

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

% *Judgment reserved on : 28.04.2011*
Judgment delivered on : 05.05.2011

+ **R.S.A.No. 84/2007 & CM No. 4113/2007**

BSES RAJDHANI POWER LTD. Appellant
Through: Mr. Samrat Nigam, Advocate.

Versus

RAJWANT SINGH Respondent
Through: Mr. Varun Hans, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1 This appeal has impugned the judgment and decree dated 17.01.2006 which had endorsed the findings of the trial Judge dated 30.11.2004 whereby the suit filed by Rajwant Singh seeking mandatory injunction directing the defendant to restore the electricity supply i.e. connection bearing No. K 1245516 (hereinafter referred to as the 'subject connection') installed in the name of the plaintiff at D.16, Santgarh near Tilak Nagar, New

Delhi (hereinafter referred to as the 'suit premises') had been decreed in his favour.

2 The case of the plaintiff is that he is the sole proprietor of M/s Universal Enterprises the factory which he was running at the suit premises. He obtained a 10 HP connection in 1995. He had been using this sanction load for his commercial purposes. The plaintiff in terms of the offer of the defendant for additional load had applied for it and deposited a sum of ₹28,520/- for an additional load of 30 HP; inspite of the plaintiff having completed all formalities, the load was not enhanced. The last bill raised upon the plaintiff was of ₹26,926/- which was also paid; in fact all bills have been paid. On 11.04.1997 without any prior show cause notice, the electricity of the plaintiff was suddenly disconnected; he had no option but to come to the court. Suit was accordingly filed.

3 In the written statement, it was stated that the suit is not maintainable. It was stated that the suit property had been inspected by the zonal staff of the defendant; seals of the existing meters were found to be fictitious and tampered with; this was a fraudulent abstraction of energy (FAE); electricity supply of the plaintiff was disconnected forthwith in these circumstances;

personal hearing under the orders of the Court had also been granted to the plaintiff on 03.02.1997.

4 From the pleadings of the parties, the following four issues were framed:-

1. Whether DVB conducted illegal inspection on and raised illegal demand of ₹4,25,491.25? OPP
2. Whether plaintiff is entitled to decree of mandatory injunction? OPP
3. Whether plaintiff has not approached the court with clean hands? OPD
4. Relief.

5 Thereafter an additional issue was also framed. It reads as under:-

“Whether the DVB conducted illegal inspection and raised illegal demand of ₹4,25,491.25?OPP”

6 On the basis of oral and documentary evidence, the trial Judge was of the view that the inspection conducted by the department on 11.04.1997 was in accordance with law; the demand raised was also not illegal. However relying upon a judgment of Delhi High Court reported in 55 (1994) DLT 701 Sukhbir Singh Vs. MCD since show cause notice had not been issued prior to disconnection of electricity, disconnection was held to be bad in the eye of law; direction was accordingly given to the department to restore the electricity connection of the plaintiff.

7 This judgment was endorsed in the first appeal.

8 On behalf of the appellant, it has been urged that the judgment of Sukhbir Singh had been misconstrued by the court below; it has no application. Reliance has been placed upon AIR 1996 SC 2258 M.P. Electricity Board, Jabalpur & Others Vs. Harsh Wood Products and Another as also another judgment of the Apex Court in AIR 1998 SC 1715 M/s Hyderabad Vanaspathi Ltd. Vs. Andhra Pradesh State Electricity Board & others to substantiate his submission that disconnection of supply by the officers of Board on suspicion or malpractice by the consumer without a show cause notice is not violative of Article 14 of the Constitution; it is not an illegality; show cause notice is not required.

9 This is a second appeal. It has been admitted and on 19.03.2007, the following substantial question of law was formulated. It reads as under:-

“Whether in a case of fraudulent abstraction of electricity or in case of pilferage in terms of case reported in M.P. Electricity Board Vs. Harsh Wood Product, AIR 1996 SC 2258, supply of electricity could be disconnected without giving any show cause notice?”

10 Record has been perused. The case of the plaintiff as is evident from the record is that this is a case of fraudulent abstraction of electricity (FAE) i.e. a case of pilferage. It is not in dispute that there are two cases of theft; one is of FAE and the

second is a case of direct theft (DT). This case falls under the first category. In the judgment of M.P. Electricity Board (Supra) the Supreme Court while dealing with the provisions of Section 24 of the Electricity Act, 1910 it had held as under:-

“8. The learned counsel for the respondent placed strong reliance on Section 24 of the Indian Electricity Act, 1910 which contemplates seven days’ notice before disconnection. Section 24 does not apply to demand on detection of pilferage. It would apply to a case of regular supply made and prior demand for payment of electricity charges with a notice of seven days to be made and for failure to pay within the given time, after expiry of seven days; the appellant as a licensee would get the right to disconnect the supply of electrical energy. It would thus be seen that disconnection will be in the course of regular supply of electricity for non-payment of the usual bills but not to any demand after detection of pilferage.”

It had also examined the provisions of Section 49 read with Section 79 of the Electricity (Supply) Act 1948. Section 31 (3) was also adverted to and noted hereunder as:-

“7. A reading thereof clearly indicates that the appellant-Board, when it defects that any consumer had committed any malpractice with reference to his use of electrical energy including authorized alternations to installations, unauthorized extension and use of devices to commit theft of electrical energy, may, without prejudice to its other rights, disconnect the supply of electricity forthwith and may call upon the consumer to make payment for compensation of the unauthorized use of electricity which is now stated to be a theft of electricity.”

11 In the judgment of M/s Hyderabad Vanaspathi Ltd.(Supra) the Apex Court had again had the occasion to deal with the provisions of Section 49 of the Electricity (Supply) Act (54 of

1948). It had noted that the Terms and Conditions of Supply had been notified on 20.10.1975; these were pursuant to the powers of the Board under Section 49 of the said Act. In terms of Clause 39 which defines a 'malpractice'; this clause enables officers of the Electricity Board to disconnect the service of a consumer on a suspicion or malpractice; this clause was neither violative of the Supply Act, 1948 and nor violative of Article 14 of the Constitution.

12 The judgment of the Sukhbir Singh on which reliance has been placed by the two courts below was in a different context. In this case, demand notice had been issued to the consumer on the basis of an inspection report; it was a case where additional load had been applied for; the application for additional load was pending; it had not actually been granted; the court was of the view that before demand notices are issued, a detailed show cause notice should have been given to the petitioner as to the manner in which this demand had been arrived at. Ratio is inapplicable.

13 Counsel for the appellant has also placed reliance upon the guidelines of the DVB-Handbook of Procedures which have a guiding force. Rule 22.B.1 deals with the detection of theft/pilferage of electricity. Rule 22.B.4 contains the procedure of conducting raids and inspection. Sub Rule (iii) reads as:

“(iii) The inspecting team would prepare a joint inspection report giving the detailed observations of the connected load, sealing position, working of meter and probable cause/modus-operandi for establishing theft of energy. The supply in all cases of theft (except direct cases of theft) covered in the following para shall be disconnected forthwith after obtaining approval of GM(E). Under general conditions of application of the tariff schedule wherever there are reasons to believe fraudulent use/theft of electricity the supply shall be disconnected forthwith without notice to the consumer/defaulters. This should be followed by lodging a FIR with the police.”

14 Learned counsel for the appellant has submitted that the approval of the GM (E) is always with the inspecting team when it goes to conduct an inspection; this submission has not been refuted by the respondent.

15 This Rule thus enables the inspecting team to disconnect the electricity forthwith without a notice to the consumer whether there are reasons to believe that there has been a fraudulent abstraction or a theft of electricity.

16 The defendant in his written statement had contended that on inspection of site, the meters had been found tampered. PW-1 had also in his deposition admitted that the inspection of his premises had been conducted on 11.04.1997. The trial Judge had while disposing of issue No. 2 returned a positive finding that the inspection was legal and the demand raised upon the plaintiff was also legal. This has also been endorsed in first appeal. This finding has not been challenged. It has since attained a finality. The suit

of the plaintiff had however been decreed only for the reason that a show cause notice should have been given to him before his electricity supply was disconnected and for this proposition reliance has been placed upon the judgment of Sukhbir Singh (Supra).

17 As noted in the discussion hereinabove, the judgment of the Sukhbir Singh had no application. Rule 22.b.4 permits the Board to forthwith disconnect the electricity supply without notice to him if it is a case of fraudulent abstraction of energy (FAE). This was one such case. The Apex Court in M.P. Electricity Board (supra) had endorsed this view; show cause notice was not necessary.

18 The judgment relied upon by learned counsel for the appellant reported in AIR 1992 Delhi 228 Kuldeep Singh Dhingra vs. Municipal Corporation of Delhi and others is inapplicable. In this case the Court had examined the provision of Clause 36 of the Delhi Electric Supply Undertaking (Conditions of Supply), wherein it had held that it would be inconsistent with the scheme of clause 36 to hold that before issuing a show cause notice the undertaking must hold a hearing; authorities are not enjoined to consider the representations made by the aggrieved persons before issuance of the show cause notice. This judgment has no application to the
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factual scenario.

19 It is also relevant to state that the plaintiff in this case had laid no challenge to the demand raised upon him; his only prayer in the plaint was for the restoration of the electricity which had been disconnected after the inspection of 11.04.1997. On the last date counsel for the plaintiff/respondent had also made a statement that 50% of the provisional bill of about ₹2 lac & odd has been deposited. Counsel for the appellant had verified this position; it was categorically stated that not a single paisa has since been paid by the respondent; to which the respondent has no answer. The respondent is enjoying the electricity under the interim orders of this Court but admittedly he has not paid even the admitted user charges. Such a consumer deserves little sympathy. Impugned judgment had even otherwise is perverse; it calls for an interference.

20 For all the aforesaid reasons, the impugned judgment is liable to be reversed. Appeal is allowed. Suit of the plaintiff is dismissed.

INDERMEET KAUR, J.

MAY 05, 2011
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