

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

13

+

O.M.P. 120 of 2006

M/S RADHA BALLAB ELECTRICALS Petitioner
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR. Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

With

14

+

O.M.P. 121 of 2006

PRAMOD KUMAR SINGHAL AND ANR Petitioners
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

With

15

+

O.M.P. 122 of 2006

M/S VISHWAKARMA ELECTRICALS Petitioner
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR. Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

With

16

+

O.M.P. 123 of 2006

M/S. VISHWAKARMA ELECTRICALS Petitioner
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

With

17
+

O.M.P. 124 of 2006

M/S. RAJ ELECTRICALS Petitioner
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR. Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

With

18
+

O.M.P. 125 of 2006

SANJAY KUMAR SINGHAL Petitioner
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

With

19
+

O.M.P. 126 of 2006

M/S. RAJ ELECTRICALS Petitioner
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

With

20
+

O.M.P. 127 of 2006

ANIL KUMAR SINGHAL AND ANR Petitioners
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

With

21
+

O.M.P. 128 of 2006

M/S. VISHWAKARMA ELECTRICALS Petitioner
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR Respondents
Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

And

22
+

O.M.P. 129 of 2006

M/S. RAJ ELECTRICALS Petitioner
Through: Mr. Arpan Bahl with Mr. Sumeet Anand,
Advocates.

Versus

B.S.E.S. RAJDHANI POWER LTD. & ANR Respondents

Through: Mr. M.S. Vinaik with Mr. A.K. Mishra,
Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER
% **04.10.2012**

I.A. No. 16244 of 2012 (for restoration) in OMP No. 120 of 2006
I.A. No. 17366 of 2012 (for restoration) in OMP No. 121 of 2006
I.A. No. 17369 of 2012 (for restoration) in OMP No. 122 of 2006
I.A. No. 17373 of 2012 (for restoration) in OMP No. 123 of 2006
I.A. No. 17367 of 2012 (for restoration) in OMP No. 124 of 2006
I.A. No. 17363 of 2012 (for restoration) in OMP No. 125 of 2006
I.A. No. 17368 of 2012 (for restoration) in OMP No. 126 of 2006
I.A. No. 17358 of 2012 (for restoration) in OMP No. 127 of 2006
I.A. No. 17364 of 2012 (for restoration) in OMP No. 128 of 2006
I.A. No. 17365 of 2012 (for restoration) in OMP No. 129 of 2006

1. For the reasons stated therein, these applications are allowed. The petitions are restored to their files.

2. The applications are disposed of.

OMP Nos. 120 of 2006, 121 of 2006, 122 of 2006, 123 of 2006, 124 of 2006, 125 of 2006, 126 of 2006, 127 of 2006, 128 of 2006 and 129 of 2006

3. The central issue in all these petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is the same. In each of the petitions, the challenge is to an impugned Award of the learned sole Arbitrator rejecting the claim of the Petitioners against the Respondent No. 1 (in all petitions) B.S.E.S. Rajdhani Power Limited ('BRPL') praying for rebate towards transmission and distribution ('T&D') losses and/or aggregate technical and commercial ('AT&C') losses arising out of single point delivery connection ('SPDC').

4. The SPDC was granted to each of the Petitioners by the Delhi Vidyut Board

(‘DVB’), predecessor-in-interest of BRPL by way of an agreement. Each of the Petitioners was to provide electricity through the SPDC to the residents of unauthorized colonies. Two clauses of the agreement relevant for the claim of each of the Petitioners read as under:

“10. Minimum Revenue

The agency shall have to pay minimum revenue for 75% of the electricity energy as recorded in the meter(s) shall be provided by DVB for measurement of the bulk energy. The meter(s) shall be jointly read on monthly basis by the representative of DVB not below the rank of the Assistant engineer and an authorized representative of the agency.

13. Commission

For the services rendered, the agency shall be paid commission of twenty five per cent (25%) of the revenue paid to DVB for the bulk supply.”

5. On 30th June 2002 DVB was unbundled and BRPL stepped into its shoes with effect from 1st July 2002. The same SPDC agreements continued between the Petitioners and BRPL. The case of the Petitioners was that they suffered huge losses on account of T&D/AT&C in the range of 55% to 60%. It was stated that since BRPL had been given a rebate by Delhi Transco Limited (‘DTL’) for T&D losses, the same rebate should correspondingly be transferred to the Petitioners. According to the Petitioners, the Chairman of the DVB had in various meetings held with the Petitioners and other SPDC providers acknowledged that they were suffering heavy losses on account of theft of electricity and distribution losses. The Petitioners claim that it was agreed in the meetings that SPDC Contractors should be treated as partners and not as agents.

6. Initially the Petitioners approached the Permanent Lok Adalat ('PLA'). By an order dated 1st September 2003 the Presiding Officer of the PLA recommended that a settlement of the disputes could be reached with the SPDC Contractors if they were given a rebate of 15% in the form of T&D and AT&C losses. However, when BRPL did not accept the suggestion, the disputes were referred to arbitration.

7. Before the learned Arbitrator, the Petitioners filed an application under Sections 24 and 25 of the Act for permission to lead evidence and direct BRPL to produce documents referred in para 7 which included a copy of the notification dated 31st May 2002 which fixed the opening levels of AT&C losses, the agreement executed between the parties, concerned official from BSES along with record and entire bills pertaining to meter of the Petitioners and records pertaining of the minutes of meeting held on various dates between Chairman of the DVB and SPDC Contractors. An application was also filed under Section 27 of the Act for summoning the witnesses whose details were given in para 5 of the application.

8. The learned Arbitrator rejected the prayers in both the applications. In the impugned Award, the learned Arbitrator noted that the request for leading evidence was declined primarily on the ground that the dispute between the parties only required interpretation of a few clauses of the agreement. It did not involve a finding on facts. The learned Arbitrator in the impugned Award then

proceeded to hold that there was no clause in the agreement which required the BRPL to compensate the Petitioners for T&D and AT&C losses. It was held that a reading of Clauses 10 and 13 of the agreement made it clear that the said clauses were only to ensure minimum revenue and commission. Nowhere had the Petitioners stated that in the meetings held with the Chairman of the DVB an agreement had been reached that the Petitioners would be granted any with further rebate and discount. Accordingly, the claims of the Petitioners were rejected.

9. Learned counsel for the Petitioners first submitted that the learned Arbitrator ought not to have rejected the Petitioners' application under Section 27 of the Act for permission to summon the witnesses mentioned in the said application. This would have enabled the Petitioners to prove the agreement between the parties as regards rebate for the T&D/AT&C losses. It is submitted that the learned Arbitrator also erred in the interpretation of the clauses of the agreement.

10. The central issue for the learned Arbitrator in all the petitions was whether the Petitioners were entitled to rebate for the T&D/AT&C losses. The relationship between the Petitioners on the one hand and the BRPL and its predecessor-in-interest on the other was governed by the agreement entered into between the Petitioners and BRPL/DVB. The parties were bound by the terms of the said agreement. There was no clause in the agreement for providing the compensation to the Petitioners in respect of T&D/AT&C losses. In the absence of any written agreement between the parties the Petitioners could not possibly

claim that they were entitled to such compensation for losses. Reference by the Petitioners to the meetings held with the Chairman of the DVB is only for the limited purpose of stating that the Chairman acknowledged the losses that had been suffered by the Petitioners on account of T&D/AT&C losses. Nowhere had the Petitioners pleaded that in the said meetings, minutes of which had been maintained, there was anything mentioned about the recording of any agreement reached between the parties that the Petitioners would be compensated for T&D/AT&C losses.

11. In the applications filed before the learned Arbitrator by them under Sections 24 and 25 of the Act and Section 27 of the Act there is no submission by the Petitioners that there was any express agreement reached between the parties regarding the compensation for AT&C/T&D losses suffered by the Petitioners. In the said applications, there are several documents and circulars which should be brought by the Petitioners in order to effectively adjudicate the claim. In the absence of any averment by the Petitioners that there was an express agreement between the parties for compensating the Petitioners for AT&C/T&D losses, the allowing of merely summoning the witnesses along with the records would not really serve any purpose. Rejection of the said request by the learned Arbitrator cannot therefore be held to be erroneous.

12. As rightly pointed out by the learned Arbitrator, the decision on the claims of the Petitioners only involved the interpretation of the clauses of the agreement. There was in fact no clause which provided for rebate on account of

T&D/AT&C losses. The Petitioners ought to have necessarily based their claims only on the agreement between the parties.

13. Consequently, the finding of the learned Arbitrator that the Petitioners were not entitled to seek benefit of any T&D/AT&C losses from the BRPL, is consistent with the clauses of the agreement and does not suffer from any patent illegality. The rejection of the Petitioners' claim by the learned Arbitrator in the impugned Award is accordingly upheld.

14. Consequently, there is no merit in these petitions and they are dismissed as such, but in the facts and circumstances of the cases, with no order as to costs.

OCTOBER 04, 2012
Rk

S. MURALIDHAR, J