

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 22 of 2008

NORTH DELHI POWER LIMITED

..... Appellant

Through: Mr. Vikram Nandarajog & Mr. Sushil
Jaswal, Advocates

versus

RAJESH GUPTA

..... Respondent

Through: None.

CORAM: JUSTICE S. MURALIDHAR

ORDER
06.01.2014

1. This is an appeal filed by the North Delhi Power Limited ('NDPL') against the impugned judgment dated 3rd December 2008 of the learned Additional Sessions Judge [Electricity] ('ASJ') in Special Case No. 6 of 2007 arising out of First Information Report ('FIR') No.371 of 2006, Police Station ('PS') Model Town, New Delhi.

2. By the impugned order, the learned ASJ found the Respondent guilty of the offence of commission of theft of electricity under Section 135 of the Electricity Act, 2003 ('Act'). Since the accused had not deposited the billed amount voluntarily, the Court proceeded to determine the civil liability under Section 154 (5) of the Act. The Court noted that the onus to prove that the accused committed the theft of electricity for the last six months was on the Complainant. Since the civil liability of the accused could not be determined by either of the two methods envisaged under Section 154 (5) of the Act, the

Crl.A. No. 22 of 2008

Court held that the period of theft should be taken to be three months. The trial Court applied the 6x5 formula and determined the civil liability to be Rs. 83,968. As regards the criminal liability, by a separate order dated 3rd December 2007, a fine of Rs. 30,000 was imposed on the Respondent, and in default thereof, he was sentenced to simple imprisonment for a period of three months.

3. The present appeal by the NDPL is confined to the determination by the learned ASJ of the civil liability of the Respondent.

4. Mr. Vikram Nandarajog, learned counsel appearing for the Appellant, submitted that in terms of Section 154 (5) of the Act, where it was not possible to determine the exact period for which the theft of electricity has taken place, the Court would be obliged to determine the civil liability as twice the amount of tariff for a period of twelve months, prior to the date of detection of theft of electricity.

5. Section 154 (5) of the Act reads as under:

“154. Procedure and power of Special Court.-

(1) to (4)

(5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is

less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.”

6. A plain reading of the above provision shows that the civil liability can be:

(a) an amount not less than the amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of theft of energy; or

(b) the exact period of theft, if determined;

whichever is less.

7. The exact period of theft, preceding its detection, can be ‘determined’ by the Court on the basis of the evidence led, in the first instance by the Complainant, and by way of rebuttal, if any, by the Respondent/accused. There could be more than one scenario where a Special Court may be required to determine the civil liability under Section 154 (5) of the Act. There may be a direct theft of electricity without there being any meter installed. A person could be stealing electricity from the mains by illegal means. In the course of evidence led by the Complainant, it could be established that it was not possible for the Complainant to know for how long such theft had been taking place prior to its detection. Once such evidence is led, the Complainant would have discharged its initial burden. The burden would then shift to the Respondent to show if there was an ‘exact period’ during which such theft of electricity took place. It is possible that the civil liability calculated on the basis of the exact period might be less than the amount equivalent to two times of the tariff applicable for a period of twelve months preceding the detection of theft. If the Defendant fails to lead any

rebuttal evidence, then it would be open to the Complainant to urge that since it has discharged the initial burden of showing that it is not possible to determine the exact period of theft, and with the Respondent having failed to rebut such evidence, the initial part of Section 154(5) should apply for determining the civil liability. In other words, in such instance, the liability would be calculated on the basis of twice the tariff applicable for a period of twelve months, prior to the date of detection of theft.

8. A second scenario could be where a meter is installed, but there is dishonest abstraction of energy, by either tampering with the meter or by bypassing the meter altogether. In such an instance, it might be possible for the Complainant to demonstrate, through the billing pattern, that there was a sharp drop in the consumption of electricity from a particular date. Here again, once the Complainant adduces such evidence, the burden will shift to the Respondent to show that the period was of a shorter duration. It might, therefore, be possible for the Court to determine the exact period during which the dishonest abstraction took place.

9. In other words, in both the above scenarios, some evidence would have to be led, in the first instance, by the Complainant, either to show that it is not possible to determine the exact period during which the theft took place, or to show the exact period during which it took place. There cannot be a situation where no evidence is led by the Complainant on the aspect of determination of civil liability. Section 154 (5) of the Act is not a 'deeming' or 'no fault clause' which dispenses with the Complainant leading evidence. The provision does not envisage an 'automatic' civil liability calculated at

twice the amount of tariff for the period of twelve months prior to the date of detection of theft where no evidence is adduced. Section 154 (5) requires judicial determination by the Court, on the basis of the evidence led by the parties, of the civil liability owed by the Respondent to the Complainant.

10. In the case at hand, it appears that in the absence of the Complainant NDPL leading evidence specific to the question of the period of theft, the learned ASJ proceeded to make an assumption that it should be three months. There could not have been any guess work on the part of the Court in that regard. The assumption of the period of direct theft as three months was, therefore, arbitrary and unsustainable in law.

11. There is one other aspect of the matter. In the impugned order, the learned ASJ appeared to have applied 5x6 formula, i.e., five times the amount of tariff for a period of six months, preceding the date of detection of theft for determining the civil liability. This has been justified on the basis of the provision in Regulation 25 of the Delhi Electricity Regulation Commission (Performance Standards – Metering and Billing), Regulations, 2002 [‘2002 Regulations’].

12. The date of detection of theft in the present case is 30th May 2006, by which date the Act was in force. It is possible that for a period prior to the coming into force, the 2002 Regulations would be applicable. However, after coming into force of the Act, for detection of theft of electricity thereafter, the methodology to be applied would be in terms of the Act. Where there is an inconsistency between the 2002 Regulations and the Act, it is the Act that

will prevail. For the purposes of Section 154 (5) of the Act, in either of the two situations, i.e. where it is not possible to determine the exact period for which the theft has taken place, which is what has happened in the present case, or where the exact period of theft is determined, then the formula applicable will be twice the amount of tariff for a period of twelve months, i.e., 2x12 and not five times the tariff for a period of six months (5x6). Therefore, in the impugned order, the learned ASJ was not justified in applying 5x6 formula. Even assuming that it was not possible to determine the exact period of theft of electricity, the 2x12 formula should have then been applied.

13. The conclusion in the impugned order as regards the civil liability was, therefore, erroneous in law. It is accordingly set aside to that extent. However, since there is no cross-appeal in the present case, the question of the Appellant having to refund to the Respondent the amount, if any, paid towards the civil liability does not arise.

14. The appeal is accordingly disposed of, but with no order as to costs.

S. MURALIDHAR, J.

JANUARY 6, 2014

tp