

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4102/2000**

Date of decision : 01.09.2009

IN THE MATTER OF :

M/S HARYANA WIRE PRODUCTS AND ANR. Petitioners
Through: Mr. Suryakant Singhla, Advocate

versus

DELHI VIDYUT BOARD AND ORS. Respondents
Through: Mr. Vikram Nandrajog, Advocate with
Ms. Himani Jadoun, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (ORAL)

1. A perusal of the file shows that the amended memo of parties is not on the record. Counsel for the petitioners hands over the same in Court. Amended memo of parties is taken on the record.

2. Counsels for the parties state that a typographical error has crept in para 2 of the order dated 06.08.2009. They state that while the premises of the petitioners was inspected on 09.10.1997, in para 2 of the aforesaid order, the date has been erroneously typed out as 09.12.1997 and necessary corrections are necessary in that regard. The date 09.12.1997 as mentioned in the fifth line of para 2 of the order dated 06.08.2009 shall read as 09.10.1997.

3. So as to pick up the threads of this case, from the last effective date of hearing, it is necessary to refer to the order dated 06.08.2009, which is reproduced hereinbelow:

"1. The present writ petition is filed by the petitioner assailing the communication dated 13.06.2000 issued by the respondent to the petitioner and for giving effect to the speaking order dated 21.05.1999 passed by the Superintending Engineer (O&M) of the respondent.

2. Counsel for the petitioner states that the notice to show cause dated 05.12.1997 was issued to the petitioner by Shri V.P. Garg, Superintending Engineer (D), North of the erstwhile DVB, on the issue of levy of LIP tariff. It was stated in the notice dated 05.12.1997 that the premises of the petitioner was inspected on 09.10.1997 by the Enforcement Department, when load of 151.922 KW was found connected for which, LIP tariff was required to be levied. Before levying the LIP tariff, the petitioner was called upon to attend a personal hearing on 19.12.1997, alongwith the necessary documents.

3. Counsel for the petitioner states that his client

appeared before the aforesaid officer on the date fixed, i.e., 19.12.1997. As no order was communicated to the petitioner thereafter, a representation dated 26.02.1999 was made by the petitioner to the Chairman, DVB on which representation, the Superintending Engineer was directed to pass a speaking order within 15 days after hearing the petitioner. Reference in this regard is made to the letter dated 05.04.1999 addressed by the petitioner to the Chairman, DVB and enclosed with the petition. In the said representation, it was further stated that Shri V.P. Garg, SE (D) North received the representation of the petitioner on 05.03.1999 but even after passing of about one month, no speaking order had been communicated.

4. On 21.05.1999, a speaking order came to be passed by Shri V.P. Garg, under intimation to the petitioner, holding *inter alia* that the inspection report dated 09.10.1997 could not be relied upon and no cognizance thereof should be taken. Hence, it was ordered that LIP tariff was not leviable in the case of the petitioner.

5. Counsel for the petitioner states that instead of acting upon the aforesaid order, the respondent addressed the impugned communication dated 13.06.2000, to the petitioner, informing it that Shri V.P. Garg, while working as the Superintending Engineer (O&M) had no *locus standi* to issue the speaking order dated 21.05.1999, as the same could only be issued by the Superintending Engineer (D) concerned and thus, the same was treated to have been withdrawn. Further, the petitioner was called upon to attend the office of the Inspector General (Enforcement), DVB, to issue a fresh speaking order and decide the case of the petitioner on merits. Aggrieved by the aforesaid communication, the petitioner has filed the present writ petition.

6. Counsel for the petitioner states that an office order dated 18/20.10.1993, was issued by the General Manager (E) of the respondent/erstwhile

Delhi Electric Supply Undertaking to the effect that a personal hearing will be given by the Superintending Engineer (D) of the concerned Circle before the category of a party is changed from SIP to LIP and after granting a personal hearing, a speaking order would be passed with copy to the consumer within a period not exceeding 10 days. It is stated that the Superintending Engineer (D) of the area, namely Shri V.P. Garg had addressed the notice to show cause to the petitioner, vide letter dated 05.12.1997 and the petitioner appeared before the aforesaid officer for a personal hearing. Hence, no fault can be found with the speaking order dated 21.05.1999, merely on the ground that on the date of passing the said order, the officer in question had been transferred from the post of Superintending Engineer (D) to the post of Superintending Engineer (O&M), and that in any case, the Inspector General (Enforcement) had no authority to issue the communication dated 13.06.2000.

7. The aforesaid issue could be clarified if the respondent produces the original records. The respondent is directed to produce the original records pertaining to the notice to show cause dated 05.12.1997 and the speaking order dated 21.05.1999 for perusal.

At the request of the counsel for the respondent, the matter shall not be taken up till 13th August, 2009."

4. By the aforesaid order, counsel for the respondents was directed to seek a clarification from his clients by producing the original records pertaining to the notice to show cause dated 05.12.1997 and the speaking order dated 21.05.1999. The said clarification was considered necessary in view of the submissions made by the counsel for the petitioners that no fault could be found with the speaking order dated 21.05.1999 passed by Shri

V.P. Garg in the capacity of Superintending Engineer (O&M) merely on the ground that on the date of passing of the speaking order, the officer in question had been transferred from the post of Superintending Engineer (D) North to the post of Superintending Engineer (O&M) and that in any case, the Inspector General (Enforcement) had no authority to issue the communication dated 13.06.2000 (Annexure P-21).

5. Counsel for the respondents states today that despite the best efforts made by his clients, the relevant part of the original records are not available. He states that the records do not contain the noting part as to the hearings granted to the petitioners. Thus, no light can be thrown by him on the said aspect. The submissions of the counsel for the petitioners have therefore to be examined on the basis of the documents available on the record.

6. A perusal of the representation dated 26.02.1999(Annexure P-9) addressed by the petitioners to the Chairman of the erstwhile Delhi Vudyt Board (DVB), predecessor-in-interest of the present respondent, NDPL shows that the petitioners had requested the Chairman to intervene in the matter on the ground that no speaking order was being issued by the Superintending Engineer (D) North, whereas the file was moving between the said officer and the Enforcement Department for a period of one year.

On the first page of the said representation, was endorsed a handwritten note dated 26.02.1999 to the following effect:

“Concerned SE should pass the speaking orders within 15 days after hearing the parties.

(Signature)

26/2

SE(D) North – By Name
(Sh. V.P. Garg)”

7. Counsel for the petitioners submits that as the aforesaid direction was issued by the Chairman of the erstwhile DVB to the concerned officer by name, the respondent cannot be permitted to question the speaking order dated 21.05.1999 passed by the aforesaid officer merely on the ground that on the date of passing of the said order, the aforesaid officer was designated as Superintending Engineer (O&M) and had no authority to pass the order. There is substance in the aforesaid submission of the counsel for the petitioners. The note of the competent authority of the respondents makes it abundantly clear that directions were issued to Mr. V.P. Garg, Superintending Engineer (D) North by name to pass the speaking order within 15 days from the date of hearing of the petitioners. The aforesaid direction was issued on 26.02.1999 and the order came to be passed on 21.05.1999. In these circumstances, the impugned letter dated 13.06.2000 issued by the Inspector General (Enforcement)DVB to the effect that he had been directed by the competent authority to treat the speaking order passed by the Superintending Engineer (D) as having been withdrawn, is

unjustified. In any case, the respondents have not been able to show or place on the record the order of the competent authority mentioned in the aforesaid communication, withdrawing the speaking order in question, so as to examine the reasons thereof.

8. A reference has been made by the counsel for the respondent, to the letter dated 13.06.2000 issued by the Inspector General (Enforcement), DVB to state that in any case, the aforesaid officer had been directed by the competent authority on the administrative side, to issue a letter to the petitioner calling upon it to appear before him for a fresh decision in the case. It is therefore stated that nothing much will turn on the absence of the relevant records and that in any case, a fresh hearing was being granted to the petitioner by the concerned officer. Even if it is assumed that the order had been passed by the competent authority on the administrative side, it was incumbent for the respondent to have issued a notice to show cause to the petitioners, before recalling the speaking order dated 21.05.1999. This is more so, when the speaking order which had been passed in favour of the petitioners, was duly communicated to them, and by virtue of an administrative order, the competent authority had decided to withdraw the said order and directed that the case be reopened. It is not denied that the petitioners were never put to notice before recalling the speaking order dated 21.5.1999 and that no notice to show cause was

issued to the petitioners prior to issuance of the letter dated 13.06.2000.

9. In these circumstances, this Court has no hesitation in quashing the letter dated 13.06.2000 as being illegal and arbitrary. The writ petition is allowed. As the communication dated 13.06.2000 is quashed, the speaking order dated 21.05.1999 shall remain in operation.

10. The writ petition is disposed of. There shall be no orders as to costs.

SEPTEMBER 01, 2009
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HIMA KOHLI,J