

HIGH COURT OF ALLAHABAD**Bench: Manjive Shukla, J. and S.D. Singh, J.****Date of Decision: 23 February 2024**

WRIT - C No. - 5548 of 2024

Dr. Ashok Kumar Sharma And Another**VS****State Of UP And 4 Others****Legislation:**

Electricity Act, 2003

U.P. Electricity Code, 2005

Constitution of India, Article 226

Subject:

Writ petition concerning the entitlement of electricity connection for tenants in a disputed occupancy scenario.

Headnotes:

Tenant's Right to Electricity Connection – Ambit and Limitations – The petitioners, as tenants, seek an electricity connection independent of the landlord's consent. They rely on Supreme Court and Allahabad High Court precedents asserting tenants' rights to basic amenities like electricity. [Paras 2, 7, 8]

Occupier's Right to Electricity – clarified – highlighted that a tenant, as an 'occupier', has the right to apply for an electricity connection under the Electricity Act, 2003, and the U.P. Electricity Code, 2005, subject to certain conditions, including the furnishing of an indemnity bond. The court distinguished between authorized occupation and unauthorized occupancy. [Para 11-14]

Effect of Eviction Decree – recognized – acknowledged the existing eviction decree against the petitioners, which impacts their status as 'authorized occupiers'. The Court held that without a stay on the eviction decree, the petitioners cannot be considered authorized to occupy the premises, thus affecting their eligibility for an electricity connection. [Para 14-15]

Discretionary Relief – denied – exercised judicial discretion to refuse the petition for a direction to the electricity corporation to provide a connection to the petitioners under the current circumstances. However, the court left open the possibility of the petitioners re-applying for a connection if the eviction decree is set aside, recalled, or stayed. [Para 16-17]

Decision – Writ Petition Disposed – The petition was disposed of with the observation that the petitioners' entitlement to an electricity connection would be reconsiderable if there is a change in their legal status concerning the premises in question. [Para 18]

Decision:

The court denies the writ petition due to the petitioners' current status as subjects of an unchallenged eviction decree, but leaves the door open for a future application if their legal status changes. [Paras 16-18]

Referred Cases:

- Dilip (Dead) through LRS. Vs. Satish and others, 2022 LiveLaw (SC) 570
- Anand Kumar Vs. State of U.P. and others, 2023(3) ADJ 668 (DB)

Representing Advocates:

Ashish Kumar Srivastava for petitioner

C.S.C., Udit Chandra for respondent

Hon'ble Saumitra Dayal Singh, J. Hon'ble Manjive Shukla, J.

1. Heard Shri Ashish Kumar Srivastava, learned counsel for the petitioners, Shri Udit Chandra, learned counsel for the respondent Distribution Corporation and learned Standing Counsel for the State.
2. The writ petition has been filed with the following main relief :

"Issue an appropriate writ, order or direction to respondent nos. 2 to 4 to provide electricity connection in the portion of premises No. D-36/17-18 Augustkunda, Varanasi which is under occupation of the petitioners-tenants."

3. Admitted facts of the case are, the petitioners were the inducted as tenants of the disputed premises being D-36/17-18 Agastkunda, Varanasi. At that time, there existed an electricity connection in the premises thus let out to the petitioners.
4. According to the petitioners, the respondent-landlord was seeking to forcibly evict the petitioners. The petitioners filed Original Suit No. 154 of 2011, wherein *vide* order dated 19.07.2011, the learned Civil Judge (J.D.) City Varanasi granted injunction in favour of the petitioners restraining the respondent from evicting the petitioners except in accordance with law.
5. Later, respondent no. 5 brought another proceeding being S.C.C. Suit No. 42 of 2014 (Sri Kashi Nattukottai Nagara Chetram Vs. Dr. Ashok Kumar Sharma and another) seeking eviction of the present petitioners. That was decreed *ex parte vide* order dated 19.4.2018. Arising therefrom, the respondent is seeking execution of the decree whereas the petitioners are seeking recall of the same. Both proceeding are pending. Only this much may be noted, there is no stay order operating against the *ex parte* decree obtained against the petitioners.
6. It is in such situation, petitioners claim to be the 'occupier' of the disputed premises. The electricity connection that earlier existed on the premises in the occupation of the petitioners has been disconnected by the respondent-Distribution Corporation on the application of the landlord.
7. Shri Udit Chandra states, there are outstanding dues of the electricity connection in excess of Rs. 3,00,000/-. Though the petitioners are not willing to deposit the amount of outstanding electricity dues, they claim grant of fresh connection in their name as occupier of the premises. In that regard, petitioners have made an application and furnished an indemnity bond. Reliance has been placed on a decision of the Supreme Court in **Dilip (Dead) through LRS. Vs. Satish and others, 2022 LiveLaw (SC) 570**, wherein it has been observed as below :

"It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question."
8. Further, reliance has been placed on a decision of the coordinate bench of this Court in **Anand Kumar Vs. State of U.P. and others, 2023(3) ADJ 668 (DB)**, wherein it has been observed as below :

"10. A bare reading of the provisions of the Electricity Act, 2003 go to show that every distribution licensee is under an obligation not only to develop but also to maintain efficient, coordinated and economical distribution system in the area of its supply. The provision of Section 43 of the Electricity Act cast a statutory duty upon the distribution licensee to supply electricity not only to owner but also occupier of premises located within the limits of the area of its supply subject to an application being made by owner or occupier in this regard and correspondingly the owner or occupier of any premises, as the case may be, has statutory right to supply and obtain such electricity supply from the distribution licensee. Of course, the right is subject to completion of formalities provided for the purpose.

11. Electricity Supply Code, 2005 reference of which has been made by learned counsel for the respondents to contend that electricity connection cannot be granted without consent from the owner enforced in 2005 enlists the obligations of the licensee and consumers vis-a-vis each other and specifies the set of practices to provide efficient, cost effective and consumer friendly service to the consumers. Under Clause 2.2 (oo) of 2005 Code 'Occupier' means the owner or authorized person in occupation of the premises where energy is used or proposed to be used. Clause 4.4 prescribes procedure for processing of application for supply. Clause 4.4 (a) which is relevant for the purpose of the present case reads as under :

13. Section 43 of the Act enjoins a duty upon the licensee not only to supply electrical energy on an application in this behalf not only by a owner of a premises but also a occupier which has been defined under the Code 2005 to include any authorized person in occupation of the premises. A tenant would be an authorized person in occupation of a premises.

14. A perusal of Clause 4.4 of the Code 2005 goes to show that indemnity form as per Annexure 4.2 can also be filed along with an application for new connection. The purpose is to enable such tenants, in respect of whom the owner or landlord refuses to give no objection for a new connection.

15. A perusal of Annexure 4.2 reproduce herein-above goes to show that the purpose as is obvious from the reading of the aforesaid form is to indemnify the licensee for any loss that may accrue on account of any act of a person in occupation of the building though he may not be owner. Thus, the Code 2005 provides either for consent letter of owner of the premises or in the absence thereof indemnity bond by the lessee/tenant or occupier of the premises. Intention is, thus, clear that either there should be owner's consent to indemnify the licensees in case the tenant/lessee or occupier vacates and

vanishes without leaving his address or in the alternative tenant/lessee or occupier may give an undertaking indemnifying any loss or damage to licensee on account of electricity connection being given to him without the consent of the owner of the land or premises making it recoverable from him and his property under the provisions of the Revenue Act in force at the time of such recovery, or by such other proceedings as the Licensee may deem fit to initiate.

16. *From the reading of the aforesaid provisions, it is clear that licensee is under an obligation to supply electrical energy on a proper application being made and every owner or occupier, which will include a tenant, of the premises has statutory right to apply and obtain electricity supply from the licensee subject to his fulfilling requirements under the provisions of the Electricity Act, 2003 and the Electricity Supply Code 2005. ..."*

13. *Thus, from the observations made in the afore quoted judgment in the case of Seema Mansoor (supra) and as per Scheme of the Act, 2003, an occupier of the premises is entitled for electricity connection and licensee cannot deny the electric connection to such an occupier of the premises."*

9. On the other hand, learned counsel for the Distribution Corporation states, in face of eviction order passed against the petitioners which is pending execution and in light of outstanding dues against an old connection, the Distribution Corporation may not be forced to grant connection to the petitioners in such a situation.

10. Having heard learned counsel for the parties and having perused the record, by way of principle, it needs no reiteration that a tenant may not be deprived of the electricity connection for reason of dispute with the landlord. To that extent, the tenant may not be left at the mercy of the landlord to avail that basic amenity. However, the decision of the Supreme Court in **Dilip (supra)** does not lay down a proposition-electricity connection must be granted in favour of a tenant irrespective of all other facts.

11. The decision of the coordinate bench of this Court in **Anand Kumar (supra)** dealt with the provision of the U.P. Electricity Code, 2005 (hereinafter referred to as the 'Code, 2005'). Qua the rights of the tenant and the obligations of the distribution company it was found that a tenant being 'occupier' may remain entitled to apply for connection on fulfilment of terms and conditions, mainly, upon issuance of indemnity bond.

12. We find that ratio of that decision is not squarely applicable to the present case. As noted in **Anand Kumar (supra)**, the right of a tenant to electricity connection springs from his inclusion in the term 'occupier' as defined under Section 2 (oo) of the Code, 2005. It reads as below :

"(oo) "Occupier" means the owner or authorised person in occupation of the premises where energy is used or proposed to be used."

13. Plainly before a person (including a tenant) may claim to be an 'occupier' he must be seen to be a person authorised to occupy the premises. By way of example, it may be noted that a trespasser or a person declared to be an unauthorised occupant may not claim any right to occupy the premises over which he may have been declared to be trespasser or an unauthorised occupant.

14. In the context of the facts brought before us, while it is true that the petitioners were admitted to tenancy over the disputed premises, it is equally true that as on date they are faced with a decree of eviction. In absence of any stay order operating against that decree, we cannot recognise the present petitioners as persons "authorised" to occupy the premises in dispute.

15. What ultimate fate litigation may reach may not be contemplated or speculated at this stage, less so by this Court exercising equitable jurisdiction under Article 226 of the Constitution of India.

16. Inasmuch as the petitioners are awaiting execution of the eviction decree, we refuse to exercise our discretionary jurisdiction to issue any writ or direction upon the electricity corporation to grant electricity connection to the petitioners, at this stage.

17. We however make it clear, if the decree of eviction is set aside, recalled or stayed, at that stage, the petitioners may remain entitled to apply for connection in accordance with law noted above.

18. With the aforesaid observations/directions, the writ petition stands **disposed of**.

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