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

+ **W.P.(C) 143/2016**

AMANDEEP

..... Petitioner

Through Mr.Kshitiz Mahipal, Advocate.

versus

BSES YAMUNA POWER LIMITED

..... Respondent

Through Mr.Deepak Pathak, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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08.01.2016

The present writ petition has been filed with the following prayers:-

- (a) Issue a writ of Mandamus or any other appropriate writ, order or direction thereby directing the respondent to prove the CMRI Data of the meter bearing no. 17066024 installed against the C.A.No.150240295 and also to give fresh hearing to petitioner;*
- (b) Issue a writ of Certiorari or any other appropriate writ, order or direction thereby quashing the speaking order dated 21.12.2015 (Annexure P-8) passed on the basis of inspection report dated 02.11.2015.*
- (c) Issue any other or further appropriate writ(s), order(s) or direction(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case, in favour of the petitioner and against the respondent.*

Learned counsel for the petitioner states that the petitioner is a tenant in the premises bearing House No.20, G.F., Burgas Park, Industrial Area, Dilshad Garden, Delhi. He states that the petitioner has not been provided with CMRI Data, and consequently principles

of natural justice have been infringed.

It is a case of the respondent-Discom that the petitioner has indulged in suspected theft of electricity (meter tampering). Learned counsel for the respondent-Discom states that they are in the process of filing a criminal complaint under Sections 135 and 138 of the Electricity Act, 2003 before the appropriate forum.

A Division Bench of this Court in ***B.L.Kantroo Vs. BSES Rajdhani Power Ltd., 154 (2008) DLT 56 (DB)*** has held that the Special Court has exclusive jurisdiction to decide disputes pertaining to dishonest abstraction of energy. The relevant portion of the said judgment reads as under:-

“22. It is apparent that the cases of theft under Section 135(1) involve mens rea. The jurisdiction of civil Court is not barred but the power to try offences punishable under Sections 135 to 139 is conferred exclusively on the Special Court constituted under Section 153 of the Act and the provisions of Sub-section (5) of Section 154 specifically invest Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases whether or not the allegation of theft is disputed, is still entitled to make such a challenge to the disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer and the amount of civil liability so determined shall be recovered as if it were a decree of a civil Court and it can act as civil Court as well as criminal Court while conducting the cases before it.

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30. Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the

jurisdiction of civil Court in view of the provisions of Sections 153 and 154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and the said Court can act as civil Court as well as criminal Court while conducting the cases before it.”

This Court is also of the opinion that it would not be proper to interdict the process at this stage. In the event, principles of natural justice have been violated, this Court has no doubt that the Special Court would quash the bill as well as the criminal proceedings sought to be initiated by the petitioner.

Consequently, the present writ petition is disposed of with liberty to the petitioner to avail the remedy before the Special Court if he so desires within a period of four weeks. To facilitate filing of the aforesaid proceedings, the bill dated 23rd December, 2015 is stayed for a period of two weeks.

Needless to say, all rights and contentions of the parties are left open and the Special Court shall decide the matter without being influenced by any observations made by this Court. Further, present order shall not bar the respondent-Discom from filing appropriate proceedings under Sections 135 and 138 of the Electricity Act, 2003.

MANMOHAN, J

JANUARY 08, 2016
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