



\$~9

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

+ W.P.(C) 6211/2012, CM APPL. 16668/2012, CM APPL.
5537/2017 & CM APPL. 44479/2021
HUMAN FUNDAMENTAL RIGHTS
ASSOCIATION (REGD.) & ORS.Petitioners

Through: Mr. Amit Saxena, Mr. Vaibhav
Saxena, Ms. Mandakini,
Advocates.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Tushar Sannu, Advocate for
GNCTD.
Mr. Anupam Varma, Mr. Nikhil
Sharma, Ms. Simran Kohli,
Advocates for BSES Yamuna
Power Ltd.
Mr. Pradeep Misra, Mr. Daleep
Dhyani, Advocates for R-9.
Mr. C.K. Rai, Mr. Vinay Kumar
Gupta, Advocates for R-11.
/UPERC.
Mr. Manu Chaturvedi, SC with Mr.
Khwaja Umair, Advocate for
MCD.
Mr. Anil Soni, Senior Advocate
with Mr. Devvrat Yadav, GP for
UOI.
Mr. Aditya Kumar Choudhary, Mr.
Sandeep Pandey, Mr. Aditya
Anand Singh, Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

11.12.2024

1. The petitioners claim to be residents of the area of East Gokalpur in



Delhi. They filed this writ petition challenging actions of the respondent No. 5– BSES Yamuna Power Ltd. [“BSES”], disconnecting their electricity supply, and also challenged a demarcation undertaken by the National Capital Territory of Delhi [“NCT of Delhi”], of the Delhi and Uttar Pradesh border.

2. It appears from the contents of the writ petition that the petitioners’ properties are located proximate to the Delhi-Uttar Pradesh border. They were being supplied electricity by BSES, which is a distribution licensee within the NCT of Delhi. BSES disconnected the electricity supply on the ground that petitioners’ properties were, in fact, situated in the State of Uttar Pradesh. The order of this Court dated 28.09.2012 records that the electricity supply to the colony was disconnected on 30.04.2012, but restored on 04.05.2012.

3. By the said order dated 28.09.2012, this Court restrained the respondents from disconnecting electricity supply to the petitioners, subject to timely payment of electricity bills and non-obstruction of the officials of BSES. Although BSES carried the matter in appeal (LPA 755/2012), the Division Bench dismissed the appeal by order dated 10.12.2012, as the order was only an *ad interim* order.

4. The contention of the petitioners, that their properties fall within the jurisdiction of the NCT of Delhi, was based upon issuance of various documents, including passport, election identity cards, etc.

5. The matter was substantially adjudicated by a judgment dated 17.09.2015. The relevant extracts whereof are reproduced below:

“4. It is pertinent to mention that present writ petition has been filed challenging the proposed action of the respondents to transfer the land and houses/properties situated in East Gokalpur, Amar Colony, A-



Block to State of Uttar Pradesh as well as to suspend disconnection of electricity of about 350 houses situated in the said area. **It is the petitioners' case that East Gokalpur, Amar Colony, A-Block is a part of Delhi and cannot be transferred to the State of Uttar Pradesh.**

5. On 28th September, 2012, this Court had restrained respondent-BSES YPL from disconnecting the electricity supply of petitioners, subject to the condition that electricity bills are paid on time and the petitioners do not obstruct any officials of respondent-BSES YPL from performing their duties. The rationale behind passing the said order was that petitioners, who primarily belong to weaker section of the society would be put to irreparable loss and inconvenience in case their electricity supplies are abruptly disconnected specially in the absence of any assurance from the State of Uttar Pradesh that electricity supply would be provided.

6. Mr. Jagjit Singh, learned counsel for the petitioners has vehemently stated that petitioners are residents of Delhi and are entitled to electricity supply from respondent-BSES YPL. He further states that PVVNL has no infrastructure to supply electricity in East Gokalpur, Amar Colony, A-Block as well as other similarly situated colonies on the border of Uttar Pradesh.

7. **Mr. Anupam Varma, learned counsel for respondent-BSES YPL has drawn this Court's attention to the report of demarcation of Delhi and Uttar Pradesh border by Total Station Method conducted jointly by officials of Delhi and Uttar Pradesh governments in May and June 2012. He states that respondent-BSES YPL is ready and willing to supply electricity connection to all those petitioners whose properties have been found to be situated in Delhi in accordance with the said demarcation report.**

8. **Mr. Varma submits that respondent-BSES YPL is prohibited in law from supplying electricity in areas falling in the State of Uttar Pradesh.**

9. **Mr. Daleep Kumar Dhayani, learned counsel for respondent-PVVNL states that residents whose properties are situated in the State of Uttar Pradesh shall be supplied electricity by the PVVNL. He, however, admits that as of today infrastructure for supply of electricity is not readily available in East Gokalpur, Amar Colony, A-Block as well as other similarly situated colonies on the border of Uttar Pradesh.**

10. Having heard learned counsel for parties **this Court finds that there is no dispute between the States of Delhi and Uttar Pradesh as to which area falls in which State. The said demarcation report has neither been challenged nor can it be challenged in the present**



proceedings. Consequently, the plea that petitioners' area falls in Delhi is rejected.

11. Moreover, from the aforesaid it is apparent that both the electricity suppliers, namely, BSES YPL and PVVNL are ready to supply electricity to the occupiers of the properties situated in their respective States. **The statement, assurance and undertaking given by the two counsel are accepted by this Court** and both respondents-BSES YPL and PVVNL are held bound by the same.

12. However, as the counsel for respondent-PVVNL has stated that infrastructure for supply of electricity is not readily available in the border area falling in the State of Uttar Pradesh, **this Court grants the State of Uttar Pradesh and PVVNL six months time to set up the infrastructure and/or negotiate with respondent-BSES YPL an agreement to supply electricity in the concerned areas, subject to approval of both the state electricity regulators.**

13. In the meantime, to avoid any inconvenience to the petitioners, this Court directs that the status quo prevalent as of today shall continue till further orders.

14. Respondents-BSES YPL and PVVNL are directed to file a status report with regard to availability of infrastructure as well as their capacity to supply electricity in East Gokulpur, Amar Colony, A-Block as well as other similarly situated colonies on the border of Uttar Pradesh."

[Emphasis supplied]

6. It appears from the above that the Court has accepted the stand of the respondents that the petitioners' area falls outside the NCT of Delhi. The undertaking of the electricity distribution company in the State of Uttar Pradesh – Pashchimanchal Vidyut Vitaran Nigam Limited ["PVVNL"], that it would supply electricity to the occupiers of the properties situated in the State of Uttar Pradesh was accepted, and PVVNL and the State of Uttar Pradesh were granted six months' time to set up infrastructure and/or negotiate with BSES to supply electricity in the concerned areas, subject to approval of both the State regulators. However, the *status quo* was continued to avoid inconvenience to the petitioners.



7. By order dated 13.02.2017, the Court recorded submissions of BSES that it was willing to hand over the electricity network which is in the territory of State of Uttar Pradesh to PVVNL, but the question of valuation prove to be an impediment. PVVNL insisted upon the transfer of undertaking without charges, but no agreement could be reached. BSES also raised the grievance that theft of electricity in the area from the network situated in the State of Uttar Pradesh, could not be redressed by Delhi Police.

8. In an order dated 04.08.2017, the submission of learned counsel for the petitioners has been recorded to the effect that a writ petition under Article 32 of the Constitution was filed before the Supreme Court for the purposes of demarcation of the land. The petition was withdrawn by order dated 26.10.2018, a copy whereof has been placed on record as part of an affidavit dated 11.01.2019 filed by BSES.

9. The State of Uttar Pradesh was also subsequently issued notice, but remains unrepresented. The Delhi Electricity Regulator Commission, and Uttar Pradesh Electricity Regulatory Commission were also impleaded, by order dated 14.01.2019. The Court noted in the said order that 209 properties, which fall partly in Delhi and partly in Uttar Pradesh, have been considered part of NCT of Delhi, but 167 properties fall in the State of Uttar Pradesh, to which PVVNL was bound to supply electricity. Learned counsel took time to take instructions on this aspect, but no categorical instructions are forthcoming even today.

10. The position which emerges from these orders is that the properties, which lie partly in the State of Uttar Pradesh and partly in the NCT of Delhi, are being supplied electricity by BSES. Learned counsel



for BSES states that they will continue to be supplied electricity by BSES. However, by the order dated 17.09.2015, the petitioners' properties were held to be outside the NCT of Delhi. The aforesaid judgment has not been challenged by any party, and has attained finality. Nine years have now passed, but the parties have not implemented the orders contained in paragraph 12 thereof, with regard to supply of electricity to the said properties. These findings and directions are binding upon the petitioners and PVVNL also.

11. The petition has remained pending only to ensure that electricity continues to be supplied to the petitioners. It is for PVVNL to either set up the infrastructure in terms of paragraph 12 of the said judgment or to enter into a negotiated agreement with BSES, subject to regulatory approval. Learned counsel for PVVNL states that no one has approached PVVNL for a connection so as to move in that direction. This appears to be a consequence of the *status quo* order passed by this Court, and continued by the judgment dated 17.09.2015. As the petitioners continue to avail of electricity supplied by BSES, despite the finding that their properties are not within the NCT of Delhi, they have not approached PVVNL for supply. This position can, however, not continue indefinitely.

12. The petitioners are therefore permitted to approach PVVNL for supply of electricity to their properties within the next four weeks, and PVVNL may take steps in accordance with law in this regard.

13. The onus has to be upon PVVNL to make the necessary arrangements, whether by way of setting up of its own infrastructure or arriving at an agreement with BSES. It cannot be that, despite the judgment of this Court dated 17.09.2015, BSES will continue to supply



electricity to the petitioners indefinitely, on the strength of an interim order, and PVVNL will be absolved of its statutory responsibilities to supply electricity in its area of supply.

14. The Managing Director of PVVNL is directed to file a personal affidavit before this Court within the next two weeks, delineating the steps taken pursuant to the order dated 17.09.2015 and the further steps which PVVNL will take to ensure that the directions contained in the said order are complied with, within a time frame of six months.

15. List on 22.01.2025.

PRATEEK JALAN, J

DECEMBER 11, 2024

'Bhupi'/AL/