

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 681/2008 & CrI M A 14953/2008

VARDHMAN PROPERTIES LTD Petitioner
Through Mr. Sanjay Goswami with Mr.
H.K. Banerjee, Advocate

versus

BSES RAJDHANI POWER LTD. Respondent
Through Ms. Anjali Sharma, Advocate

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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

ORDER
17.02.2009

1. This review petition is directed against the impugned order dated 30th September 2008 passed by the learned Additional Sessions Judge ('ASJ') Special Electricity Court in Complaint Case No. 134 of 2006, rejecting an application filed by the Petitioner Vardhman Properties Limited ('VPL') seeking review of an order dated 7th April 2006 passed by the learned ASJ summoning the Petitioner for the offence under Section 135 of Electricity Act 2003 ('Act').

2. The aforementioned complaint was filed by the Respondent BSES Rajdhani Power Limited ('BRPL') in 2006 against Krishan Lal and VPL in the Special Electricity Court under Section 151 of the Act for

determining their civil and criminal liability in terms of the Act. On 7th April 2006 the learned ASJ, Special Electricity Court, passed the following order:

“Present: Deemed Addl. P.P. for the complainant.

Arguments heard on pre-summoning evidence. CW-1 is the authorized representative who had proved his complaint Ex.CW1/2 and CW2 is the member of the raid party who has proved the inspection report Ex.CW2/1 besides other documents. It is mentioned in the joint inspection report Ex.CW2/1 that it was a case of direct theft after bye-passing the meter and a connected load of 10.927 kw was found for industrial purpose. From the perusal of the record and the statement of the said witnesses, I am satisfied that a prima facie case is made out against the accused u/s 135 Electricity Act 2003. Let the accused be summoned for the said offence on filing of PF and RC and process be given dasti for 06.05.2006.”

3. In September 2008 the Petitioner filed an application under Section 157 of the Act in the Special Electricity Court seeking review of the aforementioned order dated 7th April 2006. It was contended by the Petitioner that it was merely a registered consumer in whose name the connection stood and was not in any manner involved in the theft of electricity attributed to accused no.1 Krishan Lal.

4. By the impugned order dated 30th September 2008 the learned ASJ, Special Electricity Court, dismissed the review application holding that the scope of Section 157 of the Act was restricted to an order by that Court under Section 154 of the Act. It was held that in the absence of any specific provision in the Code of Criminal Procedure ('CrPC') permitting recall or review of a summoning order, and particularly in the light of the judgment of the Supreme Court in *Adalat Prasad v. Roop Lal Jindal* **2004 (7) SCC 338**, there was no power in the Special Electricity Court to recall the summoning order.

5. Learned counsel for the Petitioner sought to contend that under Section 154 of the Act it is only the Special Electricity Court which has the exclusive jurisdiction to try the offence under Section 135 of the Act. He submits that even the power to summon an accused after taking cognizance of the offence is traceable to Section 154 of the Act. It is submitted that the order dated 7th April 2006 was passed under Section 154 of the Act, and would therefore be reviewable under Section 157 of the Act.

6. Learned counsel for the Respondent on the other hand points out that the scope of Section 157 is limited particularly considering that under Section 155, the Electricity Act makes the CrPC, save and except to the limited extent provided under the Act, applicable to the Special Electricity Court. She further refers to Section 151 of the Act which after amendment in 2007 specifically permits the Special Electricity Court to

take cognizance of the offence under Section 135 of the Act.

7. In the considered view of this Court, there is no merit in the contention of the Petitioner. Under Section 151 of the Act, notwithstanding anything contained in any other enactment, it is only the Special Electricity Court constituted under Section 153 of the Act that has the exclusive jurisdiction to take cognizance of the offence under Section 135 of the Act. The criminal case can be triggered by a criminal complaint filed by the distribution company. Section 151 reads as under:

“151. Cognizance of offences – No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

Provided that the court may also take cognizance to an offence punishable under this Act upon a report of a police officer under Section 173 of the Code of Criminal Procedure 1973:

Provided further that a special court constituted under Section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.”

8. As explained by this Court in *Dalbir Singh v. BSES Rajdhani Power Limited* (decision dated 6th February 2009 in CrI.M.C. No. 2059/2008)

the above proviso is really clarificatory in nature. Thus the position is that the Special Electricity Court can take cognizance of the offence under Section 135 of the Act without awaiting committal of the case to it by the Magistrate. Therefore, in the instant case when by the order dated 7th April 2006 the learned ASJ took cognizance of the offence and summoned the Petitioner for the offence under Section 135 of the Act, the learned ASJ was exercising the powers under Section 151 of the Act.

9. Section 154 (3) of the Act details the procedure to be adopted by the Special Electricity Court for trying a criminal case for an offence under the Act. It reads as under:

“(3) The Special Court may, notwithstanding anything contained in sub-section (1) of Section 260 or Section 262 of the Code of Criminal Procedure 1973 (2 of 1974), try the offence referred to in sections 135 to 140 and section 150 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial:

Provided that where in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.”

10. Thus, Section 154(3) relates to the stage subsequent to the summoning of the accused. It gives an option to the Special Electricity Court to try the case initially in a summary way and, if it thinks it to be desirable at a subsequent stage, to try the case as a warrant case. Next, the provisions in Sections 155 and 157 may be examined.

11. Section 155 of the Act reads thus:

“155. Special Court to have powers of Court of sessions – Save as otherwise provided in this Act, the Code of Criminal Procedure 1973 (2 of 1974), insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.”

12. Section 157 of the Act reads thus:

“157. Review – The Special Court may, on a petition or otherwise and in order to prevent miscarriage of justice, review its judgment or order passed under Section 154, but no such review petition shall be entertained except on the

ground that it was such order passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record:

Provided that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.

Explanation – For the purposes of this Part, “Special Courts” means the Special Courts constituted under sub-section (1) of Section 153.”

13. In the conspectus of the provisions contained in Sections 154 and 155 of the Act, Section 157 has to be interpreted as permitting review and recall of a judgment or a order passed only with reference to Section 154 of the Act and not any other provision. The power under Section 157 cannot be exercised to recall a summoning order passed under Section 151 of the Act. This view of the law is consistent with the decision of the Supreme Court in *Adalat Prasad v. Roop Lal Jindal*, whereby it was held that there is no power in a Magistrate to recall a summoning order.

14. Section 155 makes it clear that the CrPC, save and except to the extent indicated to the contrary in the Act, would apply *ipso facto* to the functioning of the Special Electricity Court. There is no provision in the CrPC enabling a Court to review its order. Section 157 of the Act is therefore an exception. Such exception will have to therefore be construed strictly and within a narrow compass. If it is interpreted broadly as suggested by the Petitioner and made to include any and every

order passed by the Special Electricity Court then that would permit to any such order to be reviewed. This would be inconsistent with the legislative intent of limiting the scope of review under Section 157 of the Act while at the same time making the CrPC provisions applicable to the Special Electricity Court.

15. For all the aforementioned reasons, this Court finds no infirmity in the impugned order dated 30th September 2008 passed by the learned ASJ dismissing the review petition filed by the Petitioner.

16. The petition and the pending application are dismissed with no order as to costs.

S.MURALIDHAR, J

FEBRUARY 17, 2009
rk