kumar, Harsh Vardhan, Advocates and Neeraj Saraf, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

On the last date of hearing i.e. 12th September, 2014, the following order was made in these proceedings:-

"1. In spite of earlier directions Mr. Neeraj Saraf is not present in the Court. The counsel appearing on his behalf has argued that the respondent BSES Rajdhani Power Ltd. (BSES RPL) can recover the electricity dues in the manner available to them and in any case the review sought by them is beyond the scope of review."

2. It is not disputed that the said Mr. Neeraj Saraf was a tenant in the property to which this petition pertains and consumed the electricity of which the demand is raised by the respondent BSES RPL and on account of which demand, the respondent BSES RPL claims a right to disconnect the electricity supply of that premises which has since been vacated by the said Mr. Neeraj Saraf.

3. I have enquired from the counsel for Mr. Neeraj Saraf as to where Mr. Neeraj Saraf is now residing and in what capacity.

4. The counsel informs that Mr. Neeraj Saraf is residing at second floor of D-44, Kalkaji, New Delhi but is unable to tell in what capacity.

5. The counsel for Mr. Neeraj Saraf to on the next date also address this Court on as to why BSES RPL which is also supplying electricity to the premises at Kalkaji should not be directed to disconnect the electric supply to that property or any other property which Mr. Neeraj Saraf is presently occupying.

6. The senior counsel for the respondent BSES RPL states that the electricity bills of 904, Surya Kiran Building, 19 Kasturba Gandhi Marg, New Delhi are also in the name of Saraf Projects Pvt. Ltd. of which Mr. Neeraj Saraf is a Director.

7. The aspect of disconnection of electric supply to the said premises shall also be addressed on the said date inasmuch as the conduct of Mr. Neeraj Saraf is prima facie dishonest and no advantage of technicalities can be taken.

8. Renotify on 19th September, 2014 for personal presence of the said Mr. Neeraj Saraf and for hearing, including as aforesaid."

2. Mr. Neeraj Saraf has appeared today and his counsel on instructions states that Mr. Neeraj Saraf was earlier a tenant in 904, Surya Kiran Building, 19 Kasturba Gandhi Marg, New Delhi but has vacated the same and is no longer in enjoyment / occupation of the said premises. The counsel further states that Mr. Neeraj Saraf along with his family is residing on the second floor of D-44, Kalkaji, New Delhi as a tenant under one Ms. Madhu Jain, owner thereof.

3. Arguments on the aspect of disconnection of electricity supply to the said premises at Kalkaji have been heard.

4. It is the contention of the counsel for Mr. Neeraj Saraf:

i) that the order if made, of disconnection of electricity supply to the Kalkaji premises, would be beyond not only the scope of the review petition which alone is under consideration but also beyond the scope of the writ petition against the judgment dated 1st June, 2011 wherein review is sought;

ii) that the respondent no.1 / review applicant BSES Rajdhani Power Ltd. (BRPL) has not made any demand on Mr. Neeraj Saraf for electricity charges for which the electricity supply to the premises at Kalkaji is sought to be disconnected and has also not taken any proceedings for recovery of the said charges and in the circumstances, the said Mr. Neeraj Saraf cannot, under threat of disconnection of electricity supply to the premises at Kalkaji, be made to pay the said electricity charges;

iii) that the order if any of disconnection of electricity supply to the premises at Kalkaji would be beyond the jurisdiction of this Court.

5. To appreciate the matter in correct perspective, a narration of the past events is necessary:

(a) M/s. Saraf Projects Pvt. Ltd. (SPPL) (respondent no.2 in the writ petition) was a tenant under the writ petitioner M/s. Rakesh Kumar Sharma and Sons (HUF) on the first floor of property No.E-5, South Extension Part-II (Market), New Delhi and the said SPPL had obtained an electricity connection in the said tenanted premises in its own name from the respondent no.1 / review applicant BRPL;

(b) in CS(OS) No.842/2009 filed by the writ petitioner for eviction of SPPL from the tenanted premises, SPPL agreed to vacate the said premises on or before 7th January, 2013;

(c) this writ petition was filed contending that SPPL had outstanding arrears of over Rs.55,00,000/- towards electricity charges of the meter got installed in the tenanted premises and that if the respondent no.1 / review applicant BRPL did not recover the same from SPPL prior to 7th January, 2013, the writ petitioner would be saddled with the liability thereof in accordance with the Full Bench judgment of this Court in [BSES Rajdhani Power Ltd. Vs. Saurashtra Color Tones Pvt. Ltd and Another,](#) and seeking a direction to the respondent no.1 / review applicant BRPL to recover the said charges from SPPL and to ensure that upon SPPL vacating the premises and the writ petitioner being put back into possession thereof, the writ petitioner is not saddled with the said liability;

(d) the writ petition was disposed of vide judgment dated 1st June, 2011, without issuing notice thereof to SPPL, directing respondent no.1 / review applicant BRPL to either immediately recover its electricity dues from the said SPPL or to secure dues qua the same and clarifying that if it failed to do so, it shall not be entitled to deny electricity connection in the said premises to the writ petitioner or to any other transferee of the said premises, for the reason of the said dues;

(e) review has been sought by respondent no.1 / review applicant BRPL of the said judgment dated 1st June, 2011 inter alia pleading: (I) that supply of electricity to the premises aforesaid could not be disconnected due to the grant and operation of an interim stay order dated 23rd August, 2006 by the State Consumer Disputes Redressal Commission in a complaint filed by SPPL and which complaint was ultimately, vide order dated 16th December, 2008, decided in favour of SPPL; (II) on appeal by respondent no.1 / review applicant BRPL to the National Consumer Disputes Redressal Commission (NCDRC), the order dated 16th December, 2008 of the State Commission was set aside vide order dated 7th August, 2009; (III) SPPL preferred SLP(C) No.25343/2009 against the order dated 7th August, 2009 of the NCDRC; during the pendency thereof respondent no.1 / review applicant BRPL issued a disconnection notice to SPPL on 7th August, 2010 and since electricity charges were not paid inspite thereof, electricity supply to the said premises was disconnected on 15th September, 2010; (IV) the SLP aforesaid was also dismissed vide judgment dated 8th November, 2010. f 14

(f) the review application was entertained and notice thereof issued to the writ petitioner as well as SPPL.

(g) during the hearing of the review application on 20th July, 2012, this Court was informed that in Contempt Case being Cont. Cas. (C) No.48/2011 filed by the writ petitioner, SPPL had on 26th July, 2011 admitted that the liability towards electricity dues was of SPPL. In this view of the matter, vide order dated 20th July, 2012 Mr. Neeraj Saraf and his two sisters who were informed to be the Directors in SPPL were directed to remain present in the Court on the next date of hearing;

(h) however on the next date i.e. 17th August, 2012, Mr. Neeraj Saraf appeared and informed that besides himself his wife Ms. Riya Saraf is the only other Director of SPPL; Mr. Neeraj Saraf further stated that he intended to challenge the demand of respondent no.1 / review applicant BRPL before the appropriate forum under the electricity laws and sought time for the said purpose; while the senior counsel for the respondent no.1 / review applicant BRPL on 17th August, 2012 informed that the dues as on that date were in the sum of Rs.63,29,992.69, Mr. Neeraj Saraf contended that the dues would not be more than of Rs.5,00,000/- to Rs.7,00,000/-; it was further the contention of the senior counsel for the respondent no.1 / review applicant BRPL on 17th August, 2012 that SPPL had also lied in Contempt Case being Cont. Cas. (C) No.48/2011 on 26th July, 2011 by representing that the SLP against the order of the NCDRC (supra) was then still pending when in fact the said SLP stood dismissed on 8th November, 2010; a perusal of the order dated 26th July, 2011 also disclosed that SPPL on that date had while admitting the liability qua the electricity dues, also sought an outer limit of three months to clear all the electricity dues of respondent no.1 / review applicant BRPL; in these circumstances, SPPL vide order dated 17th August, 2012 was directed to deposit a sum of Rs.7,00,000/- with respondent no.1 / review applicant BRPL and Mr. Neeraj Saraf and his wife Mrs. Riya Saraf were also directed to show cause as to why they should not be directed to deposit the balance amount and also as to why they should not be proceeded against for making wrong statements before the Court; f 14

(i) Mr. Neeraj Saraf failed to deposit the amount of Rs.7,00,000/- within the time directed and vide order dated 24th August, 2012 further time was granted subject to a deposit being made of Rs.10,00,000/- instead of Rs.7,00,000/-;

(j) thereafter the proceedings in the review petition were adjourned from time to time;

(k) on 16th April, 2013, the counsel for SPPL sought a clarification that the pendency of these proceedings shall not come in the way of a challenge being made by SPPL to the demand of respondent no.1 / review applicant BRPL before the Consumer Grievance Redressal Forum (CGRF); the same was opposed by the senior counsel for the respondent no.1 / review applicant BRPL; vide detailed order of that date, SPPL was informed that such clarification could be given subject to SPPL either depositing

the disputed amount before this Court, subject to the outcome of the proceedings before the CGRF and / or subject to SPPL giving security for the same; the same was not acceptable to SPPL; f 14

(l) on 13th May, 2013, it was informed that CGRF had since closed the proceedings; the counsel for SPPL stated that he will be taking legal recourse against the order of the CGRF and sought adjournment;

(m) however no challenge before any fora was made by SPPL against the order of CGRF; on the contrary, on 9th May, 2014, the counsel for SPPL stated that if adjudication without pre- deposit is permitted of the demanded amount, SPPL in accordance with the said adjudication, will pay whatever liability is found due.

6. It was in the aforesaid state of affairs that the order dated 12th September, 2014 reproduced hereinabove came to be made.

7. The senior counsel for respondent no.1 / review applicant BRPL has highlighted that SPPL and the Sarafs are guilty of making a wrong / false statement in the contempt proceedings aforesaid, of the SLP being still pending till then when the same stood dismissed long back and of being in breach of undertaking to clear the electricity dues within three months, also given in the said contempt proceedings.

8. I have considered the matters.

9. I am conscious that I am exercising review jurisdiction, the scope whereof is limited. There is also merit to some extent in the arguments aforesaid noted of the counsel for SPPL and Mr. Neeraj Saraf. However what compels me to still hold that this Court should direct disconnection of electricity supply to the premises at Kalkaji now in occupation of Mr. Neeraj Saraf and his family is:

i) that the Courts, in legalese and though bound by the rules and procedures, cannot forget the very purpose of their creation i.e. to do justice. If in a case of gross abuse, as the aforesaid facts would also disclose the instant case is, the Courts fail to pass an order / direction necessary for doing justice, citing the reason of their hands being tied by such legalese and procedural restrictions, the same would be nothing but injustice and a failure to perform their duty;

ii) justice in the aforesaid facts would be, to take every step which is necessary to compel SPPL and Mr. Neeraj Saraf to either pay the electricity dues or if interested in contesting the demand therefor by BRPL, to file appropriate proceedings therefor; and,

iii) what is found is that SPPL and Mr. Neeraj Saraf are taking advantage of the situation which is of their own creation by abusing the process of law by first obtaining interim stay on payment of electricity dues and / or of disconnection of electricity supply in a proceeding which was ultimately held to be misconceived and dismissed and then inspite of dismissal thereof not paying the dues which had

accumulated over the time and simply leaving the premises to which the dues pertained; not only so, thereafter when faced with contempt, SPPL and Mr. Neeraj Saraf again gave an undertaking to the Court to clear the dues within three months and are in breach thereof also.

10. This Court at this stage is not merely exercising review jurisdiction but has also as aforesaid issued notice to Mr. Neeraj Saraf and his wife Mrs. Riya Saraf to show cause as to why they should not be punished for their aforesaid conduct, falsehood and abuse of the process of this Court. I am of the considered opinion that in exercise of such jurisdiction, this Court can direct to be done what the person in contempt ought to have done.

11. As would be obvious from the above, SPPL and Mr. Neeraj Saraf inspite of informing this Court that they would be challenging the demand, have not done so till date, being conscious that if they do so, they, as per law applicable, would be required to make a pre-deposit. They cannot be allowed to sit pretty and to the prejudice of others.

12. As far as the argument that respondent no.1 / review applicant BRPL has not taken any proceedings for recovery against SPPL and Sarafs is concerned, the spirit behind the judgment of the Full Bench of this Court in Saurashtra Color Tones Pvt. Ltd. (supra) is of not compelling the distribution companies as BRPL to take recourse to lengthy legal proceedings for recovery of dues and to ensure recovery thereof by denying electricity; it is a natural corollary thereof that if the person from whom recovery is due shifts to another premises, electricity thereto be also denied.

13. I therefore permit respondent no.1 / review applicant BRPL to forthwith disconnect electricity supply to the second floor of D-44, Kalkaji, New Delhi in occupation of Mr. Neeraj Saraf and his family.

14. It is however clarified that the said disconnection is to be only for the reason of the said premises being in occupation of Mr. Neeraj Saraf from whom electricity charges are due and the said disconnection would not affect the rights of Ms. Madhu Jain or any other person having ownership or occupation rights to the said premises and in the event of Mr. Neeraj Saraf and his family members vacating the said premises, the electricity supply thereto shall be immediately restored.

15. List on 10th October, 2014 for further consideration. Mr. Neeraj Saraf to also remain present on all further dates unless specifically exempted.