

\$~

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

+ W.P.(C) 2727/2013 & CM APPL. 5144/2013

SHRI MAHESH GUPTA

..... Petitioner

Through: Ms. Reena Jain Malhotra, Advocate with
Mr. Vineet Malhotra, Advocate.

versus

NORTH DELHI POWER LIMITED

..... Respondent

Through: Mr. Manish Shrivastava, Advocate.

%

Reserved on : 16th September, 2013

Date of Decision: 04th October, 2013

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed under Article 226 of the Constitution challenging the demand of Rs.5,19,569/- as well as seeking refund of Rs.2,85,000/- deposited with the respondent and for quashing the Ombudsman's order dated 12th March, 2013.

2. The relevant facts as stated in the petition are that K.No.35300142823 was installed in the petitioner's premises in the year 1999 having a sanctioned load of 3 KW for non-domestic light. The connection was energized on 20th May, 1999 with Meter No. 9624756.

3. On 5th September, 2002, the electricity meter was replaced with a new Meter No.202841 with an initial reading of 10. It is further stated that the petitioner has faced various kinds of problem since the installation of the new electricity meter and the respondent had been sending provisional bills till February, 2004 and, thereafter no bills, were raised by the respondent. It is stated that the respondent in an arbitrary manner suddenly raised the impugned bill dated 23rd October, 2006.

4. The petitioner challenged the said bill before District Consumer Disputes Redressal Forum, Tis Hazari wherein by order dated 12th January, 2011, the Forum disposed of the complaint on the ground of lack of jurisdiction. Subsequently, the petitioner filed writ petition before this Court being W.P.(C) 1379/2011 which was disposed of with a direction that the petitioner should first avail the alternative remedy available to him. In between the matter was also referred to Lok Adalat, but the matter could not be settled.

5. Thereafter the petitioner moved Consumer Grievance Redressal Forum (CGRF) who vide its final order dated 10th February, 2012 dismissed the petitioner's complaint. Against the CGRF's order petitioner filed an appeal with the Office of the Electricity Ombudsman. The Ombudsman vide the impugned order dated 12th March, 2013 upheld the demand raised by the respondent. The relevant portion of the impugned order dated 12th March, 2013 is reproduced hereinbelow:-

"The consumer before the CGRF submitted that he is a registered consumer of the above electricity connection installed in the year 1999. According to him, the DISCOM has been raising provisional bills which he was depositing timely. But in the month of March, 2006, he has received one bill showing

consumption of 90513 units. The meter was replaced, for some reason, with a new meter No. 202841 on 08.09.2002. Reportedly, the fact of replacement of meter could not be updated in the records and average bills were being issued upto 17.07.2004 after which no more bills were issued. A bill was issued on 03.01.2006 with the remarks Premises Locked (PL). Later, a reading of 92920 was recorded on 07.03.2006 and a reading of 95623 on 04.05.2006. For this, a bill for 90513 units was prepared and issued. Since the record had not been updated indicating replacement of meter, the meter reading record did not match the actual reading taken on the above two days. To resolve the issue, an inspection was held on 30.06.2009 and the meter No. 202841 was found installed with a reading of 5114 which is, reportedly explained by the dialover that took place. It is this stage found that the records for replacement of meter had not been updated. This updation was then carried out.

xxxx

xxxx

xxxx

xxxx

The CGRF has, in its orders, agreed that the lack of updation of records at the time of installation of meter No. 202841 caused the problems and hence there was no excess billing. They also noticed that the complainant never approached the then NDPL to explain the issue of average bills upto 17.07.21004 and the lack of issue of bills from 17.07.2004 to 07.03.2006 even though energy was being consumed regularly. They, therefore, agreed that the bill for 95613 units consumed from 05.09.2002 to 04.05.2006

xxxx

xxxx

xxxx

xxxx

In addition to the K. No. summary statement and the meter reading book records, the DISCOM, on its own, also forwarded and e-mail dated 08.01.2013 attaching a copy of the Meter Checking Report dated 16.12.2008 which was available in their records and which was duly signed by the Appellant. This was not placed on record earlier and showed "the consumer's meter to be 2.25% fast" i.e. within the permissible limit of accuracy.

Further, the DISCOM vide its reply dated 09.01.2013, in response to our queries raised vide this office letter dated 26.12.2012, clarified that though the readings had been noted in the manual meter reading book these did not get punched in the system. This happened during the initial transitional period of DVB privatization when the processes were not very mature and such exceptions occurred resulting in NR (No Reading) remarks (implying readings not taken) with provisional bills being raised based on past consumption prior to the said period. The DISCOM further confirmed with emphasis that readings were taken on 07.03.2006 and 04.05.2006 which were 92920 KWH and 95623 KWH respectively (cognizance of which has been taken by CGRF). The reading of 95623 KWH was from the date of replacement of meter (05.09.2002) and the consumption period is approx. 44 months.

To sum-up the fact is that the meter has been found to be accurate on testing on 07.03.2006 and 16.12.2008 and also the meter remained at site upto 03.01.2009. The consumption was never disputed by the complainant. The appellant never approached the DISCOM for regular bills during 17.07.2004 to 07.03.2006, as also pointed out by CGRF in its order.

The reading based bill for the 95613 units consumed during 05.09.2002 to 04.05.2006, by levying tariff applicable year-wise, is thus payable by the appellant as ordered in the CGRF order. However, there clearly was a deficiency in service in not preferring bills to the consumer based on proper readings for many years from 05.09.2002 to 07.03.2006. Instead provisional/average basis bills were sent over this long period which is not proper. Though credit for all payments made by the consumer for the period has to be given by the DISCOM, he need not be compensated for this deficiency as he himself did not ask for proper bills from the DISCOM as would be the commonsensical approach of any consumer, if he did not receive bills over a period of months, let alone years.

However, the lack of proper readings being taken on a regular basis, the lack of proper billing for a prolonged period, including not updating data or recording change of meter shows inaction of the DISCOM which led to needless litigation being undertaken after the consumer received an alleged large, and to him, unclear bill. This calls for an internal inquiry by the DISCOM for fixing responsibility whose results must be made known to us within 3 months.

The appeal is, therefore, disposed off accordingly with the above orders."

6. Ms. Reena Jain Malhotra, learned counsel for petitioner submitted that respondent had failed to discharge its duty properly as it had failed to update the replacement of meter in its data and only average/provisional bills had been issued between 2002 and 2004. She stated that thereafter suddenly the impugned bill of Rs. 5,73,748/- had been issued in 2006.

7. Learned counsel for petitioner further submitted that the respondent resorted to unfair trade practices and showed exorbitant consumption of 90513 units of electricity for the month of March, 2006 which is totally out of sync with the consumption pattern that had been detailed in the provisional bills raised between 2002 and 2004.

8. On the other hand, Mr. Manish Shrivastava, learned counsel for respondent relied upon the Ombudsman's order dated 12th March, 2012 which had concurred with the factual findings recorded by the CGRF in the order dated 10th February, 2012.

9. Having heard learned counsel for parties and on a perusal of the paper book this Court is of the view that though the respondent failed to update its record and issued only provisional/average bills between 2002 and 2004 and thereafter, no bill till 2006, yet the impugned bill is for actual energy

consumed by the petitioner. This Court finds that the basis of the impugned bill are the readings taken on 7th March, 2006 and 4th May, 2006. This Court also takes note of the fact that the meter was checked in 2008 and according to the meter checking report dated 16th December, 2008 the meter of the petitioner was found to be fast by 2.25%, which is within the permissible limits of accuracy.

10. This Court also takes note of the finding given by the Ombudsman that the impugned demand is not for one particular month but is based on the actual energy consumed from 2002 to 2006, i.e., from the date of replacement of meter to the date of impugned bill.

11. This Court finds that nothing has been placed on record by the petitioner to show that petitioner ever approached the respondent inquiring as to why provisional/average bills were being raised between 2002 and 2004 and no bills thereafter.

12. This Court is of the view that in exercise of writ jurisdiction it would not be prudent to interfere with the findings of fact, specially the concurrent findings, unless the findings are perverse on the face of it or any grave miscarriage of justice or flagrant violation of law is pointed out. It is settled law that the Court in writ jurisdiction does not exercise the powers of appellate court. The Supreme Court in ***Shamshad Ahmad and Ors. Vs. Tilak Raj Bajaj (Deceased) through LRs and Ors., (2008) 9 SCC 1*** has held as under:-

"38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does

not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law.

39. *In Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447] this Court stated: (SCC p. 458, para 16)*

“16. ... unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.”

13. Consequently, this Court is of the view that the impugned order does not call for any interference. Accordingly, the writ petition and pending application are dismissed.

MANMOHAN, J

OCTOBER 04, 2013

js/rn/cg