

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

Date of decision: 6th April, 2011

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W.P.(C) 2206/2011 & CM No.4678/2011 (for stay).

RAJINDER PRASAD

..... Petitioner

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

Versus

GNCT OF DELHI AND ORS

..... Respondents

Through: Mr. Sumit Chander, Advocate for R-1.

Mr. S.K. Dubey with Mr. Karn Deo Baghel & Mr. Tungesh, Advocates for R-2.

Mr. K. Datta, Advocate for R-3.

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 erstwhile Delhi Vidyut Board (DVB) had raised a bill for ₹19,39,751.91/- on the petitioner, payable by 27th February, 2002. The said

bill was on account of misuse and low power factor. The petitioner challenged the said bill by filing a suit for permanent injunction in the Court of the Civil Judge, Delhi. The Civil Judge vide order dated 27th February, 2002 ordered -

“In the meantime the plaintiff shall deposit the current demand along with 25% of the misuse charges within 7 days.”

2. It is the case of the petitioner that the petitioner complied with the aforesaid interim order.

3. The plaint in the aforesaid suit was however on 21st October, 2009 rejected under Order VII Rule 11 of the CPC for the failure of the petitioner to pay the requisite Court fees on the plaint. The said order has attained finality.

4. The petitioner thereafter approached the Permanent Lok Adalat and the matter was pending there.

5. The present petition was filed impleading the Government of NCT of Delhi and Delhi Power Company Ltd. (DPCL) as the respondents, seeking declaration that the aforesaid claims of the DVB against the petitioner stood waived off in accordance with the Notification dated 16th

May, 2008 of the Department of Power of the Government of NCT of Delhi issued in exercise of powers under Section 108 of the Electricity Act, 2003 r/w Notification dated 20th February, 2004 issued by the Ministry of Home Affairs, Government of India and in terms of the judgment of a Single Judge of this Court in ***Lalit Gulati v. Govt. of NCT of Delhi*** 176 (2011) DLT 1 with respect to the said Notification.

6. The writ petition came up first before this Court on 1st April, 2011 when the counsel for the respondent no.2 DPCL appearing on advance notice contended that without North Delhi Power Ltd. (NDPL) which is the successors of the DVB in the locality concerned, being impleaded as a party, the writ was not maintainable. Accordingly, NDPL was impleaded as the respondent no.3 and notice issued. The counsel for the respondent no.3 NDPL today states that the matter concerns the petitioner and the respondent no.1 Government of NCT of Delhi.

7. The counsel for the respondent no.1 Government of NCT of Delhi states that a decision has been taken to prefer an intra court appeal against the judgment of the Single Judge in ***Lalit Gulati*** (supra) and this petition should be held over till then.

8. The counsel for the respondent no.2 DPCL and the counsel for the respondent no.3 NDPL have urged that the facts of the present case would not be covered by the judgment in ***Lalit Gulati***. The matter being purely legal, need has not been felt to issue formal notice or to call for the replies and the counsels have been finally heard.

9. The contention of the counsel for the petitioner is that the present case is fully covered by the judgment in ***Lalit Gulati***. Per contra, the counsels for DPCL & NDPL contend that the claim in the present case cannot be said to be a stale claim which were intended to be covered by the Notification aforesaid, in as much as the same was under challenge by the petitioner since 2002 itself, first in the Civil Court, where the challenge by the petitioner has been dismissed and thereafter before the Permanent Lok Adalat. It is further contended that the judgment in ***Lalit Gulati*** was concerned with cases where the challenge to the demand was pending and did not consider the case as the present where the challenge had failed. It is contended that in the present case, with dismissal of the challenge by the petitioner to the demand, the doubt if any with respect to the demand stands removed and the respondents would now be entitled to recover the

same.

10. The judgment in *Lalit Gulati* considered the Cabinet Note on the basis of which deliberations leading to the issuance of the Notification took place. While the Notification excluded from its ambit the consumers who had challenged the demand of electricity dues in Courts, from the benefit of write off, the Single Judge concluded that the Cabinet Note did not reflect any intention to exclude such consumers; from letter dated 23rd March, 2008 of DPCL to the Secretary (Power), Government of NCT of Delhi, it was further concluded that the amount which was written off included the cases where no payment whatsoever was made towards electricity bills raised. It was further held that there was no rational basis on which distinction could be drawn between the consumer who was in arrears and who makes no payment whatsoever and makes no challenge in any court on the one hand and a consumer who although does not make any payment or makes only a part-payment, challenges the said demand by filing a case in a court, on the other hand. It was held that there is no reason why the former should get the benefit of complete waiver, while it is denied to the latter. Accordingly, the part of the Notification excluding

the consumers who had preferred challenge to the claim, from the ambit of the Notification was struck down.

11. I am unable to see the distinction as is being sought to be made out, in the facts of the present case. A claim/bill, challenge where to was subjudice on the date of the Notification cannot be more stale than the claim the challenge where to had failed. The counsel for the petitioner points out that in the present case also, the challenge was very much pending/subjudice on the date of the Notification and has failed thereafter and for this reason also the petitioner is fully covered by the judgment in ***Lalit Gulati***.

12. I am even otherwise of the opinion that once the Government is intending to prefer an intra court appeal in ***Lalit Gulati*** (supra), it is expedient that the Division Bench examines the matter in all facets and factual controversies that arise and for the reason also it is expedient that the Government if aggrieved prefers an appeal in the facts of the present case also rather than inviting decision of the Division Bench on the Notification, only on the facts in ***Lalit Gulati***.

13. The petition accordingly succeeds. The petitioner is held entitled to the benefit of the Notification aforesaid and the respondents are restrained from taking any action against the petitioner for recovering the same or for non-payment of the aforesaid demand.

No order as to cost.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

6th April, 2011
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