

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

Date of decision: 16th March, 2011

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W.P.(C) 1712/2011

SMT. KANTA SHARMA

..... Petitioner

Through: Mr. Ujjwal K. Jha & Mr. B.P.
Agarwal, Advocates

Versus

BSES RAJDHANI POWER LTD

..... Respondent

Through: Ms. 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? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the speaking order dated 27th January, 2011 of the respondent holding the petitioner guilty of Dishonest Abstraction of Energy (DAE) and the consequent demand for ₹2,29,085/-.

2. Since the Division Bench of this Court in ***B.L. Kantroo Vs. BSES Rajdhani Power Ltd.*** 154 (2008) DLT 56 has held that even a consumer is entitled to approach the Special Court set up under Section 153 of the Electricity Act, 2003, it is felt that the writ petitions be entertained only in cases where no factual controversy arises and where the speaking order can be quashed merely on an illegibility / breach of procedure as borne out from the speaking order and the other documents of the respondent.

3. Finding that the petition in the present case raises a number of factual controversies also, it has been put to the counsel for the petitioner that the matter cannot be permitted to be agitated simultaneously before two foras i.e. the factual controversy before the Special Court and the legal questions raised in this Court and the petition would be entertained only if the petitioner is willing to give up the challenge on factual grounds.

4. The counsel for the petitioner has contended that though factual ground may also be necessary but it may be examined by this Court whether the procedure followed in the instant case by the respondent is in

accordance with the Regulations or not. The counsels have been heard on the said limited aspect, without intending to prejudice the parties in any manner before the Special Court.

5. The petitioner herein had reported to the respondent of the meter installed at her premises having got burnt. Upon such complaint, the meter was replaced and a Meter Replacement Report / Meter Burnt Report dated 3rd September, 2010 prepared. In the said report, no observation has been made with respect to any of the meter seals having been found broken or tampered with.

6. The petitioner was served with a notice dated 6th September, 2010 informing that the burnt meter which had been sealed and taken away by the respondent will be de-sealed in the presence of the petitioner on 21st September, 2010. There is no plea as to whether the petitioner reported on 21st September, 2010 or not. No letter also was sent by the petitioner in this regard. As per the documents furnished to the petitioner, the meter was tested in the laboratory on 28th October, 2010 and in which report it is

stated that visual observation showed that the top cover of the meter was found re-fixed and IP terminal was found burnt. It was further reported that one illegal re- soldering was found on PCB at 12 V AC point and another at CT6 point. The report accordingly concluded that the burnt meter had been tampered.

7. The respondent thereafter inspected the premises of the petitioner on 29th November, 2010 and found excess connected load over sanctioned load and a show cause notice given to the petitioner including with respect to the report aforesaid of meter testing of the laboratory and which ultimately resulted in the speaking order impugned in this petition.

8. The counsel for the petitioner at the outset argued that no case for DAE can be said to have been made out in the present case since under Regulation 52 of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007 an inspection has to necessarily precede booking of a case for theft of electricity.

9. The aforesaid contention is not found acceptable. Accepting the said contention would tantamount to holding that there can be no case of theft in the case of a burnt meter. An unscrupulous consumer cannot be permitted to escape the charge and liability of theft by burning the meter. If the meter is reported to be burnt, Regulation 40 requires the respondent to immediately install the new meter and to send the burnt meter for testing. If on such testing, the respondent finds that the meter has been burnt to escape charge **of** theft, certainly a case thereof can be booked.

10. The counsel for the petitioner has next contended that even if the case for theft were to be booked in pursuance to a burnt meter, the respondent was required to carry out the test of the meter in the laboratory in the presence of the petitioner. Reliance in this regard is placed on Regulations 52(viii) & (ix). It has been put to the counsel for the petitioner whether the expression “and the same must be handed over to the consumer or his / her representative at site immediately under proper receipt” in Regulation 52 (ix) does not mean / refer to the premises of the petitioner from where the meter is removed. The counsel for the petitioner

however contends that in the case of a burnt meter, the expression “site” would denote the site where the meter is tested.

11. I am unable to accept the said proposition also. Neither Regulation 52 nor Regulation 40 dealing with burnt meter requires the testing in the lab to be in the presence of the consumer.

12. The counsel for the petitioner then contends that the testing had to be necessarily in the presence of the petitioner in as much as a notice therefor was given. He contends that pursuant to the said notice, even if the petitioner had not reported for testing on 21st September, 2010, and if the respondent was not able to carry out the test on that date, another notice of the fresh date for testing ought to have been given.

13. The counsel for the respondent on the contrary contends that the notice of testing is given as a part of good practices and without any obligation in this regard.

14. Once the Regulations are not found to impose any obligation on the respondent to test the meter in the presence of the consumer and the consumer fails to avail the opportunity on the date given for testing, the process cannot be made cumbersome and the condition that no testing can be carried out without the presence of the petitioner and which may lead to delays cannot be imposed.

15. The counsel for the petitioner has next contended that in the present case, the burnt meter was not even sealed in the presence of the petitioner. He contends that there is nothing to the said effect in the burnt meter / meter replacement report also. However, this is found to be a question of fact and which is left to be best adjudicated **by** the Special Court.

16. The other question which arises is whether it should be the petitioner who should approach the Special Court, as contended by the counsel for the respondent, or the respondent should be directed to approach the Special Court with its case for DAE against the petitioner and the petitioner should be protected till then.

17. The respondent is required to approach the Special Court only for enforcement of the civil liability. As far as disconnection for non payment of the assessment in pursuance of the speaking order is concerned, the respondent is authorized to carry out the same under the Act and the Regulations.

18. In my opinion, ordinarily it should be the consumer who if aggrieved by the speaking order and the demand in pursuance thereto and if raising factual controversies should approach the Special Court and claim interim relief against disconnection before the Special Court. However, in exceptional cases where writ petitions are filed and the consumers are relegated to the Special Court for adjudication of the factual controversies, this Court, if finding a strong *prima facie* case in favour of the petitioner, can order that the respondent will not exercise the right of disconnection without approaching the Special Court.

19. The counsel for the petitioner seeks to withdraw the writ petition with liberty to approach the Special Court and seeks interim protection till then.

20. The petition is dismissed as withdrawn with liberty to the petitioner to raise all questions before the Special Court. Subject to the petitioner so approaching the Special Court on or before 31st March, 2011, the electric supply to the petitioner shall not be disconnected in pursuance of the speaking order and demand impugned in this petition till the consideration of the application of the petitioner for interim relief by the Special Court.

21. It is reiterated that nothing contained herein shall prejudice the respective contentions of either parties before the Special Court.

No order as to costs.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 16, 2011
'gsr'