

Yogender Sagar vs Bses Ypl & Anr on 7 January, 2025

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 23/2025
YOGENDER SAGAR

Through:

BSES YPL & ANR.

Through: Mr. Sharique Huss

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 07.01.2025

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 23/2025

3. This writ petition has been preferred on behalf of the Petitioner challenging the alleged excess bill for Rs.13,56,198/- issued by BSES YPL/Respondents in respect of Enforcement of CAW No. 401660111 dated 20.09.2024. Petitioner also claims compensation and litigation expenses as well as a direction to the Respondents to reconnect the electricity connection which was disconnected on 15.11.2024.

4. Learned counsel appearing on behalf of the Respondents on advance copy of the writ petition, on instructions, submits that the electricity of the premises in question bearing No. D-116, Gali No. 5, Kamal Vihar, Delhi- 110094 has been disconnected as there are outstanding dues payable by the Petitioner in the sum of Rs.13,56,198/- and as the bill reflects Petitioner has This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/01/2025 at 21:27:45 indulged in meter tampering leading to fraudulent and dishonest abstraction of energy. Learned counsel raises an objection to the maintainability of the writ petition on the ground that only the Special Court constituted under Section 153 of the Electricity Act, 2003 ('2003 Act') is vested with the power under Section 154 of the 2003 Act to try offences punishable under Sections 135 to 140

and Section 150 of the said Act and to support this plea, relies on an order of this Court in Ashok Kumar v. BSES Rajdhani Power Limited, W.P. (C) 6026/2007, decided on 09.09.2016 as also orders in Kishan Singh Shokeen v. B.S.E.S. Rajdhani Power Ltd., W.P. (C) 9215/2007, decided on 01.07.2024 and Muhimuddin Muhi v. BSES Yamuna Power Ltd., W.P. (C) 4387/2023, decided on 11.12.2024.

5. Petitioner who appears in person, disputes the allegations of theft and dishonest abstraction of energy. He submits that it was the agent of Respondent No. 2 who had on 16.04.2024 noticed that there was some technical fault in the electricity meter of the Petitioner and had broken the seal to examine the meter, on an assurance that a new seal will be placed soon. However, the needful was not done for a long time and instead a show cause notice was issued on 27.08.2024, levelling false allegations of dishonest abstraction of energy. Petitioner attended the personal hearing on 02.09.2024 and also gave a written reply dated 04.09.2024 pointing out that the seal was broken by the team of BSES YPL and he had not tampered with the meter. Without paying heed to the issues raised by the Petitioner, the impugned bill was generated seeking an exorbitant amount of Rs.13,56,198/- and electricity was disconnected and thus, the impugned demand be quashed and electricity of the premises in question be restored. On the issue of the jurisdiction of this Court to entertain the writ petition, This is a digitally signed order.

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6. Heard the Petitioner and learned counsel for the Respondents.

7. There is merit in the preliminary objection raised on behalf of the Respondents. There can be no dispute that jurisdiction conferred on Constitutional Courts under Article 226 of the Constitution of India is an inviolable part of the basic structure of the Constitution and the High Courts have wide powers. It is, however, equally settled that the High Court should not exercise the extraordinary power in writ proceedings where disputed questions of fact are involved and in this context, I may allude to the judgment of the Supreme Court in Shubhas Jain v. Rajeshwari Shivam and Others, (2021) 20 SCC 454. In my view, a greater restraint is required when jurisdiction is conferred by Statutes on Special Courts.

8. As per the Respondents, Petitioner has allegedly tampered with the meter and indulged in fraudulent and dishonest abstraction of energy, an allegation seriously refuted by the Petitioner, who in turn blames the Respondents for having broken the seal for examination of the allegedly faulty meter. In a nutshell, the matter relates to alleged dishonest abstraction/theft of electricity by the Petitioner. In Ashok Kumar (supra), this Court held that in light of Sections 153 and 154(5) of 2003 Act, Petitioner had an alternate remedy to challenge the impugned bills before the Special Court and relevant passages from the order are as follows:-

"A perusal of the file reveals that it is the case of the respondent that the petitioner has indulged in fraudulent and dishonest abstraction of energy. A Division Bench of

this Court in B.L. Kantroo vs. BSES Rajdhani Power Ltd., 154 (2008) DLT 56 (DB) has held that the Special Court has exclusive jurisdiction to decide disputes pertaining to dishonest abstraction of energy. The relevant portion of the aforesaid judgment reads as under:-

"22. It is apparent that the cases of theft under Section 135(1) involve This is a digitally signed order.

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30. Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of civil Court in view of the provisions of Sections 153 and 154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said Court can act as civil Court as well as criminal Court while conducting the cases before it."

Accordingly, this Court is of the view that the petitioner has an alternative effective remedy to challenge the impugned speaking order and the impugned bills."

9. In this context, I may also allude to the observations of this Court in Kishan Singh Shokeen (supra), which are as follows:-

"7. The dictum laid down by the Supreme Court in Shubhas Jain v. Rajeshwari Shivam, 1 is of also pertinent importance, wherein, the Court has held that the High Court while exercising the jurisdiction under Article 226 of Constitution, should not adjudicate on the disputed questions of facts. The Court held as under:

"26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable."

8. Considering the case in hand, the dispute involves certain questions of facts like whether the meter itself was tampered and as to who was This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/01/2025 at 21:27:46 responsible for the same. These issues are highly contentious. Therefore, on the conspectus of the settled legal position as enunciated above, it is amply clear that since, the petitions at hand, involve various disputed questions of facts which would require a shred of evidence to be laid by the concerned party and a meticulous examination of such evidence before deciding such dispute. The Court, therefore, is not inclined to adjudicate such disputes in writ jurisdiction.

9. At this juncture, it is imperative to place reliance on the decision of the Supreme Court in SLP(C) No. 6883/2017 titled as North Delhi Power Limited v. Devinder Singh & Anr., wherein, the Court discussed the jurisdiction of the Civil Court in the context of the Electricity Act, 2003 and held that for disputes of such nature can be adjudicated by the Civil Court. The relevant paragraphs of the said decision are reproduced as under:- " It is clear from a perusal of the aforesaid sections that the Special Electricity Court acts as a Court of Sessions and has been set up to try offences that are committed under the Act. By no stretch of imagination can it be stated that a civil suit would be within the jurisdiction of such Court. We are, therefore, of the view that the impugned judgment deserves to be set aside.

10. This Court is not oblivious to the settled position of law that the presence of an alternate efficacious remedy by itself does not oust the jurisdiction of a writ court. However, such a position is also not absolute rather than subject to certain exceptions as enunciated by the Supreme Court in the decision of Radha Krishan Industries v. State of H.P., wherein, the Court observed as under:-

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is

challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when This is a digitally signed order.

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27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad, (2003) 5 SCC 399] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions."

11. However, the present is not the case where any of the exigencies as mentioned in the aforementioned paragraphs are met. More importantly, this is not the case wherein, any fundamental right of the petitioner was violated. Moreover, the petitioner has all the rights to approach the Civil Court. Having considered the nature of the grievance raised in the writ petition, it is found that the alleged violations of Rules and Regulations, if any can also be gone into by the concerned Court. Essentially the issue whether the petitioner was involved in the alleged theft of electricity or not perhaps may not be amenable to adjudication by this court in exercise of the extraordinary powers conferred under Article 226 of the Constitution.

12. Therefore, in view of the observations made hereinabove, the petitioners are granted liberty to approach the Civil Court or avail any other remedy, available as per law, for ventilation of his/her grievances."

10. Learned counsel for the Respondents has also rightly placed reliance on the decision in Muhimuddin Muhi (supra), where Petitioner was permitted to withdraw the writ petition to approach the appropriate forum in light of judgment in Ashok Kumar (supra), as the dispute pertained to dishonest abstraction of electricity.

11. In view of the plethora of judicial precedent that Special Court This is a digitally signed order.

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12. It is made clear that all rights and contentions of the parties to the lis are left open and the Special Court shall decide the matter on its own merit as this Court has neither entered into nor expressed any opinion on the merits of the case.

JYOTI SINGH, J JANUARY 07, 2025/shivam This is a digitally signed order.

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