

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: March 16, 2011

+ **CS(OS) No. 1459/2006**

SHYAM BIHARI SINGHAL Plaintiff

- versus -

BSES YAMUNA POWER LTD. Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr. Fanish K. Jain, Adv.

For the Defendant: Mr. K. Datta with Mr. Diggaj Pathak,
Advs.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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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 Digest? | Yes |

V.K. JAIN, J (ORAL)

1. This is a suit for declaration and permanent injunction. The plaintiff is a consumer of the defendant in respect of connection no. K 623-1321193-IP installed at his business premises being B-14/7, Jhilmil Industrial Area, Shahdara, Delhi.

2. The plaintiff had initially got sanctioned load of 17.92

KW but, he later appealed for its enhancement to 50 HP. Under a voluntary disclosure scheme floated by the defendant, the plaintiff declared his tampered meter and also deposited the relevant charges on 26.4.1999. His meter was then changed in May, 1999. The case of the plaintiff is that the meter was not sealed by the defendant at the time it was changed in May, 1999. According to the plaintiff, only paper seals were put on the meter but they were not properly pasted. It was claimed by the defendant that at the time of inspection by its officials on 14th July, 1999, one paper seal was found uprooted. This however is controverted by the plaintiff whose case is that in fact, the paper seal was not properly pasted and it was uprooted at the time of inspection by the officials of the defendant.

3. It is alleged that during an inspection carried out by the defendant on 15th May, 1999, the load was found to be 16.608 KW. An inspection was thereafter carried out on 14th July, 1999 by the officials of the defendant. According to the plaintiff, the load found at that time was within the sanctioned limit but was wrongly shown as 150.643 KW in the inspection report, without verifying the factual position.

4. It is further stated that a provisional bill of Rs.

48,83,927/- was issued to the plaintiff demanding electricity charges @ Rs. 4.30 per unit, though it should have been raised @ Rs. 3.00 per unit. Neither any show cause notice was issued to the plaintiff before issuing the aforesaid demand notice nor was he given an opportunity of personal hearing. The plaintiff has sought a declaration that the inspection report and MT report dated 14th July, 1999 as also the bill raised by the defendant are null and void. He has also sought injunction restraining the defendant from disconnecting electricity supply on the basis of non-payment of the aforesaid bill.

5. The defendant did not file any written statement and the right to file its written statement was closed vide order dated 13th November, 2007.

6. The plaintiff has filed his own affidavit by way of evidence in which he has supported on oath the case set up in the plaint. He has stated that on 15th May, 1999, an inspection was carried out by the officials of the defendant in his presence and at that time, the connected load was found to be 16.608 KW as would be evident from the report dated 15th May, 1999. The report was referred in the affidavit as Exhibit PW-1/9, though the learned Joint Registrar did not put exhibit mark on the documents, presumably on account of its being a

photocopy. He has further stated that another inspection was carried out on 14th July, 1999 and it was alleged by the officials of the defendant, without verifying the factual position, that the connected load was 150.643 KW. He has claimed that the cable installed in his premises cannot bear the load of 150.643 KW. He has further stated that the paper seal on the meter was exactly in the same position as was left by the officials of the defendant at the time of inspection, though the officials of the defendant tried to disturb the seal at the time of inspection on 14th July, 1999. The plaintiff was cross-examined by the defendant, but, nothing worthwhile mentioning came out in the cross examination.

7. Vide order dated 3rd August, 1999, the learned Civil Judge before whom the matter was pending at that time, directed the defendant to restore the supply to the premises of the plaintiff subject to the payment of Rs. 6 lakhs in installments. The aforesaid amount is stated to have been deposited and the electricity supply stands restored in terms of the aforesaid order.

8. Since the defendant has not filed any written statement controverting the averments made in the plaint, I see no reason to disbelieve the unrebutted testimony of the

plaintiff. The deposition of the plaintiff coupled with the perusal of the inspection report dated 15th May, 1999 would show that at the time of inspection carried out on 15th May, 1999, the connected load was found to be 16.608 KW which is well within the limits of the sanctioned load of 17.92 KW.

9. The plaintiff has placed on record the photocopies of two inspection reports both dated 14th July, 1999. The first report pertains to the load which was found connected at the time of inspection and the other is the report of status of the meter installed in the premises of the plaintiff.

10. Though the inspection report dated 14th July, 1999 indicates the connected load of 16.608 KW, there is absolutely no evidence on record to prove that the load found connected on that date was more than the load which was sanctioned to the plaintiff. The case of the plaintiff, as stated earlier, is that the officials of the defendant recorded connected load of 150.643 KW without factual verification and the cable provided on his premises cannot bear that much load. The onus was on the defendant to prove, by leading evidence or by admission of the plaintiff, that the load found actually connected on 14th July, 1999 was 150.643 KW. In the absence of any such evidence or admission, I see no reason to disbelieve the

deposition of the plaintiff in this regard and held that connected load on 14th July, 1999 was not 150.643 KW.

11. A perusal of the inspection report dated 14th July, 1999 also indicates that the paper seals passed by the zonal staff on 21st May, 1999 on middle of the MS box of CT and CT meter was found removed from the meter side. It further indicates that on account of removal of the aforesaid paper seal, the doors of CT and CT meter box are easily openable without harming the paper seal and hence the CT as well as process wire were accessible. No evidence has been led by the defendant to prove the alleged removal of the paper seals. According to the plaintiff, at the time of inspection on 14th July, 1999, the paper seals were in the same condition in which they were put by the officials of the defendant. In the absence of any rebuttal by way of evidence from the defendant, I see no reason to disbelieve the testimony of the plaintiff in this regard and hold that the defendant has failed to prove that the plaintiff had removed the paper seal from meter site as recorded in the inspection report dated 14th July, 1999.

12. Even if it is assumed that the paper seal on the meter box was removed by the plaintiff, as claimed in the inspection report dated 14th July, 1999, that by itself and without

anything more does not prove any unlawful extraction of energy by the plaintiff since no evidence of actual tampering with the meter or even removal of the meter seal was found. This is also not the case of the defendant that the wire supplying electricity through the meter had been snapped before it reached the meter and thus, the electricity was being consumed directly without routing it through the meter. There is no allegation that the meter glass was found broken or damaged. In fact, there is no allegation of any artificial device having been used at any point of time.

13. In order to prove the alleged unlawful abstraction of energy, it was not sufficient for the defendant to prove that the paper seals fixed by its officials were found removed by the consumer. The defendant was required to prove by some other evidence such as use of a check meter that the consumption being recorded by the meter was found to be less than the actual energy consumed by him. One possible method of theft of electricity can be by tampering with the meter or its mechanism so as to slow down the recording of consumption by it. Another method can be to use an external device, which enables abstraction of electricity, in such a manner that the supply is not routed through the meter. Yet another method

can be abstracting energy directly from the main lines. Of course, these methods of unlawful abstraction of energy are only illustrative and not exhaustive the lawful abstraction of energy can in certain cases be also indicated by study and analysis of consumption pattern of the consumer. In a given case, it can be shown that the consumption found recorded by the meter was much less than what it ought to have been, considering the capacity of the equipments installed and being used by the plaintiff in his premises and the working days and working hours for which these equipments were used, provided that it is not a case of the meter being defective. No such attempt was however made by the officials of the defendant at the time of inspection on 14th July, 1999 or even thereafter.

14. In a case where no tampering with the meter or the seals affixed on it is found and no external device is found being used by the consumer, mere removal of the paper seal fixed on the meter box would not, in my view, be sufficient to prove unlawful abstraction of energy and in any case would not disclose the quantum of the energy actually stolen.

15. In ***Jagarnath Singh v. H. Krishna Murthy & Anr.***, ***AIR 1967 SC 947***, which was a case of prosecution under Section 39, Indian Electricity Act, 1910, Supreme Court was

considering a case where the meter was installed in a dark corner and passage to the meter had certain obstructions. It was also found that by inserting a wire through the stud hole, the movement of the meter which registers the consumption of electric energy could be affected in a way as to either totally prevent the rotating or slow down its movement, as a result of which, there could be consumption of electric energy without payment for the same. Supreme Court held that existence of such tampered meter does not amount to such artificial means for abstraction of electricity so as to make it an offence under Section 39 of the Act. The Court also referred to its earlier decision in **Jagannath Singh v. Ramaswamy AIR 1966 SC 849**, wherein it was observed that a meter with an exposed stud hole was not a perfected instrument for unauthorized taking of energy and could not be regarded as an artificial means for its abstraction.

In the case before this Court, no artificial device for abstraction of energy was found installed at the time of inspection on 14th July, 1999 and no gap was found in the meter whereby a wire/some other device could be inserted inside, so as to obstruct the functioning of the rotator.

17. In **Ramesh Chander v. State, 1997 (42) DRJ**, which

again was a case for prosecution under Section 39 of the Electricity Act, this Court observed that mere existence of tampered meter is not enough to attract the provisions of Section 39 of the Act and there was no presumption of dishonest abstraction, consumption or use of electric energy on discovery of tampered meters. The Court was of the view that the presumption under Section 39 will arise if artificial means were employed to abstract, consume or use energy. In taking this view, this Court relied upon the decision of the Supreme Court in ***Ram Chandra Prasad Sharma and others v. State of Bihar and another AIR 1967 SC 349***, wherein it was held that the presence of a perfected artificial means which would render abstraction of energy possible has to be established by the prosecuting agency.

18. In ***Swaran Dhawan v. State (NCT of Delhi), 99 (2002) DLT 416***, which was also a case for prosecution under Section 39 of the Electricity Act, it was found that half seal on the meter was fictitious. It was held that this by itself does not lead to an inference that the electricity was being stolen from the meter. It was held that the burden was on the licensee i.e. Delhi Vidyut Board to prove that the electricity was being abstracted, consumed and used by the consumer and the

consumer had dishonest intention to do so, though in the event an artificial means or device is found which is used or facilitates abstraction, consumption of energy which is not authorized by DVB for drawing electricity, the burden of proof shifts on the consumer to prove to the contrary.

19. In ***Jagdish Narayan vs. North Delhi Power Ltd. & Anr.***, 140 (2007) DLT 307, this Court relying upon the decision of the Supreme Court in Jagannath Singh (supra) held that automatic presumption of DAE on the basis of the external symptoms of tampering together with the analysis of the consumption pattern would not be a safe and error free method and some other tangible evince must be shown to exist. This Court was of the view that an accu check meter can be deployed to find out if the meter is in fact recording lesser units and that analysis of the consumption pattern being merely corroborative, would not by itself be substantive evidence.

In the case before this court, the defendant did not make an attempt even to study the consumption pattern of the plaintiff to find out whether consumption of electricity by him, after restoration of electricity pursuant to the interim order passed on 3rd August, 1999, had increased. Had that been done and had the consumption being found substantially

higher, that could have given some indication that the meter was not correctly recording the consumption of electricity at the time of inspection on 14th July, 1999, though that by itself would not have been a clinching factor and would have only been one of the circumstances indicating possibility of unlawful abstraction of energy.

20. In ***Udham Singh v. BSES Rajdhani Power Ltd., 136 (2007) DLT 500***, during the course of inspection, it was found that CT and meter box combined seals were found missing. On 6.10.2002, the petitioner's premises were inspected and it was found that the paper seals which were pasted on the Meter box were intact. It was endorsed that the paper seals which were pasted on the meter box had been removed and the fresh seals were duly signed. Those seals were removed by the staff of the licensee and were replaced by fresh seals. No irregularity was, however, found. Another inspection was carried out on 24th March, 2004. At that time, the meter was running in the right direction, the meter half seals were observed to be unnumbered and it was reported that the meter was running fast by 5.30%. A third inspection was held on 1.12.2004. On this occasion, the inspection team stated that the CT and Meter Box combined seals were found missing. After giving show cause

notice to the consumer, an order was passed by the AO of BSES on 17th December, 2004, referring to the inspection dated 1st December, 2004, the consumption pattern indicated that average recorded consumption to be 1119.84 units per month, which was found to be 19.95% of the assessed consumption. Holding the consumption to be low, dishonest abstraction of energy was held to be established.

During the course of judgment it was observed by this court that the mere circumstance that CT box meter was missing itself could not lead to conclusive proof of tampering or dishonest abstraction of energy. With respect to consumption pattern, considering the explanation given by the consumer, it was observed that the consumption pattern being derivative, and not on the basis of the actual consumption by use of scientific principles or better tools, more accurately deducing the actual consumption of electricity led to the inference that the meter was slow but the meter was not checked for accuracy or defects nor were any material disclosed to that effect. The Court was of the view that in absence of any collateral materials or conclusive proof about the dishonest abstraction of energy, mere existence of an irregular seal could not have justified such findings.

22. In ***Bhasin Motors (I) P. Ltd. v. NDPL, 142 (2007) DLT 116***, it was found during inspection that the upper seal of the meter box had been tampered. The cover seals were found to be missing. The court was of the view that the aforesaid signs are best helpful to suspect the dishonest abstraction of energy but cannot be taken to be conclusive evidence.

23. In order to succeed, the defendant was required to establish that the actual consumption of electricity by the plaintiff was more than what was recorded in the meter and it was further required to prove on the basis of some rationale and scientific formula the amount of energy consumed by the plaintiff without its being recorded in the meter. For the reasons given in the preceding paragraphs, I have no hesitation in holding that since the defendant has failed to produce any evidence to prove that the actual connected load on 14th July, 1999 was 150.643 KW has not at all established any unlawful abstraction of energy and further has also failed to show how and on what basis the demand raised in the bill marked as Exhibit PW-1/10 for Rs. 48,83,927/- has been arrived at. The impugned demand, therefore, cannot be sustained and the bill raised by the defendant is accordingly liable to be quashed.

24. The impugned bill demanding Rs. 48,83,927/- from

the plaintiff is hereby quashed and the defendant is restrained from disconnecting the electricity of the plaintiff on account of non-payment of the aforesaid bill. It is made clear that this order will not come in the way of the defendant disconnecting the electricity supply to the plaintiff for non-payment of some other dues or on account of some other valid reason.

25. The amount of Rs. 6 lakhs which the plaintiff had deposited in compliance of the interim order dated 3rd August, 1999 shall be refunded back to him within 8 weeks.

26. The decree sheet be drawn up accordingly.

(V.K. JAIN)
JUDGE

MARCH 16, 2011
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