

**REPORTABLE**

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) NO.13441 OF 2004**

% **Date of Decision : April 30, 2008.**

VINOD KUMAR JAIN

.... Petitioner.

Through Mr. Arvind Sah, Advocate.

VERSUS

BSES RAJDHANI POWER LTD.

.... Respondent.

Through Mr. Amit Kapur, Mr.Apoorva  
Misra and Mr. Mohit Jolly, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

**SANJIV KHANNA, J:**

1. The petitioner, Mr. Vinod Kumar Jain is owner and occupant of property bearing no. 47/3, Jonapur, Vindhyachal Farms, Mehrauli which is energized by an electricity connection

through licensee BSES Rajdhani Power Ltd. (hereinafter referred to as respondent-distcom, for short).

2. Petitioner claims that after installation of the electronic meter, he started receiving exorbitant bills w.e.f. 28<sup>th</sup> February, 2003. He relies upon consumption pattern from 30<sup>th</sup> December, 2001 onwards. As per the said consumption pattern, the maximum consumption was of 1930 units in February, 2002 but w.e.f. 28<sup>th</sup> February, 2003 the consumption for each billing circle was between 6596-10638 units. The petitioner, however, paid these bills. On 18<sup>th</sup> February, 2004 he received an electricity bill of Rs.79,370/- on the basis of consumption of 19832 units between the period October, 2003 to February, 2004. Subsequently, he also received another bill showing consumption of 9517 units for the period February-April, 2004. On 20<sup>th</sup> March, 2004 he wrote to respondent-distcom to change the electricity meter. In this letter he gave details of the earlier billing pattern and stated that the electricity meter was running fast and not recording correct reading as per actual consumption.
3. On 24<sup>th</sup> April, 2004 the electricity meter was inspected and tested by the respondent-distcom and was found to be running fast by 5.07%. I need not in this case examine the question whether the electricity meter was faulty and defective as both

the parties admit that the error of +5.07% recorded and found at the time of inspection is beyond permissible limits.

4. It is stated in the writ petition that the respondent-distcom did not correct the bill and thereafter issued a disconnection notice dated 5<sup>th</sup> August, 2004, which prompted the petitioner to approach this Court. It is the case of the petitioner that he is not liable to pay the electricity bill in question because it was raised on the basis of a faulty meter. The respondent-distcom on the other hand, have stated that the petitioner is liable to pay the electricity bill for the period in question after reducing the consumption as recorded by 5.07% i.e. for 18225 units.
5. Both the parties have relied upon The Delhi Electricity Regulatory Commission (Performance Standards-Metering and Billing) Regulations, 2002 (hereinafter referred to as the Regulations, for short) as the said Regulations were applicable at the given point of time. Relevant Regulations being nos. 19, 20 and 21 (excluding the portion which is not relevant), read as under :-

**19. Testing of meters.-** (i) The licensee shall conduct periodical inspection/testing and calibration of the meters as per rule 57 of Electricity Rules, in the following manner:-

(a) Periodicity of meter tests

The licensee shall observe following time schedule for regular meter testing:-

| <b>Category</b>         | <b>Interval of testing</b> |
|-------------------------|----------------------------|
| NDMC, MES, Railways     | 6 months                   |
| Bulk supply meters (HT) | 1 year                     |
| LT meters (11kW-100kW)  | 3 years                    |
| LT meters (upto 11 kW)  | 6 years                    |

Wherever applicable, CT and PT shall also be tested along with meters.

(b) When the meter is found to be fast beyond limits specified in rule 57(1) of the Electricity Rules, the licensee/consumer, as the case may be, shall replace/rectify the defective meter within 30 days of testing. The licensee shall adjust/refund the excess amount collected on account of the said defect, based on percentage error, for a period not more than 6 months from the date of test and charge the cost of replacement/repair of the meter in the next bill sent to the consumer.

(c) When the meter is found to be slow beyond permissible limits, as specified in rule 57(1) of the Electricity Rules and the consumer does not dispute the accuracy of the test, the licensee/consumer, as the case may be, shall replace/rectify the defective meter within 30 days of testing. The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a period of not more than 6 months prior to date of test with due regard being paid to conditions of working, occupancy, etc., of the premises during this period and up to the date on which defective meter is replaced/recitified.

(d) If the consumer or his representative refuses to sign the test report and pay due billing charges, the defective meter shall not be replaced/rectified and the licensee shall approach the designated electrical inspector, who shall test the correctness of the meter and give results within one month. The decision of the Inspector shall be final and binding on the licensee as well as the consumer.

(ii) The licensee shall keep record of all such meter tests and submit to the Commission exception report every six months.

**20. Meter complaints.-** (i) Correctness of meter-

(a) Should the consumer dispute the accuracy of the meter, he may, upon giving notice/complaint to that effect and paying prescribed testing fee, have the meter tested by the licensee.

(b) The licensee shall, within 15 working days of receiving the complaint, carry out testing of the meter and shall furnish duly authenticated test results to the consumer.

(c) If the meter is found to have error beyond the limits of accuracy as specified in rule 57 of Electricity Rules, and the meter has not been tested within the meter testing schedule as prescribed in regulation 19, the amount of past energy bill shall be adjusted in accordance with the result of test with respect to the meter readings of the 3 billing cycles prior to the billing cycle in which dispute has arisen and upto the date of replacement of meter.

(d) The consumer shall not be liable to pay any demand violation charges if the demand computed on the basis of test results of the meter exceeds his contract demand.

(ii) Meter not recording-

(a) If the meter is not recording/stuck as reported by the consumer, the licensee shall check the meter and if found stuck, the meter shall be replaced by the licensee/consumer, as the case may be, within 30 days of receipt of complaint.

(b) If the meter is not recording/stuck as noticed by the licensee, the licensee shall notify the consumer. Thereafter, the licensee shall check the meter and if found stuck, the meter shall be replaced within 30 days.

(c) The consumer shall then be billed on provisional basis on average consumption of last three billing cycles for a period between the date of last reading and the date of replacement/repair of the stuck meter.

(iii) Burnt meter –

(a) x x x x

- (b) x x x x
- (c) x x x x
- (d) x x x x

**21. Billing during the period defective/burnt meter remained at site.-** (i) The consumer shall be billed (for the period meter remained defective) based on the estimated energy consumption by taking the consumption pattern of the consumer for the 6 months prior to and 6 months after the period, during which the meter remained defective. The amount already paid by the consumer by way of provisional bills for the period meter remained non-functional or defective, shall be adjusted in this bill.

(ii) In cases where the recorded consumption of past six months prior to the date meter became defective, is either not available or partially available, the consumption pattern as obtained from such lesser period along with the above mentioned subsequent six months' pattern shall be deemed sufficient for estimation of consumption.

(iii) In case, the Maximum Demand Indicator (MDI) of the meter at the consumer's installation is found to be faulty or not recording at all (unless tampered), the demand charges shall be calculated based on billing demand during corresponding months/billing cycle of previous year, when the meter was functional and recording correctly. In case the recorded MDI of corresponding month/billing cycle of past year is also not available, the highest of the billing demand during 6 months succeeding meter replacement shall be considered."

6. The above Regulations are not self evident and clear but somewhat confusing and at the first blush overlapping and contradictory. It is the case of the respondent-distcom that Regulation 19 will apply to the present case as the meter was found to be defective and Regulation 20 will not apply as it is not the case of the petitioner that the meter in question was not tested within the time schedule prescribed in Regulation 19. It is stated that Regulation 21, which is for

computation of demand/consumption, applies only when meter is defective and also when meter was not tested within the testing schedule under Regulation 19. Both the conditions of Regulation 20(1) (c) should be satisfied for Regulation 21 to apply. On the other hand, the petitioner claims that Regulation 19 applies only in case of suo moto testing by respondent-distcom pursuant to the schedule fixed in Regulations 19 and Regulation 20 applies when consumer makes a complaint and on testing the meter is found to be defective or running fast.

7. Regulation 19, as per the heading, deals with testing of meter. Normally, heading given to a Section does not determine and is not used as a tool to interpret the Section but the heading of the Section is certainly useful and can give insight into the scope and ambit of the provision, if the language employed in the Section is ambiguous. Reference in this regard can be made to the case of ***Uttam Das Chela Sunder Das versus Shiromani Gurdwara Parbandhak Committee*** reported in (1996) 5 SCC 71 wherein it has been observed as under:-

“18. We have strong reservations to such unpurposive view of the High Court for more than one reason. The marginal note/caption to Section 16 is the foremost pointer that the issue whether the institution in question is a Sikh Gurdwara or not, has to be decided first and other questions later. The marginal notes or captions are, undoubtedly, part and parcel of legislative exercise and the language employed therein provides the key to the legislative intent. The words so employed are not mere surplusage.”

8. Similarly, in the case of ***Iqbal Singh Marwah versus Meenakshi***

***Marwah*** reported in (2005) 4 SCC 370, it has been held as under:-

“.... Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. (See *Craies on Statute Law*, 7<sup>th</sup> Edn., pp. 207, 209)”

9. A heading of a section therefore provides an insight into the factors to be considered. In case of ambiguity and doubt these can be always referred to as a key or as an opening into the mind of the draftsman and the clauses arranged thereunder. Where however the language is clear and discernible, normally the heading or the title should not be referred to and cannot form the basis for interpreting the subject matter dealt with in the relevant clause. Thus it is permissible to assign a limited role to a heading or title of a section. (See, ***Raichurmatham Prabhakar versus Rawatmal Dugar*** reported in (2004) 4 SCC 766).

10. Heading of Section 19 states that the said provision deals with testing of meters as per Rule 57 of the Electricity Rules, 1956. Sub-clause (a) of Clause (i) stipulates that periodicity of testing and intervals during which a meter must be tested. Sub-clause (b) of Clause (i)

stipulates that in case a meter is found to be beyond limits (it should be excessive) as specified in Rule 57 (1) of the Electricity Rules, 1956, the defective meter will be replaced within 30 days and the licensee will adjust or refund the excess amount collected on account of defective meter based upon percentage of error. The period for correction will not be more than six months from the date of testing. The consumer will bear the cost of replacement. The said Clause does not permit the distcom to collect any additional amount in case the meter was running slow. In such cases, when the consumer admits that the meter is slow, clause (c) applies but when there is a dispute, the matter has to be referred to an electrical inspector as stipulated in clause (d). Thus, under Regulation 19 when on inspection, a meter is found to be fast, two results will follow. Firstly, the meter must be replaced by the Distcom within 30 days and secondly the bills paid by the consumer till the date of inspection will be corrected and the excess amount paid, depending upon the percentage of error, will be refunded to the consumer or adjusted in future bills to be paid by the consumer. This correction will be for a period of six months from the date of the test. Thus the meter is presumed to be defective and recording excess energy charge for a period of six months. No penalty is imposed upon the distcom and the adjustment is as per the percentage of error in the testing. Only benefit which the consumer gets is retrospective benefit for a period of six months. This may not be of any advantage as the meter may have been defective for a longer time, but the consumer cannot

claim benefit beyond six months.

11. Regulation 20, on the other hand, begins with the heading “meter complaints”. Clause (i)(a) relates to complaints made by a consumer about the accuracy of a meter. Sub-clause (b) requires meter to be tested within 15 days of the complaint and sub-clause (c) deals with a situation where a meter is found to be defective. Sub-clause (d) however states that in such cases the consumer will not be liable to pay any demand violation charges if the demand computed on the basis of the test results of the meter exceeds the contract demand.

12. We are concerned with Regulation 19(i)(b) and 20(1)(c) and have to decide, which one of the two regulations will apply in the present case. It is an admitted case of the parties that the meter was found to be defective on the testing done on 24<sup>th</sup> April, 2004. It is the case of the respondent-distcom that Sub-clause 20(1)(c) will not apply as the second condition, namely, “meter was not tested within the meter testing schedule as prescribed in Regulation 19” is not satisfied. I have given my consideration to the said contention but I am unable to agree with the respondent-distcom. At the outset I may state that the Regulation 20(1)(c) is rather loosely worded and could have been more certain. Regulation 20(i) deals with complaints made by consumer and the effect thereof in case the meter is found to be defective to the disadvantage of the consumer. If the interpretation given by the respondent-distcom is accepted then neither Regulation 19(i)(b) or 20(i)(c) will apply. Regulation 19(i)(b) as interpreted above applies only

to cases where on self-testing by the respondent-distcom, a meter is found to be recording excess consumption. Clause (b) of Regulation 19(i) applies to suo moto inspection and testing by the Distcom. The said Regulation does not apply when a consumer makes a complaint. A more plausible and reasonable interpretation will be to read the word “and” used in Regulation 20(i)(c) as “or”. Normally, the use of the word “and” is in cumulative sense, that is, requiring fulfillment of conditions that are adjoined, but sometimes by force of the context “and” is read as “or”. This is required to carry out the intention of the legislature and only in such cases where it is found necessary, the plain natural meaning of the word “and” is given go bye to and the word “and” is read as “or” as in a disjunctive fashion. This is done to prevent the provision from becoming unintelligible, unworkable or totally irreconcilable to the rest of the statute. (See, in this regard the observations of the Supreme Court in ***Faqir Mohd. Versus Sita Ram*** reported in (2002) 1 SCC 741 and ***Ishwar Singh Bindra versus State of U.P.*** reported in (1969) 1 SCR 219.)

13. In other words, if on a complaint made by a consumer, a meter is tested and found beyond the limit of accuracy or the meter has not been tested within the time schedule fixed in Regulation 19(i)(a) and is found to be defective, then in either case Regulation 20(i)(c) will be applicable. Cases of complaints covered by Regulation 20(i)(a), Clause (c) will apply. Thus, when a complaint is made by a consumer and the meter is found to be defective, Clause (c) of Regulation 20(i)(a) will apply.

Refund or adjustment under Regulation 19(i)(b) is not applicable as the said Regulation relates to suo moto testing of meters by Dictcom. Similarly, Sub-Clause (c) of Regulation 20(i) will apply where a meter has not been tested within the prescribed schedule fixed under Regulation 19 and the meter is found to be fast. In such cases also Regulation 19(i)(b) will not apply and Regulation 20(i)(c) will apply. In such cases Clause 19(i)(c) or (d) will also not apply.

14. Regulation 20(i)(c) stipulates that the meter reading for the past three billing cycles prior to the billing cycle in which dispute has arisen and upto the date of replacement of the meter will be adjusted in accordance with the test. Thus, for the last three billing cycles prior to the billing cycle when test was conducted, are required to be adjusted and the petitioner given benefit and refund of the excessive charges claimed from him. Regulation 20(i)(c) also stipulates that "*the adjustment*" will be "*in accordance with*" the result of the testing. The adjustment, therefore, to be made is limited to the result of the test i.e. the defect or the percentage by which the meter was found to be running faster. Thus, Regulation 20(i)(c) also stipulates the calculation or adjustment to be made if the meter is found to be running faster. The consumer gets the benefit of adjustment in accordance with the test report and for the period of the billing cycle in which the complaint is made and retrospectively for the last three billing cycles and thereafter till the date the meter is replaced. Regulation 20(i) does not have a similar provision as Regulation 19(i)(c) or (d) i.e. when meter is found to be running slow. Thus, where a meter is found to be running slow on a complaint made by the consumer or has not been tested within the time schedule, no past arrears can be claimed by the Distcom. The reason is obvious. The calibration of the meter is done by the distcom. It is the responsibility of the distcom to ensure that the meter is properly calibrated and tested within the time schedule. The consumer or

licensee has hardly any say in the matter and neither does he possess the necessary technical expertise. Public utility service must meet the exacting standards.

15. I may note here that Regulation 20(i)(c) does not in fact levy any penalty on the distcom in case the meters are defective or records excessive consumption. Regulation 20(i)(a) and (c) can hardly be regarded a penal provision against any wrong calibration resulting in meters being faster. As already stated above, it is the duty of the distcom to calibrate the meters and ensure that the same are within prescribed limits. It is for the regulators and authorities to examine this aspect and take corrective steps, if required.

16. Regulation 21 will apply when a meter is burnt. The said Regulation also stipulates that it will apply when a meter is defective. Learned counsel for the petitioner had submitted that Regulation 21 will apply to cases where on a complaint made by a consumer under Regulation 20(i)(a), a meter is found to be defective and beyond the limit of accuracy. An incorrect meter can be also regarded as a defective meter but I do not think Regulation 21 will apply to cases where a consumer has raised a dispute about accuracy of a meter under Regulation 20(i)(a) and the same is found to be incorrect. In such cases, Regulation 20(i) is a complete Code and also stipulates how adjustment is to be made as provided in sub-Clause (c). A specific Regulation i.e. 20(i)(c) will prevail and apply over a general Regulation 21. In cases covered by Regulation 20(i) calculation will have to be done in terms of Sub-clause (c). In such cases adjustment in favour of

the consumer for the period specified on the basis of the test will have to be made as stipulated in Clause (c). Regulation 21 will apply when a meter is not recording any consumption as stipulated in Regulation 20(ii). In other words Regulation 21 applies when a meter is defective in the sense that it is dead or stuck. This becomes clear if we examine the language of Regulation 20(ii)(c) which provides for provisional billing. The term “provisional billing” also finds mention in Regulation 21(i). Sub-Clause (ii) of Regulation 21 is also an indicator that the said Regulation applies when a meter is defective in the manner it does not record electricity consumption or is stuck and not to cases covered by Regulation 20(i).

17. The Writ Petition is accordingly partly allowed to the extent indicated above. It is directed that the respondent-distcom shall calculate and grant benefit to the petitioner under Regulation 20(i)(c) for the past three billing cycles and the billing cycle in dispute shall be adjusted according to the test report. A fresh bill will be issued to the petitioner within a period of three weeks from today. No late payment/surcharge will be charged in the said bill. In case the petitioner is entitled to any refund, the same shall also be paid to him within three weeks.

In the facts and circumstances of the case there will be no order as to costs.

**(SANJIV KHANNA)**

**JUDGE**

**APRIL 30 , 2008.**

**P/VKR**