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

+ **W.P.(C) 6026/2007**

ASHOK KUMAR

..... Petitioner

Through Mr.Fanish K.Jain, Advocate.

versus

B.S.E.S RAJDHANI POWER LTD

..... Respondent

Through Mr.Deepak Pathak, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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09.09.2016

Present writ petition has been filed with the following prayers:-

1.) A writ, order or direction in the nature of a writ of mandamus, thereby declaring the act of the officials of the Respondent as illegal and malafide in preparing the inspection report dated 03.10.2006 and 04.10.2006.

2.) A writ, order or direction in the nature of a writ of mandamus, thereby quashing the speaking order dated 23.7.2007 against the electricity connecting bearing K.No.2630J4520533 and K.No.2630J4570650 both installed Sweet Shop at Shops P.No.35 Ashok Mohalla, Nagloi, New Delhi-110 041.

3.) A writ or direction in the nature of a writ of mandamus, thereby quashing the bill for a sum of Rs.10,06,102/- against electricity connecting bearing K.No.2630J4520533 and K.No.2630J4570650 both installed Sweet Shop at Shops P.No.35 Ashok Mohalla, Nagloi, New Delhi-110 041.

4.) Any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of

the case, also be passed in favour of petitioner in the interest of justice.”

A perusal of the file reveals that it is the case of the respondent that the petitioner has indulged in fraudulent and dishonest abstraction of energy. 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 aforesaid 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.”

Accordingly, this Court is of the view that the petitioner has an alternative effective remedy to challenge the impugned speaking order and the impugned bills.

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 six weeks. In the interest of justice, it is directed that the time spent in prosecuting the present petition would not be taken into account while calculating the period of limitation for the new proceeding to be filed by the petitioner before the Special Court.

Learned counsel for the respondent fairly states that the respondent would not take any coercive action against the petitioner with regard to the impugned bills for a period of six weeks. The aforesaid statement made by learned counsel for respondent is accepted by this Court and the respondent-BSES is held by the same.

Needless to say, all rights and contentions of both the parties are left open and the Special Court shall decide the matter finally without being influenced by any observation made by this Court.

However, it is clarified that in the event, the alternative proceeding is not filed within a period of six weeks, the interim protection shall stand vacated.

MANMOHAN, J

SEPTEMBER 09, 2016
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