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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8568/2009

LALIT GULATI

..... Petitioner

Through : Mr. Rajat Wadhwa, Advocate.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through : Ms. Zubeda Begum and Ms. Sara
Ansari, Advocates.

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W.P.(C) 13046/2009

RANVIR SINGH

..... Petitioner

Through : Mr. Rajat Wadhwa, Advocate.

versus

GOVERNMENT OF NCT OF DELHI

..... Respondent

Through : Ms. Zubeda Begum and Ms. Sara
Ansari, Advocates.

CORAM: 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

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02.12.2010

1. The challenge in both these writ petitions is to a Notification dated
16th/19th May 2008 issued by the Department of Power, Government of

National Capital Territory of Delhi ('GNCTD') in exercise of powers conferred under Section 108 of the Electricity Act, 2003 read with Notification dated 20th February, 2004 issued by the Ministry of Home Affairs, Government of India.

2. By the said impugned Notification, the Lieutenant Governor ('LG') of the NCT of Delhi issued directions, in public interest, to the Delhi Electricity Regulatory Commissioner, as under:

- “(1) direct the Discoms to write off the principal dues against sale of power during DESU/DVB period in respect of the private electricity consumers and to waive off their late payment surcharge as well pertaining to that period only, except the cases under litigation at any forum and at any level.
- (2) direct the Discoms not to raise any bill on the private electricity consumers pertaining to sale of power in DESU/DVB period excluding the cases under litigation at any forum at any level.
- (3) direct the Discoms to implement the above decisions (1) & (2) from the next immediate billing cycle.”

3. The facts in Writ Petition (Civil) No. 8568 of 2009 are that the Petitioner is the proprietor of M/s Modelama Exports, New Delhi. He was allotted a power connection by the erstwhile Delhi Vidyut Board ('DVB'). It is stated that till July 1995, DVB was raising bills on the basis of the consumption of

electricity as recorded in the meter installed in the Petitioner's premises. After July 1995, the DVB raised bills including certain amounts under the heading "Misuse/excess charges." Aggrieved by the said bills, the Petitioner filed Writ Petition (Civil) No. 1104 of 1998 in this Court. During the pendency of the writ petition, DVB withdrew the LIP tariff and LPF surcharge on 30th June 1999. Consequently, the Petitioner's bills were revised and the writ petition came to be disposed of by an order dated 9th August 2000. The Petitioner states that he was surprised to receive another bill dated 25th February 2002 for a sum of Rs. 32,45,127.55 as current demand against the actual consumption of 20430 units for the period from 8th August 1989 to 28th July 1994. The Petitioner states that this demand was not raised earlier and not mentioned by the DVB during the pendency of the Writ Petition (Civil) No. 1104 of 1998.

4. Being aggrieved by the said bill, the Petitioner filed Suit No. 133 of 2002 in the Court of Civil Judge, Delhi. An order dated 2nd April 2003 was passed in an application filed in the said suit by the Petitioner under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC') restraining the DVB from disconnecting the power supply of the Petitioner for non-payment of the said bill. By the same order, the learned Civil Judge granted the DVB liberty to issue a fresh show cause notice concerning the impugned bill and decide the matter afresh after giving a personal hearing to the Petitioner.

5. It is submitted by Mr. Rajat Wadhwa learned counsel for the Petitioner

that despite the above order having been passed more than seven years ago, no show cause notice for a fresh hearing has been given to the Petitioner and the said interim injunction order continues till date. It is stated that during the pendency of the above suit, the impugned Notification came to be issued whereby the LG gave directions to the DVB in the manner indicated hereinbefore.

6. The principal grievance of the Petitioner is that merely because he chose to challenge an illegal demand raised by the erstwhile DVB, which has now been substituted by the BSES Rajdhani Power Limited ('BRPL'), he cannot be discriminated *vis-à-vis* other defaulters and must be extended the benefit of writing-off of the arrears. He points out that in the Petitioner's case the demand was raised for the period from 8th August 1989 to 28th July 1994 and this demand was not raised till 2004. Therefore, even this claim should have been classified as a 'stale claim' and had to be written-off in the same manner as other claims covered by the impugned Notification.

7. As far as the facts of Writ Petition (Civil) No. 13046 of 2009 are concerned, Petitioner Ranvir Singh was running an industrial unit at Nangloi in New Delhi for which an electricity connection was installed on 14th March 1988 for a sanctioned load of 10 H.P. (7.46 KW). Electricity was being supplied by the erstwhile Delhi Electricity Supply Undertaking ('DESU') till 2004 which, after privatization, was restructured, and the distribution company to whom the work of electricity supply was assigned in 2004 was the North Delhi Power Limited ('NDPL'). It is stated that the

Petitioner applied for enhancement of load to 52.5 HP on 29th December 1995 by making payment of requisite charges. On 17th June 1997, the Petitioner's meter was inspected but no action was taken by the DESU to enhance the load. After the assignment of the Petitioner's account to the NDPL, he wrote a letter on 21st May 2004 complaining of the inaction in enhancing the load. Ultimately in January 2005, NDPL installed a meter with sanctioned load of 52.5 HP. It is stated that much later, the Petitioner was given a bill dated 20th November 2006 for an amount of Rs. 27,44,580/-, that the current demand was of Rs. 26,632.53 and he was informed that if he does not clear the bill, he will face disconnection of the electricity supply. The Petitioner then filed a CS (OS) No. 2309 of 2006 in this Court challenging the said bill. On 18th December 2006, an interim order was passed by this Court restraining NDPL from disconnecting the supply of electricity of the Petitioner, subject to payment of Rs.10,00,000/-

8. In the written statement filed in the suit, the NDPL indicated that the amount mentioned in the impugned bill was for the period 1996 to 2006, during which time the electricity was supplied by DESU. During the pendency of the said suit, the impugned Notification came to be issued. However, the Notification did not cover the Petitioner. Aggrieved thereby, the Petitioner has filed the present petition.

9. Mr. Rajat Wadhwa, learned counsel appearing for the Petitioners, submits that the impugned Notification to the extent that it creates two classes of consumers who were in arrears of electricity dues and treats them

differently, is both arbitrary and discriminatory and therefore violative of Article 14 of the Constitution of India. It is submitted that there is no rational basis on which those who have challenged the illegal demand raised by the distribution company should be denied the benefit of the write-off of the arrears whereas those who have not made any payment and have not even challenged the bill raised by the distribution company are given the benefit. Reliance is placed upon the judgment of the Supreme Court in *All India Federation of Tax Practitioners v. Union of India* 76 (1998) DLT 602 (DB) in support of the proposition that a person who has challenged an action in Court cannot be discriminated against and denied the benefit. Reliance is also placed on the judgment of this Court in *Dr. Harbhajan Singh Awla v. Union of India* 108 (2003) DLT 628.

10. Appearing for the Respondent GNCTD Ms. Zubeda Begum, Advocate referred to the additional affidavit filed on 31st August 2009, which indicates that the object and purpose of the impugned Notification dated 16th /19th May 2008, which was based on a decision taken by the Cabinet, “was to get rid of stale claims of power consumption arrears of DVB period which were not easy to be pursued and recovered without spending, exorbitant amount of money and manpower”. The reason for denying the benefit to consumers who had challenged the demand in court was that “cases pending before judicial forums are live and under consideration. These have to be contested on merits and treated separately.”

11. Ms. Begum submits that cases pending before the various judicial

forums constitute a class in themselves since they were sub-judice. They deserved to be taken to their logical end by following the due process of law. She, accordingly, submitted that such cases deserved a different treatment and there was no violation of Article 14 of the Constitution of India. Further, such cases had been referred to the Electricity Consumers Advocate Committee for consideration and decision. Referring to the Cabinet notes on the basis of which the deliberations took place in the GNCTD and the impugned Notification came to be issued, she pointed out that in many of the cases there were no payment records and there were “many fictitious/bogus connections in respect of which the arrears could not be linked to the actual consumers”. She relied upon certain observations of the Supreme Court in *All India Federation of Tax Practitioners v. Union of India*.

12. Ms. Begum referred to the facts in the case of Shri Lalit Gulati and pointed out that since the matter was sub-judice and there was documentation to substantiate the raising of the bill that was under challenge, the said case would be contested on merits and was, therefore, rightly excluded from the impugned Notification.

13. The above submissions have been considered. A perusal of the Cabinet note on the basis of which deliberations took place in the GNCTD leading to the issuance of the impugned Notification reveals that the following factors weighed with the Cabinet:

- “(i) DPCL/DISCOMs have taken all efforts to recover the dues but the same could not bring fruitful result.
- (ii) DISCOMs expressed their view that majority of the cases have no payment records and in some cases amounts are contested by consumers as being inaccurate and faulty. As per the provisions of the Transfer Scheme, the responsibility to recover the private consumer arrears vests with the DISCOMS and that from Govt. consumers with DPCL.
- (iii) The Statutory Auditor of DPCL observed that “the recovery of DVB period debtors is doubtful and need to be provided for.”
- (iv) Most of the arrears are of very old vintage and linked to as old as DESU period of pre-1997 era and thus have a very poor recovery potential. Whatever dues were recoverable has since been recovered through implementation of LPSC waiver schemes several times in the past. Rs. 31.76 crore could only be recovered from the waiver scheme launched in December, 2005.
- (v) There are many fictitious/bogus connection in respect of which the arrears could not be linked to the actual consumers. This task has become all the more difficult due to poor maintenance of consumer records.
- (vi) No provision of “bad debt” were usually made in the past by DESU/DVB thereby inflating the arrears figures in the Books of Accounts.
- (vii) Carrying huge arrears figures in the books of DPCL after unbundling do not reflect the true financial health of the Company.
- (viii) In 2007-08, it is informed by DPCL that no payment could be recovered from the private consumers. All efforts made by DPCL has not yield any fruitful result for recovery of past dues.”

14. Clearly, the Cabinet note did not reflect any intention to exclude those consumers who had challenged the demand of electricity dues in courts from the purview of the benefit of write-off.

15. It was urged by Ms. Begum that only those cases where no records were available and there was no hope of recovery of the arrears, were covered by the Notification. The Cabinet note referred to hereinabove acknowledges that in a majority of the cases there were “no payment records and in some cases amounts are contested by consumers as being inaccurate and faulty.” This could therefore well include those cases where the consumer had challenged the demand in Court. What is also significant is that the amount written-off on account of non-recovery of arrears in terms of the impugned Notification dated 16th/19th May 2008 was Rs. 2845 crores as on 31st October 2007.

16. A letter dated 23rd March 2008 addressed by the Delhi Power Company Limited (‘DPCL’) to the Secretary (Power), GNCTD, is also instructive of the reasons for the write-off of electricity arrears. The said letter read as under:

“**Sub:- Status of dues of Delhi Vidyut Board.**”

Sir,

Delhi Vidyut Board (DVB) was set up in 1997 from the erstwhile DESU as a measure of infusing professional management in the Undertaking. But the situation became bad to worse in the years from 1997 to 2002. As a reforms measure,

entire DVB was re-structured with the carving out of three Discoms, two Generation Companies, one Transmission Company and one Holding Company in June, 2002. As on 1.7.2002 a sum of Rs. 4902.85 crore was outstanding on account of old DVB dues. Consistent efforts were regularly made to recover these dues. As no satisfactory results were forthcoming, a LPSC Waiver Scheme was launched by GNCTD in December, 2005. Unfortunately, the response to the Scheme had been lukewarm. Despite extension of the period of Scheme, only a sum of Rs. 31.76 crore could be recovered. As the efforts made by Discoms to recover the dues were not bearing any fruitful results, a Chartered Accountants firm was engaged to assess the recovery potential. As per report submitted by CA firm, many of the figures were fictitious and consumers were not currently available. The total outstanding dues as per CA firm report were to the tune of Rs. 3708.24 crore. This includes principle amount of Rs. 2144.55 crore and LPSC Rs. 1563.69 crore. Out of the above, the dues pertaining to the private connections were Rs. 2719.71 crore (Principle Rs. 1628.46 crore, LPSC Rs. 1091.25 crore).

It has been pointed out by the Discoms (copy enclosed) that majority of these cases have no payment records and in some cases amounts are contested by consumers as being inaccurate and faulty. Elaborating above details, a reference was made to GNCTD for its consideration. Based on this, a note was submitted to the Cabinet, GNCTD by the Department of Power. The Cabinet, GNCTD vide their Cabinet Decision No. 1220 decided to settle all matters relating to unresolved cases of old DVB dues relating to private connection through the mechanism of Delhi Legal Service Authority through conciliation and mediation and take the assistance of the Public Grievances Cell (PGC) in the matter. The matter was then referred to the PGC to organize Lok Adalat with a view to settle

these cases. The action required on the part of DPCL was taken actively but no fruitful result regarding recovery of dues could be achieved. It is pertinent to mention here that during 2007-08, no amount could be recovered from private consumers. As already communicated to the Department of Power while updating Cabinet note, the outstanding dues against private connections as on 31.10.2007 were to the tune of Rs. 2539.02 crore in respect of approximately 5,52,000 consumers. This consists of principle amount of Rs. 1529.91 crore and LPSC Rs. 1009.21 crore.”

17. It is plain from the aforementioned letter that a sum of Rs. 2539.02 crores constituting arrears of electricity dues was being written off by the GNCTD by means of the impugned Notification dated 16/19th May 2008. This included the cases where no payment whatsoever was made towards electricity bills raised and no challenge had been made to the said bills by the consumers by filing any case in any court.

18. The Respondent has been unable to explain to this Court the rational basis on which a distinction could be drawn between a consumer who was in arrears and who makes no payment whatsoever and makes no challenge in any court, and a consumer who although does not make any payment or makes only a part-payment, challenges the said demand by filing a case in a court. There is no reason why the former should get the benefit of complete waiver whereas it is denied to the latter. It is unfair to deny the benefit of write-off of arrears to a consumer who goes to the court to challenge such demand, and grant it to a consumer who neither challenges the demand nor

makes any payment whatsoever. This basis of classification of consumers who are in arrears of electricity dues is not only irrational and arbitrary but also has no nexus to the object of reduction of litigation. In the case of these two Petitioners the demand was raised for a period much earlier than the date of the bill, therefore, they answer the description of “stale claims.” There is no reason why for certain stale claims, where there is no challenge by the consumers, there is a complete waiver of arrears whereas in those cases where a challenge is raised by the consumer which is pending in a Court, there is no such waiver.

19. In *All India Federation of Tax Practitioners* case, the challenge *inter alia* was to proviso to Section 92 of the Finance (No.2) Act 1998, which provided that Kar Vivad Samadhan Scheme, would not apply to a class of ‘litigating assesses in arrears’. While striking down the said proviso as being arbitrary and violative of Article 14 of the Constitution of India, a Division Bench of this Court observed as under (DLT@p. 619):

“26. In our opinion, no sub-classification can, therefore, be made in the class of litigating assesses in arrears merely by reference to the fact whether they are prosecuting the litigation or defending themselves. In our opinion, once a liability to pay the tax was incurred and determined on or before 31.3.98, the assessee would be treated to be in arrears inspite of his having succeeded at one stage of litigation if the Revenue has chosen to continue with litigation and there is no reason why the benefit of the scheme should be denied to him. To this extent, the scheme is discriminatory and violative of Article 14 of the Constitution. All the assesses litigating and in arrears belong to one class. Any

attempt at carving out further classes by reference to who is the prosecutor/appellant/applicant in the pending litigation is void as based on no intelligible differentia. It is arbitrary, irrational and evasive. It will have no rational relation to the object sought to be achieved by the Act. The twin test laid down in *R.K. Garg's* case would fail. On the other hand keeping them in one class would enable the twin objective of legislation being achieved – (i) the reduction of litigation, and (ii) the realisation of revenue.”

20. Reverting to the instant case, the object of the impugned Notification is also the reduction of litigation and acknowledgement of the fact that the Respondent was unable to recover arrears of stale claims. Neither of the above objects have been achieved by excluding the benefit of the Notification dated 16th/19th May 2008 to the cases where the demand for arrears of the electricity dues is under challenge in courts. Applying the ratio of the decision in *All India Federation of Tax Practitioners*, it must be held that the exclusion of the consumers who have challenged the demand of arrears of electricity dues in courts from the ambit of the benefit of Notification dated 16th/19th May 2008 is discriminatory and violative of Article 14 of the Constitution of India.

21. Consequently, the portion of Clauses (1) and (2) of the impugned Notification dated 16th /19th May 2008 which excludes “the cases under litigation at any forum and at any level” is struck down as being violative of Article 14 of the Constitution of India. A consequential mandamus is issued to the Respondent to extend the benefit of the impugned Notification dated 16th/19th May 2008 to the two Petitioners and all others who are similarly

situated.

22. The writ petitions are allowed in the above terms but, in the circumstances, with no order as to costs.

S. MURALIDHAR, J

DECEMBER 02, 2010
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