

**Devinder Kumar Vs. Delhi Electric Supply Undertaking**

**Devinder Kumar Vs. Delhi Electric Supply Undertaking**

**SooperKanoon Citation :** [sooperkanoon.com/699814](http://sooperkanoon.com/699814)

**Court :** Delhi

**Decided On :** Mar-14-1997

**Reported in :** 1997IIIAD(Delhi)126; AIR1997Delhi337; 66(1997)DLT853; 1997(41)DRJ655

**Judge :** S.N. Kapoor, J.

**Acts :** [Electricity Act, 1910](#) - Sections 39; [Indian Penal Code \(IPC\), 1860](#) - Sections 372; [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

**Appeal No. :** Civil Revision Appeal No. 12 of 1991

**Appellant :** Devinder Kumar

**Respondent :** Delhi Electric Supply Undertaking

**Advocate for Pet/Ap. :** Dinesh Kapur and; A.K. Jha, Advs

**Judgement :**

**S.N. Kapoor, J.**

(1) In this petition, the revision petitioner challenges an order refusing to stay disconnection of electricity by the learned Sub Judge Delhi in suit No. 308/90 and dismissal of appeal in Mc 419/90 dated 14th December 1990.

(2) According to the petitioner, he was running a factory of manufacturing of welding cables and welding rods in the name of M/s D.K. Traders at A-32 Mansarover Park. He was having an electricity connection since September 1988. The officials of the Desu threatened to disconnect his electric connection. He Filed the suit and an application for stay was also filed.

(3) The defendant/respondents have contested the suit and application both. One of the grounds taken was that the connection had been taken by Mr. Devinder Kumar but the supply was being used by D.K. Traders. On inspection on 8th March 1990 and 9th March 1990 the plaintiff was found connecting excess load to the extent of 33 HP. Full seal of the meter was found missing. The half seal of the meter was found tempered with. The disc of the meter was found moving in forward direction on red phase but stopped it blue phase and moving slow at yellow phase in forward direction. Paper seal of the meter was also found tempered with. The plaintiff was found to have abstracted the electricity stealthily and a case under Section 379 Indian Penal Code and 39 of Indian Electricity Act was got registered.

(4) Disconnection was initially stayed on 20th March 1990. The electricity was allegedly disconnected on 28th March 1990. On an application under Section 151 the defendant was directed to restore the electricity. The learned Sub Judge found that the license was in the name of Devinder Kumar and not in the name of M/s D.K. Traders. Moreover, the license was for assembly of electrical goods and not for manufacturing of welding cables and welding rods. The plaintiff had failed to produce any record relating to assembly of the electrical goods. Thus, prima facie he was running the business of manufacturing of welding rods and welding cables without any valid Municipal licence. He had not filed the notice which he received. On the basis of the inspection report dated 8th March 1990 filed by the respondent the plaintiff was found to have connected excess load to the extent of 33 HP. A copy of the Fir No. 52/92 Ps Mansarover Park, for the alleged theft of electricity was also filed. Finding neither any prima facie case, nor balance of convenience nor seeing any irreparable loss, he rejected the prayer for stay.

(5) Feeling aggrieved by this order, an appeal was Filed. The learned Additional District Judge also decided the matter against the petitioner on the basis of inspection report dated 8th March 1990 and meter testing report dated 9th March 1990 and copy of the FIR. The learned Additional District Judge took the view that the petitioner was using electricity in excess of sanctioned load to the extent of 33 HP; that it was difficult to reject the report of the Meter Testing Department; and it appeared that both the reports of 8th March 1990 and 9th march 1990 were drawn up by officials of separate functionaries under the respondent No. 1. The learned Additional District Judge was of the view that the report could not be rejected out of hand and they would have to be accepted as prima facie case against the plaintiff/appellant.

(6) I have heard the learned counsel for the parties at length and gone through the record. The learned counsel had raised several points. I will take each of them separately.

(7) The first point taken by the learned counsel was that the learned Additional District Judge as well as the learned Sub Judge took a wrong view on the point that the petitioner had not approached the court with clean hands. The submission appears to be contrary to the facts established on record. If a license was produced by the petitioner himself and after seeing it, the court found that the electric connection was for a different purpose, then that license could relate to only that specified kind of business and would not ensure to run the business for manufacturing any other goods. It is obvious that he had no license for manufacturing welding cables and welding rods. The welding roads and welding cables are goods different from electrical goods.

(8) It was next contended that the petitioner was granted a stay on 20th March 1996 and that should have continued till the disposal of the suit. In this respect, one has to note that stay was granted even at that stage for a particular purpose to use it in accordance with law and this also did not authorise any commission of theft or any other offence or in violation of any law or rule made thereunder.

(9) It was next contended that power/electric connection sanctioned under Section 4(4) of Deco 1959, sanctioned for one industrial purpose could be used for another

industrial purpose and it was not an offence, and as per Section 4(5) of Deco, the Desu could permit the change in the existing trade and could have allowed to run the additional trade. But, it is not the case that the plaintiff had applied for any such permission of the Administrator or Desu either under Deco Rule (4) or Rule (5). Nor, is it the case that the plaintiff were also running the same business even now. Section 4(4) and 4(5) of Deco read as under: 4. Restriction on Consumption of Energy Notwithstanding anything contained in any contract or agreement, no consumer shall:

'(1)xxx (2) xxx (3) xxx (4) Use a load for purpose other than the purpose for which it was sanctioned in his favor without the permission of Administrator viz., a load sanctioned for domestic/commercial purposes shall not be used for industrial purposes or a load sanctioned for domestic purpose shall not be used for a commercial purpose without the permission of the Administrator. (5) Notwithstanding anything contained in any contract or agreement or in the provision of a license granted under the Act, the Delhi Electric Supply Undertaking on the request of the licensee, may permit the change in the existing trade and allow to run the additional trade for which the load has been sanctioned other than obnoxious and hazardous industry without the prior approval of the Lieutenant Governor, Delhi.'

(10) These provisions are to be considered along with Clause Vi (3) of Schedule to the Act which shall be deemed to be the condition of licence. It reads as under:

'(3)Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier or as to the position of the meter board or as to the improper use of energy, or to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-clause (1), the matter shall be referred to an : Electrical Inspector and decided by Him.'

(11) Another contention was that since no notice was served in terms of the judgment in Municipal Corporation of Delhi Vs . M/s Aanta Iron & Steel Company (Pvt) Ltd., : [1990]1SCR733 , the only option was to issue direction for restoration

of electric supply after disconnection. In response to this contention, learned counsel for Desu submitted that the case was confined to only misuse or excess user; it was a case of electricity theft also. In *Mp Electricity Board, Jabalpur & Ors. v. Harsh Wood Products & Anr.*, Jt 1996 (5) 434 it was held that in case of detection of pilferage of electricity seven days prior notice was not necessary before disconnection, the Supreme Court observed in para 8 as under:

'8. The learned counsel for the respondent placed strong reliance on Section 24 of the Indian [Electricity Act, 1910](#) which contemplates seven days notice before disconnection. Section 24 does not apply on demand on detection of pilferage. It should apply to a case of regular supply made and prior demand for payment of electricity charges with a notice of seven days to be made and for failure to pay within the given time, after expiry of seven days, the appellant as a licensee would get the right to disconnect the supply of electrical energy. It would thus be seen that disconnection will be in the course of regular supply of electricity for non-payment of the usual bills but not to any case of demand after detection of pilferage.

(12) The learned counsel also assailed the question of alleged theft on the ground if the electricity was disconnected on 28th March 1990, with a view to creating evidence, the police aid was sought. It appears that this submission is devoid of any force. It is apparent from the report dated 8th March signed by Enforcement Inspector as well as one K.L. Garg, Superintending Engineer. The report of 8th March bears signature of Prakash, representative of the petitioner. It is not possible to assume at this stage that the Superintending Engineer and his own representative Prakash and Enforcement Inspector would have connived to forge the document. It is apparent that the officials had to visit the premises several times - once to inspect the premises, and another time to remove the meter. There is no reason at this stage to observe simply on the basis of surmises made by the learned counsel for the petitioner that everything was done by these officials only to harm the petitioner.

(13) It is notable that when the two courts have prima facie taken a particular view on facts which does not appear to be perverse, I feel that this court is supposed to

act upon the observations of the courts below regarding facts about misuser, absence of license for which the electricity was being used and about electricity theft. In this light, it is apparent that the petitioner did not approach the court with clean hands and naturally in these circumstances, the petitioner cannot be said to be entitled to any relief in this revision petition. The revision petition is dismissed accordingly.

(14) A copy of this order be sent to the learned trial Court through learned District Judge for information and to proceed in accordance with law.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**