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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5316/2017 & CM APPLs. 22526-22527/2017

ABDUL GAFAR

..... Petitioner

Through

Mr. Mahendra Singh, Advocate

versus

TATA POWER DELHI DISTRIBUTION LTD. Respondent

Through

Mr. Arav Kapoor, Advocate

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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28.06.2017

The present writ petition has been filed under Articles 226 and 227 of the Constitution challenging the impugned speaking order and impugned bill dated 24th May, 2017.

A perusal of the files reveals that it is the case of the respondent that petitioners have indulged in dishonest abstractions 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.”

Consequently, present writ petition and applications are 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 respondent fairly states that for a period of three weeks the impugned speaking order and the impugned bill shall not be executed/enforced.

The aforesaid statement made by learned counsel for respondent is accepted by this Court and respondent is held bound by the same.

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

Order dasti under the signature of the Court Master.

MANMOHAN, J
(Vacation Judge)

JUNE 28, 2017
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