

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**I.A. NO.550 OF 2016
IN
DFR NO.3056 OF 2016**

Dated : 17th MAY, 2017.

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Shri I.J. Kapoor, Technical Member.**

IN THE MATTER OF:

**Shri Rama Shankar Awasthi)
200, Green Wood Govt. Society,)
Omega-1, Greater Noida-201308 &)
Anr.) ... Appellant(s)**

AND

**Uttar Pradesh Electricity Regulatory)
Commission)
Vibhutikhand, Kisan Mandi Bhawan,)
Gomti Nagar, Lucknow-226010 & Ors.) ... Respondents**

Counsel for the Appellant(s) : **Mr. Anand K. Ganesan**
Ms. Swapna Seshadri
Mr. Sandeep Rajpurohit
Ms. Neha Garg

Counsel for the Respondent(s) : **Mr. C.K. Rai**
Mr. Umesh Prasad for **R-1**.

Mr. C.S. Vaidyanathan, Sr. Adv.
Ms. Divya Chaturvedi
Ms. Arunima Kedia for **R-2**.

Mr. Sanjay Sen, Sr. Adv.
Mr. Aditya Shankar
Mr. Sameer Kumar
Ms. Mandakini Ghosh for **R-3**

ORDER

1. The Appellants have filed this appeal against order dated 20/04/2016 passed by the Uttar Pradesh Electricity Regulatory Commission ("**the State Commission**") in Petition No.971 of 2014 filed by Respondent No.2 - Noida Power Corporation Limited. By the impugned order the State Commission has approved the Power Purchase Agreement ("**PPA**") of Respondent No. 2 with Respondent No.3 - M/s Dhariwal Infrastructures Limited for procurement of 187 MW power for a period of 25 years.

2. In the present application the Appellants have prayed that they may be granted leave to file the appeal. In the application it is stated that the impugned order is passed without any public notice or hearing any other person apart from Respondent Nos.2 and 3 who are sister concerns. It is stated that since no public notice was issued, the Appellants could not participate in the proceedings before the State Commission. It is the case of the Appellants that they are consumers of Respondent No.2, the distribution licensee. According to the Appellants the entire cost and expenses of Respondent No.2 on purchase of electricity

including the cost that would be incurred on procuring electricity from Respondent No.3 is a pass through to the consumers. It is contended that the Appellants are therefore affected parties and they fall within the definition of the term “aggrieved persons” for filing the present appeal under Section 111 of the Electricity Act, 2003 (“**the said Act**”).

3. Respondent Nos.2 and 3 have opposed the prayer of the Appellants. Reply is filed by Respondent Nos.2 and 3. Rejoinders of the parties are on record. We have heard Mr. Ganesan learned counsel appearing for the Appellants, Mr. Vaidyanathan learned senior counsel appearing for Respondent No.2 and Mr. Sen learned counsel appearing for Respondent No.3 at some length. We have gone through the written submissions.

4. The first contention of Respondent Nos.2 and 3 is that the Appellants are not “persons aggrieved” under Section 111 of the said Act. In this connection at the outset it is necessary to see the averments made in the memo of appeal. Paragraphs 7A & B are material. They read as under:

7. FACTS OF THE CASE

- A. *The Appellants are consumers of the Respondent No.2, which is the distribution licensee for the area of Greater Noida. The Appellant No.1 has a rented accommodation at 200, Green Wood Govt. Officers Colony, Omega-1, in Greater Noida in the State of Uttar Pradesh. The Appellant has taken the above premises on rent from 10/10/2015.*
- B. *The Appellant No.2 is a resident of A-049, Sigma-4, Greater Noida and is also a consumer of the Respondent No.2. Copies of the electricity bills for the premises of the Appellant No.1 and Appellant No.2 are attached hereto and marked collectively as **Annexure B**.*

5. Thus Appellant No.1 claims that he has taken on rent premises situated at 200, Green Wood Govt. Officers Colony, Omega-1, Greater Noida. Appellant No.2 is a resident of A-049, Sigma-4, Greater Noida. The Appellants thus claim to be consumers of Respondent No.2. The appeal memo has been verified by Appellant No.1. Appellant No.1 has also filed affidavit dated 06/09/2016 stating that Appellant No.2 has authorized him to verify the appeal. It may be stated here that Appellant No.1's case is that he is the tenant of Mr. Paliwal. As consumers residing in Greater Noida and as consumers of Respondent No.2 the Appellants claim that they are aggrieved by the impugned order *inter alia* because the State Commission has mechanically

approved the PPA between Respondent Nos.2 and 3 who are sister concerns without assessing the availability of electricity at cheaper cost to the consumers.

6. In the reply filed by Respondent No.2, Respondent No.2 took objection that Appellant No.1 had not produced the Lease Agreement. Appellant No.1 then produced the Lease Agreement by way of its rejoinder.

7. Respondent No.2 thereafter filed IA No.727 of 2016 making serious allegations against Appellant No.1. It is stated in the application that the enquiries made by Respondent No.2 revealed that Mr. Paliwal and Appellant No.1 had not appeared before Mr. Verma the Advocate and Notary and the Lease Agreement was attested on the basis of identification by an Advocate. Doubt is raised whether the Advocate had identified Mr. Paliwal or Appellant No.1 or both. The allegations are summarized as under:

- a) The stamp paper was issued by the Treasurer on 09/12/2014 whereas the date of execution of the Lease Agreement is 10/10/2015.

- b) The property in question is situated in Greater Noida but the Lease Agreement has been executed and notarized in Lucknow by Mr. Verma, Advocate and Notary whose office is situated in Lucknow.
- c) The Lease Agreement comprises three pages. Mr. Paliwal (lessor) has signed all the three pages, whereas Appellant No.1's signature appears only on the last page.
- d) The tenure of lease in the Lease Agreement is of three years commencing from 01/10/2015, but it seems that it has not been registered.

8. It is further stated in this application that in proceedings before this Tribunal, Appellant No.1 has demonstrated that he is a resident of three different places in the State of Uttar Pradesh. This clearly indicates that Appellant No.1 purports to reside in a particular area to create locus. After assailing the conduct of Appellant No.1 and accusing him of having indulged in malpractice, Respondent No.2 prayed *inter alia* that under Section 120 (2) (d) of the said Act, the Register of Mr. R.C. Verma, Advocate and Notary in relation to notarization of the Lease Agreement dated 10/10/2015 entered into between Mr. Paliwal and Appellant No.1 be requisitioned from his office at Lucknow.

9. Mr. Vaidyanathan learned counsel appearing for Respondent No.2 and Mr. Sen learned counsel appearing for Respondent No.3 have reiterated the above submissions. It is contended that on the date of filing of the appeal Appellant No.1 had no locus to file the appeal as the Lease Agreement dated 10/10/2015 is not registered and not properly notarized. It is submitted that unregistered Lease Agreement is not admissible in evidence (**Anthony v. K.C. Ittoop & Sons & Ors¹**). It is submitted that use of old stamp paper indicates fabrication (**Thiruvengadam Pillai v. Navaneethammal²**). It is submitted that the Appellants have not come to the court with clean hands and therefore they should not get any relief from this Tribunal (**Ashok Kumar Pandey v. State of West Bengal³**). It is submitted that this appeal is in the nature of public interest. It is settled by this Tribunal that it does not entertain public interest litigation. (**Pushendra Surana v. Central Electricity Regulatory Commission⁴**). Counsel submitted that Appellant No.1 has tried to establish locus by creating a Lease Agreement. Appellant No.2 is but a proxy of Appellant No.1. The application therefore deserves to be dismissed.

¹ (2000) 6 SCC 394

² (2008) 4 SC 530

³ (2004) 3 SCC 349

⁴ 2014 ELR(APTEL) 820

10. Though this Tribunal is only concerned with the issues arising under the said Act and can never be converted into a Rent court, taking into account the serious allegations made against Appellant No.1, this Tribunal summoned Mr. Verma, Advocate and Notary to remain present before it. Accordingly, Mr. Verma remained present in the court on 20/03/2017 and stated that he had not notarized the Lease Agreement dated 10/10/2015. Appellant No.1 who was present in the court maintained that signatures on the Lease Deed were of Mr. Verma. The matter was adjourned to 22/03/2017 for appropriate orders. On 22/03/2017 this Tribunal recorded that in view of the statement made by Mr. Verma, it is necessary to obtain Handwriting Expert's opinion. The matter was listed on 27/03/2017. Pursuant to the above order, on 27/03/2017, Mr. Verma had brought his Registers and Seal. They were ordered to be taken in the custody of the court. Surprisingly, Mr. Verma retracted his earlier statement. He stated that his earlier statement that he had not notarized the Lease Agreement is incorrect. He stated that he had signed on the Lease Agreement and that his earlier statement was made due to inadvertence. He tendered apology

for his conduct. On that day Mr. Ganesan learned counsel appearing for the Appellants tendered in the court photocopies of certain documents showing the signature and seal of Mr. Verma. They are documents filed by Respondent No.2 in the State Commission. The said photocopies were also taken in custody.

All documents were marked as under:

- | | | |
|-------|---|--------|
| i) | Lease Agreement dated 10.10.2015 | - Y-1 |
| ii) | Supplementary submissions filed in Petition No. 971/2014 Dated 20.11.2015 | - Y-2 |
| iii) | Rejoinder affidavit in Petition No. 1020/2015 | - Y-3 |
| iv) | Rejoinder affidavit in Petition No. 987/2014 | - Y-4 |
| v) | Rejoinder affidavit in Petition No. 934/2014 | - Y-5 |
| vi) | Petition No.1020/2015 dated 11/05/2015 | - Y-6 |
| vii) | Affidavit of A.K. Arora dated 11.05.2015 | - Y-7 |
| viii) | Reply to Application Dt.23.03.2015 in Pet.No.987/2014 | - Y-8 |
| ix) | Submissions on behalf of NPCL consisting of 21 pages. | - Y-9 |
| x) | Affidavit dt. 26/10/15 of A.K. Arora in Petition No.971/14. | - Y-10 |
| xi) | xi) Affidavit dt. 20/11/15 of A.K. Arora in Petition No.971/14. | - Y-11 |
| xii) | xii) Affidavit dt. 27/09/14 of Mr. A.K. Arora. | - Y-12 |

xiii) Application dt. 10//11/2014 - Y-13

xiv) Affidavit of A.K. Arora dt. 10/11/2014 - Y-14

11. Documents at serial No.(ii) to (xiv) are documents filed by Respondent No.2 before the State Commission. Mr. Ganesan requested that whether entries of these documents are made in the Registers seized by us should be seen. Accordingly, we verified the Register. We found that just as there is no entry in respect of Lease Agreement dated 10/10/2015, there are no entries in respect of documents of Respondent No.2.

12. Mr. Ganesan learned counsel for the Appellants has made scathing comments on the conduct of Respondent Nos. 2 and 3. He submitted that it is the contention of Respondent Nos.2 and 3 that since there is no entry in the Register, the Lease Agreement is not properly executed. Counsel submitted that there is no requirement in law for notarization of Lease Agreement. If the presumption of execution is taken away, the Lease Agreement will have to be proved. In this case the landlord Mr. Paliwal has filed an affidavit stating that Appellant No.1 is his tenant and Lease Agreement has been executed between the two. In fact now Lease

Agreement dated 16/03/2017 has been executed, wherein the fact of tenancy of Appellant No.1 since 01/10/2015 has been confirmed. This Lease Agreement is for a period from 01/03/2017 to 31/01/2018. A copy of this Lease Agreement has been filed by Appellant No.1 along with his affidavit dated 17/03/2017. Counsel submitted that affidavits filed before the State Commission are required in law to be on oath. Requirement of filing affidavit in support on oath with the petition is prescribed in Regulation 29 and 31 of the Uttar Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations 2004. Counsel relied on judgment of the Bombay High Court in **Ayushakti Ayurveda Pvt. Ltd. v. Hindustan Lever Ltd.**⁵, where it is held that if an affidavit is not properly notarized, no value can be attached to it. Counsel submitted that all this has come to light because of the actions of Respondent No.2. Consequences of its action cannot be avoided by Respondent No.2 (**Joint Action Committee of Airline Pilots Association v. Director General of Civil Aviation**)⁶. Counsel submitted that on the above grounds the impugned order is liable to be set aside. Counsel submitted that the entire effort of Respondent Nos.2 and

⁵ (2003) 4 MLJ 915

⁶ (2011) 5 SCC 435)

3 is to avoid the scrutiny of the impugned order by this Tribunal. They have prolonged the matter for about one year. Counsel submitted that the impugned order will have to be set aside because of the defects in the documents filed before the State Commission, which go to the root of the matter.

13. In response to this submission Mr. Vaidyanathan learned counsel for Respondent No.2 submitted that this submission can be urged only at the time of the admission of the appeal as this Tribunal is at present concerned only with prayer for leave to appeal.

14. We express our deep anguish at the manner in which parties have dealt with notarization of documents. Even though Lease Agreement is not required in law to be notarized as contended by Mr. Ganesan, when a person chooses to get it notarized it must be done as per the law. We are distressed to note that several documents filed in the State Commission, particularly affidavit in support of the petition are stated to be notarized, but no entry in respect thereof is found in the Register. When questioned the Notary profusely apologized. He tendered

unconditional apology and stated that he would ensure that in future the Register will be maintained properly and the required procedure will be meticulously followed. When we were about to take action against Mr. Verma the counsel for the parties submitted that in view of the unconditional apology tendered by Mr.Verma and the statement promising good behavior made by him, a kindly view may be taken and he may be forgiven for his conduct. Having regard to the requests made by the counsel we refrain from taking any action against Mr. Verma, the Notary. We advise him to abide by his statement made before us which we have accepted and warn him that any deviation from this statement will entail serious action against him.

15. As to what will be the effect of an unsworn affidavit on the proceedings before the State Commission need not be examined now. That point can be urged at the stage of admission.

16. Now we come to the other questions raised by Respondent Nos.2 and 3. If a Lease Agreement is not notarized its execution will have to be proved. In this case landlord Mr. Paliwal and Appellant No.1 have filed affidavits confirming the execution of

the Lease Agreement and the fact that Appellant No.1 has been a tenant of the property since October, 2015. Moreover a fresh Lease Agreement dated 16/03/2017 is executed by them for a period of 11 months from March,2017 to January,2018 which further confirms the tenancy of Appellant No.1 from October,2015.

17. It is contended that the Lease Agreement dated 10/10/2015 is unregistered and hence not admissible. In the facts of this case, this submission does not help Respondent Nos.2 and 3. We are not dealing with a dispute regarding tenancy rights. In any case, the said Agreement can be looked into for the purpose of tenancy in collateral proceedings. (See **Bondar Singh v. Nihal Singh**⁷). It must be remembered that we are concerned only with the question whether Appellant No.1 is a consumer of Respondent No.2 or not.

18. Even if it is assumed that the Lease Agreement is invalid, the only effect is that the lease becomes a lease on month to

⁷ 2003-4-SCC 161

month basis (See **Bharat Petroleum Corporation Ltd. v. Rama Chandrashekar Vaidya**⁸)

19. The submission that Appellant No.1 has given different addresses in different proceedings to establish locus also deserves to be rejected. It is the case of Appellant No.1 that village Nithari is his ancestral village. His further case is that his residence is at Dalibagh, Lucknow where he generally resides and premises in Greater Noida have been taken on rent by him for his personal use as and when he travels to Delhi, Noida and Greater Noida. We find nothing wrong in a person maintaining three premises for his occupation and use. In view of the above we reject the objection raised by Respondent Nos.2 and 3 regarding validity of Lease Agreement dated 10/10/2015 and the submission that the Lease Agreement is entered into to establish locus.

20. It is also pertinent to note that Appellant No.2 is the owner of the premises in Greater Noida. He has given an authorization in favour of Appellant No.1 to sign the papers relating to the present appeal. The argument that Appellant No.2 is merely a

⁸ 2014-1-SCC 657

proxy of Appellant No.1 has no basis. In fact the appeal can be prosecuted by Appellant No.2 alone. Subsequently, Appellant No.2 has also filed affidavit confirming the authorization given to Appellant No.1 and verifying contents of the appeal.

21. If the Appellants are consumers of Respondent No.2 in the facts of this case, they would certainly be “persons aggrieved” for the purposes of Section 111 of the said Act. In **Municipal Corporation of Greater Bombay v. Lala Pancham & Ors**⁹, the Supreme Court has held that the term ‘any person aggrieved’ is of the widest amplitude. In that case the Supreme Court was *inter alia* dealing with a clearance order issued under the Bombay Municipal Corporation Act, 1988 (“**the Act**”). The question was who could lodge an objection to the clearance order. The relevant provision of the Act used the expression ‘any person aggrieved’. The Supreme Court held that the expression ‘any person aggrieved’ is sufficiently wide to include not only a tenant but also an occupant of a building who is likely to be dishoused as a result of the action taken under a clearance order. The Supreme Court expressed that the said expression was not defined in the Act, but it was inclined to give it its natural meaning and the natural

⁹(1965) 1 SCR 542

meaning would certainly include a person whose interest is in any manner affected by the order. In our opinion these observations of the Supreme Court are clearly attracted to the facts of this case. The Appellants' case is that they are consumers of Respondent No.2 and as such they are affected by the impugned order. We find substance in this submission. The Appellants, in our opinion, are "aggrieved persons" and leave to appeal can be granted to them.

22. We may also usefully refer to the order of this Tribunal in **Energy Watchdog v. Tamil Nadu Electricity Regulatory Commission & Ors - IA No.118 of 2016 in DFR No.2565 of 2015 dated 09/09/2016**, where this Tribunal has after discussing **Pushpendra Surana** on which reliance is placed by Respondent Nos.2 & 3 held that a consumer who would be affected by the power procurement by the distribution licensee, is an aggrieved person. We are unable to come to a conclusion that the present appeal is in the nature of public interest litigation. We are also not impressed by the argument based on the date of stamp paper and the contention that Appellant No.1 has not signed on each page of the Lease Agreement. When the landlord himself has filed affidavit supporting Appellant No.1's tenancy

these arguments are liable to be rejected and are rejected as such. We, however, reiterate that in these proceedings arising out of the said Act, we are concerned only with the question whether the Appellants are consumers of Respondent No.2 or not. Since Respondent Nos.2 and 3 have raised issue regarding tenancy, we have dealt with it. This Tribunal is, however, not expected to go beyond the scope of its jurisdiction and enter into intricacies of the Rent Act and other related statutes. On the basis of available material, we have come to a conclusion that the Appellants are consumers of Respondent No.2 and are aggrieved persons.

23. In view of the above leave to file the appeal is granted to the Appellants. We however make it clear that we have not expressed any opinion on the merits of the case. Nothing said by us in this order should be interpreted to mean that we have expressed opinion on the merits of the case.

24. The interim application is disposed of in the above terms.

25. List the matter on **18/05/2017**.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]