

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

+(1) W.P.(C) 13556/2006

B.S.E.S.RAJDHANI POWER LTD. Petitioner
Through Mr. I.S. Alag & Mr. J.S. Lamba, Advocates.

versus

CONSUMER GRIEVANCE REDRESSAL F Respondents
Through Mr. Anoop Bagai & Mr. Devendra Nautiyal,
Advocates for respondent No. 2.

+(2) W.P.(C) 14873/2006

NALIN BHUSHAN CHANDHOK Petitioner
Through Mr. Anoop Bagai & Mr. Devendra Nautiyal,
Advocates.

versus

BSES RAJDHANI POWER LTD. Respondent
Through Mr. I.S. Alag & Mr. J.S. Lamba, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
01.04.2008

1. These are two cross writ petitions, one filed by BSES Rajdhani Power Limited and the other filed by the consumer- Mr. Nalin Bhushan Chandhok.

2. There was a dispute between consumer and erstwhile Delhi Vidyut Board about electricity dues and consumption charges payable with effect from 1991. It appears from the order passed by the Consumer Grievance Redressal Forum that due to error in software, Delhi Vidyut Board was raising provisional bills, which resulted in levy of late payment surcharge charge.

3. In 2001, Delhi Vidyut Board framed and introduced a LPSC waiver scheme. It is the case of the consumer that taking advantage of the said scheme, he approached Delhi Vidyut Board for payment of outstanding bills and thereafter in the month of February, 2001 payment of Rs.1,61,574/- was made. The consumer claims that this payment was in full and final settlement of all arrears. The stand taken by the Delhi Vidyut Board, it appears was contrary.

4. The consumer thereupon filed a writ petition being CW No. 5886/2001 in this Court. The said writ petition was disposed of by order dated 7th August, 2002 with the consent of the parties recording as under:-

“Learned counsel for the parties state that in view of the counter affidavit filed and in view of the fact that the petitioner has availed of the scheme of waiver of LPSC, a corrected demand is liable to be sent to the petitioner and the petitioner can continue to deposit current charges.

In view of the aforesaid, it is directed that corrected

demand be sent to the petitioner within two weeks and the same shall thereafter be paid by the petitioner. The petitioner in the meantime shall continue to pay the current demands and on payment of current demand the connection of the petitioner shall not be disconnected. This is of course subject to the condition that on receipt of amended bill the petitioner pays the same.

Writ petition stands disposed of in the aforesaid terms.”

5. The net effect of the above order was that the consumer was entitled to waiver of all LPS charges, but he shall be liable to pay for the units consumed.

6. In July, 2002, Delhi Vidyut Board was disbanded and BSES Rajdhani Power Limited came into existence and was assigned rights for recovery of dues of the Delhi Vidyut Board.

7. Pursuant to the order passed by this Court on 7th August, 2002, a demand was raised against the consumer. The consumer thereupon approached this Court by filing W.P. (C) No. 3557/2003. The said writ petition was disposed of, referring the matter to the Consumer Grievance Redressal Forum constituted under Section 42(5) of the Electricity Act, 2003.

8. The said forum by its order dated 31st March, 2006 has held as under:-

“Keeping in view the totality of the situation, the Forum observes that delay in raising the bills on actual reading basis for the period from 1991 onward and up to the date of amalgamation of the connections is entirely attributed to the then licensee of power i.e. DESU/DVB and presently BRPL, regardless of the reasons involved.

It is difficult for any consumer to authenticate the bills prepared on reading basis for a long period of 12 years approximately at this stage.

The Forum therefore directs that the bills be issued in respect of the (eight) connections existing at the premises on reading basis for a period of three years, reckoned back w.e.f. the date of amalgamation i.e. 2.4.2003 as per laws of limitation. Bills issued on provisional basis earlier than three years from the date of amalgamation i.e. prior to 2nd April 2000 will be deemed to have been settled.”

9. The Consumer Grievance Redressal Forum is certainly right in observing that there can be some difficulty in raising bills on actual reading basis for the period 1991 onwards and it will be for the Distcom to establish the actual consumption of the units by the consumer. To this extent, no fault can be found with the order passed by the Consumer Grievance Redressal Forum. It is reiterated that it is the responsibility and liability of the Distcom to establish and show actual consumption of units from 1991 and justify the electricity bill. The consumer will be entitled to benefit of payments made by him. In case of any dispute about payment, the consumer may also be entitled to some indulgence because of the delay in

raising the bill as it may be difficult to procure and get firm evidence. To this extent also, I agree with the order passed by the Consumer Grievance Redressal Forum. However, it is not possible to agree with the direction given by the Consumer Grievance Redressal Forum that Distcom will be entitled to raise bills for a period of three years, reckoned back with effect from the date of amalgamation i.e. 2nd April, 2003. While giving the aforesaid direction, respondent-Distcom has been directed to raise bills only for the period upto 2nd April, 2000 and no computation or bills can be raised for the period before the said date. No reason has been given in the impugned order for the aforesaid direction except stating that this was as per law of limitation. It is well settled that normal law of limitation is not applicable for recovery of electricity dues. The period in question, is before the Electricity Act, 2003, came into operation and will be governed by the provisions of Electricity Act, 1910. Reference in this regard may be made to the decision in ***H.D. Shourie versus Municipal Corporation of Delhi & Another***, reported in 32 (1987) DLT 73, wherein it has been observed as under:-

“12. There is no provision either under the Municipal Corporation Act or under the Electricity Act which provides the period within which a bill for electricity charges must be sent. According to the Conditions of Supply the bill is to be sent monthly or

bimonthly but if no bill is sent who is the loser. The loser obviously is the respondent-licensee who is entitled to receive money for the electricity consumed by a consumer but is not in a position to receive the same unless and until it sends a bill. It is true that considerable hardship may be caused to a consumer if a bill for the electricity charges is sent after lapse of a number of years and the consumer is asked to pay a large amount in one lumpsum, but it must not be forgotten that for all this period of time the consumer uses the money which would have been legitimately due and payable to the licensee for the electricity admittedly consumed. I am quite sure that if and when occasion arises and such large sums of money are demanded, the respondents would act reasonably and allow sufficient time to the consumers to pay the amount so demanded. Unless and until a statute clearly limits the right of an authority to assess, compute or to send a bill, it cannot be said that that authority loses its right to recover the money due to it by sending a bill within three years. Where, however, once a bill has been sent then the period of limitation for recovery of the same would commence and if payment is not made within three years, the right of the respondents to file a suit would be lost.

13. For the aforesaid reasons, it must follow, therefore, that the respondents are at liberty to send a bill for consumption of electricity even three years after the electricity has been consumed.”

10. Moreover in the present case the consumer had filed CW No. 5886/2001, which was disposed of on 7th August, 2002. The said consent order records that LPSC shall stand waived and the consumer will continue to make payment of current demand. It also records that the consumer will

pay corrected payment sent to him. The consumer had, therefore, agreed to pay corrected demand for the entire period, which was made subject matter of CW No. 5886/2001. It cannot be said that the consumer is not liable to pay arrears for the period prior to 2nd April, 2000.

11. In these circumstances, the matter is remanded back to the Consumer Grievance Redressal Forum to re-examine the matter in the light of the observations made above. It is again clarified that the consumer may be entitled to benefit in case the Distcom is not able to establish actual consumption of units. Consumer will be also entitled to some indulgence in case he is not able to substantiate his claim for payment because of lapse of time and non-availability of documents. However, consumer will be liable to pay for actual consumption of units but without payment of any late payment surcharge.

12. The writ petitions are accordingly disposed of.

13. Parties will be at liberty to challenge the decision of the Consumer Grievance Redressal Forum in case they are aggrieved. The consumer will continue to make payment of current demand charges. However, his electricity will not be disconnected for payment of arrears, which are subject matter before the Consumer Grievance Redressal Forum. This interim order will continue till the Forum decides the dispute.

SANJIV KHANNA, J.

APRIL 01, 2008

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