

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

+ **RSA No.30/2009**

% **26th August, 2016**

NORTH DELHI POWER LTD. Appellant

Through: Mr. Vikram Nandrajog, Advocate
with Mr. Sheetesh Khanna,
Advocate and Mr. Sushil Jaswal,
Advocate.

versus

ALLENA AUTO INDUSTRIES (P) LTD. Respondent

Through: Mr. Rajesh Kumar Luthra,
Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant against the Judgment of the First Appellate Court dated 27.11.2008. The first appellate court by the impugned judgment has set aside the Judgment of the Trial Court dated 4.3.2003, and by which judgment the suit of the respondent/plaintiff seeking permanent injunction against the appellant/defendant from claiming higher electricity tariff/charges on the basis of the Report dated 25.3.1997 was dismissed. The first appellate court has decreed the suit and has restrained the

appellant from claiming Large Industrial Power (LIP) charges from the respondent/plaintiff on the basis of the Report dated 25.3.1997.

2. Before I turn to the facts of the case, it is necessary to state that there existed two types of electricity connections at the relevant point of time in the year 1997 which were installed by the Delhi Vidyut Board (DVB) erstwhile DESU, and of which entity the present appellant company is the successor. One set of connections were connections with sanctioned load below 100 KW and they were known as Small Industrial Power (SIP) connections. The other set of connections were where sanctioned load was more than 100 KW and were called as Large Industrial Power (LIP) connections. The tariffs for SIP connections and LIP connections were different i.e charges for LIP connections were at a higher tariff than the SIP connections. If a consumer having taken only an SIP connection, (respondent/plaintiff having taken an SIP connection with sanctioned load of 95 KW), is found to be actually using and having connected a load above 100 KW, then DVB imposed the higher LIP charges upon the consumer. These charges were charged for six months prior to the inspection and were to continue after the date of inspection till the fault was remedied by the consumer by bringing down the connected load to the sanctioned load below 100 KW.

3. The facts of the present case are that the DVB conducted an inspection of the premises of the respondent/plaintiff on 25.3.1997. Respondent which was having a sanctioned load of 95 KW i.e respondent/plaintiff was a consumer in the SIP category, was as per the officials of the DVB who conducted the inspection dated 25.3.1997, found to have a connected load of 239.7 KW as against the sanctioned load of 95 KW. The respondent/plaintiff was thus noticed for paying LIP charges. After giving show cause notice to the respondent/plaintiff, the appellant/defendant passed its speaking Order dated 27.10.1997 imposing LIP charges upon the respondent/plaintiff resulting in the respondent/plaintiff filing the subject suit stating that in its factory manufacturing pumps for maruti cars the respondent/plaintiff had two separate electricity lines feeding separate machineries. One set of machinery were fed with DVB line and had connected load upto 95KW with a standby generator of 125 KVA and other set of machineries were connected through a separate line and had for its power source a generator of 125 KVA with another standby generator of 75 KVA. It may be noted that 100 KW equals 117.6 KVA. Respondent/plaintiff therefore pleaded that officials of the appellant were totally unjustified and had acted arbitrarily in holding that a total connected load of 239.7 KW was connected against DVB line whereas against DVB line there was connected load only within the sanction load, and that load of one set of machineries was connected

with the separate line having as its power of source the generators of 125 KVA and 75 KVA.

4. After pleadings were complete, the trial court on 26.5.2000 framed the following issues:-

- “1. Whether the plaintiff is entitled for the relief claimed? OPP
2. Whether at the time of inspection dated 25.03.00 plaintiff has connected load of 239.7 KW with the DVB electricity line? OPD
3. Relief.”

5. Trial court decided issue nos.1 and 2 in favour of the appellant/defendant by holding that no permission was taken by the respondent/plaintiff for installing the generator sets. Trial court also held that the speaking Order dated 27.10.1997 was passed after hearing the respondent/plaintiff and hence the respondent/plaintiff was liable to pay the LIP charges. It is interesting to note that the trial court noted the admission of the DW2 Sh. Ram Singh in its cross-examination conducted on 9.10.2002 that the entire load of 239.7 KW if it was fixed on the DESU line/cable, then, the cable will burst i.e it was an inconceivable position that the entire load of 239.7 KW could have ever run on the DESU cable which supplied electricity to the premises of the respondent/plaintiff. This aspect is indeed material and is dealt with hereinafter.

6. The first appellate court by the impugned judgment has allowed the appeal by holding that there were two separate lines of production

machineries and they were fed by the separate electricity lines, one line being the line of DESU having for its standby supply a generator of 125 KVA and other line being the line connected to the generator of 125 KVA with a standby generator of 75 KVA, and which latter line with its connected machineries cannot be said to be a connected load on the DVB connection/line.

7. I may at this stage note that it is an admitted position that when inspection was conducted by the officials of the DVB on 25.3.1997, this insertion report itself Ex.PW1/DX1 notes that there are total of three diesel generator sets which were found at the site. Two generator sets were of 125 KVA capacity and one generator set was of 75 KVA capacity. Also the witness of the respondent/plaintiff PW1 Sh. Umesh Dhupar has filed and proved on record the photographs and negatives showing separate lines and which though are marked as A and B, but, really they are exhibited documents because they are the original photographs as also the original negatives with respect to the photographs.

8. There are other aspects dealt with in this case by the courts below of re-inspection having applied for by the respondent/plaintiff, as to whether respondent/plaintiff had proper hearing before the authority giving hearing, but, these aspects would not be relevant once it is found that in fact there was no connected load of 239.7 KW on 25.3.1997 at the premises of the respondent/plaintiff on the DVB/DESU line because the DVB/DESU line had

only connected load/machineries upto 95 KW whereas the other set of machineries were fixed on another line having as the source of supply one DG set of 125 KVA and a standby DG set of 75 KVA.

9(i) On behalf of the respondent/plaintiff, two witnesses were examined. PW1 is Mr. Umesh Dhupar and who was duly authorized by the resolutions of the respondent-company Ex.PW1/A and Ex.PW1/B. This witness has deposed with respect to the two sets of production lines in the factory, one line being connected with the line of DVB/DESU and the other line with an alternative arrangement of supply by a 125 KVA set with a standby generator of 75 KVA capacity. For the DVB line there was a 125 KVA set as an alternative in case there was any break down or lack of power supply from the DESU line, and which DG set of 125 KVA would be used to continue the production in the factory of the respondent/plaintiff whenever there was failure of power supply. This witness PW1 has clearly deposed that there is no DESU line feeding the alternative set of machinery which was fixed on one DG set of 125 KVA with a standby DG set of 75 KVA. As already stated above, this witness has proved the photographs and the negatives showing separate electricity lines with respect to the machineries connected on the second DG set of 125 KVA and a standby DG set of 75 KVA.

(ii) PW2 who deposed on behalf of the respondent/plaintiff is Sh. Parveen Dutt Paliwal and he similarly deposed with respect to existence of two

sets of production lines in the factory, one connected with the line of DVB/DESU having an alternative arrangement/standby of 125 KVA generator set and which was used in case of power cut and electricity failure, whereas the other set of production line machineries had no connection with the DESU line but had its source of power supply two generator sets, one of 125 KVA and a standby generator set of 75 KVA. This witness specifically deposed that there is no change over line of DVB/DESU on this second generator set of 125 KVA and once there is no change over switch in this connection to connect this with DESU line, the second set of machineries/connected load are not those connected to the supply line of the appellant.

10. On behalf of the appellant/defendant, evidence was led of two witnesses with DW1 Sh. O.P. Sharma proving the report dated 25.3.1997 as Ex.PW1/DX1 being a member of the inspection team. So far as DW1 is concerned, he deposed in his cross-examination that he only signed as a member and he had no knowledge about the load in the premises. The second witness DW2 Sh. Ram Singh who was also a member of the inspection team, deposed in detail with respect to the inspection stating that inspection was conducted in the presence of the owner of the respondent/plaintiff company. DW2, has admitted that at the time of inspection the cable of the DVB/DESU was of the size of 3.5X150 mm square and which cable would burst if the respondent/plaintiff had connected a load of 239.7KW on this cable i.e it is

impossible to have a connected load of 239.7 KW on the cable size of 3.5X150 mm square.

11. In my opinion, the first appellate court has rightly concluded that there could not be connected load of 239.7 KW in the premises of the respondent/plaintiff on 25.3.1997. The following reasons persuade me to uphold the impugned judgment:-

(i) Admittedly three generator sets, two of 125 KVA capacity and one of 75KVA, were found at the premises of the respondent/plaintiff and as noted in the inspection report Ex.PW1/DX1.

(ii) Once the sanctioned load is 95KW, it would be enough even for this sanctioned load for the DESU line that there is one standby generator of 125 KVA, whereas, there were found not one but two generator sets of 125 KVA with another set of 75KVA and which can only be if one generator set of 125 KVA is used as a standby for the DVB/DESU line in case of power failure and the other generator set of 125 KVA with the standby of 75KVA DG set was used for those separate set of machineries which had a separate feeding line without any change over switch to connect the same to the DVB/DESU electricity cable.

(iii) If on the cable size of 3.5X150 mm square which was fixed by appellant in the premises of respondent/plaintiff load of 239.7 KW is

connected, then this cable will burst as admitted by the DW2 in his cross-examination, and therefore it is inconceivable that the load of 239.7 KW would be connected for running the same on the DVB/DESU line.

(iv) PW1 had duly proved the photographs and the negatives showing existence of a separate electricity line and which was the separate electricity line was not connected to the DESU supply line and which separate line had as its power source one DG set of 125 KVA and the standby DG set of 75 KVA.

(v) The fact that diesel generator sets were fixed in the premises of the respondent/plaintiff without taking permission of the appellant/defendant will not take away the fact that three diesel generator sets, two of 125 KVA each and one of 75 KVA, were found installed in the premises of the respondent/plaintiff and therefore there were two separate lines giving electricity to the machineries in the factory of the respondent/plaintiff; one line being of 95KW sanctioned load of appellant/defendant and other private line having as its source the second DG set of 125 KVA with standby DG set of 75KVA. I may also note that the appellant/defendant has not filed anything on record showing that as per which legal provision permission is required for installing of DG sets by a consumer, and that what would be the consequences in law if no permission is taken for installing of DG sets but yet DG sets are fixed/installed as a source of supply. Be that as it may, three DG sets in any case were duly found installed and existing in the premises of the

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respondent/plaintiff and thus the entire 'connected load' of 239.7 KW cannot be connected to the supply line of the appellant.

12. In view of the above, I am of the opinion that inspection dated 25.3.1997 conducted by the officials of the appellant in the premises of the respondent/plaintiff in which the connected load was stated to be 239.7 KW against the DESU line is a totally false and unacceptable report, and appellant has been rightly restrained by the first appellate court from acting upon the same and by giving the relief of restraining the appellant from charging LIP charges upon the respondent/plaintiff on the basis of inspection dated 25.3.1997.

13. While admitting this appeal on 29.1.2014, the following substantial question of law was framed:-

“Whether, the findings of the first appellate court being without any material, documents or evidence available on record is legal and valid?”

14. In view of the aforesaid discussion, the abovesaid substantial question of law is answered in favour of the respondent/plaintiff and against the appellant/defendant by holding that the first appellate court has rightly arrived at a conclusion that the respondent/plaintiff cannot be fastened with the LIP charges on the basis of the inspection dated 25.3.1997 and the first appellate court has rightly held that there could not have been a connected load of 239.7KW on the line of DVB because there were two separate lines having

two separate sources of power i.e one DESU line with the sanctioned load of 95KW having a source of supply as the main source of supply from DVB/DESU and the second line having a source of supply having DG set of 125 KVA and the standby set of 75 KVA.

15. In view of the above, there is no merit in this second appeal and the same is therefore dismissed, leaving the parties to bear their own costs.

AUGUST 26, 2016
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VALMIKI J. MEHTA, J

