

UNREPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (C) NO. 4621 OF 2005**

% **Date of Decision : April 22nd, 2008.**

VANISHREE ENTERPRISES Petitioner.

Through Prof. Ram Prakash, petitioner in person.

VERSUS

BSES RAJDHANI POWER LIMITED ... Respondent.

Through Mr. Rohit Aggarwal, Advocate for
respondent No. 1.

Mr. R.M. Bagai, Advocate for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be
allowed to see the judgment? NO
2. To be referred to the Reporter or not ? NO
3. Whether the judgment should be reported
in the Digest ? NO

SANJIV KHANNA, J:

1. The petitioner-Mr. Ram Prakash, who appears in person, states
that he has challenged by way of present writ petition arrears of

Rs.2,67,831.01 claimed by BSES Rajdhani Power Limited, the respondent, in the electricity bill for the Month of June, 2003. The said electricity bill pertains to premises No. D-9/4, Okhla Industrial Area, Phase-I, New Delhi, a property owned by the petitioner. The petitioner is also the registered consumer of the electricity meter installed in the property for which the bill has been raised. The said electricity bill consists of arrears on account of electricity consumed during the period 4th June, 2001 to 5th October, 2001 of Rs.94,910/-. For this amount, one M/s Absolut Apparels, the then tenant of the petitioner, had issued a cheque to the erstwhile Delhi Vidyut Board but the said cheque was received back dishonoured. The respondent-Distcom is also claiming late payment charges on Rs.94,910/- i.e.; Rs. 1,29,272/-. In addition, the respondent-Distcom has claimed Rs.1,38,558.66 on account of alleged sub-letting during the period 4th December, 1998 to 3rd November, 2001. The aforesaid amounts add up to make the bill of Rs.2,67,831.01.

2. Due to non-payment of the bill of Rs.2,67,831.01, the arrears demanded by respondent-Distcom increased to Rs.3,57,910.75 as on 7th March, 2005. The increase is due to late payment surcharge.

3. M/s Absolut Apparels was not made party to the present writ petition, presumably because in the prayer clause challenge was mainly made to the impugned demand of Rs.1,38,558.66, i.e. the amount payable for alleged sub-letting during the period 4th

December, 1998 to 3rd November, 2001. The prayer clause of the writ petition reads as under:-

“i) An appropriate writ, order or direction to quash the demand raised under notice dated 7.3.2005 including the impugned demand of Rs.138,558.66ps and LPSC, if any, and to return the interim payment of Rs.10,000/- made by the petitioner under directions of the PMT Lok Adalat;”

4. I am not inclined to go into inter se disputes between the petitioner and his erstwhile tenant M/s Absolut Apparels/Mr. Amitosh Moitra. There are several reasons for the same. The petitioner himself has filed a civil suit before Civil Judge being a suit for mandatory and perpetual injunction in respect of bounced cheque of Rs.94,910/-. Mr. Amitosh Moitra and the respondent Distcom are a party to the said suit. The petitioner had also filed an application under Order XII, Rule 6 of the Code of Civil Procedure, 1908 in the said suit for decree on admissions, which was dismissed by the Civil Judge on 13th August, 2004. A civil revision petition was filed in this Court against the said order dated 13th August, 2004, but was dismissed by a Learned Single Judge of this Court on 24th May, 2005. M/s Absolut Apparels has also filed a civil suit for recovery of Rs.7,35,000/- against the petitioner. M/s. Absolut Apparels claims refund of Rs.3,41,000/- paid as a security deposit, when the premises was taken on lease/licence, and interest accrued thereon. It is the case of M/s Absolut Apparels that on 3rd November, 2001

they were illegally evicted from the property by the petitioner, who was accompanied by 4-5 strangers and police officers. It is claimed by M/s Absolut Apparels that they wanted to vacate the premises but the petitioner was not refunding the security deposit. The petitioner has filed a counter claim in the said suit. The petitioner denies all allegations and has stated that the property was damaged by the tenant.

5. It will not be appropriate for this Court to go into disputed questions of fact and decide inter se disputes between the petitioner and M/s Absolut Apparels, which are already subject matters of the two civil proceedings. The bill of Rs.94,910/-, bouncing of cheque given by Absolut Apparels, conduct of Delhi Vidyut Board etc. are subject matter of a Civil Suit filed by the Petitioner for mandatory and permanent injunction. As the parties have already invoked jurisdiction of the civil court before the present writ petition was filed, I am of the opinion that application CM No. 6481/2007 should be rejected. The inter se disputes between the petitioner and M/s Absolut Apparels will be decided in the civil proceedings. It is also clarified that the observations made by this Court in the earlier orders and in the present order relating to inter se disputes between the petitioner and M/s Absolut Apparels will not be binding on the civil courts, who will decide the disputes independently and on the basis of evidence and material placed before them.

6. This brings us to the main issue raised in the writ petition, the prayer clause of which has been quoted above. The misuse charges have been claimed for the period 1998-2001. These were demanded for the first time in June, 2003. It is claimed that letting out of the premises by the petitioner to M/s Absolut Apparels amounted to subletting and constitutes misuse.

7. It is not denied by the respondent Distcom that no show cause notice was issued before the impugned bill for misuse charges was raised. It is not stated by the respondent that any show cause notice was issued to the petitioner. The levying of charges without issuing show-cause notice would be violative of the principles of natural justice (refer to **Matsaya Metal Udyog Pvt. Ltd versus Municipal Corporation of Delhi** reported in 1991(144) DLT13 DB). In this regard I may also refer to Circular dated 6th January, 2003, which is quoted in order dated 28th November, 2006 and reads as under:-

“Instances of old cases have come to notice where misuse charges have been levied(sic) without service of show cause notice to the consumer and the consumers have been approaching various courts for withdrawal of such charges on grounds of non-issuance of show cause notice. Some of the judgments have gone against us and the Honourable Courts have passed orders to withdraw the charges so levied and also imposed fines on BYPL/BRPL for not following the course of natural justice. In the circumstances the cases of violation of tariff (misuse) shall be dealt as follows:

Old cases where misuse has been levied without service of show cause notice shall be withdrawn by the Executive Engineer (D) or next higher authority from the date of levy after due verification of record within seven working days from the receipt of the consumer's objection. However, simultaneously the premises in question shall be reinspected and if misuse is found the case may be proceeded against the consumer inspected and if misuse is found the case may be proceeded against the consumer afresh, after service of show cause notice in accordance with the DERC (Performance Standard – Metering & Billing) Regulations, 2002 (Regulation 32 to 35 & 37)".

8. Thus principles of Natural Justice have been violated. Circular mentioned above has also not been followed. Normally for violation of Principles of Natural justice and the circular, respondent distcom should be permitted and allowed to comply with the requirements of law and pass an appropriate order. However, in the present case I am not inclined to grant the said liberty for various reasons. These have been discussed below.

9. There is also no justification and reason why it took years for the respondent-Distcom to raise the said bill in 2003 for the period between 4th December, 1998 to 3rd November, 2001. It may also be noted here that Delhi Vidyut Board was fully aware that M/s Absolut Apparels was in occupation of the property and using the said

electricity connection. This is clear from the order dated 4th April, 2000 passed by the Executive Engineer, Delhi ALN. It is also admitted that M/s Absolut Apparels or Mr. Amitosh Moitra were issuing cheques for payment of the electricity dues.

10. The petitioner by his letter dated 8.11.2001 had requested Delhi Vidyut Board to issue an updated bill for the electricity meter in question, so as to enable him to settle the matter with his tenant. Thereafter Delhi Vidyut Board had issued a final bill with due date 23.11.2001. In the said final bill no misuse charges were claimed. The petitioner is right in his contention that after Delhi Vidyut Board had raised the final bill; the respondent could not have made any further claim for the period prior to the said bill. Full facts were in the knowledge of Delhi Vidyut Board when the final bill was issued but misuse charges were not levied and claimed. Reference in this regard can be made to Regulation 14 of the Delhi Electricity Regulatory Commission (Performance standards – Metering and Billing) Regulation, 2002. The relevant portion of which reads as under :

“14. Change of occupancy/vacancy of premises: –

(i) It shall be the responsibility of the owner of the connection to get a special reading done by the licensee at the time of change of occupancy or on the premises falling vacant.

(iv) Once the final bill is raised the licensee shall not have any right to recover any charge (s), other than those in the final bill, for any period prior to the date of such bill.”

11. The above regulation may not be applicable as it was enacted in 2002, but the object and principle behind the said regulation is

apparent and can be applied. There should be finality and certainty, in absence of fraud and misrepresentation.

12. The tariff order for the year 2001 in Schedule or Clause 3.8.1 stipulates and defines what is misuse. These categories are as under :-

“i) Use of electric load for category of use other than that for which it was sanctioned for viz.

a) Domestic connections used for non-domestic or industrial purpose.

b) Non-domestic connection used for industrial purpose.

c) Agriculture connection used for domestic, non-domestic, industrial or farm house etc.

d) Industrial connection used for non-domestic purposes.

e) Use of electrical load for industrial purposes without valid municipal licence.

ii) Extension of electricity outside the premises by any industrial consumer.

iii) Feeding from any live connection to any premises having connection lying disconnected due to any reason.

iv) Bringing three different single – phase connection to one place to make three phase supply.”

13. Schedule or Clause 3.9 reads as under: -

“The following shall not be treated as misuse of supply:

- i) In case of domestic/non-domestic connection(s), extension of supply from live connection to other portion of the building/plot including for servant quarters, garages or for certain activities

covering social requirements relating to religious functions, sports etc.; in residential area so long as the supply is not extended to any portion for which connection has been disconnected due to non-payment of dues and there is no change in the category of use.

- ii) In industrial premises where the supply is used by one or more persons where portion in business takes place or division in family occurs.
- iii) User of connection changes due to succession
- iv) Change of firm from Private Limited to Public Limited or vice versa.
- v) Supply to activities incidental to main activity for example supply to chemist shop in nursing homes and hospitals, tea shop/canteen/employees' cooperative store, dispensaries, retail outlets of own products etc.; provided that the load for such activities remains within 10% of the sanctioned load or 10 KW whichever is less.
- vi) Professionals such as Doctors, Engineers, Lawyers, CA's, Journalists and Consultants practising from their residence irrespective of location provided that such use shall not exceed

25% of the area of the premises or 50 sq Meters
which is less.

- vii) For cottage industries operating in residence by family members only where electricity is not used for processing.

14. Use of electricity connection by a tenant has not been designated as misuse in the aforesaid Clause 3.8.1. Clause 3.8.1 defines misuse and circumstances which constitute and are regarded as “misuse”. For levy of “misuse charges” mentioned in the schedule, a case must fall under one of the categories. Clause 3.8.1 is a complete code. Clause 3.9 on the other hand carves out exceptions, when no misuse charges can be levied. Schedule 3.9 does not stipulate that if a case does not fall under the exceptions, it will amount to misuse under Clause 3.8 and misuse charges will be leviable. Clause 3.9 will apply where a case falls under Clause 3.8.1 and in such cases no misuse charges are payable. Clause 3.9 stipulates circumstances which would not be treated as a “misuse”, even when conditions mentioned in Clause 3.8.1 are satisfied. The respondent herein has relied upon Clause 3.9 (ii). Clause 3.9.(ii) stipulates that in industrial premises where supply is used by one or more persons where partition in business takes place or division of family occurs shall not be regarded as misuse. Similarly, change of the consumer because of conversion of a private limited to public limited company and vice versa is not regarded as misuse. These Clauses do not apply when a property with an electricity connection is rented out to

a tenant. Moreover, I may note here that the aforesaid Clauses of Tariff Schedule of 2001 may not have retrospective effect and do not relate to the entire period for which misuse charges have been claimed. The respondent has not produced and referred to any enactment or term of supply under which misuse charges can be claimed because a property is in use and occupation of a tenant.

15. In these circumstances, the impugned demand of Rs.1,38,558.66 towards misuse charges for the period 4th December, 1998 to 3rd November, 2001 is quashed. Learned counsel for the respondent during the course of hearing had agreed that the impugned demand of Rs.1,38,558.66 can be quashed provided the petitioner pays Rs.94,910/- for which the cheque had been issued by M/s Absolut Apparels but was not honoured. As already stated above, I am not examining this question as the parties are already before the civil court.

16. The other question which requires determination is whether the respondent-Distcom should be asked to refund Rs.10,000/- which was deposited by the petitioner pursuant to an interim order passed by the Lok Adalat. The Lok Adalat in its order dated 4th March, 2005 has noted that the parties were unable to arrive at any settlement and, therefore, the petitioner herein will be entitled to approach Delhi High Court or any other court or forum for redressal of his grievance. It is, however, unclear whether the amount demanded was paid on

account of dishonour of cheque of Rs.94,910/- or on account of misuse charges. Perhaps it was paid on account of both claims but this Court cannot speculate and divide the said payment. The petitioner should have made an appropriate prayer before the Lok Adalat, when the matter was discharged as un-settled. Refund or adjustment of this payment of Rs.10,000/- will abide by the decision in the civil suits. Similarly the question whether or not electricity supply to the property should be disconnected for non payment of Rs.94,910/- is for the civil court to decide. Parties will also have to abide by interim order passed by the Civil Court in this regard.

17. The petitioner had deposited Rs.40,000/- as per the interim direction issued by this Court in its Order dated 15th March, 2005. As this amount was deposited pursuant to interim directions issued by this Court, it will not be adjusted against any other dues payable for consumption of electricity in the property. To balance out equities and as the claim of misuse charges is being quashed, it is directed that the aforesaid amount Rs.40,000/- will be refunded by the respondent-Distcom to the petitioner within a period of one month from today. In case they do not refund the said amount to the petitioner within one month, the petitioner will be entitled to interest on Rs.40,000/- @ 10% per annum from the date of this judgement till the payment is made. As held above on the question of payment of Rs.94,910/- and late payment charges payable thereon, the parties will abide by the

interim order and the final decision of the civil court and respondent-distcom is at liberty to recover the same as per law.

With the above directions, the writ petition is disposed of. No costs.

(SANJIV KHANNA)
JUDGE

APRIL 22, 2008.
VKR/P