

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

Date of decision: 6th October , 2010.

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W.P.(C) No.6585/2007

INDERJIT SINGH

..... PETITIONER

Through: Mr. Kapil Sankhla, Advocate.

Versus

NORTH DELHI POWER LTD.

..... RESPONDENTS

Through: Mr. K. Datta & Ms. Manish Srivastava,
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 petition impugns the speaking order dated 3rd November, 2006 of the respondent finding the petitioner guilty of Dishonest Abstraction of Energy (DAE) and consequent demand for ₹2,44,647/-. This Court while issuing notice of the petition on 11th September, 2007 restrained the respondent from enforcing the demand impugned, subject to the petitioner depositing a sum of ₹50,000/- with the respondent. The said amount was reported to have been deposited and the interim order was made absolute on 22nd May, 2009. The respondent has filed a counter affidavit and to which a rejoinder has been filed by the petitioner. The parties were referred to the

continuous Lok Adalat of this Court but no settlement could be arrived at. The counsels have been heard.

2. The dispute relates to the electricity connection for domestic purposes installed in the premises of the petitioner at RA-73, Inderpuri, New Delhi. Besides the said domestic electricity connection, the said premises is also provided with a commercial electricity connection for the shop run by the petitioner on the ground floor of the property.

3. The case of the petitioner is that the domestic electricity connection and to which the dispute pertains was burnt at 2330 hours in the night on 15th September, 2006 and on immediate reporting by the petitioner, officials of the respondent reached the premises at 0115 hours in the night and made the electricity supply direct with the assurance to replace the burnt meter; however the officials of the Enforcement Assessment Cell, Keshavpuram, Lawrence Road, Delhi of the respondent visited the premises of the petitioner on 16th September, 2006 i.e. the very next date and gave a show cause notice to the petitioner unnecessarily booking the petitioner under Sections 126 & 135 of the Electricity Act, 2003; the petitioner appeared before the concerned official of the respondent on 25th September, 2006 but the respondent without regard to the submissions of the petitioner passed the impugned speaking order and raised the impugned demand. The petitioner denies that he has indulged in any DAE of which he has been found guilty.

4. The respondent in its counter affidavit admits receipt of a complaint of burning of the electricity meter from the petitioner in the night on 15th September, 2006 but pleads that on visit the electricity meter was found to be in a smoky condition with the neutral terminal burnt; the respondent admits that the electricity connection was made direct in the night with a view to restore electricity supply to the petitioner immediately to avoid inconvenience and in accordance with Regulation 17(vii) of the DERC (Performance Standards – Metering & Billing) Regulations, 2002, an inspection team visited the premises of the petitioner on the next day and carried out the inspection in the presence of the petitioner to ascertain if there existed any kind of theft/tampering/DAE; it is pleaded that during the said inspection the following irregularities were found:-

- “a. Meter box hinges had been tampered.
- b. Both meter box seals had been tampered.
- c. Meter terminal seal had been tampered.
- d. Both the half seals of the meter had been tampered.
- e. All sticker seals had been tampered and re-fixed.
- f. The said domestic electricity connection was being misused for commercial purposes.”

5. It is yet further pleaded that the inspecting team discovered the connected load of 7.76 kW as against the sanctioned load of 0.50 kW and accordingly a case of DAE booked and show cause notice issued.

6. The counsel for the petitioner has contended that the demand impugned has been raised without arriving at any finding of DAE. It is urged that merely from the observations of the box hinges and the seals having been found tampered, no inference of DAE can be drawn. Reliance in this regard is placed on (i) *Udham Singh Vs. BSES Rajdhani Power Ltd.* 136 (2007) DLT 500; (ii) *Jagdish Narayan Vs. NDPL* 140 (2007) DLT 307; and (iii) *J.K. Steelomelt (P) Ltd. Vs. BSES Rajdhani Power Ltd.* 140 (2007) DLT 563.

7. It is contended that the respondent did not carry out any other tests to reach a finding of DAE; it is urged that accu-check was not done. It is yet further urged that the findings of breaking of hinges of the meter box and of seals being tampered are not presumptive of DAE in as much as the meter was burnt and the same could have happened even during burning of the meter or while making the supply direct. It is yet further contended that the findings of the electricity connection being used for commercial purposes are without regard to the fact that another commercial electricity connection existed in the premises.

8. It was enquired from the counsel for the petitioner whether the meter of the petitioner was sent to NABL accredited laboratory as required under the Regulation 52 (viii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007. The counsel for the petitioner replies in

negative. The counsel for the respondent however informs that the procedure of sending the meter to NABL accredited laboratory has been introduced for the first time in the 2007 Regulations and there was no such requirement under the 2002 Regulations in force at the relevant time.

9. The counsel for the respondent has opposed the argument of the petitioner of the possibility of the hinges and the seals being broken during the burning of the meter by stating that the respondent does not admit that the meter had burnt and has pleaded that the meter was in a smoky condition with only the neutral terminal burnt. On enquiry as to why the meter was not sent for accucheck, the counsel for the respondent states that since it is the case of the petitioner himself that the meter had burnt and was not functioning, a non-functional meter could not be sent for accu-check. The counsel for the petitioner rejoins by contending that the respondent cannot on the one hand state that the meter was not burnt and on the other hand contend that accucheck was not carried out owing to the meter having got burnt.

10. The counsel for the respondent also draws attention to the reply given by the petitioner to the show cause notice and contends that the petitioner did not reply to the specific charges and merely stated that the meter seals must have shrunk and must have sustained damage. Reliance is placed on ***J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board*** (2003) 5 SCC 226

contending that the said judgment has not been noticed in any of the judgments cited by the counsel for the petitioner and that the Apex Court has laid down that the tampering of the seal is enough to conclude DAE. It is argued that the respondent has proceeded against the petitioner in accordance with the Regulations and the law; that the petitioner has availed of the hearing had no substantive reply to the allegations and thus no case for interference in writ jurisdiction has been made out. With reference to the judgments cited by the counsel for the petitioner, it is urged that those were cases where one or maximum two seals were found tampered but in the present case all the seals were found tampered and thus the said judgments will not apply.

11. This Court in *Udham Singh* (supra) with reference to the 2002 Regulations held that mere irregularity in meter seals or breakage of glass etc. do not justify issuance of a show cause notice for DAE; the assessing officer is required to observe the consumption pattern before making out a case for DAE. It was further held that in the absence of any collateral evidence, the only basis for DAE could be the consumption pattern and in the absence of DAE having been established from the consumption pattern, no case for DAE can be made out. It was further held that when the meter is not checked for accuracy or defects, the findings of DAE were flawed.

12. In ***Jagdish Narayan*** (supra) it was held that in order to draw a presumption of DAE against a consumer, it first must be shown that an artificial means or means not authorized by the Board or licensee existed for the abstraction, consumption or use of electricity by the consumer – till such time this initial burden is discharged by the supplier of electricity, burden of proof does not shift to the consumer. It was further held that *mens rea* or intention of the consumer to dishonestly abstract electricity must be proved “conclusively” to bring home the charge of DAE - that can be established only by showing that the consumer was responsible for tampering the meter by some visible means and the external manifestations of tampering can only raise a suspicion which cannot take the place of proof. In this judgment it was observed that an accu-check meter can be deployed to find out if the meter indicates recording lesser units and the analysis of consumption pattern is merely corroborative and not substantive evidence of DAE. The judgment of the Apex Court in ***J.M.D. Alloys Ltd.*** (supra) cited by the counsel for the respondent was also considered in ***Jagdish Narayan*** and was held to have been rendered in the context of an industrial consumer and in a different set of facts and not applicable.

13. In ***J.K. Steelomelt (P) Ltd.*** (supra) also it was held that it is one thing to plead that the connected load is more than the sanctioned load but is another to say that in fact the connected load has been used throughout and

merely because the connected load is more than the sanctioned load cannot lead to an automatic presumption of DAE.

14. It would thus be seen that the counsel for the respondent is not right in contending that the judgment of the Apex Court in *J.M.D. Alloys Ltd.* has not been considered in any of the aforesaid judgments.

15. In so far as the counsel for the respondent has tried to distinguish the judgment aforesaid on the basis of the number of seals tampered with, as would be apparent from the above discussion, it is not the number of seals which is determinative. What has been laid down in the judgments of this Court is that there should be some conclusive evidence of DAE having been intentionally practiced by the consumer. In the present case also, there is none. In spite of the case having remained pending for a considerable long time, the respondent has not even pleaded that the subsequent consumption against the electricity connection also justifies a case of DAE. There is also no discussion in the speaking order impugned, with reference to the other commercial electricity connection in the premises i.e. whether load found was connected to the other meter or not and if not as to what was the load connected to the other commercial meter. In view of the said fact, no reliance can be placed on the case of the respondent of higher connected load also.

16. Thus, following the judgments aforesaid, the case made out by the respondent against the petitioner of DAE cannot be sustained. The speaking order dated 3rd November, 2006 is quashed/set aside. Axiomatically, the demand in pursuance thereto is also quashed/set aside. The petitioner has become entitled to refund of ₹50,000/- deposited as a condition for the interim stay. Since the respondent has enjoyed the sum of ₹50,000/- for the last approximately three years, the respondent is liable for payment of interest thereon to the petitioner. A lump sum amount of ₹12,000/- towards interest on ₹50,000/- for the last three years is awarded. The respondent is directed to adjust the sum of ₹62,000/- in the future bills of the petitioner against either of the connections.

17. The petition is disposed of. The respondent to also pay costs of ₹10,000/- of this petition to the petitioner. If the cost is not paid within four weeks, the same to be also included in the amount to be adjusted as aforesaid.

**RAJIV SAHAI ENDLAW
(JUDGE)**

6th October, 2010
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