

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

Date of decision: 20th April, 2011

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W.P.(C) 1389/2007

SUDHA GUPTA

..... Petitioner

Through: Mr. Saurabh Prakash with Mr.
Siddharth Yadav, Advocates

Versus

BSES RAJDHANI POWER LTD.

..... Respondent

Through: Mrs. Anjali Sharma, Advocate

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 demand of the erstwhile Delhi Electric Supply Undertaking (DESU) of which the respondent is a successor, in the sum of ₹2,65,352.23 on account of charges for subletting of electricity.

2. Notice of the petition was issued and vide interim order dated 23rd February, 2007, subject to the petitioner depositing ₹1,00,000/- with the respondent, the respondent was directed to re-energize the electricity connection which had been disconnected for default in payment of the said amount. The order dated 19th March, 2007 records payment of the said amount of ₹1,00,000/- by the petitioner to the respondent. Pleadings have been completed and the counsels have been heard and the written submissions filed by them perused.

3. The petitioner is the owner of premises No.I-7, DSIDC Industrial Complex, Rohtak Road, Nangloi, Delhi and obtained the industrial connection to which this writ petition pertains, therein, in her own name. An inspection of the premises of the petitioner was conducted on 13th January, 1994 when it was reported that the petitioner had sublet the electricity supply through the said connection to M/s Gupta and Company Ltd. It is the case of the petitioner that the petitioner was earlier carrying on business in the said property in the name and style of M/s Gupta & Company in partnership with her other family members and the business of

which partnership was subsequently in the year 1974 taken over by M/s Gupta & Company Pvt. Ltd. promoted by the petitioner and the other partners and which M/s Gupta & Company Pvt. Ltd. subsequently became a deemed Public Limited Company in the name and style of M/s Gupta & Company Ltd.; that she continues to be one of the Shareholders / Promoter-Director of the said Company and thus the electricity supply through the connection in her own name was being used by her for her own business / industrial purposes only and had not been sublet.

4. Upon the DESU not accepting the aforesaid contention of the petitioner, the petitioner earlier filed Civil Writ No.265/1999 in this Court challenging the said demand of the then DESU/Delhi Vidyut Board (DVB) being the successor of DESU and predecessor of respondent. The said writ petition was disposed of vide order dated 15th March, 2002 by referring the parties to the Permanent Lok Adalat. However, the respondent did not respond for settlement of the case before the Permanent Lok Adalat and the Permanent Lok Adalat accordingly closed the case as unsettled with liberty

to the petitioner to approach the Court / other fora for redressal of her grievance. Thereafter the present writ petition came to be filed.

6. The petitioner also relies upon the judgment dated 7th December, 2005 of the Court of the Additional District Judge, Delhi in a suit filed against the DESU/DVB by Sh. Sudhir Jain, another partner in the partnership firm M/s Gupta & Company and Promoter-Director and Shareholder of M/s Gupta & Company Ltd., with respect to a similar charge made by DESU/DVB against him, with respect to the electricity connection in his adjoining property No.I-9 from where also the business of the said firm / Company was being carried on. The Additional District Judge held that no case of subletting was made out by allowing the electricity connection to be used for the business being carried on by the consumer in the name and style of a corporate entity.

7. The counsel for the respondent has not contended that the aforesaid judgment has not attained finality.

8. Though the respondent neither in the counter affidavit nor during the hearing could disclose the basis, if any, of the respondent or its predecessor to so levy charges for subletting of electricity but the respondent along with the written submissions has filed a copy of the Delhi Electric Supply Undertaking Electricity Tariff effective from 1st October, 1993 and Clause xxiv (iv) of General Conditions of Application prescribed wherein includes within the ambit of “MISUSE” subletting electricity to any person / concern by any registered consumer in whose favour the industrial load has been sanctioned. The argument of the respondent thus is that a case of misuse by subletting would be made out even where the registered consumer of industrial electricity supply is carrying on the industrial activity not in his own name but through the medium of a firm in which he may be a partner or a Company in which he may be a Promoter-Director.

9. I find the matter to be no longer *res integra*. A Division Bench of this Court in ***J.B. Exports Ltd. Vs. BSES Rajdhani Power Ltd.*** AIR 2006 Delhi 317 has in similar circumstances held that mechanical interpretation of the principle of separate corporate personality should be avoided. It was

held that “a subletting can be done by A in favor of B, but when A & B are both treated as the same entity by applying the principle of piercing the veil of corporate personality, there is no question of subletting”. Recently, the same view was followed in ***Continental Device India Ltd. Vs. Delhi Vidyut Board*** MANU/DE/0039/2010 where it was also held that in the absence of any definition of subletting in the tariff, the usual meaning of the expression “subletting” would apply. Unfortunately neither of the counsels drew attention to either of the aforesaid judgments.

10. The writ petition therefore succeeds. The Inspection Report and the order holding the petitioner to have sublet the electric supply are set aside and the consequent demand for subletting charges is quashed. Axiomatically the petitioner has become entitled to refund of the amount of ₹1,00,000/- deposited with the respondent on the said account under interim orders in this petition. The Supreme Court in ***Abhimanyoo Ram Vs. State of U.P.*** (2008) 17 SCC 73 and in ***Ramesh Chandra Sankla Vs. Vikram Cement*** (2008) 14 SCC 58 has held that equities flowing from the interim order have to be balanced at the time of the final decision. The

petition having succeeded, the respondent has become liable to pay interest to the petitioner on the said sum of ₹1,00,000/- from the date of receipt till the date of refund / adjustment. The rate of said interest is fixed at 7% per annum. The parties are however given liberty to adjust the said amount in the future amounts, if any, payable to the respondent.

11. The respondent having contested the matter inspite of the clear position in law aforesaid, the respondent is also burdened with costs of this petition of ₹10,000/-, payable to the petitioner along with refund / adjustment aforesaid.

**RAJIV SAHAI ENDLAW
(JUDGE)**

20th APRIL, 2011
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