

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

% Date of decision: 16th July, 2009

+ LPA 211/2009

N.D.M.C. Appellant
Through Mr. Sudhir Nandrajog, Sr. Adv with
Mr. Arjun Pant, Adv.

versus

KARAM CHAND THAPAR &
BROTHERS P.LTD Respondent
Through Mr. Ateev Mathur, Adv.

AND

+ LPA 212/2009

N.D.M.C. Appellant
Through Mr. Sudhir Nandrajog, Sr. Adv with
Mr. Arjun Pant, Adv.

versus

ABASKAR CONSTRUCTION P.LTD. Respondent
Through Mr. Jasmeet Singh and
Mr. Saurabh Tiwari, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local newspapers 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?

AJIT PRAKASH SHAH, CJ (oral)

1. These appeals involving similar questions of facts and law were taken up for hearing together and are being disposed of by this common judgment.

2. LPA No.211/2009 is preferred by NDMC against the order of the learned single Judge in WP(C)No.11919/2006, whereas LPA No.212/2009 is preferred against the order of the learned single

Judge in WP(C)No.1988/2007. Both the writ petitions were allowed by the learned single Judge relying upon an unreported judgment in the case of **NDMC v. Ashok Kumar Ahuja** (CS (OS) No.1469/2007 decided on 15.9.2008).

LPA No.211/2009

3. The respondent is a company, incorporated under the provisions of the Companies Act, 1956 having its office at Janpath, New Delhi. Electricity is being supplied to the respondent by NDMC vide K.No.K-59418-LT-Meter No.BE-65346. It is the case of NDMC that for the period 2.11.1994 to 9.6.1995 bills were raised on a provisional basis as the meter was defective during the said period and this was the only available billing option with the appellant-NDMC. The bill in which the demand is raised after finalization of assessment was issued in May, 2006. The respondent challenged the bill by way of writ petition inter alia on the ground that the demand was barred by limitation.

LPA No.212/2009

4. The respondent in this case is also a company, incorporated under the provisions of the Companies Act, 1956 having its office at Thapar House, New Delhi. LT connection having load of 104.80 KW bearing no. KOT 2883 was granted to the respondent in the above said premises. The case of NDMC is that the electricity meters installed at the premises of the respondent remained defective during the period of assessment from 15.3.1994 to 12.6.1995 and from 26.6.1996 to 3.10.1997. Only provisional assessment was made and after the finalization of the assessment, the impugned bill

dated 16.1.2007 was raised. The respondent filed a writ petition for quashing the bill, inter alia, on the ground that the bill was barred by limitation.

5. Learned counsel appearing for NDMC strenuously contended that the decision of this court in **NDMC v. Ashok Kumar Ahuja** (supra) was rendered in a civil suit and has no application in the facts of the present case and in any event the said decision is the subject matter of RFA filed by the appellant-NDMC which is pending for hearing. He submitted that limitation would not begin to run till such time a bill was not raised. He submitted that there is no provision in the Indian Electricity Act that stipulated the period within which an electricity bill has to be raised. He placed reliance on the decision of this Court in **H.D.Shourie v. Municipal Corporation of Delhi**, AIR 1987 Delhi 219 which was affirmed by the Division Bench in **Municipal Corporation of Delhi v H.D.Shourie**, 53 (1993) DLT 1. He submitted that the impugned demand is justified on the principle of escaped billing which has been approved by the Supreme Court in **Swastic Industries v. Maharashtra State Electricity Board**, AIR 1997 SC 1101. He also referred an unreported judgment of the Division Bench of this court in **North Delhi Power Ltd. v. Delhi Bottling Co. Ltd.** (LPA 356/2007 decided on 24.4.2009). The Division Bench in that case held that the electricity undertaking can issue a bill for consumption of electricity even after three years after the electricity has been consumed.

6. We find considerable substance in the submission of the

learned counsel appearing for NDMC. In ***Municipal Corporation of Delhi v H.D.Shourie*** (supra) also challenge was to a revised bill like in the present case. It was argued that no bill could be raised beyond three years after the consumption of the electricity. It was contended that on correct interpretation of Section 24 of the Indian Electricity Act, the amount becomes due the moment electricity is consumed and under Section 455 of the Delhi Municipal Corporation Act, this amount cannot be recovered more than three years after it has become due. This argument was considered in depth by Kirpal J, as he then was, and the learned Judge held that the electricity charges become due only after the bills are sent and not earlier. This being so, the proviso to Section 455 of the Delhi Municipal Corporation Act will apply only when the bill has been sent and the remedy available with the respondents for filing a suit to recover the amount would come to an end after three years elapse after the electricity charges have become due and payable. In other words, the provisions of Section 455 would come into play after the submission of the bill for electricity charges and not earlier. The decision of the learned single Judge was affirmed by the Division Bench in ***Municipal Corporation of Delhi v H.D.Shourie*** (supra).

7. In ***Swastic Industries v. Maharashtra State Electricity Board*** (supra), the Supreme Court rejected the contention that a large portion of the claim of the undertaking was time barred except for the period of three years immediately preceding the demand and held as under :-

“13. It was submitted that the interpretation canvassed for by counsel for the appellants was

more valid by reference to the language employed in sub sec.(1) of S. 24, which preserved the licensee's right to file a suit to recover the charges or sums due. It was argued that if in such suit the license can only recover the charges or sums within the period of limitation, these could be the only charges or sums (viz. those within the period of limitation) for the non-payment of which the electric supply could be cut off by the licensee. In our opinion, the argument is not well-founded. It has to be provided that the right to discontinue the supply of electricity is without prejudice to the licensee's right to file a suit to recover the amounts, since by reason of disconnection of the supply the licensee will not necessarily obtain the amounts due from the consumer. It became necessary therefore to protect the licensee's right to recover such amounts by ordinary civil action and merely because in such an action the defendant to the suit i.e. the consumer may have the defence of limitation open to any portion of the claim would not warrant such considerations being applied to the licensee's right of discontinuance of supply for nonpayment of the amounts owed to the licensee. The provision contained in S.24(1) which enabled the licensee to discontinue electric supply to a particular consumer is mainly by way of relieving of the licensee of the obligation on him to be found contained in S. 22 viz. to make supply of electricity on application to all consumers within the area of supply. Once the proper position is perceived, then there is no warrant for obliging the licensee to go on supplying electricity to a consumer who has not paid the amounts in respect of the supplied made to him in the past on the ground that if the license were to file a suit, the claim or part thereof would be barred by the law of limitation. The provision in our opinion, would clearly warrant the wider meaning to be given to the word 'due' rather than the narrower meaning, as the wider meaning would be more in accord with the scheme of the statutory provisions under consideration as also with commercial honesty."

8. In **North Delhi Power Ltd. v. Delhi Bottling Co. Ltd.**, the Division Bench held that the electricity undertaking is entitled to issue the bill for consumption of electricity even after three years after the electricity has been consumed.

9. In the light of the above legal position the findings of the learned single Judge that the claim was time barred cannot be sustained.

10. Learned counsel appearing for the respondents, however, contended that in view of the provisions in sub-section (2) of Section 56 of the Electricity Act, 2003, no bill could have been raised after a period of two years. This very contention has been rejected by a two Judge Bench of Supreme Court in ***M/s Kusumam Hotels (P) Ltd. v. Kerala State Electricity Board & Ors.***, AIR 2008 SC 2796.

The Bench observed:

“We, however, are not in a position to accept the contention that the Bills could not have been issued having regard to Sub-section (2) of Section 56 of the Act. Appellants herein have incurred liabilities.

Sub-section (5) of Section 185 of the Electricity Act, 2003 reads, thus:

“(5) Save as otherwise provided in Sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.”

Whereas the bills are issued only in respect of the dues arising in terms of the law as was applicable prior to the coming into force of 2003 Act. Sub-section (2) of Section 56 shall apply after the said Act came into force. The Board could have even framed a tariff in terms of the provisions appended to Section 61 of the Act. Appellants incurred liability to pay the bill. The liability to pay electricity charges is a statutory liability. The Act provides for its consequences. Unless, therefore, the 2003 Act specifically introduced, the bar of limitation as regards the liability of the consumer incurred prior to coming into force of the said Act. In our opinion, having regard to Section 6 of the General Clauses Act, the liability continues. [See *Southern Petrochemical Industries Co. Ltd. v. Electrici-*

ty Inspector and E.T.I.O. and Ors. [(2007) 5 SCC 447].”

11. We may also add that similar contention has been rejected by the Kerala High Court in ***Abdul Nazer v. Kerala State Electricity Board and Ors.***, AIR 2006 Kerala 20.

12. In the result, the appeals are allowed. The impugned orders passed by the learned single Judge are set aside. The writ petitions are remitted back to the learned single Judge to consider the challenges on merits. Registry to post the petitions for admission before the appropriate Court on 3rd August, 2009.

CHIEF JUSTICE

MANMOHAN, J

JULY 16, 2009
mm/nm