

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

Date of decision: 15th July, 2010.

+ **W.P.(C) No.618/2008 & CM No.1212/2008 (for interim relief)**

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SMT. USHA GOEL

..... Petitioner

Through: Ms. Neha Gupta, Advocate

Versus

BSES YAMUNA POWER LIMITED

..... Respondent

Through: Mr. Vikram Nandrajog & Mr. Sushil
Jaswal, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 |

RAJIV SAHAI ENDLAW, J.

1. The petitioner by this writ petition seeks quashing of the order dated 20th November, 2007 of the respondent holding the petitioner guilty of dishonest abstraction of energy and quashing of the bill/demand of Rs.23,23,608/- on the petitioner in pursuance thereto. This Court vide order dated 25th January, 2008 which continues to be in force while issuing notice of the writ petition stayed the said demand. The parties were referred to Lok Adalat where the respondent gave a proposal for settlement on payment of 70% of the impugned demand. The same was not acceptable to the petitioner. The respondent has filed

the counter affidavit to which rejoinder affidavit has been filed by the petitioner. The counsels have been heard.

2. The electric connection in question is in the name of M/s V.D. Industries of which petitioner is the Proprietor and is for industrial purposes. It is the case of the petitioner that on 22nd November, 1999 the respondent replaced the manual meter with a mechanical CT meter; that on 14th September, 2006 the mechanical CT meter was replaced with an electronic meter; that however neither the box of the meter nor CT was changed and the box and the CT are the same as installed in 1999; that on 11th January, 2007 the petitioner complained of the meter not showing the reading; the officials of the respondent visited the premises of the petitioner on 12th January, 2007 and endorsed that the reading was not visible; that on 6th April, 2007 the officials of the respondent again visited the premises of the petitioner and again made an endorsement “no download, no display show by meter”; that on 23rd April, 2007 a new CT meter was installed along with box with new CT and the old meter disconnected but retained at site; that on 27th April, 2007 the disconnected meter was again inspected though in the absence of the petitioner; that in the assessment during the said inspection, without getting the disconnected meter tested in lab, endorsement was made of the petitioner indulging in DAE and “CT connection found short deliberately” and the meter being found burnt. It is further the case of

the petitioner that the disconnected meter was taken away finally on 27th April, 2007 after breaking the seal thereof and without resealing the same.

3. The respondent in the speaking order impugned in this writ petition has held that during the inspection on 27th April, 2007, connected load of 64.198 KW was found as against the sanctioned load of 33.00 KW; the CT box and meter box seals were found tampered and reaffixed; Y phase CT connection was found deliberately short and meter disconnected; that the supply was restored through a new meter; that the lab to which the petitioner's disconnected meter was sent has in its report concluded that the LCD & LED of the disconnected meter was "found not ok, accuracy of the meter could not be checked because of the same being dead and CMRI data could not be retrieved". Though the speaking order deals with the contentions of the petitioner in the reply to the show cause notice, one of the reasons given is that on analysis of consumption pattern a sudden increase in the recorded consumption after replacement of the tampered meter was found. It has thus been held that the same was clearly indicative of dishonest abstraction of energy.

4. The counsel for the petitioner has contended that the show cause notice ought to have been issued within 30 days but was issued thereafter; that the meter was sent to/received by the lab with the seal broken and thus no reliance could be placed on the record of the lab.

Reliance is placed on *Jagdish Narayan Vs. North Delhi Power Limited* 140 (2007) DLT 307 laying down that *mens rea* or intention of consumer to dishonestly abstract electricity must be proved conclusively to bring home charge of DAE. It was further held that interference of DAE should not be permitted to be drawn on mere fact that the meter had been found with broken seals. Reliance is also placed on *Udham Singh Vs. BSES Rajdhani Power Ltd.* 136 (2007) DLT 500 laying down that inspection should precede assessment that consumer indulged in DAE and mere irregularity in meter seals, or breakage of glass, do not authorise issuance of show cause notice.

5. The counsel for the petitioner has further contended that the meter in question was inspected earlier thrice on 12th January, 2007, 6th April, 2007 and 23rd April, 2007 and no allegation as made on 27th April, 2007 of any such tampering was made. It is thus contended that the inspection of 27th April, 2007 suddenly alleging tampering is bad.

6. The counsel for the respondent states that neither the data was downloaded from the disconnected meter nor was the meter inspected prior to 27th April, 2007. It is contended that the visits on 12th January, 2007, 6th April, 2007 and 23rd April, 2007 were merely checks and cannot be classified as inspection. It is further averred that it was quite evident during the inspection on 27th April, 2007 as also borne out from the photographs that the petitioner had tampered with the meter. It is

further urged that the petitioner has failed to explain the sudden surge in consumption immediately after replacement of the meter.

7. The counsel for the respondent has also urged that the disputed questions of fact raised cannot be adjudicated in the writ petition and the appropriate remedy for the petitioner is to approach the Special Courts constituted under Section 153 of the Electricity Act, 2003 as laid down by the Division Bench of this Court in ***B.L. Kantroo Vs. BSES Rajdhani Power Ltd.*** 154 (2008) DLT 56.

8. The counsel for the petitioner in rejoinder has sought to explain the sudden surge in consumption immediately on replacement of the meter by contending that a new motor has been installed. The counsel for the respondent however points out that the said explanation was given after the speaking order was made and the respondent thus had no occasion to deal with the same.

9. I am perturbed by the admitted sudden surge in consumption immediately on replacement of the allegedly defective meter. The same is *prima facie* indicative of DAE. It is too much of a co-incidence that a new motor leading to increased consumption was installed at about the same time as the removal of the allegedly defective meter and its replacement with a new one. Leave apart the other contentions, this alone is a factual dispute and if the petitioner is unable to satisfy that a

new motor in fact was installed, sudden increase in consumption without any other parameter can only lead to one conclusion which is against the petitioner. This Court in the exercise of writ jurisdiction would not come to the assistance of such a consumer of electricity. There is nothing to indicate that the petitioner before or immediately after installing the new motor, if any, informed the respondent of the same or sought any additional load for the same. In the circumstances, the said explanation *prima facie* appears to be an afterthought.

10. The writ petition is therefore dismissed. The petitioner shall however have the remedies available to her in law before the fora which can go into such disputed questions. It is further clarified that nothing contained herein shall be deemed to be an expression of view on the merits of the case and which observations have been made purely for the purposes of determining whether the writ jurisdiction should be exercised or not. The petition is accordingly dismissed and the interim order vacated. However, notwithstanding the same, the respondent shall not disconnect the electric supply to the petitioner owing to non-payment of the demand, subject matter of this writ petition, for a period of four weeks from today. The said time is given to allow the petitioner to approach the alternative forum and to apply for interim relief therein. However, unless there is stay of disconnection from any other forum/Court after four weeks herefrom and further if the petitioner fails

to pay the demanded amount, the respondent shall be free to disconnect the electric supply to the petitioner.

The petition is disposed of.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

15th July, 2010

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(Corrected and released
on 26th July, 2010.)