

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

Date of decision: 19th April, 2011

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W.P.(C) 8647/2007

JINGLE BELL AMUSEMENT PARK P. LTD. Petitioner

Through: Mr. V.K. Goel, Advocate

Versus

NORTH DELHI POWER LTD. Respondent

Through: Mr. Vikram Nandrajog & Mr. Sushil
Jaswal, 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 writ petition was filed impugning the demand of ₹34,34,594.77
towards arrears of electricity and of late payment surcharge of

₹5,22,873.64 thereon. However, when the writ petition came up before this Court on 28th November, 2007, the counsel for the respondent informed that erroneously double billing had been effected for the period of March, 2004 to February, 2005 and the amount due from the petitioner was ₹21,98,207/- only. Notice of the petition was issued and subject to the petitioner depositing ₹10,00,000/- with the respondent and paying the current consumption charges, recovery of the balance amount claimed by the respondent and disconnection of electric supply for non payment thereof was stayed. Pleadings have since been completed. The interim order was made absolute on 22nd May, 2009. The counsels for the parties have been heard.

2. It is not in dispute that a non domestic electric connection of 80 KW bearing K No.43100137786 was energized at the premises of the petitioner on 30th November, 2002. It is the case of the respondent that the multiplying factor of the said meter was to be of 12 but inadvertently the bills were raised with the multiplying factor of 1 only. The counsel for the respondent in this regard during the course of hearing has handed over a

copy of the Meter Installation Protocol Sheet stated to be bearing the signatures of the petitioner and also showing the multiplying factor of the meter to be 12. The counsel for the petitioner of course controverted the same. It is also not in dispute that the petitioner in February, 2003 applied for additional load of 60 KW taking the total load to 140 KW and the additional load was energized in March, 2004. It is the case of the respondent that only while sanctioning the enhanced load to the petitioner, it came to light that the petitioner was being billed with a multiplying factor of 1 instead of 12 and accordingly, the multiplying factor was changed to 12 with effect from August, 2003 and the demand impugned in this petition was raised for escaped assessment owing to application of wrong multiplying factor for the period 30th November, 2002 till July, 2003.

3. The counsel for the respondent has taken a preliminary objection to the maintainability of this petition. It is urged that the dispute raised is a billing dispute and as per the dicta of the Division Bench of this Court in ***Ram Kishan Vs. NDPL*** 130 (2006) DLT 549 (DB), the alternative remedy

under Sections 42(5) or 42(6) of the Electricity Act, 2003 being available, the writ petition is not maintainable.

4. The counsel for the petitioner while not controverting that the dispute is a billing dispute has however justified the maintainability of this writ petition on the ground of the demand being barred by time. It is contended that electricity dues for the period 30th November, 2002 to July, 2003 could not have been claimed after two years therefrom as has been done. Reliance is placed on Section 56(2) of the Act.

5. The question as to when the electricity charges become first due is no longer *res integra*. The Single Judge of this Court in ***H.D. Shourie Vs. Municipal Corporation of Delhi*** 32 (1987) DLT 73 held that the electricity charges become due and the limitation for recovery thereof commences only when the bill therefor has been raised. The Division Bench in appeal reported as ***MCD (DESU) Vs. H.D. Shourie*** 53 (1993) DLT 1 reiterated that liability to pay accrues when liability is quantified and bill is raised.

6. The counsel for the petitioner has however contended that in the present case it is not as if the bill for the period 30th November, 2002 to July, 2003 had not been raised; that bills were raised and paid; that the claim now of the respondent is that the bills raised were not for the amount due but was for something less. He contends that once the consumption for a particular period has been computed and the bill raised, the subsequent demand for the same period would be covered by Section 56(2) of the Act and is recoverable only within two years and not thereafter.

7. The counsel for the respondent has met the aforesaid *prima facie* attractive argument of the petitioner by contending that the present is a case of an “escaped demand” and by further contending that the matter is no longer *res integra*. Reliance is placed on ***Swastic Industries Vs. Maharashtra State Electricity Board*** (1997) 9 SCC 465 upholding the order of the National Consumers Dispute Redressal Commission holding that even where the electricity distribution company had woken up after nine years to make the claim, the electricity dues have to be paid.

8. Though the Supreme Court in the judgment aforesaid did use the expression “escaped billing” but a reading of the judgment does not show that in that case, for the period for which the billing had escaped attention, bills had been raised, as is the case here. The said judgment cannot thus be said to be a judgment on the distinction sought to be made by the petitioner in the present case.

9. The counsel for the respondent next invited attention to the judgment dated 24th April, 2009 of the Division Bench of this Court in LPA No. 356/2007 titled ***NDPL Vs. Delhi Bottling Company Ltd.*** In this case, the challenge was to a supplementary bill for the period for which the bill had earlier been raised. The argument of NDPL before the Division Bench was that the principle of “escaped billing” had been approved by the Supreme Court in ***Swastic Industries*** (supra). The Division Bench relying upon ***Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay*** AIR 1978 Bombay 369 held that there is no limitation for making the demand by way of a supplementary bill and Section 24 of the Electricity Act, 1910 empowers

issuance of such demand. It was held that the distribution company could not be said to have abandoned its right to recover the charges which were due to it and which had earlier been not claimed. It was further held that the principle of constructive *res judicata* also would not apply to a case of supplementary demand for misuse charges not claimed earlier.

10. The counsel for the respondent has also invited attention to a detailed judgment of the High Court of Jharkhand in ***M/s Tata Steel Ltd. Vs. Jharkhand State Electricity Board*** AIR 2008 Jharkhand 60 laying down that if the sum demanded was not shown as due at any time earlier, there could be no question of the said amount being at in earlier point of time due from the consumer. It was further held that the amount of short payments became due only after realization of mistake and the assessment of the short-charged amount, and on raising the bill therefor.

11. I am in respectful agreement with the view taken by the High Court of Jharkhand. The case here of the respondent is that though the electricity consumed by the petitioner from 30th November, 2002 to July, 2003 was more; that the bill was raised for a lesser consumption owing to the

inadvertent application of a wrong multiplying factor. Thus, the entire electricity claimed to have been consumed by the petitioner cannot be said to have been billed by the respondent. To that part of the electricity consumed and for which no bill was raised, the dicta in *H.D. Shourie* (supra) will clearly apply. *H.D. Shourie* cannot be read in a restrictive way to hold that even if the units consumed are say 100 but bill is erroneously raised for 10 units only, the claim for the balance 90 units for which no bill has been raised would also stand barred by time.

12. I find that the Division Bench of the Bombay High Court in *Rototex Polyester v. Administrator, Admn. Of Dadra & Nagar Haveli Electricity Dept.* MANU/MH/0760/2009 in identical facts held that in case the consumer is under-billed on account of clerical mistake such as where the multiplication factor had changed, but due to oversight the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. It was held that the revised bill amount would become due when the revised bill is raised and Section

56(2) of the Act would not come in the way of recovery of the amount under the revised bills.

13. Having held against the petitioner on the aspect of limitation, this writ petition is not maintainable owing to the alternative remedies available under Section 42(5) or 42(6) of the Act.

14. The petition is accordingly disposed of. However, since the petition remained pending in this Court for considerable time and interim relief was also granted to the petitioner, it is further directed:

- (i) that subject to the petitioner taking the alternative remedies under Section 42(5) or 42(6) as it may deem expedient within 30 days of today, the same shall be entertained without any plea of limitation.
- (ii) that the petitioner shall be entitled to apply for interim relief before the alternative fora and till the decision by the said alternative fora on the application of the petitioner for interim

relief, the interim order granted in this petition shall continue in force. However, thereafter it shall be as per the order of the said alternative fora.

No order as to costs

**RAJIV SAHAI ENDLAW
(JUDGE)**

APRIL 19th, 2011
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