

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-5349 of 2024

Present:
Justice Zafar Ahmed Rajput,
Justice Ms. Sana Akram Minhas,

Petitioner : David s/o. Sohna, through
Mr. Shamshad Ali Qureshi Advocate.

Respondents : 1. Chief Executive Officer/MD, K-Electric.
No. 1 & 2. 2. Area Manager/Deputy Manager, Karachi
(Nemo)

Respondent No.3 : NEPRA through its Chairman (Nemo)

Date of hearing : 29.10.2024.
Date of order : 29.10.2024.

ORDER

ZAFAR AHMED RAJPUT, J: - Through the instant Constitutional Petition, the
Petitioner, *inter-alia*, seeks the following relief: -

- a) *That Direct the official of K-Electric to install the electricity to the petitioner, which is fundamental and basic right of petitioner to use the electricity in accordance with law while respondents are bound to supply the electricity to common man/public and cannot run from their responsibility.*
- b) *To Direct the official respondent No. 3 to take appropriate action against the official of K-Electric who are harassing the public and failed to perform their legal duty against the public interest.*

2. Briefly stated facts of the case, as disclosed in the memo of Petition, are that the Petitioner has been residing since his childhood at House No. 161-A, Gali No. 2, Azam Basti, Mehmoodabad, Karachi, which was purchased by his father; that after the demise of the Petitioner's father, one of his brothers, namely Shams Zahid, occupied a portion of the said house and took over the control of electricity connection in the year 2000; that initially the electricity connection was utilized jointly by both parties, with the Petitioner contributing towards the payment of electricity charges; later, the Petitioner's brother assumed exclusive control over the said electricity connection and in the year 2002 he discontinued the electricity supply to the Petitioner; since then the Petitioner has been obtaining electricity through a wire connection from his neighbours; that the Petitioner approached the

Respondents No.1 & 2 on several occasions, requesting them to install a separate electricity connection in his name but they failed to perform their statutory duty; that the Petitioner thereafter served a legal notice upon the said Respondents, but the same yielded no result; that the Petitioner also submitted an application before the Respondent No.3 for redressal of his grievances but in vain; hence, the Petitioner has maintained this petition.

3. Learned counsel for the Petitioner contended that the Petitioner duly submitted the prescribed application form before the Respondents and expressed his willingness to pay the electricity charges strictly in accordance with his actual consumption; however, despite the Petitioner having fulfilled the requisite formalities, the Respondents have failed to install the requisite electricity connection; hence, such failure is in clear violation of the obligations governing the supply of electricity; that the Government of Pakistan continues to hold a 22% shareholding in K-Electric and retains representation on its Board of Directors; as such, in such circumstances, the refusal or failure to supply electricity to the Petitioner by the Respondents No.1 & 2 constitutes an unlawful act attributable to an entity having, at least in part, a State-related character and involvement; that the failure of the Respondent No.1 to provide a separate electricity connection to the Petitioner is violative of his fundamental rights guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973; that the Respondent No.1, being the entity responsible for the supply and distribution of electricity is under a statutory obligation to provide electricity to the Petitioner being an eligible consumer; that failure and neglect on the part of the Respondents to install an electricity connection in favour of the Petitioner amounts to denial of his fundamental rights and, therefore, is illegal, arbitrary, and unsustainable in law; that the acts and conduct of the Respondents amount to an arbitrary exercise and misuse of authority and are contrary to the public interest; that the continued failure of the Respondents to provide an electricity connection has resulted in the curtailment and infringement of the Petitioner's fundamental rights, thereby causing him serious and continuing prejudice.

4. We have heard learned counsel for the petitioner and perused the material available on record.

5. At the very outset, it may be observed that the controversy sought to be agitated through the instant Petition is, in substance, a private dispute between the Petitioner and his brother, namely Shams Zahid, concerning possession of the house in question and entitlement to the electricity connection installed therein. It

appears that the electricity connection was originally obtained in the name of the Petitioner's brother and has remained in his name and under his control. The Petitioner alleges that his brother discontinued the electricity supply to him in the year 2002. The grievance of the Petitioner, therefore, does not arise from any arbitrary, unlawful, or mala fide refusal on the part of the Respondents No.1 & 2 to provide a basic utility; rather, it emanates from an intra-family dispute concerning possession of the property and entitlement to the existing electricity connection, which the Respondents No.1 & 2 cannot be expected to adjudicate or resolve.

6. The installation of a separate electricity connection is subject to the applicable rules, regulations, and consumer application procedure of K-Electric, which, *inter alia*, require an applicant to establish his title, ownership, or lawful possession over the premises in respect of which such connection is sought, particularly where an existing connection is already installed in the name of another person. The questions as to whether the Petitioner is in lawful and independent possession of an identifiable portion of the house and whether, as against his brother, he is entitled to a separate electricity connection involve disputed questions of fact concerning possession and entitlement *inter se* the parties. Such questions cannot appropriately be adjudicated upon in the constitutional jurisdiction of this Court, as their determination would require examination of evidence before a court or forum of competent jurisdiction.

7. It is well settled that the constitutional jurisdiction of this Court cannot ordinarily be invoked for resolution of private or a civil dispute between individuals merely by impleading a public entity as a respondent. Nor can such extraordinary jurisdiction be invoked as a substitute for the ordinary remedies available to an aggrieved consumer, including the departmental/consumer complaint mechanism and any remedy available before the competent forum under the applicable electricity and consumer-protection laws. In the instant case, the Petitioner has failed to demonstrate that he approached or exhausted any such alternate and efficacious remedy before invoking the extraordinary constitutional jurisdiction of this Court.

8. For the foregoing reasons, we find no merit in the instant Petition, which is accordingly dismissed in limine, along with the listed applications. The Petitioner shall, however, remain at liberty to seek appropriate relief, in accordance with law, before the competent forum for resolution of the underlying dispute concerning

possession of the premises and his entitlement, if any, to a separate electricity connection.

9. The above are the reasons for our short order dated 29th October, 2024.

JUDGE

JUDGE

Athar Zai