

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

% Judgment reserved on: 17.01.2013
Judgment pronounced on: 21.01.2013

+ **LPA No.1082/2007 & CM 9601/2007**
N.D.P.L Appellant

Through : Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Vikram Nandrajog and
Mr. Sushil Jaiswal, Advs.

versus

BHASIN MOTORS PVT. LTD. ... Respondent

Through : None

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

1. An electricity connection with sanctioned load of 83 KW for industrial purposes was installed in property No. 56-B, Army Road, Najafgarh Industrial Area, Delhi, where the respondent was carrying its business. On 11.09.2004, some officials of the appellant carried out inspection of the premises of the respondent and found that:

(i) Upper seal of the meter box had been tempered.

(ii) Cover seals were missing and

(iii) There were scratches on the dial plate.

According to the appellant, the inspection report concluded that the respondent was indulging in Dishonest Abstraction of Electricity (DAE). A show cause notice was issued to the respondent on the same date and after giving hearing to the respondent, a speaking order was passed on 30.09.2004 confirming the DAE.

2. WP(C) 173031/2004 was filed by the respondent during the pendency of the proceedings initiated by issuing of show cause notice. The writ petition was disposed of vide order dated 1.11.2004 and the order dated 30.9.2004 was quashed on the ground that it had been passed without giving opportunity of hearing to the respondent. Consequent to the aforesaid order, the respondent was given afresh hearing on 4.11.2004 and another speaking order dated 11.4.2004 was passed concluding that DAE was established. The respondent filed WP(C) 18328/2004 challenging the inspection report and the bill of Rs.1558955, which the appellant had raised on account of respondent indulging DAE. The learned Single Judge vide impugned order dated 21.05.2007, allowed the writ petition and quashed the order dated 11.11.2004. The appellant was directed to refund the amount which the respondent had deposited

pursuant to an interim order passed by learned Single Judge on 30.11.2004, along with interest on that amount at the rate of 12% per annum. Being aggrieved, the appellant is before us by way of this appeal.

3. A perusal of inspection report dated 11.9.2004, would show that the inspection was carried out in the presence of the representative of the respondent company and the show cause notice issued on the spot, on the basis of the aforesaid inspection, was signed by him. The very same person appeared on behalf of the respondent, at the time of personal hearing. The reply submitted by the respondent to the showcause notice dated 12.9.2004 contained absolutely no explanation as to how the upper seal of the meter box, had been tampered, cover seals were missing and the scratches were found on the dial plate. This was not the case of the respondent, in the reply to the show cause notice, that the meter box seals got tampered and cover seals went missing during the course of reading of the meter by the Meter Reader of the appellant. In any case, had that been so, the respondent would have brought the same to the notice of the appellant and would have got fresh seals affixed on the meter box as well as the cover cover. In the absence of any explanation from the respondent, the inevitable and logical inference would be that of

tampering of the meter box seal, removal of cover seals and scratches on the dial plate are attributable to the respondent alone. As per DERC Regulations, the responsibility of keeping the meter under safe custody is of the consumer who has to use all reasonable means in his power to ensure that no seal/ meter is broken/ tampered with, otherwise other than by the licensee. Since the respondent neither did bring any tampering of the seal of the meter box, removal of seals of cover and scratches on the dial plate to the notice of the Meter Reader nor did it later on bring it to the notice of the appellant with a request to put fresh seals and change the dial plate, it would not be unreasonable to conclude that the purpose of removal of these seals was to indulge in unlawful abstraction of the energy.

4. As per Regulation 25(ii) of the Delhi Electricity Regulation Commission (Performance, Standards, Metering and Billing) Regulations, 2002, the inspecting team was required to prepare a report giving details such as connected load, condition of seal, working of meter and mention any irregularity noticed, as per the prescribed format. As per Sub-Regulation (iii), the report is to clearly indicate whether conclusive evidence substantiating the fact that energy was being dishonestly

abstracted was found or not. The details of such evidence is required to be recorded in the report and it is also to bring out whether the case was being booked for direct theft or DAE. Sub-Regulation (iv) provides that no case for DAE shall be booked only on account of one seal on the meter missing or tampered or breakage of glass window etc. unless corroborated by consumption pattern of consumer as per Regulation 26 (ii) and such other evidence as may be available. Regulation 26(ii) provides that before the personal hearing, the officer of the licensee shall analyse the case, after carefully considering all the documents, submissions by the consumer, facts on record and the consumption pattern, wherever available. The licensee is required to assess the energy consumption for past six months as per the Tariff Order. In case of suspected DAE, if consumption pattern for last one year is reasonably uniform and is not less than 75% of the assessed consumption where meter is less than 10 years old and not less than 65% of the assessed consumption where meter is more than 10 years old, no further proceedings can be taken.

5. A perusal of speaking order dated 11.11.2004 would show that consumption pattern of the respondent for the period 3.7.2004 to

11.9.2004 was analyzed and the average recorded consumption during this period was found to be 6022.32 units per month. The case of the respondent before the officer of the licensee was that the premises in question was being used by it as a Maruti Authorized Centre from February, 2000 to December, 2002 and, therefore, the consumption was higher during that period. The officer of the appellant analyzed the consumption during the aforesaid period and found that it was 4977.28 units per month. He, therefore, found the contention of the respondent to be quite contradictory because the consumption recorded during the period the premises was being used by Maruti Service Centre was less than the consumption recorded during the period the premises was used by the respondent. The officer of the appellant also analyzed the consumption for the period prior to purchase of the aforesaid property by the respondent in June, 1999 and found that the recorded consumption during that period was 20400.68 units per month.

6. The seal of a meter can be tampered with only by intervention of a human being and not otherwise. Similarly, the seals cannot go missing of their own and are necessarily removed by a human being. Likewise, there can be no scratches on the dial unless an attempt is made to interfere

with the functioning of the meter. Since as per Sub-Regulation 17(iv) the responsibility of keeping the meter under safe custody lie with the consumer and as per Regulation (vii) during any inspection or on consumer complaint or *suo moto*, the licensee is required to ensure that the meter is not tampered/bypassed, it was for the respondent to explain how the meter box seal got tampered, cover seal went missing and scratches came on the dial plate.

7. In our view, if the seals and/or meter are found tampered and no plausible explanation for such an act is forthcoming from the consumer, that would be sufficient evidence to conclude dishonest abstraction of energy by the consumer in terms of Regulation 25(iii), provided tampering with the meter and/or seal is detected in the presence of the consumer or his representative and the details thereof are recorded in the report prepared at the spot in the presence of the consumer or his representative as the case may be.

8. In view of the provisions contained in Regulation 17(iv), even after conclusive evidence substantiating DAE in terms of Regulation 17(iii) is found, no case can be booked only on the ground of one seal on the meter missing or tampered or brokage of glass window unless it is corroborated

by the consumption pattern of the consumer in terms of Regulation 26(ii). During the course of hearing, in terms of Section 26(ii), it is upon the consumer to satisfy the officer of the licensee, on the basis of the record available with him, that his actual consumption could not have been more than what was recorded by the meter. The appellant has applied LDLF formula for the purpose of analyzing of the consumption pattern of the respondent. This is the only methodology prescribed in the tariff. Such formula assumes working only for ten hours, in 25 days of the month, utilizing 60% of the existing load. It was very much upon the respondent to produce the evidence available with it to show that it was working for less than 10 hours a day or 25 days a month or was utilizing less than 60% of the existing load. The evidence could have, *inter alia*, been in the form of details, including power consumption of the gadgets installed in the premises of the respondent, the number of persons employed during the relevant period, the hours during which the equipment were used and the employees were working, and the number of working days in the establishment. No such attempt, however, was made by the respondent. Since the actual evidence with respect to working hours of the factory, the days on which the work was done in the factory and the load which

was connected at that time are the facts which are only in the knowledge of the consumer, if the consumer withholds such evidence, the licensee would be justified in assessing the consumption of the consumer in terms of LDHF Formula. In any case, the formula applied by the appellant does not take into account the whole of the installed load, all the days of the month and two shifts in a day.

9. The learned Single Judge held that LDHF Formula cannot be applied without first establishing that there was a DAE because the formula is meant only to determine the quantum of penalty which is required to be levied in terms of Regulation 26(ii). In our opinion, the tampering of the seals and/or the meter by itself would be conclusive evidence substantiating unlawful abstraction of energy in a case where no acceptable explanation is given by the consumer for the seals and/or the meter having been found tampered with. Taking any other view would make it extremely difficult to establish unlawful abstraction of energy by dishonest consumers.

During the course of arguments, we specifically asked the learned counsel for the appellant as to how unlawful abstraction of energy was possible in a case of this nature and he explained that if the seals are

tampered in the manner found in this case, it is possible for the consumer to temporarily stop running of the meter so as to avoid recording of consumption of electricity, during the period the meter does not run. According to the learned counsel, the consumer can, as and when he so desires, resume running of meter so that at the time of inspection by the officials of the licensee, the meter is found running. We, therefore, need to take interpretation which would discourage such dishonest practices on the part of unscrupulous consumers of electricity.

10. Reliance by learned Single Judge on the decision of the Supreme Court in Jagannath Singh@ Jainath Singh Vs. B.S. Ramaswamy & Anr.[(1966) 1 SCR 885), is misplaced since that was a case of prosecution under Section 39 and 44 of Indian Electricity Act, 1910 whereas the case before us is a civil case, challenging the demand raised by the licensee on account of dishonest abstraction of energy. The standard of proof required in a criminal trial is proof beyond reasonable doubt, whereas the standard of proof required in a civil action is preponderance of probabilities.

11. For the reasons stated hereinabove, we are of the view that the impugned order dated 21.5.2007 cannot be sustained. We accordingly

allow the appeal and set aside the impugned order. In the facts and circumstances of the case, there shall be no orders as to costs.

V.K.JAIN, J

CHIEF JUSTICE

JANUARY 21 , 2013
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