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

+ **LPA 1391/2007**

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

..... Appellants

versus

KOLMET BUILDERS

..... Respondent

+ **LPA 200/2008**

BSES YAMUNA POWER LTD.

..... Appellant

versus

RAVEEN JAIN & ANR

..... Respondents

Present : Mr. Anupam Varma, Adv. for the appellants.
Mr. Laliet Kumar and Mr. Mohit Bhardwaj, Adv.
for the respondents.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

ORDER

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14.03.2013

Both these appeals are directed against a common judgment dated 05.10.2007, whereby WP(C) No. 17774/2004 filed by Kolmet Builders and WP(C) No. 13889-90/2004 filed by Raveen Jain and another were allowed.

2. In the matter of Raveen Jain, one electricity connection was obtained by Raveen Jain in respect of property bearing No. 297, Patparganj, Industrial Area, Delhi, whereas the other connection was obtained by Suneer Jain in respect of property bearing No. 298, Patparganj, Industrial Area, Delhi. Separate bills were being issued by the appellant BSES Yamuna Power Ltd. (BYPL), one in the name of Mr Raveen Jain and the other in the name of Suneera Jain. The case of the appellant is that during inspection carried out by its officials on 30.04.2004, it was found that a total connected load of 145.145 KW was being used by M/s Jayanita by intermixing the load of two independent connections, one in the name of Raveen Jain and other in the name of Suneer Jain, by way of common reception, common telephone and common basement. This is also the case of the appellant that the representative of the consumer who met its officials on the spot refused to sign the inspection report and an endorsement was accordingly made on the document. On the basis of said inspection dated 30.04.2004, a show cause notice dated 02.08.2004 was issued to the respondents/writ petitioners. After giving personal hearing to them, an order was passed holding that since there was intermixing of the connection by clubbing two connections

and the combined load exceeded 100 KW, the category of the said connections was liable to be changed from SIP to LIP(LT).

3. Being aggrieved from the order passed by the appellant, the respondents/writ petitioners Raveen Jain and Suni Jain filed WP(C) No. 13889-90/2004. The learned Single Judge vide order dated 05.10.2007 held that the intermixing of the load had not been established and accordingly quashed the demand which followed the speaking order passed by the appellant. The appellants were directed to re-work the bill applicable for the load and category for which the connections were sanctioned to the respondents, after adjusting the amount already paid to them in terms of the interim order of the Court. It was further directed that refund, if any, payable to the respondents, shall be refunded along with interest at the rate of 9% per annum. Being aggrieved from the said order, the appellant is before us by way of this appeal.

4. In WP(C) No. 17774/2004, three separate connections were provided to the Kolmet Builders in respect of three different portions of Property No. 7-B, Pusa Road, New Delhi. The case of the appellant is that during the course of inspection carried out by its officials on 20.01.2003, it was found

that the combined connected load of the three connections were 175.006 KW, the connected load against K. No.160307 being 30.64 KW, the connected load against K. No.160220 being 73.043 KW and the connected load against K. No. 160306 being 71.323 KW. Based upon the inspection dated 20.10.2003, a show cause notice was issued to the respondents Kolmet Builders on 04.12.2003 seeking to change the category of tariff from SIP/non-domestic to LIP/MLHT. A reply was filed by the respondent claiming that since the three connections were installed and sanctioned for different portions and there was no intermixing, the proposed conversion of tariff from NDLT to MLHT was without any basis. After giving personal hearing to the respondent, a speaking order was passed on 16.01.2004 stating therein that the status of the separate distinct premises had been altered unauthorizedly into unified premises where all the three connections were being used for running a hospital and, therefore, the said respondent was required to be billed under MLHT (LT) category.

5. In the case of Raveen Jain, the case of the respondent is that the inspection report dated 30.04.2004, was not supplied to them at any point of time. The case of the appellant in this regard is that the said respondents

were very much aware of the inspection report which was prepared on the spot and which their representative had refused to sign. Regulation 31 of Delhi Electricity Regulatory Commission (Performance Standards-Metering Billing) Regulations, 2002 prescribes the procedure for levy of charges other than normal tariff for violation of provisions of tariff schedule. The said Regulation, to the extent it is relevant provides that the inspection report and show cause notice thereto must be signed by an authorised signatory of the licensee and must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of each must be pasted at a conspicuous place in/outside the premises. Simultaneously, the inspection report and the notice shall be sent to the consumer under Registered Post.

6. Presuming that the inspection was carried out in the presence of the representative of the respondents and he had refused to sign the inspection report, the appellant, in view of the provisions contained in the above-referred regulation was required to affix a copy of the inspection report at a conspicuous place in or outside the premises where the electricity was being

consumed. In addition to such affixation, the appellant was also required to send the inspection report and notice to the respondents by registered post. This is not the case of the appellant that they had pasted a copy of the inspection report in or outside the premises inspected by its officials and/or it was also sent to the respondents by registered post. We find from a perusal of the writ petition, filed by Raveen Jain and Suneer Jain that in para 5 of the petition, they specifically alleged that though some officials of the appellant came to their premises on 30.04.2004 and checked the installations and meters, no copy of the inspection report was supplied to them. A perusal of the reply filed by the appellant would show that the aforesaid averment made in para 5 of the writ petition, was not denied by them. While replying to para 5 of the petition, the appellant simply stated that no comments were required since it was a matter of record, thereby admitting the averment of the respondents/writ petitioners that no copy of the inspection report was supplied to them. In our view, once the respondents/writ petitioners, took the plea that no copy of the inspection report was made available to them, it was incumbent upon the appellant to say, in its reply, that the representative of the respondents had refused to

sign the inspection report. The appellant was further required to allege and show that a copy of the inspection report was affixed at a conspicuous part of the premises inspected by its officials and was simultaneously sent to the respondents by registered post. In these circumstances, there is no escape from the conclusion that the appellant failed to comply with the requirement prescribed in Regulation 31(iii) of Delhi Electricity Regulatory Commission (Performance Standards-Metering Billing) Regulations, 2002.

7. As noted earlier, the show cause notice to the consumer is also required to be handed over to him/his representative at the site under proper receipt. However, in the case of Raveen Jain and Suneer Jain, the show-cause notice having been prepared on 02.08.2004, more than three months after the inspection, the appellant cannot even claim that the said notice was tendered to the representative of the respondents and was refused by him. Moreover, even if the show cause notice is refused by the consumer or his representative, it is required to be affixed at a conspicuous place of the premises and simultaneously sent to the customer by registered post.

8. A perusal of the show cause notice dated 02.08.2004 would show that the inspection report was not annexed to the said notice. Therefore, it

cannot be said that the appellant had provided the inspection report to the respondents before passing the speaking order though not at the time of inspection. We also note from the show cause notice that there is no averment in the said notice that M/s Jayanita was having common a reception, common telephone and common basement for properties No. 297 and 297, Patparganj, Industrial Area, Delhi. In the absence of inspection report, the respondents did not get an adequate opportunity to present their case before the officer, who passed the speaking order. This is more so when even the show cause notice did not contain an averment that M/s Jayanita was having a common reception, common telephone and common basement in respect of properties No.297 and 298, Industrial Area, Delhi.

9. For the reasons stated hereinabove, we are of the view that the speaking order passed by the appellant in respect of Raveen Jain and Suneer Jain could not have been sustained. However, since we are upholding the quashing of the speaking order dated 16.01.2004 on account of violation of Regulation 31(iii) of Delhi Electricity Regulatory Commission (Performance Standards-Metering Billing) Regulations, 2002 and not on merits, the matter needs to be reconsidered by the appellant in the light of a fresh reply which

the respondents may file considering the inspection report which has since been received by them as part of the writ document. Accordingly, we permit the respondents Raveen Jain and Suneer Jain to submit a fresh reply to the appellant, within four weeks from today. On such reply being furnished, a notice of personal hearing will be issued by the appellant to the respondents in case it is not satisfied with the reply, submitted by the respondents. A fresh speaking order shall thereafter be passed after hearing the respondents or their representative. LPA No.200/2008 stands disposed of accordingly.

10. In the case of Kolmet Builders, it is an admitted position that three separate connections were issued to the respondent in respect of three different portions of the same property. The case of the appellant against Kolmet Builders is based on the following provisions contained in tariff:-

“2.36.35.4 Clubbing of more than one connection for classification under SIP or LIP

The Commission is of the opinion that if separate connections have been taken in distinct portions of a building under different names then the load should not be clubbed together for classification under SIP or LIP, unless it can be proved that the connections for one portion is used to supply other portion(s) or the connections are used in a unified premises.”

A careful perusal of the aforesaid provision would show that the said provision would apply only in a case where electricity connections have been obtained in different names and the connection for one portion is used to supply electricity to the other portion or such connections are used in a unified premises. The aforesaid provision certainly does not apply in a case where separate connections in distinct portion of a building have been taken under the same name. There seems to be a logic behind confining the aforesaid provision only to a case where the connections are obtained in different names. Admittedly, under the Regulations framed for Delhi, a consumer in Delhi is permitted to have more than one connections in one name, in distinct portions of the same building. If one consumer is permitted to have more than one connections in the same building, there can be no logic behind levying a higher tariff on such a consumer merely on the ground that he has taken more than one connections for distinct portions of the same building. A provision to levy higher tariff in case a person uses the connection obtained for one portion of the building to provide electricity to another portion of the building or uses more than one connections in a unified premises, would make sense only where the Regulations prohibit the

consumer from taking more than one connections in the same building or there is a specific regulation providing for levy of higher tariff in case more than one connections are taken by the consumer or the connection taken in respect of one portion is used by him for providing electricity in another portion.

11. The learned counsel for the appellant has relied upon the decision of Supreme Court in **Punjab State Electricity Board and Anr. v. Ashwani Kumar (2010) 7 SCC 569**, in support of his contention that clubbing of the connection would attract higher tariff. A perusal of the aforesaid decision would show that Regulation 3.5.2 of Punjab and Haryana Electricity State Electricity Board, Electric Supply Regulations expressly stipulates that whenever an existing consumer applies for a new connection in the same premises, in his name, it shall normally be not allowed. Regulation 3.5.7 of the said Regulation provides that if a consumer fails to exercise option to get his connections clubbed within the stipulated date or declares that there is only one connection in his premises but later on it is detected that he is having more than one connection in one premises, he shall have to pay higher tariff and surcharge, if applicable w.e.f. 1-1-1996.

It was in the light of these Regulations that the Supreme Court, *inter alia*, observed as under:-

“10. The bare reading of the above regulations and circular makes it apparent that the aim of the Electricity Board is to provide single connection in the premises. Not only this, it is the obligation of the consumer, to get the connections clubbed where more than one connection exists in the same premises. This policy is, primarily, meant to encourage single connection as well as consumers to opt for clubbing of their loads and also to facilitate a smooth transmission. Besides this, the most important aspect is the mischief that these provisions ought to suppress.

11. A consumer who gets two meters installed in his premises and in that garb receives bulk supply instead of medium supply clearly makes an attempt to avoid payment of higher tariff. It cannot be disputed that a consumer of a medium supply is subjected to a lower tariff than the one receiving bulk supply. Therefore, the intention, thus, is to avoid revenue loss to the Board by circulating the prescribed procedure. These regulations and circulars, thus, cannot be interpreted so as to defeat the very object of suppressing such a mischief in the consumption of electricity. Therefore, if the Electricity Board finds that such mischief is being played, there is nothing in law preventing the Board from treating it as a clubbed connection and impose such tariff and penalty as is permissible in accordance with law. No consumer can be permitted to defeat the spirit of the regulations and take undue advantage of receiving electric supply through all the different meters in the same

premises and with an intention to defraud the Electricity Board of its genuine dues for supply of electricity.”

In the case before us, there is no regulation prohibiting the consumer from obtaining more than one connections in the same building, the respondent Kolmet Builders was actually sanctioned three connections in the same building and there is no regulation such as Regulation 3.5.7 of Punjab and Haryana Electricity State Electricity Board, Electric Supply Regulations providing for charging higher tariff if a consumer fails to get his connections clubbed or declares that there is only one connection in his premises, but later on he is found to have more than one connections. In the absence of a regulation similar to the regulations framed by Punjab and Haryana Electricity State Electricity Board, the appellant cannot take recourse of clause 2.36.354 of the tariff.

12. For the reasons stated hereinabove, we find no merit in the appeal against Kolmet Builders. Hence, LPA No. 1391/2007 is, therefore, dismissed, without any order as to costs.

CHIEF JUSTICE

V.K. JAIN, J

MARCH 14, 2013/BG
LPA No.1391/07, 200/08

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