



Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017

F.11(2098)/DERC/2023-24

Petition No. 20/2023

In the matter of: Application for and on behalf of the Applicant under the provision of Regulation No. 24 of Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 for shifting or relocation of Transformer bearing Number as IS-DL-RP-STC-DVKJ-1751-VKJ424 of 11000 volts installed outside the Applicant house bearing No. B-201 Area Land measuring 100 Sq Yards out of Khasra No. 1920 Min situated in Residential colony known as Vasant Kunj Enclave, B Block in the Revenue Estate of Village Rangpuri Alias Malikpur Kohi, Tehsil Vasant Vihar, New Delhi – 110070.

Rajat Tiwari

..... Petitioner

Versus

BSES Rajdhani Power Ltd.

Through its: CEO

..... Respondent

Coram:

Justice (Retd.) Jayant Nath, Chairperson

Sh. Ram Naresh Singh, Member

Sh. Surender Babbar, Member

Appearance:

1. Mr. Bharat Malhotra, Advocate for the Petitioner;

2. Mr. Moksh Arora, Advocate for the Respondent

ORDER

(Date of Hearing: 14.11.2024)

(Date of Order: 23.01.2025)

1. The instant Petition has been filed by Shri Rajat Tiwari, through his Counsel Shri Bharat Malhotra Advocate, under Section 142 of the Electricity Act, 2003 against BSES Rajdhani Power Ltd. alleging violation of the procedure as laid down in the Regulations of Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 ('DERC Supply Code, 2017').
2. In brief, the Petitioner is aggrieved by the action of the Respondent of installing 7/8 feet pole mounted Electricity Transformer in front of the Entrance Gate of the premises of the Petitioner without obtaining the consent of the

owner of the subject property. The Petitioner has prayed to issue an Order or direction to the Respondent to shift the Electricity transformer.

Petitioner's Submissions

3. The Petitioner stated that he had purchased the said property from Shri Ghansham Das. The Petitioner further stated that the said seller had not been residing at the property since the last several years.
4. The Petitioner stated that the Electricity transformer bearing number AS IS-DL-RP-STC-DVKJ-1751-VKJ424 of 11000 volts was installed outside the Petitioner's premises way back in 2015 and is in operation since then. However, it is pertinent to note herein that the Erstwhile Owner of the property was not residing in the Property in question and the Electricity transformer in question was installed in front of the subject property and is now covering more than 85-90% of the entrance without informing and without obtaining the written or the oral consent of the Erstwhile Owner, hence the installation of the Present Electricity Transformer is illegal.
5. The said property is now bounded by a built-up House towards the East Side, Service Road towards the West Side, Plot Number B-233 towards the North, followed by the Road on the South. The front of the property is occupied by the Electricity Transformer and there is a Boundary Wall of JJ Cluster Area at the back. The same leaves no option to the Petitioner to open the entrance at either side, the fact which can be very well ascertained by examining the photographs placed on record.
6. Before approaching this Commission, the Petitioner filed Writ Petition No. 2552/2023 and the Hon'ble High Court of Delhi disposed of the same on 01.03.2023 with the following observations: -

"3. Notwithstanding the above, the Court notes that the issues relating to shifting or relocation of a transformer would be governed by the provisions made under the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017, and more particularly, Regulation 24 thereof.

4. Accordingly, the writ petition is disposed of alongwith miscellaneous application, with liberty to the petitioner to apply in terms of the aforesaid Regulation before the competent authority. Any such application made by the petitioner be disposed of by the concerned authority in accordance with law."

7. The Petitioner stated that Section 67(3) of the Indian Electricity Act makes it abundantly clear that the Electricity Board is obliged to take consent from the Owner of the property before laying electrical poles and lines, the factum of which is missing in the facts of present case as there was no consent whatsoever was taken over by respondent from the erstwhile Owner. Even Regulation 24 of the Supply Code empowers the Court to Order for shifting of the Transformer.

Respondent's Submissions:

8. The Respondent has submitted that the instant Petition at the outset is liable to be dismissed on the sole ground of jurisdiction viz. the Petitioner has a specific remedy stipulated in Rule 3(1)(b) of The Works of Licensees Rules, 2006 read with Section 176 (2) (e) and Section 67 of Electricity Act, 2003. The said Rule provides that if at any time, the owner or occupier of any building of land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed, shows sufficient cause, the District Magistrate or the Commissioner of Police, or the Officer authorized may, by order in writing, direct for any such works, support, stay or strut to be removed or altered. The relevant extract of The Works of Licensees Rules, 2006 is produced herein:-

"3. Licensee to carry out works.

(1)(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorized may by order in writing direct for any such works, support, stay or strut to be removed or altered."

9. The Hon'ble High Court vide order dated 31.08.2022, took a similar view in Writ Petition bearing No. W. P. (C) 12556/2022 titled as "**Prashant Mathur vs. GNCT of Delhi & Ors.**", wherein, the Hon'ble High Court held that the issues relating to shifting or relocation of a transformer would be governed by the provisions made under the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 thereof.

10. The Respondent has further stated that the Petitioner had also approached the Hon'ble High Court of Delhi by way of W.P.(C) 2552/2023 titled as "**Rajat Tiwari vs. Delhi Power Company Limited & Anr**". The Hon'ble High Court, after noting the fact that the transformer was in existence prior to the construction raised by the petitioner herein disposed of the said writ petition vide order dated 01.03.2023. It was also observed that the issue relating to shifting or relocation of a transformer would be governed by the provisions made under the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017, and more particularly, Regulation 24.
11. That the Transformer in question was originally installed in April 2009 after following the due process of law under the Electricity Act, 2003, CEA Regulations, 2010 and DERC Regulations, 2007. Upon request of the Vasant Kunj Enclave United Residents Welfare Association, the said Transformer was shifted by the Answering Respondent in the year 2014 to the present location. Thus, the Transformer in question was in existence prior to the Petitioner purchasing the subject property in the year 2021. It is an admitted case of the Petitioner that the Transformer has been operational since 2015. As of date, the said Transformer is catering to the electricity supply of approx. 1444 consumers.
12. That the subject Transformer was installed with due caution and in accordance with the law framed under The Electricity Act, 2003 and Regulations framed under CEA Regulations 2010 and DERC Regulations, 2007.
13. It is submitted that the Petitioner has an equally efficacious alternative remedy to find recourse in the present matter. It is submitted that the Hon'ble High Court of Delhi in the matter of "**Kalyani India Private Limited vs. Government of NCT of Delhi & Ors.**", bearing W. P. (C) No. 718/2020 on the issue of removal/relocation/transfer of the transformer from the property of the Petitioner, passed an Order dated 20.01.2020, wherein, the Hon'ble High Court of Delhi disposed of the said writ petition, *inter-alia*, holding that a Petitioner has an alternative remedy, and it would be appropriate to approach the concerned authorities in accordance to the 3(1)(b) of The Works of Licensees Rules, 2006 read with Section 176 and Section 67 of The Electricity Act, 2003.

Rejoinder by Petitioner

14. The Petitioner has filed a Rejoinder dated 04.10.2024 and reiterated and reaffirmed that:

- i. The actions and conduct of the Respondents of installing the Electricity Transformer in question, right in front of the premises of the subject Property without approximately following the due procedure of obtaining consent from the owner of the subject property as per the provisions of the Indian Telegraph Act, 1885, as the same is, *inter alia*, *ultra vires* of Article 19 and 21 of the Constitution of India as well as from the purview and provisions of Delhi Electricity Regulatory Commission's Regulations, 2017.
- ii. It is denied that the Transformer in question was originally installed in April 2009 after following the due process of law under the Electricity Act, 2003, CEA Regulations 2010 and DERC Regulations, 2007. It is further denied that upon request of the Vasant Kunj Enclave United Residents Welfare Association, the transformer was shifted by the Respondent in the year 2014 to the present location. It is submitted that Transformer in question was installed outside the Applicant/ Petitioner's premises way back in 2015 and is in operation since then. However, it is further submitted that the erstwhile Owner of the Property was not residing in the Property in question and the Transformer in question was installed in front of the subject Property and which is covering more than 85-90% of the entrance without informing and without obtaining the Written or Oral Consent of the erstwhile Owner. It is also hereby submitted that at the time of purchasing the Property in question, the Applicant/Petitioner was aware about the erection of the Electricity Transformer in question and it is also a matter of record that in the present case, Consent was also not obtained from the erstwhile Owner of the Property and compensation was not paid, hence the subsequent purchaser, i.e., Applicant/Petitioner is entitled to call upon Respondents to shift the Transformer in question without cost.

15. During the hearing on 14.11.2024, the Learned Counsel for the Petitioner stated that the Petitioner is ready to pay the nominal cost upto Rs. 5-6 Lakhs for shifting of transformer to an appropriate place.

Commission's Analysis:

16. The Petitioner is the Owner of the property w.e.f 14.06.2021 and indisputably, the transformer in question was already in existence on that date. However, the grievance of the Petitioner is that the said 11000 volts Transformer poses not only a high risk to the health and safety but is also causing hindrance in ingress and egress into the property. The Petitioner also alleged that the Respondent has not obtained prior approval for installation of Electricity Transformer from the erstwhile Owner of the property.
17. The Respondent, per contra, submitted that the Transformer in question was originally installed in April 2009 and, upon request of the Vasant Kunj Enclave United Residents Welfare Association, the Transformer in question was shifted to the present location in 2014. The Respondent further submitted that the installation and operation of the Transformer adheres to all relevant safety standards, guidelines and statutory requirements and, thus, poses no safety hazard.
18. It is observed by the Commission from the admitted facts that there is no violation of Regulations warranting any action against the Respondent Licensee under Section 142 of the Electricity Act, 2003.
19. The Respondent has also brought on record the judgement that in the matter of **"Kalyani India Private Limited vs. Government of NCT of Delhi & Ors."**, WP(C) No. 718/2020. The relevant portions thereof are as under:-

" 1 to 3 xxxxxxxxxxxxxxxxx .

4. Rule 3(1)(b) of the said Works of Licensees Rules 2006 which have been framed under Sections 176 and 67 of the Electricity Act, 2003 reads as follows:-

"3. Licensee to carry out works.-(1) xxx

(a) xxx

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised

may by order in writing direct for any such works, support, stay or strut to be removed or altered.

5. Hence, according to the aforesaid provision in case, the owner of a land raises objections in respect of the works to be carried out and shows sufficient cause, the District Magistrate or the Commissioner of Police may direct such work, support, etc. to be removed or altered The Petitioner has an alternative remedy. It would be appropriate if the concerned District Magistrate may deal with the plea of the Petitioner."

6. xxxxxx

7. In my opinion, the plea of learned counsel for respondent No. 2 has merits. The petitioner has an alternative remedy. It would be appropriate if the concerned district magistrate may deal with the plea of the petitioner.

8. Let the concerned District Magistrate/Divisional Commissioner treat the present writ petition as representation of the petitioner and pass an appropriate order within 12 weeks from today. An opportunity would also be given to the petitioner and respondent No. 2 an oral hearing."

8 to 9. XXXXXXXXXXXXXXXXXXXXXXXXXX . "

20. In light of the above, the Petitioner may approach the Appropriate Authority as prescribed under Rule 3 of The Works of Licencees Rules, 2006 for seeking the redressal of his grievance.

21. With the above direction, the Petition is disposed of.

Sd/-
(Surender Babbar)
Member

Sd/-
(Ram Naresh Singh)
Member

Sd/-
(Justice (Retd.) Jayant Nath)
Chairperson