

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

Date of decision: 4th October, 2010.

+ **W.P.(C) No.8859/2009 & CM No.6215/2009 (u/S 151 CPC for stay)**
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SH. VIJAY BALI

..... PETITIONER

Through: Petitioner in person.

Versus

BSES YAMUNA POWER LTD. & ORS.

..... RESPONDENTS

Through: Mr. K. Datta & Mr. Manish
Srivastava, Advocates for R-1 & 2.
Mr. P. Mallikarjun, Adv. for Mr.
Saleem Ahmed, Adv. for R-3 to 5
with S.I. Lala Ram.

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 filed the present writ petition pleading:-
 - (i) That he has been residing at Flat No.270-C, J&K Block,
Dilshad Garden, Delhi since the year 1987;
 - (ii) That in the year 2001 the mechanical electricity meter installed
by the then Delhi Vidyut Board (DVB) at his residence became
faulty but neither the DVB nor the respondent no.2 BSES

Yamuna Power Limited (BSES YPL) being the successor of DVB, replaced the faulty meter inspite of repeated demands/complaints of the petitioner;

- (iii) That the faulty mechanical meter was ultimately replaced by BSES YPL with an electronic meter on 30th March, 2004 but the officials of BSES YPL failed to prepare the Meter Replacement Report;
- (iv) The new electronic meter was also faulty and with respect whereto also several complaints were made by the petitioner but to no avail;
- (v) That the electronic meter also finally stopped working and BSES YPL also stopped sending bills to the petitioner;
- (vi) Upon the petitioner collecting duplicate bills from the office of BSES YPL he found that the connection was shown as disconnected though it was very much alive;
- (vii) That on 2nd May, 2008, the officials of BSES YPL visited the premises of the petitioner and prepared a site inspection report and as per which there was no tampering with the meter;
- (viii) That on 8th May, 2008 a notice dated 5th May, 2008 under Section 163 of the Indian Electricity Act, 2003 was received by the petitioner and after few hours on the same day, officials of BSES YPL along with several other unauthorized persons visited the house of the petitioner and created a chaos and of

which complaint was lodged by the petitioner on 9th May, 2008 with the Police officials (also impleaded in this petition).

- (ix) That the officials of BSES YPL again visited the house of the petitioner on 12th May, 2008 and misbehaved and insulted the petitioner's family and regarding which a telegram dated 13th May, 2008 was sent by the petitioner;
- (x) That the officials of BSES YPL along with local police without any intimation to the petitioner, on 15th May, 2008 broke open the lock of the meter room and removed the meter and connected the wires directly to let the electricity supply run directly. The petitioner lodged a complaint thereof also on 15th May, 2008 to the Police Commissioner and also sent legal notice to BSES YPL but to no avail;
- (xi) That the petitioner filed a criminal complaint under Section 156(3) of the Cr.P.C. against the officials of BSES YPL and which complaint is still pending;
- (xii) That the petitioner also lodged a complaint against the officials of BSES YPL with the Public Grievance Cell of the Department of Power, Govt. of NCT of Delhi;
- (xiii) That on 12th June, 2008 a status report was filed by the Investigating Officer in the complaint case aforesaid filed by the petitioner *inter alia* to the effect that the officials of BSES YPL after removing the faulty meter had connected the electric

supply directly without installing a new meter;

- (xiv) That on 2nd July, 2008 the officials of BSES YPL again entered the premises of the petitioner without intimation and started harassing the petitioner compelling the petitioner to call the police. The connected load of 19.201 KW was assessed at the petitioner's premises without any basis;
- (xv) The petitioner filed a civil suit before the Court of the Civil Judge for permanent injunction restraining the BSES YPL from tampering with the evidence of direct supply;
- (xvi) That the petitioner was delivered a notice dated 7th October, 2008 of theft assessment without any theft assessment order or bill having been served on him;
- (xvii) That the petitioner filed another complaint of offences under Sections 350, 425, 448, 500, 503 & 506 IPC against the officials of BSES YPL and in which complaint, bailable warrants against the said accused had been issued.
- (xviii) That a complaint before the Consumer Disputes Redressal Forum was also filed by the petitioner claiming damages from BSES YPL.
- (xix) That on 15th December, 2008 again a number of officials of BSES YPL entered the premises of the petitioner and the petitioner called the police;
- (xx) That the petitioner received notice of a case of 'direct theft'

filed by BSES YPL against him and appeared in the Court; the officials of BSES YPL attempted to have the petitioner arrested.

2. The petitioner in the writ petition has claimed the following reliefs:-

- “a) stay the proceedings in FIR No.444/08 and CC No.1008/08; and
- b) direct the resp. no.2 to install the correct meter at the petitioner’s premises and restore the power supply of the petitioner with immediate effect; and
- c) restrain the respondents from initiating any action against the petitioner and his family causing further physical and mental harassment to them, without the leave of this Hon’ble court; and/or
- d) pass any other or further order(s) which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice, in favour of petitioner and against the respondents.”

3. The writ petition came up before this Court on 18th May, 2009 when notice of the writ petition was issued. The petitioner admitted that electricity charges had not been paid w.e.f. year 2002, though claimed that no bills in accordance with law had been raised on him. The counsel for BSES YPL informed that a sum of ₹82,000/- was due from the petitioner as per consumption recorded and the petitioner had been booked for direct theft of electricity and theft charges of ₹3.8 lacs had been imposed. This Court vide interim order 18th May, 2009, without prejudice to the rights and contentions of the parties, subject to the petitioner depositing ₹1,50,000/- in the manner provided therein directed the respondent no.2 to restore the electricity connection of the petitioner. The petitioner was also directed to pay the current consumption charges. The said amount of ₹1,50,000/- has been paid and the said order continues to be in force.

4. Though the parties were referred to Mediation Cell but the same has been unsuccessful.

5. The counter affidavit stated to have been filed by BSES YPL is not on record though the rejoinder of the petitioner is on record. Copy thereof has been perused. The petitioner appearing in person also states that the costs of ₹2,000/- imposed vide previous order for delay in filing the counter affidavit have not been paid. The counsel for BSES YPL assures that the cost if not paid till now shall be paid within ten days. If the cost is not so paid, the petitioner shall be entitled to adjust the amount thereof from the payment under the next bill due from him to BSES YPL.

6. BSES YPL in its counter affidavit has *inter alia* stated that in January, 2006 during the uploading of data in the computer system, the status of the meter of petitioner was inadvertently uploaded as “disconnected” and due to which inadvertent mistake, the bills generated showed status of the meter as “disconnected”; that on 2nd May, 2008 during inspection, the meter was found to have stopped; however the petitioner on 5th May, 2008 did not allow the faulty meter to be replaced and owing where to the notice dated 5th May, 2008 under Section 163 of the Electricity Act was issued. It is further pleaded that though on 15th May, 2008, the faulty meter was removed but the petitioner resisted the installation of a new meter and continued to use the electricity directly from the LT box indulging in direct theft of electricity; that it was so found during inspection on 2nd July, 2008 and

pursuant thereto a theft bill of ₹1,86,497/- was issued to the petitioner and a case of direct theft lodged against the petitioner. It is yet further pleaded that the premises of the petitioner were once again inspected on 15th December, 2008, when again the petitioner was found indulging in direct theft and a theft bill of ₹95,758/- issued and First Information Report (FIR) registered against the petitioner. The premises of the petitioner were inspected for the third time on 21st April, 2009 when again the petitioner was found to be indulging in direct theft of electricity and another FIR lodged against him and theft bill of ₹95,566/- issued.

7. The counsel for BSES YPL has today stated that the prayer (b) (supra) in the writ petition has already been granted vide interim order aforesaid. He states that the said order can be made absolute subject to the outcome of the various theft cases pending against the petitioner. He further contends that the relief claimed in prayer (a) of stay of theft cases cannot be granted, the petitioner having not claimed the quashing of the FIR and the complaint case in the present proceedings. Similarly, it is urged that the relief in prayer (c) is contrary to Section 41 of the Specific Relief Act, 1963.

8. It was enquired from the counsel for BSES YPL whether the validity of a theft bill raised, can be gone into in the civil writ jurisdiction. The counsel has fairly stated that the same can be, but urges that the present case entails disputed questions of fact which cannot be adjudicated in the writ jurisdiction and/or are best left to be decided in the various proceedings

pending. It is stated that same questions are pending adjudication in the complaint cases filed by the petitioner against the officials of BSES YPL as also in the theft cases by BSES YPL against the petitioner.

9. The petitioner though had filed the writ petition through an Advocate and was initially appearing through Advocate, now appears in person. Upon being asked as to how the factual controversy raised by him can be adjudicated in this writ jurisdiction, he has referred to Section 56(2) and contends that demand for electricity charges from the year 2002 onwards, is barred by time. Though the same does not form the basis of the writ petition but even otherwise the said contention has no merit. It is his case that no bills were being raised w.e.f. year 2002. This Court in *MCD Vs. H.D. Shourie* 53 (1993) DLT 1 and *NDPL Vs. Delhi Bottling Co. Ltd.* MANU/DE/0489/2009 has held that electricity charges do not become barred by time till the bill therefor has been raised. Else, the petitioner in his lengthy arguments has raised various arguments of facts. The only legal argument which can be gathered from his statements is that when BSES YPL was aware that the meter was faulty, why the meter replacement procedure as prescribed in Delhi Electricity Supply Code & Performance Standards Regulations, 2007 was not followed.

10. In the entire narrative aforesaid, what has struck me as odd is that when BSES YPL on 15th May, 2008 removed the faulty meter and even if it is believed that the petitioner resisted the installation of the replacement

meter, why action in accordance with law was not taken by BSES YPL against the petitioner therefor. The booking of the first theft case thereafter on 2nd July, 2008 thus does appear to be strange. Once BSES YPL on 15th May, 2008 knew that the faulty meter had been removed and the petitioner had not allowed installation of new meter and BSES YPL did not take any steps for installation of new meter and the petitioner continued to reside in the house, it was obvious that the supply of electricity to the petitioner was direct. The petitioner could not be expected to have ceased residing in the house or using the electricity. Similarly, the successive theft cases inspite of full knowledge of removal of defective meter and non-installation of new meter do strike me as odd.

11. A theft is shrouded in secrecy and discreet. However, when a consumer allows removal of a faulty meter and resists installation of a new one, BSES YPL in the ordinary course ought to have taken steps for installation of a new meter with the assistance of the police.

12. The pleas of BSES YPL that its officials inspite of removal of defective meter did not make the electric supply direct and it is the petitioner who connected electricity directly, after removal of meter and has thus committed theft is contrary to Regulation 40 which requires BSES YPL to make supply direct upon removal of defective meter and thus cannot be accepted. Moreover Regulation 40(c) expressly provides that pending replacement of meter, a case of direct theft shall not be booked.

13. Since the aforesaid aspect was not brought out during the course of hearing, the matter was listed on 7th October, 2010 for directions/clarification. The petitioner did not appear. He could also not be contacted over the telephone number given. However the query aforesaid was posed to the counsel for BSES YPL. It was also enquired from the counsel whether in the circumstances aforesaid, this Court could strike down/quash the direct theft bills in as much as it was felt that the Roster did not permit this Court to deal with the FIR and complaint case of direct theft at the instance of BSES YPL against the petitioner. The counsel for BSES YPL sought time to respond. However on the next date the counsel for BSES YPL sought time till 18th October, 2010 to respond and also sought permission to file a synopsis if necessary on the aforesaid aspects. However the counsel has thereafter neither rendered any clarification nor filed any synopsis.

14. In the absence of any reply to the aforesaid clear-cut violation of Regulation 40 in raising the theft bill on the petitioner, there is no option but to make an order quashing the theft bills raised by BSES YPL on the petitioner. The excess amount received by BSES YPL from the petitioner as a condition to the interim orders for restoration of the electricity supply be also adjusted in future bills raised by BSES YPL on the petitioner. The petitioner shall have liberty to approach the Roster Bench with respect to the FIR and complaint case as aforesaid.

15. The petition is allowed to the aforesaid extent. The petitioner is also awarded costs of this petition of ₹20,000/-. The costs be paid within four weeks of today, failing which the said costs be also adjusted in the future bills of the petitioners.

**RAJIV SAHAI ENDLAW
(JUDGE)**

4th October, 2010

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(corrected & released on 25th October, 2010)