

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

+ W.P.(C) 12682/2005

Date of decision : 12th February, 2008.

RG SCIENTIFIC ENTERPRISES (P) LTD.

..... Petitioner

Through Mr.Jeevan Prakash, Adv.

versus

BSES RAJDHANI POWER LTD.

..... Respondent

Through Mr.Arun Monga, Adv.

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?

ORDER

% 12.02.2008

1. The petitioner M/s RG Scientific Enterprises (P) Limited has filed the present writ petition for quashing show cause notice dated 3rd December, 2003 as well as speaking orders dated 10th January, 2004 and 1st June, 2005 passed by respondent-Distcom M/s BSES Rajdhani Power Limited.

The petitioner has also challenged the impugned bill dated 18th October, 2004 as revised on 29th June, 2005 for Rs.5,09,308/-.

2. The petitioner is a private limited company and is running and managing a Pathology and Urology Medical Centre at premises No. F-12, East of Kailash, New Delhi-65. The electricity to the said premises during the period in question i.e. September, 2003 onwards was supplied by the respondent-Distcom through two electricity connections of 61.14 KW and 50 KW. It is also the case of the petitioner that they had installed a generator set in the premises through which a substantial load was connected.
3. On 29th September, 2003 it is alleged that the respondent conducted an inspection in the aforesaid premises. It is the case of the petitioner that no inspection report was prepared or counter signed at that time and no show cause notice was given at the site. The respondent, on the other hand, claim that an inspection report was prepared, which bears the signature of the petitioner. Unfortunately, copy of the inspection report has not been filed along with the counter affidavit, though very existence of the inspection report is subject matter of controversy and issue in the writ petition and a similar contention had also been raised before the Assessing Officer. Failure of the respondent to place on record photocopy of the inspection report, it appears is intentional. This Court therefore, has to draw an adverse inference that the inspection report does not support

the case of the respondent, otherwise there was no reason and cause for the respondent not to place the said inspection report on record, specially in view of the averments made in the writ petition challenging and questioning the very existence of the report.

4. Apart from the above fact, I find that in the present case show cause notice was issued by the respondent-Distcom on 3rd December, 2003, which is almost after 60 days after inspection was done on 29th September, 2003. In this connection my attention has been drawn to Clause 31(iii) of the DERC Regulations, 2002, which provides that show cause notice/inspection report must be signed by an authorised signatory of the licensee and must be handed over to the consumer at the site immediately under proper receipt and in case of refusal, a copy must be pasted at a conspicuous place in or outside the premises and simultaneously inspection report and the show cause notice should be sent to the consumer under registered post. In fact, DERC Regulations, 2002 specially stipulates that the inspection report must contain the nature of violation and the same must be clearly mentioned. There is no explanation why there was violation of Regulation 31(iii) in the present case as the show cause notice was not given immediately to the petitioner but was issued after a lapse of 60 days.
5. In addition to the above, there are certain other aspects which have been raised by the petitioner in his detailed written averments filed before the

Assessing Officer, which have been enclosed as Annexure P-10 at page 53 onwards. In the speaking order dated 1st June, 2005, the assessing officer has not dealt with several contentions and has passed the order in a cryptic manner without meeting the allegations. For example, it is mentioned that inspection proforma No. 922 dated 29th September, 2003 shows connections of the DG set. However, the entire connected load to the DG set is not mentioned and the fact whether there was overlapping of equipment mentioned in inspection proforma Nos. 921 and 922 is not specifically stated. Even the allegations made by the petitioner for failure to furnish inspection report and the fact there was no inspection report at all and there was non-compliance of other provisions of DERC Regulations, 2002 has not been averred to and specifically examined. In fact, the stand taken by the petitioner before the Assessing Officer was that the inspecting team did not ascertain the load that was exclusively connected to the generator set which was found to be in use and operation.

6. Another contention raised by the petitioner was that there is distinction between the connected load and user. The speaking order ignores the said contention. The petitioner had also alleged that he could not have been billed as MLHT(LT) or his category converted from NDLT to MLHT (LT) as a medical centre is entitled to be billed at NDLT for load upto 200 KW. This contention has not been examined.

7. Learned counsel for the petitioner has drawn my attention to para 5.7.2.1 of the Tariff Schedule, which stipulates that in case of non-domestic consumer of upto 100 KW, the said consumer is entitled to 15% rebate on the Tariff charges of Rs.515/- per unit. It is stated that the petitioner/consumer has not been given the said rebate.
8. Learned counsel for the petitioner during the course of arguments has relied upon regulation 31(i) of DERC Regulations, 2002, which reads as under:-

“(i) The licensee shall not be entitled to levy and charge on account of violation of provision (s) of Tariff Schedule prior to the date of last reading/inspection and in no case beyond past six months from the date of the current reading/inspection.”

9. However, it is pointed out by the learned counsel for the respondent that the said Regulation will not apply in view of Regulation Section 45(vi) of DERC Regulation, 2002, which reads as under:-

“These Regulations shall not apply to the extent of rationalization order or tariff order has made specific provisions”.

10. In this regard, my attention has also been drawn to the tariff approved for the years 2003-04. As per notification dated 26.6.2003, para 8.2.1.1 (ii) reads as under:-

“(ii) The above tariff will be levied for six months prior to date of detection retrospectively, unless conclusive evidence, to the

satisfaction of the licensee, is produced by the consumer to substantiate that excess load beyond 100KW was connected afterwards.”

11. The above clause in the tariff schedule will override the provisions of DERC Regulation, 2002 in view of Regulation 45 (vi). The said clause stipulates that the bulk tariff charges will apply and will be levied for 6 months prior to date of detection retrospectively unless consumer produces evidence to substantiate that excess load beyond 100 KW was connected afterwards.
12. In view of the above facts, I hereby set aside the two impugned speaking orders dated 10th January, 2004 and 1st June, 2005 as well as the bill as revised on 29th June, 2005 for Rs.5,09,308/-. The Assessing Officer will pass a fresh speaking order dealing with all the specific contentions as raised by the petitioner. The petitioner is also given liberty to raise the additional contentions. The petitioner will appear before the Assessing Officer on 25.2.2008 at 3.00 p.m. The respondent is given liberty to furnish copy of the alleged inspection report. In case inspection report is not legible, a typed copy of the same will be furnished. Speaking order will be passed within eight weeks from the date of first hearing, which is fixed for 25.2.2008.
13. The petitioner has already deposited Rs.4 lacs with the respondent/Distcom. In case the petitioner is entitled to any refund, the

same will be paid along with interest @ 12% per annum from the date of deposit.

14. It is also clarified that if the petitioner is aggrieved by the fresh speaking order, he is at liberty to challenge the same in accordance with law.

The present writ petition is accordingly disposed of.

DASTI.

SANJIV KHANNA,J

FEBRUARY 12, 2008

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