

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

+ **RFA No. 1007/2018**

% ***14th December, 2018***

MADAN GOPAL Appellant

Through: Mr. Deepak Agarwal, Mr.
Nishant Prateek, Mr. Rishabh
Kumar Mr. Akash Gupta and
Mr. Abhay Tayal, Advocates
(9999922423)

versus

BSES RAJDHANI POWER LTD. Respondent

Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 31.08.2018 by which the trial court has dismissed the suit filed by the appellant/plaintiff for quashing of the inspection report dated 17.05.2006 and consequently the electricity bill raised against the appellant/plaintiff for a sum of Rs. 1,19,156/- on account of fraudulent abstraction of energy.

2. The facts of the case are that on 17.05.2006, an inspection was conducted at the premises of the appellant/plaintiff where the subject electricity connection was installed at Shop No. B-25, Sector-F and G, LSC, Shivaji Enclave, New Delhi. As per the Inspection Report dated 17.05.2006, it was found that appellant/plaintiff was indulging in fraudulently abstracting of energy because the polycarbonate meter body upper and base cover of single-phase electro mechanical meter were found tampered and in open condition through which foreign material could be inserted to manipulate the recorded consumption. Scratch marks were also found on the disc and dial of the meter. The connected load as found on 17.05.2006 by the inspecting team was 5.173 KW as against the sanctioned load of 3 KW. The appellant/plaintiff was in the business of supplying cold water to the trolleys, and by these trolleys, commercial sale of water took place to an individual. The inspection report containing the load report, meter report and inspection report were said to be prepared at the site in the presence of the representative of the appellant/plaintiff. Photographs were also taken as also videography done by M/s Arora Photo Studio. The respondent/defendant issued a Show Cause Notice

dated 17.05.2006 and the appellant/plaintiff attended the personal hearing on 05.06.2006. The Assessing Officer after giving a personal hearing passed his Order dated 17.08.2006 holding the appellant/plaintiff guilty of fraudulent abstraction of energy and hence the DAE Bill of Rs. 1,19,156/- was held to be payable by the appellant/plaintiff.

3. In the suit, issues were framed and parties led evidence, and these aspects are recorded in paras 5 to 8 of the impugned judgment, and which paras read as under:

05. From pleadings of parties, following issues were framed: -

- i. Whether the suit of the plaintiff is not maintainable in view of Section 145 of Electricity Act, 2003? OPD
- ii. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
- iii. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
- iv. Relief.

06. To prove his case, the plaintiff tendered his evidence by way of affidavit and examined himself as PW-01. He relied upon following documents:

Sl. No	No. of Exhibits	Details of Documents
1	Ex. PW1/1	Bill for October 2006 for Rs. 3750
2	Ex. PW1/1A	Receipt
3	Ex. PW1/2	Bill for Rs. 16050/- for the month of

		September 2006
4	Ex. PW1/3	bill for Rs. 1,19,156/-
5	Ex. PW1/4	bill for Rs. 6320/- for the month of October, 2005
6	Ex. PW1/5	Bill for Rs. 13750/- for the month of September, 2005
7	Ex. PW1/6	Bill of Rs. 532/- for the month of June, 2005
8	EX. PW1/7	Bill for Rs. 1940 for the month of April, 2005
9	Ex. PW1/8	Bill for Rs. 1930/- for the month of February, 2006
10	Ex. PW1/9	Ex. PW1/9 Speaking Order dated 17.08.2006

07. On the other hand, the defendant got examined Sh. Nishi Kant Gupta as DW-01 and Sh. Sanjeev Kumar as DW2. DW1-Sh. Nishi Kant Gupta relied upon following documents:

Sl. No.	No. of Exhibits	Details of Documents
1	Mark-A	Photocopy of reading details
2	Mark-B	Photocopy of Speaking Order dated 17.08.2006
3	Mark-C	Photocopy of DAE bill

08. DW-02-Sh. Sanjeev Kumar relied upon following documents:

Sl. No.	No. of Exhibits	Details of Documents
1	Mark-A	Photocopy of Inspection Report
2	Mark-B	Photocopy of Load Report
3	Mark-C	Photocopy of Meter details report

4. The trial court has held that the suit of the appellant/plaintiff had to be dismissed because the appellant/plaintiff

was found to supply cold water to trolleys, not only in the summer months, but throughout the twelve-month period inasmuch as Municipal Corporation of Delhi (*hereinafter* 'MCD') License of the appellant/plaintiff was not only for summer months but was for the entire year of 12 months. The appellant/plaintiff, besides supplying cold water to water trolleys, also owned 10 water trolleys. In one trolley, about 200-250 liters of cold water was supplied and the appellant/plaintiff for this purpose had installed two cooling plants at the roof of his shop. It was not disputed that the sanctioned load was only 3 KW but the connected load as found at the site on the date of inspection being 17.05.2006 was found to be of 5.173 KW.

5. The trial court has further observed with regard to the fact that whereas before the inspection, energy consumption was 300 to 400 Units, but subsequently the consumption went up to around 600 odd Units. The trial court notes that the subsequent bills raised after the conduct of the disputed inspection, for the higher number of Units, was never questioned by the appellant/plaintiff and the appellant/plaintiff quietly paid the amounts, thus showing the consumption of higher number of Units, and the appellant/plaintiff

failed to explain as to how there could be a huge difference of electricity consumption Units before and after the subject inspection. This is observed by the trial court in the following lines of the impugned judgment:

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“It is to note here that during cross-examination, PW-01 admitted that before the inspection, his average consumption was between 300 to 400 units and after the inspection, the consumption increased in the month of August, 2006 to 599 Units (two months) and in the month of October, it was 657 units as per bill Ex.PW1/1 and as per Ex.PW1/2, his consumption was 1297 units from 13.06.2006 to 18.08.2006 and as per PW1/4, the consumption for the month of August to October, 2005 was 1147 units. He admitted that he deposited those bills Ex.PW1/1 and PW1/2 without any objection.

Here, view of the Court is that the plaintiff did not explain as to how there was huge difference of consumption of electricity before the inspection and after the inspection.”

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6. I completely agree with the aforesaid discussion, reasoning and conclusions of the trial court that the appellant/plaintiff was indeed guilty of fraudulent abstraction of energy. One of the best ways to find that whether or not there is theft of electricity so as to find out the normal consumption of Units calculated as per the connected load, and as compared to the consumption of Units during the period in which there was theft of electricity, and on such

comparison in the facts of the present case it was clear that the appellant/plaintiff was guilty of theft of electricity.

7. At this stage, I would also like to reproduce the relevant portion of the speaking order passed by the Assessing Officer on 17.08.2006 against the appellant/plaintiff inasmuch as this para alongwith the Regulation 25 of the 2002 Regulations are sought to be pressed by the appellant/plaintiff to argue that the appellant/plaintiff should not be held guilty of fraudulent abstraction of energy. This relevant portion of the speaking order reads as under:

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“Shri Madan Gopal, user of the connection, attended personal hearing on 05.06.2006 and submitted that meter was installed in December, 2001 and this work of cooling water plant was started in the year 2002. This is a cooling unit which works only during summer period. Unit remain closed from October to March. In the process, there is a tank of 2000 litre which is cooled by the two cooling units. This cooled water is stored in the same tank for the whole day and is sold next day to rehriwalas. He is not aware of the tampering of the meter. Meter is installed inside the shop, which remains closed during winter season. Reading is also not taken during this season as shop remain closed. He used to go and rectify the bills when he opens shop at the start of the summer season.

The case has been examined and found that the meter on which the inspection has been made was installed in the year 2001. The consumption records show the average recorded consumption for the period 12.06.2005 to 17.05.2006 has been 452 units per month. The connection is being used for cooling plant, therefore, considering 30 working days, the assessed consumption works out to 931 units per month. The average recorded consumption therefore, has been only 48.5% of the assessed consumption. Consumer has submitted that the cooling plant works only in the summer

season, therefore, the consumption recorded during the period 14.4.2004 to 23.8.2005 as per available meter reading has been 557 units per month. This shows that the average consumption considering only summer period has been less than the consumption considering summer plus winter period. This shows that the recorded consumption has been inconsistent. Consumer had been manipulating the readings by tampering.

DAE is established under Regulation 25 & 26 of Delhi Electricity Regulatory Commission (Performance Standards-Metering and Billing) Regulations-2002 and Section 135 & 138 of the Electricity Act 2003.

DAE bill is to be raised as per Tariff Schedule, 2005-06 and Regulation 26 of Metering & Billing Regulations of Delhi Electricity Regulatory Commission (Performance Standards-Metering & Billing) Regulations-2002.”

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8(i). The Ld. Counsel for the appellant/plaintiff sought to argue that in the period from 12.06.2005 to 17.05.2006 i.e. approximately one year prior to the date of inspection, the Units consumed were only 452 Units and the Assessing Officer has wrongly taken 30 working days consumption of 931 Units per month inasmuch as it is argued on behalf of the appellant/plaintiff that Saturdays and Sundays are a holiday.

8(ii). I cannot agree with this argument urged on behalf of the appellant/plaintiff because surely it is not as if that people do not drink water on Saturdays and Sundays from trolleys. No doubt where theft is alleged, the Units of theft have to be calculated as per the formulae

fixed under the Rules and Regulations, however, the Assessing Officer has noted that when the actual consumption during the period of one year prior to the theft is taken as 452 Units per month but when the actual load at site is taken, as found on the date of inspection, and calculation process done on that basis, the Units found to be consumed in the period prior to the subject inspection came to only 48.5% of the assessed consumption calculated on connected load as found on the inspection dated 17.05.2006. Once that is so, I do not find any illegality whatsoever either in the speaking Order dated 17.08.2006 or in the impugned judgment because after all, the covers of the meter were found tampered with at the site whereby the foreign material could be inserted to manipulate the meter readings. Also, scratches were found on the disc and dial, and the relevant photographs and videography was done when the inspection was carried out at site on 17.05.2006. Once there are photographs and videography taken at the site, the factum with respect to the fraudulent abstraction of energy having taken place by the appellant/plaintiff is proved. I reject the argument urged on behalf of the appellant/plaintiff that there had to be a lab report before a conclusion could be arrived at that the meter disc and dial had scratches.

10. In view of the aforesaid discussion, there is no merit in the appeal and the same is hereby dismissed.

DECEMBER 14, 2018/ib

VALMIKI J. MEHTA, J

