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

+ W.P.(C) NO. 10821/2009

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Judgment dated 30th May, 2013.

Prof. Ram Prakash

..... Petitioner

Through: In person.

versus

BSES Rajdhani Power Ltd.

..... Respondents

Through: Ms.Anjali Sharma and Mr.S.K. Alok, Adv

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The present writ petition has been filed by the Petitioner inter alia seeking an appropriate writ, order or direction against the Respondent, to quash the demand raised under the Assessment Bill of Rs. 55,191/- which was reduced to Rs. 38,650/- plus LPSC of Rs. 1160.
2. The necessary facts to be noticed for disposal of the writ petition are that the petitioner is the owner of a residential house bearing No.B-48, South Extension Part-I, New Delhi. An electric connection was sanctioned as New K No. 2540C7270562 CRN NO. 2540020364 of 1KW for domestic purpose for the first floor built on a plot measuring 200 sq. yards. The said floor has five rooms of about 100 sq. ft each, a kitchen and a toilet. The petitioner has been regularly paying his electricity consumption bills. On 19.06.2009, the petitioner received an Inspection Report BR-MD-OA 000812 dated 08.06.2009 alleging that the said electric connection was being used for non-domestic purpose. The petitioner made a representation dated 22.06.2009 to the Chief Commercial Officer stating that there is no misuse, the premises had been partly let out on long term

lease and partly on month-to-month basis for residential use. The Enforcement Staff, Andrews Ganj, New Delhi, instead of examining the merit of the representation made by the petitioner, handed over a provisional assessment bill of Rs. 55,191/- to the petitioner on 24.06.2009, which was to be paid by 10.07.2009. Under protest by petitioner against the demand of Rs. 55,191/-, the petitioner was called for personal discussion on 09.07.2009 before the assessing officer. After the said discussion, the assessing officer reserved the petitioner's case for order. The petitioner also met one Sh. Arvind Gujral, Head of the Enforcement Section. The petitioner requested Mr. Gujral for objectively examining his case and suggested that an inspection of the premises be conducted. After hearing the petitioner, the Head of Enforcement Section informed the petitioner that use of the premises as paying guest hostel amounts to misuse of domestic connection even though the premises were being used for residential purpose. The petitioner suggested that an opportunity be granted to him on the ground of natural justice to change the domestic connection to commercial connection before imposing the misuse charges at the penal rate. The Head of Enforcement Section rejected the petitioner's suggestion and stated that he could instead grant petitioner a reduction of 30% in the penal amount. Thereafter, the petitioner received the copy of speaking order of the Assessing Officer on 01.08.2009, confirming the alleged misuse of the premises in question and a final assessment bill for tariff violation of Rs. 55,191/- was handed over to the petitioner to be paid by 10.08.2009 with threat of disconnection of electricity supply in case the amount was not paid. However, the head of enforcement section reduced the amount of the bill to Rs. 38,650 + LPSC of Rs. 1160/- to be paid by 13.08.2009.

3. The petitioner who appears in person submits that no show cause notice was served on him and the provisional demand dated 20.06.2009 was raised under Section 126 of Electricity Act, 2003 and was finalized on 30.07.2009 after consideration of petitioner's representation dated 22.06.2009. It is submitted by the petitioner that under sub-section (3) of Section 126 it is mandatory that the final order of provisional assessment of electricity charges must be decided within 30 days. Prof. Ram Prakash further submits that there is no provision for extension of time, therefore, the demand raised by respondent is time barred. Sub-section (3) of Section 126 of the Electricity Act is reproduced below:-

“(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.”

4. Reliance has been placed on *Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. & Anr. Vs. Sri Seetaram Rice Mill*, reported at (2012) 2 SCC 108, para 36:-

“36. Having dealt with the principle of interpretation of these provisions and the distinction between Sections 126 and 135 of the 2003 Act, we shall now discuss the ambit and scope of Section 126. The provisions of Section 126 contemplate the following steps to be taken:

- (i) An assessing officer is to conduct inspection of a place or premises and the equipments, gadgets, machines, devices found connected or used in such place.
- (ii) The formation of a conclusion that such person has indulged in unauthorized use of electricity.

(iii) The assessing officer to provisionally assess, to the best of his judgment, the electricity charges payable by such person.

(iv) The order of provisional assessment to be served upon the person concerned in the manner prescribed, giving -him an opportunity to file objections, if any, against the provisional assessment.

(v) The assessing officer has to afford a reasonable opportunity of being heard to such person and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment.

(vi) The person, upon whom the provisional order of assessment is served, is at liberty to pay the said amount within seven days of the receipt of such order and where he files such objections, final order of assessment shall be passed, against which such person has a right of appeal under Section 127 of the 2003 Act within the prescribed period of limitation.”

5. The petitioner further submits that the inspecting team of the respondent resorted to dubious means to extract higher revenue by classifying the petitioner’s premises under the misuse category. It is further submitted that the inspecting team of the respondent found the board titled at the petitioner’s premises as “Paying Guest Accommodation for Ladies” and mislabeled the said premises as “PG Hostel” and booked a case of misuse alleging “common office with kitchen” against petitioner.
6. The petitioner further submits that the said premises in question was given on rent on month to month basis for an undetermined period with a certain degree of continuity of stay and minimum period of stay is three months. The petitioner next submits that the said premise is used exclusively for private residential purposes for a sufficiently continued period, and not for absolute permanent stay. It is the case of the petitioner that the said premise is exclusively and purely used for residential use for ladies on monthly rent basis. Mr. Ram Prakash submits that letting out of premises

on rent for residential purpose cannot be termed as commercial or 'non-domestic use'. It is contended that the term "Hostel" is defined in Gazette of India Notification dated 07.02.2007 containing Master Plan of Delhi. The Master Plan defines 'Hostel' as "A premises in which residential accommodation in the form of rooms is provided, usually attached to an institution with or without dining facility." Further it is submitted that one of the conditions of a hostel/paying guest house is the requirement of minimum plot size of 500 sq. mtr., which petitioner does not have. It is also the case of the petitioner that the paying guest accommodation is not mentioned in the Master Plan and also does not fit in the category of 'PG Hostel' as was done by respondent.

7. Mr. Ram Prakash also submits that the Delhi Electricity Regulatory Commission distinguishes between 'domestic' and 'non-domestic' users wherein 'Domestic premises' means 'premises for bonafide residential purposes', and 'Non-Domestic premises' means 'any premises other than domestic, industrial or agricultural premises unless otherwise stated'. The petitioner also submits that the expression 'residential' means a place where a person lives for a sufficiently long period of time. The petitioner submits that in the present case PG accommodation is provided on month to month tenancy basis with a minimum stay of three months, therefore, the petitioner has been letting its premises on month to month basis for undetermined period for residential purpose and does not fall in the category of 'Misuse'. It is also submitted by the petitioner that the load sanctioned for the petitioner's electricity connection is 1 KW and it was sanctioned as far back as in the year 1965, therefore, it leaves no scope for any non-domestic use.
8. It is next submitted by the petitioner that on enquiry under RTI Act, the petitioner was informed the reasons why 'PG accommodations' were not

to be treated as 'non-domestic'. The petitioner was informed that since 'PG accommodation' are not covered under the Master Plan their usage continues to be domestic. It is also submitted that the respondent's act is malicious and manipulated. It is further submitted that the respondent misrepresented the PG accommodation of petitioner as a PG hostel, as respondent could not penalize the petitioner under the category of PG accommodation.

9. The counsel for the respondent submits that the inspection of the premises of the petitioner was conducted on 08.06.2009 in the presence of the petitioner's representatives. A copy of inspection report was sought to be served upon petitioner but the same was not accepted by the petitioner and was therefore, sent by registered post to the petitioner. It is also submitted that on inspection, the enforcement team found one signboard fixed on the building which read as "Paying Guest Accommodation for ladies" and each room had been given numbers, with a common kitchen. Therefore, it was concluded that the electricity connection was being used unauthorisedly for non-domestic purpose, i.e., for running a PG Hostel. The counsel for Respondent also contends that the petitioner failed to produce any rent agreement or rent receipt on record so as to prove the premises had been let out on month-to-month tenancy basis for residential purpose. The counsel further submits that the petitioner has been using a domestic connection for commercial purpose that is for letting out the said premises for residential use by working women and the petitioner is not using the premises as a residence for himself.
10. It is also submitted by the counsel for respondent that the necessary show cause notice was duly served upon the petitioner and the petitioner was granted an opportunity of being heard before the assessment bill was raised. It is further submitted that the petitioner's representation was duly

considered and the demand by the respondent was raised in accordance with law. It is contended that the said assessment order in question is based on the inspection report prepared by the inspection committee keeping in view the electricity laws and connected rules and regulations.

11. It is further contended by counsel for respondent that the classification of supply as 'domestic connection' or 'non-domestic connection' has been clearly set out in Regulation 4 & 5 of Chap. II of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007. It is submitted that paying guest accommodation does not fall under any category of Regulation 4, whereas Regulation 5 (i) provides for 'Any other category of commercial consumers not specified/covered in any category in this section.'
12. The counsel for the respondent submits that Section 126(3) of the Act is a directory provision and not a mandatory provision. She further submits that there has been no time period prescribed for providing a 'reasonable opportunity of hearing' under Section 126, therefore, the objections can be filed by an aggrieved person even on the 29th day after the service of the order of the provisional assessment and the electricity company cannot provide the aggrieved person with a reasonable opportunity of hearing and pass a final assessment order within 30 days from the date of service of the order of provisional assessment. She further submits that by construing the provisions as mandatory and not directory, would only lead to absurd and incongruous results, and would enable dishonest consumers indulging in unauthorized use of electricity to misuse the provisions and evade the penal consequences specified under the Act.
13. Counsel for the respondent further contends that the provisions under Section 126 of the Act intend to prevent the unauthorized use of electricity, therefore if the provision under the Act is read as mandatory in

nature, then the said interpretation would defeat the very aim and object of the provision. Reliance has been placed on *B.P Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick*, reported at AIR 1987 SC 1010, wherein reference to case *Madhav Rao Scindia Vs. UOI*, reported at AIR 1971 SC 530 was made wherein it was held :-

“The court will interpret a statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption against the law-maker intending injustice and unreason.....A provision in a statute will not be construed to defeat its manifest purpose and general values which animate its structure.”

14. In *Deputy Custodian, Evacuee Property, New Delhi & Ors. Vs. Official Receiver of the estate of Daulat Ram Surana*, reported at (1965) 1 SCR 220, Delhi it was held that:-

“If it appears that the obvious aim and object of the statutory provisions would be frustrated by accepting the literal construction suggested by the respondent, then it may be open to the Court to enquire whether an alternative construction which would serve the purpose of achieving the aim and object of the Act, is reasonably possible.”

15. Counsel for respondent submits interpreting Section 126 (3) as mandatory provision instead of directory provision would frustrate the aim and object of the provision and would encourage the dishonest consumers to continue unauthorized use of electricity and consequently enabling the dishonest consumers to evade the penal consequences.
16. The counsel for the respondent further submits that the petitioner was assessed by the assessing officer under the provision of Sec.126 of the Act, wherein the petitioner had an alternate remedy of Appeal under

Section 127 of the Act, to seek his grievance against the assessment, which petitioner did not exhaust/ avail before approaching this court.

17. I have heard counsel for the parties, considered their rival contentions and also perused the documents placed on record. It is to be noticed that the terms and conditions of the Tariff order, 2009 of Delhi Electricity Regulatory Commission, which has been placed on record wherein the details of the units/amount of electricity under the category domestic and non-domestic have been detailed, as per which under the domestic category the user shall be entitled to a sanction of load up to 10KW, and the non-domestic user shall be entitled to sanction beyond 10KW and up to 100KW. As per the inspection report dated 08.06.2009 the authorized enforcement team has concluded that the load of 14.292 KW was being used by the petitioner unauthorizedly against the authorized sanctioned load of 1KW. Therefore, the petitioner has been using electricity more than the sanctioned load, and the excess load usage falls under non-domestic use category.
18. The petitioner also failed to produce any receipt(s)/rent agreement(s) so as to prove that the premises in question had been let out on month-to-month tenancy basis. Also the petitioner has been using the premises for commercial purpose that is for letting it out to working women for residential use and not using the said premises for his own use.
19. It is also brought to the notice of the court that the provisional demand had been raised by the respondent without serving a show cause notice on the petitioner. The penalty demand of Rs. 55,191/-should have been raised after considering petitioner's objections, instead the petitioner's objections had been considered only on 09.07.2009 that is when the petitioner had been called for personal discussion by the respondent, whereas the demand had been raised on 24.06.2009.

20. Keeping in view the facts of the case and the submissions made by the petitioner, the matter is remanded back to the respondents with a direction to pass a fresh order, after granting an opportunity of hearing to the petitioner. The petitioner would also be entitled to raise all objections which have been raised in the present writ petition. The respondents will pass a reasoned order after considering the objections. Accordingly, the impugned order is set aside. All rights of the petitioner are kept open.
21. Writ petition is disposed of in above terms. No order as to costs.

G.S.SISTANI, J

MAY 30, 2013
ssn/msr