

Bses Rajdhani Power Ltd vs The Commissioner South Delhi Municipal ... on 8 December, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 10006/2020, CM APPL. 31784/2020 & CM APPL. 31786/2020

BSES RAJDHANI POWER LTD

Through: Mr. Sandeep Sethi,
Buddy Ranganadhan,
Varma, Mr. Nikhil S
Aditya Gupta and Ms
Advocates.

versus

THE COMMISSIONER SOUTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respon

Through: Mr. Sanjeev Sagar, SC for SDM
with Ms. Nazia Parveen, Advoc
with Mr. Prashant Kumar, JE
(SDMC).
Mr. Satinder Singh Bawa, Advoc
for GNCTD.
Mr. Rishi Bhardwaj, proxy cou
for Ms. Pratima K. Gupta, Adv
for R-5/DERC.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 08.12.2020 The hearing was conducted through video conferencing. CM APPL. 31785/2020 (exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed-off. W.P.(C) 10006/2020, CM APPL. 31784/2020 & CM APPL. 31786/2020

3. Issue notice. The learned counsel named above accept notice on behalf of the respondents. Reply and rejoinder, if any, be filed in 4 weeks each, successively.

4. The petitioner has impugned the demand by the Municipal Corporation of 'way leave charges', through letter dated 27.10.2020/ 04.11.2020, before permission could be granted to it for carrying out road-cutting in general. The aforesaid letter however, refers to permission for Jeewan Park Nala S/stn to Som Bazar Road, C-Block, Jeewan Park.

5. A similar demand raised by the North Delhi Municipal Corporation was dealt with by this Court in W.P. (C) 5293/2016, in which, inter alia, the following order was passed:

"...

4. These applications seek permission from the North Delhi Municipal Corporation (NDMC) apropos twenty three applications for laying electricity cables on roads/pathways/lanes and other areas under the control of the respondent Corporation.

5. The learned counsel for North Delhi Municipal Corporation (NDMC) refers to a chart according to which, out of the 23 applications, permission has been granted in one, while permission apropos the others has been deferred till 30.09.2020, by when the rainy season in Delhi will be over. She submits, upon instructions, that the applications could not be processed due to non- payment of Road Restoration charges.

6. Mr. Sandeep Sethi, the learned Senior Advocate for the applicant/petitioner submits that the applications have been pending for months and if that is that the holding back the Corporations decision/permission, then the petitioners shall deposit the requisite RR charges within two days, in terms of Column No. 6 of the aforementioned chart depicting the RR charges against each application. Apropos the application at Sr. No. 3, the petitioner will pursue his remedies with the Public Works Department.

7. According to the applicant/petitioner each of the projects is urgent so as to ensure that there is grid stability in supply of electricity to consumers. It is stated that the requirement of electricity in the domestic areas has increased due to the nationwide lockdown, because the number of residents staying back in residential premises round the clock, has increased the demand. It is argued that electricity being an essential service, its continuous and uninterrupted supply ought to be ensured at all times. Otherwise because of heavy load, the current infrastructure may itself burn out, leading to extensive destruction of property and disruption of supply of electricity for a long period. Therefore, the laying of cables and other improvements are imperative to upgrade the supply grid so as to ensure stability. It is in this regard that the policy for not granting permission till 30.09.2020, seems a little odd.

8. The applicant/petitioner further submits that while it is ready and willing to deposit the cost, it may be worthwhile to permit the applicant/petitioner to restore

the road immediately after laying of the cables so as to obviate any inconvenience to road/footpath users. Its work could well be finished within two days after laying cables so to reduce the time for restoration of the paths/roads, for normal use. The said restoration shall obviously be done under the instructions and guidelines of the Corporation and is likely to be faster than if the Corporation were to invite tenders for restoration of the road. In the circumstances, should the Corporation consider the applicant's request for restoration of the road to the Corporation's satisfaction, there would be no requirement of payment of road restoration charges. The Corporation shall take a view in this regard, within ten working days from the date of receipt of a copy of this order and communicate its decision to the applicant/petitioner. If the corporation agrees to the applicant/petitioner restoring the roads after laying of cables, etc. no RR charges will be required to be deposited. However, if the Corporation decides to things its own way of inviting tenders for restoration, etc. the said charges, will be deposited. In any case after the deposit of the RR charges the permission will be granted by the Coronation within four days thereafter.

9. Ms. Tewatia, the learned counsel for the Corporation insists that the Corporation has not given up its claim for Way Leave Charges. However, the same would not hold up the decision on the applications for commencing of work.

10. Issue of Way Leave Charges would be subject to the outcome of the Writ Petition

11. The applications stand disposed-off in terms of the above ..."

6. The petitioner shall be treated likewise in this case too. The South Delhi Municipal Corporation ('SDMC') will not delay its decision on the petitioner's application for commencement of work of laying underground electricity cables. The laying of the cables would be without prejudice to the rights and contentions of the parties. Specifically, without prejudice to the Corporation's claim for way leave charges from the petitioner. The petitioner's application is regarding laying of electricity cables for provision necessary public utilities -- an essential service. Therefore, as a special case, in the interest of the general public the Corporation would endeavour to dispose-off the appellant's application within 2 weeks from the date of receipt of copy of this order.

7. The copy of the petition has been served upon the learned Standing Counsel for the SDMC through e-mail during the Court proceedings.

8. List on 20.05.2021.

9. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J DECEMBER 8, 2020 AB