

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

Date of decision: 30th March, 2011

+ W.P.(C) 2160/2011 & CM No.4577/2011 (for stay)

RATAN LAL

..... Petitioner

Through: Mr. B.P. Agarwal & Mr.
Ujjawal Kumar Jha, Advocates

Versus

NDPL

..... Respondent

Through: Mr. K. Datta with Mr. Manish
Srivastava & Mr. Vishwa
Wadhwa, 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? | 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 demand of ₹3,06,680/- in a bill with the due date of 31st March, 2011 raised by the respondent on the petitioner under Regulation 43 of the Delhi Electricity Supply Code &

Performance Standards Regulations, 2007 i.e. for the period, the meter was defective.

2. The counsel for the respondent appearing on advance notice has contended that the dispute raised in the petition being a billing dispute, this writ petition is not maintainable as held by the Division Bench of this Court in ***Ram Kishan Vs. NDPL*** 130 (2006) DLT 549.

3. The counsel for the petitioner has however contended that the defective period bill has been raised without any show cause notice or opportunity of hearing to the petitioner. He in this regard invites attention to the judgment dated 16th March, 2010 of this Court in W.P.(C) No.1807/2010 titled ***Devki Nandan Aggarwal Vs. North Delhi Power Ltd.*** In that case, the writ petition was disposed of with liberty to the distribution company to issue show cause notice to the petitioner and to thereafter pass a speaking order on the question of defective meter and with liberty to the distribution company to raise a fresh bill after passing a speaking order and with further clarifications for the petitioner therein if remained aggrieved by the said order to be

entitled to the remedies.

4. The counsel for the petitioner has from the said judgment sought to urge that before raising the defective period bill under Regulation 43, it is incumbent upon the distribution company, as the respondent is, to issue a show cause notice and grant an opportunity of hearing and to pass a speaking order.

5. However, a perusal of the aforesaid judgment shows that the same was on concession of the counsel for the distribution company in that case. The counsel for the respondent also clarifies that the said concession was made in that case owing to the delay in that case and which is not so in the present case.

6. The judgment aforesaid being on concession, cannot be treated as a precedent.

7. The counsel for the petitioner has however contended that since under Regulation 43 civil consequence arises, the principles of natural justice ought to be complied and the distribution companies cannot be

permitted to raise defective period bill of any amount and leaving the consumers to rush to the Consumer Grievance Redressal Forum (CGRF).

8. Per contra, the counsel for the respondent has contended that no hearing is required under Regulation 43 in as much as the Regulation itself provides the formula for computing the defective period bill and the exercise being a purely mathematical one, no requirement of show cause notice and hearing can be read therein. It is further contended that if it were to be so held then the distribution company would be required to give hearing to the consumers before raising every bill and which is not possible.

9. Attention of the counsel for the parties has been invited to Regulation 44 which provides a procedure for the consumer to file a complaint with respect to the bill. Of course, the said procedure is *post facto* the bill i.e. post decisional; however it does not appear to make any difference. The said Regulation is found to redress the grievance raised by the petitioner of the petitioner having no say whatsoever in

the mistake if any by the distribution company in raising the defective period bill. It has as such been enquired from the counsel for the petitioner as to why the petitioner cannot make a complaint under Regulation 44 with respect to defective period bill to the respondent itself.

10. The counsel for the petitioner has urged that Regulation 44 would not apply to the defective period bill and apply only to regular bills as made under Regulation 42. He has further contended that since Regulation 44(ii) provides for payment of the amount based on average consumption of last three consecutive undisputed bills, the said Regulation cannot apply to a defective period bill made under Regulation 43.

11. I am unable to agree. The placement of Regulations 42 to 44 shows that Regulation 44 is intended to cover/ apply to both, the regular bills under Regulation 42 and the defective period bills under Regulation 43. The mechanism provided of *post facto* hearing is found to be a complete mechanism whereunder the grievance, if any, with

respect to the bill, whether it be raised in the normal course or for defective period will be redressed. Merely because payment during the pendency of the complaint, at the rate of average consumption of the last three consecutive undisputed bills is provided for, cannot be held to mean that the Regulation would not cover / apply to the defective period bill. The same, in the case of a defective meter, would refer to the last three consecutive undisputed bills of the period prior to the defect.

12. The Regulations have, wherever necessary, provided for a hearing. The Legislature having not provided for a hearing before raising the defective period bill and having provided for an opportunity post facto, it is felt that this Court ought not to in the name of principles of natural justice, introduce a hearing where none exists and when the post facto mechanism provides a complete machinery for redressal of grievance.

13. The Supreme Court in *The Chairman, Board of Mining Examination & Chief Inspector of Mines Vs. Ramjee* (1977) 2 SCC

256 held that unnatural expansion of natural justice, without reference to the administrative realities and other factors can be exasperating; if fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of.

Again in *Swadeshi Cotton Mills Vs. Union of India* (1981) 1 SCC 664, it was held that where the statute contemplates a post-decisional hearing amounting to a full review of the original order on merits, then the same would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Reference may also be made to *Union of India Vs. Tulsiram Patel* (1985) 3 SCC 398 laying down that the rule of *audi alteram partem* yields to and changes with the exigencies of different situations; the rule is not cast in a rigid mould and is flexible and adaptable. It was yet further reiterated that if the statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed

that the legislature and the statutory authorities intend to act in accordance with the principles of natural justice.

14. The post decisional / post bill hearing in the present case is found to be adequate and not causing any prejudice to the petitioner / consumer. It is not as if the post decisional / post bill hearing saddles the consumer nevertheless with a liability. Regulation 44 does not require the consumer to pay the amount billed before representing their against. Provision as aforesaid has been made for payment during the period of pendency of complaint by the consumer with respect to the bill. It thus cannot be said that the post decisional / post bill mechanism in the present situation would be unfair to the consumer.

15. The counsel for the respondent agrees that the mechanism provided in Regulation 44 will apply to defective period bills under Regulation 43 as also to the other bills under Regulation 42.

16. Since the consumer is expected to make a complaint under Regulation 44 immediately on receipt of the bill and further since the

matter does not appear to have been considered in any earlier judgment, it is deemed expedient to extend the time for making of the complaint by the petitioner till the filing of this writ petition. The writ petition be treated as a complaint of the petitioner against the defective meter bill and be dealt with and decided in accordance with Regulation 44. If the petitioner remains aggrieved by the decision so taken by the respondent, the petitioner shall have his remedies in law.

17. To avoid any controversy, it is further provided that subject to deposit of ₹1,00,000/- besides regular consumption charges by the petitioner within 7 days from today, the electricity supply of the petitioner shall not be disconnected till seven days after the decision under Regulation 44 and communication thereof to the petitioner.

The petition is disposed of. No order as to costs.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 30, 2011

‘gsr’