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

% *Judgment pronounced on: 12th May, 2015*

\+ CRL.M.C. 1002/2011

MEENA CHAUDHARY @ MEENA P.N. SINGH ..... Petitioner
Through: Petitioner in person.

versus

BSES RAJDHANI POWER LIMITED & ORS .... Respondents
Through: Mr. Satish Kumar Verma, Addl. Public Prosecutor for State.
Mr. Sunil Fernandes, Standing Counsel for BSE-RPL with Mr. Deepak Pathak, Mr. Raghav Chandha, Ms. Mithu Jain, Advocates

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The criminal complaint bearing CC No. 133/2010, pending before the Special Electricity Court, Saket, New Delhi has been filed by the BSES/respondent No.1 against the petitioner alleging that direct theft of electricity was detected at the petitioner's premises bearing No. Flat 1260, Sector D, Pocket I, Vasant Kunj, Delhi.

2. It is alleged in the complaint that after the inspection of the petitioner's premises on 30th June, 2010, by a team from the Enforcement Department of the respondent no.1, duly authorised to conduct inspections, and the issuance of the Theft Bill on 3rd July,

2010, the petitioner had filed a criminal writ petition bearing W.P. (Crl.) No. 1116/2010 before this Court, which was dismissed vide order dated 2nd August, 2010. Against the said order dismissing the writ petition, the petitioner then filed a Letters Patent Appeal bearing L.P.A. No. 649/2010. The said appeal with the leave of this Court was dismissed as withdrawn. It is alleged by the BSES/respondent No.1 that the petitioner, instead of presenting her defence before the Trial Court, she has filed the present petition which is not maintainable.

3. The BSES/respondent No.1 had alleged that the petitioner admits that there was no electricity supply to her premises since 30th July, 2007. The team from the Enforcement Department of the respondent No.1, duly authorised to conduct inspections, had inspected the premises of the petitioner on 30th June, 2010. The team found that the electricity supply to the petitioner's premises was running directly through 2 numbers illegal D.T. wires from BSES BUS BAR, and the entire load of the said premises was connected to it. The petitioner did not have a regular connection and no meter was found at the site. The petitioner was present at site during the inspection and she created a huge ruckus and started abusing the enforcement team members. Faced with this opposition, the enforcement team members called for police assistance, and with great difficulty were able to record the load of the premises, which was found to be 14.383 KW for domestic use, which included load for three numbers window air conditioners. However, they failed to carry

out videography of the proceedings, except whatever could be managed from outside the premises. The petitioner in the present case has filed only some of the pages of the inspection proceedings, although she has in her possession the complete copies. The complete copy of the inspection report, the meter report, the load report and the seizure memo has been filed by respondent No.1.

4. It is also the case of BSES/respondent No.1 that as the electricity was being drawn directly and the petitioner was the beneficiary of direct theft, the petitioner was booked for theft of electricity. Accordingly, an assessment bill for theft of electricity for an amount of Rs.1,61,830/- was issued to the petitioner.

5. As the petitioner failed to pay the theft bill, a complaint under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the "Act") was initiated against the petitioner before the Special Electricity Court, Saket, New Delhi.

6. The petitioner who appeared in person was asked to pay reasonable amount without interest to the complainant in order to resolve the issue in hand but she was not agreeable for the same. Even learned counsel appearing on behalf of the respondent No.1 upon instruction has informed the Court that new connection has been installed and she has been paying the electricity charges as per consumption regularly and in order to settle the dispute for previous period, his client may agree to receive a sum of Rs.50,000/- as full and final settlement but the petitioner is not agreeable for the same. She has levelled various allegations against the respondents and

insisted that the matter be decided on merits. Left with no other option the matter was heard.

7. Her first submission is that the user of electricity at the DDA Flat No. 1260, Sector-D, Pocket-I, Vasant Kunj, New Delhi is the 'Registered Consumer' with BSES/respondent No.1 who lives in Bihar and is only a paying guest in the premises.

8. Her next submission is that there is no direct theft of electricity at the said premises on the following reasons:-

(i) On 30th July, 2007, the electric meter was removed by men of BSES/respondent No.1 from the said premises in collusion with the Manager of Aglomed Pharmaceutical Company to extort money from the petitioner. On 7th July, 2007 at the instance of Delhi Police, the Manager of Aglomed Pharmaceutical Company made an application to BSES/respondent No.1 for re-installing the electric meter at the said premises who failed to take steps to re-install the meter at the said premises, inspite of various complaints made by the petitioner.

(ii) Since 30th July, 2007 till the year 2010 BSES/respondent No.1 had been furnishing provisional fixed rate monthly bills to Aglomed Pharmaceutical Company in the name of Brahma Nand Sharma and send it to E-2, Green Park, New Delhi, for supplying electricity without a meter at the said premises. Respondent No.1 has been receiving monthly payments by cheques from Aglomed Pharmaceutical Company for supplying electricity without a meter at the said premises. Thus, there is no direct theft of electricity at the said premises.

9. Her next submission is that she has no legal liability towards electricity consumption at the said premises in face of the following facts:

(a) The Applicant is a qualified medical doctor.

(b) The Applicant is living in the said premises in the capacity of a paying guest in the guest house in the said premises.

(c) The Aglomed Pharmaceutical Company is running the guest house in the said premises since a very long period for doctors for its own promotion and the Company is showing the same in the Income Tax Ledger as a charity for doctors in need.

(d) The owner of the said premises is Shri Brahma Nand Sharma. The electricity bills were regularly furnished by the BSES/respondent No.1 in the name of Shri Brahma Nand Sharma.

(e) The Aglomed Pharmaceutical Company has been regularly paying the electricity bills and water bills for the said premises by cheques in favour of BSES/respondent No.1 and Delhi Jal Board respectively.

10. She has also denied that there is any site inspection or any video recording by BSES/respondent No.1 at the said premises at any point of time rather on 30th June, 2010 men of BSES/respondent No.1 again came to extort money from the petitioner without any written authority from BSES/respondent No.1 and without an authorized Identity Card and threatened to cut the electric supply

without any reason under the law. Thereafter, she called PCR and the local police. The local police did not allow cutting of electric supply or site inspection or videography at the said premises by the BSES/respondent No.1 because they were not allowed to enter in the premises. There is no evidence of recording of site-inspection by BSES/respondent No.1 men at the said premises at any point of time. From 30th July, 2007 till the year 2010, the BSES/respondent No.1 had been receiving monthly payments by cheques from Aglomed Pharmaceutical Company in the name of Nand Sharma and send it to E-2, Green Park, New Delhi, for supplying electricity without a meter at the said premises. Therefore, there is no direct theft of electricity at the said premises.

11. Therefore, it is a fictitious and forged penalty charges raised by BSES/respondent No.1 without direct theft of electricity and without inspection and evidence of the said premises. The fake penalty raised by BSES/respondent No.1 against the petitioner on the basis of a fake and forged site-inspection report, without disclosing the total records of past payments of provisional fixed rate electric bills furnished by BSES/respondent No.1 for supplying electricity without a meter since after 30th July, 2007 till 30th June 2010, stands extortion and damage to reputation of the petitioner by the men of BSES/respondent No.1 through forgery and intimation. The average monthly bills for two months comes to Rs.640/- only.

12. It is submitted that on 7th March, 2011 the petitioner on her return from U.K. landed at Delhi Airport at 3.00 a.m. The petitioner suffered profound disability of jetlag. Due to jet-lag brain faculties

remain unresponsive, dormant and confused. The petitioner appeared before Additional Sessions Judge/ Electricity on the same day. Due to lack of time, mental and physical exhaustion and jet-lag the petitioner could not follow the intents of the Court which passed the order without explaining the contents of the order.

As no case of theft of electricity under Section 135 of the Act could be booked against the petitioner when admittedly the meter from the said premises had been removed by the men of BSES/respondent No.1 and the supply was made direct at the said premises by the men of BSES/respondent No.1 and electricity was being supplied by BSES/respondent No.1 at the said premises without a meter. None of the actions under clause (a) to (e) of sub-Section (1) of Section 135 of the Act has been committed by the petitioner at the said premises.

13. Learned counsel for the respondent has not disputed the fact that the average monthly bills for two months comes to Rs. 640/- only. The petitioner is stated to consume the electricity without a meter from the period July, 2007 till 30th June, 2010.

14. This court while exercising the power under Section 482 Cr.P.C. is not inclined to decide the matter on merit in the nature of rival claims of the parties as the disputes are pending before the special Tribunal dealing with such disputes. The offer was given by the respondent to the petitioner to pay a sum of Rs.50,000/- as full and final settlement without prejudice in order to resolve the disputes which is not acceptable to the petitioner. If the stand of petitioner is still rigid then she should contest the matter before the Tribunal on merit.

15. As far as the jurisdiction to hear the matter by the trial court is concerned on the grounds that the petitioner is not the registered consumer, the said argument has no force and is rejected in view of specific provision of Section 135 of the Act. Even otherwise under the provision of Section 135 of the Act under the head of "Direct Theft of Electricity', the same can be raised against the petitioner under the provisions of clause (i) of sub-section (1) of Section 2 of the Delhi Electricity Regulatory Commission (Performance Standards - Metering and Billing) Regulation, 2002.

16. Under these provisions, under the Chapter of Offences and Penalties, Section 135 of the Act stipulates that the theft of electricity would apply to "*whoever dishonestly taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or (c) damages or destroys an electric meter, apparatus, equipment, or were or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or (d) uses electricity through a tampered meter, or (e) uses electricity for the purpose other than for which the usage of electricity was authorized. ....Provided also that if it is provided that any artificial means or means not authorized by the Board or licensee or supplier,*

as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer."

17. Under these circumstances, it is immaterial if the name of the Registered Consumer with the respondent is Brahma Nand Sharma. The petitioner, who is enjoying the facility, is therefore liable to pay the electricity charges.

18. In view of the above, this Court is of the considered view that either the petitioner settles the matter as per offer given by the counsel for the respondent and deposit the amount within four weeks from today, otherwise in failure to do so, the present petition shall be treated as dismissed. However, the petitioner would be entitled to contest the matter before the Tribunal who would decide the same without the influence of this order.

19. The petition is disposed of accordingly with these directions.

20. No costs.

(MANMOHAN SINGH)
JUDGE

MAY 12, 2015