

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 112/2009**

Date of decision : August 18, 2009

M/S SHREE OM ENTERPRISES PVT. LTD.

..... Appellant

Through : Mr. Ujjwal Kr. Jha, Adv. with
Mr. R.P. Agarwal, Adv.

Versus

BSES RAJDHANI POWER LIMITED Respondent

Through : Mr. K. Dutta, Adv.

%

CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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 ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM 11333/2009 (exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

RSA 112/2009 & CM 11332/2009

1. Notice of the appeal be issued to the respondent.

RSA 112/2009

Page 1 of 7

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2. Mr. K. Dutta, Advocate accepts notice on behalf of the respondent.
3. Arguments heard on admission and formulation of substantial question of law.
4. Appellant company is running a unit of printing since 1984 at A-98/3, Okhla Industrial Area, Phase-II, New Delhi. It is the user of two connections bearing No.K 011 1304067 and K 011 1304075 respectively. The then respondent conducted an inspection on 14.6.1991 and found appellant using more than 100 KW of load, misusing the supply for manufacturing of PVC pipes and violating the terms and conditions of the agreement. Respondent sent a letter dated 6.11.1991, informing the appellant company that it was found on LIP category unauthorisedly excess in load and asked the appellant to pay on the higher tariff with surcharge. Another letter dated 3.12.1991 was also received by the appellant. Against these letters, appellant made representation vide its letter dated 6.1.1992. However, turning down the representation, respondent issued a show cause notice/

disconnection notice claiming Rs.3,38,378.02 on higher tariff basis for the period from 6.6.1991 to February 1992. Challenging the said notice, appellant filed a suit for perpetual injunction against the respondent. The suit of the appellant was dismissed by the trial court for the reasons given in para 9 of its judgment, vide judgment and decree dated 10.7.2003. It reads:-

"I have considered respective submissions of both the counsels and perused the record. The bone of contention of both the parties is the inspection dated 14.06.91 P10 and dw1/1. The defendant followed the due process of law by issuing show cause notice P15 before raising the impugned demand for LIP and misuse of supply. As per allegations in this report plaintiff was found indulged in excess load of LIP category and using the load for PVC pipes. Plaintiff has not disputed the observations made in the report with regard to the installations of the machines. I may highlight these machines, PVC extruder, three numbers, mixer channels and other machines. These machines are used for manufacturing of PVC items as alleged in the report not for printing or calender manufacturing. Plaintiff has not contradicted these allegations. He has not furnished any representation after the inspection that no such machines were installed at the suit premises at the time of inspection. He has not

4

taken any steps for reinspection by depositing fresh test report and reinspection fees. The penalty as per tariff has been raised by defendant after following due process of law and providing opportunity of hearing and also considered the representations of the plaintiff. Hence, in my opinion, the plaintiff failed to provide the onus of the issues. Therefore, these issues are decided in favour of the defendant and against the plaintiff."

5. The judgment and decree of the trial court was assailed in appeal by the appellant in RCA No.50/2009. The appeal followed suite and it was dismissed, vide order dated 2.7.2009.
6. Aggrieved by the said judgment and decree of the appellate court, this appeal has been filed raising substantial questions of law in para 2 of the appeal.
7. It is urged by the learned counsel for the appellant Mr. Ujjwal Kr. Jha that after the dismissal of the appeal, appellant has received a disconnection notice for the said sum of Rs.3,38,378/- in August 2009 dated 16.7.2009 and thereafter on 6.8.2009 the electricity was disconnected. It is argued that the judgment and decree of the appellate court is erroneous in law as the court failed to appreciate that respondent had raised the impugned demand

without considering the facts and the representation of the appellant by way of a non-speaking order. The tariff from SIP to LIP could not be charged by the respondent without issuing show cause notice and without giving an opportunity of personal hearing and without passing of a speaking order.

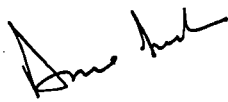
8. It is also argued that the appellate court did not consider that there was no misuse of the premises for excess load or shunt capacitor and surcharge notice dated 6.11.1991 and subsequent surcharge notice dated 3.12.1991 were duly replied on 6.1.1992 and its reply was rejected by the respondent by a non-speaking order. Such an order of the respondent is bad in law.
9. From the averments and the submissions of the learned counsel for the appellant, it is clear that appellant did receive a notice dated 3.12.1991 for levying of surcharge on account of load violation/misuse of supply etc. This notice was replied by the appellant stating that they were not manufacturing PVC conduited pipe. However, in this

6

appeal, appellant has averred that PVC sheet is being used for binding diary etc. It means PVC was being manipulated by the appellant.

10. The fact remains appellant did not dispute the observations made in the report in regard to the installations of the machines. The trial court highlighted the machines, i.e. PVC extruder, three numbers, mixer channels and other machines which were being used by the appellant. It is not disputed that these machines are used for manufacturing of PVC items as alleged in the report and not for printing or for coloured calendar manufacturing. The appellant did not dispute the contents of the notice either in the trial court or in the appellate court.
11. As per the observations of the trial court, the appellant did not furnish any representation after the inspection that no such machines were installed in the suit premises at the time of the inspection. The court also observed that appellant did not take any steps for reinspection by depositing test report and reinspection fees.

- 7
12. Since the penalty was imposed and the impugned bill was raised by the respondent after following due process of law by providing opportunity of hearing and after considering the representation of the appellant, the trial court as well as appellate court rightly dismissed the claim of the appellant.
 13. The appellate court discussed the oral as well as the documentary evidence of the parties as adduced on the record and while concurring with the findings of the trial court, concluded that show cause notice 6.11.1991 and the show cause notice dated 3.12.1991 are for revision of tariff from SIP to LIP due to connected load found more than 100 KW and surcharge due to low power factor.
 14. The challenge in this appeal are the fact finding of the trial court as well as of the appellate court.
 15. Under these circumstances, no substantial question of law can be formulated in this appeal as no such question arises. Hence, appeal being without merits is hereby dismissed.


(ARUNA SURESH)
JUDGE

August 18, 2009
jk