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

% ***Decided on: 14.09.2023***

+ W.P.(C) 9513/2017 & CM APPL. 38654/2017
NEW DELHI MUNICIPAL COUNCIL Petitioner
Through: Mr. Nirvikar Verma, ASC for
NDMC.

versus

TEWARI HOUSE HOSPITALITY PVT. LTD. Respondent
Through: Mr. Deepak Vohra, Mr. Nishant
Gupta & Mr. Akash Tiwari,
Advocates. [M:-9810538000]

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The petitioner – New Delhi Municipal Council [“NDMC”] has filed this petition under Article 226 of the Constitution of India assailing an order dated 02.05.2017 passed by the Electricity Consumer Grievances Redressal Forum, New Delhi [“the Forum”] on an application of the respondent herein.

2. The respondent is an electricity consumer of NDMC in respect of its premises [F-60, Malhotra Building, Connaught Place, New Delhi - 110001]. The respondent was granted a sanctioned load of 74.960 KW. The contention of NDMC is that an inspection was conducted on 15.07.2015, when it was found that the respondent was using electricity to the extent of 112.537 KW. NDMC therefore issued a show cause notice dated 28.07.2015 to the respondent, contending that unauthorised overloading of electric connection amounted to “*unauthorised use of electricity*” within the meaning of Section 126(6) of the Electricity Act,



2003 [“the Act”]. NDMC, therefore, purported to charge misuse charges as recoverable under a formula given in Annexure XIII under the Delhi Electricity Regulatory Commission [“DERC”] Regulations for the period of six months prior to the date of inspection. The respondent replied to the show cause notice on 27.08.2015, after the lapse of the time granted in terms of the guidelines of the DERC. Misuse charges were therefore levied upon the respondent with effect from 15.01.2015 (i.e. six months prior to the date of inspection).

3. In terms of the request of the respondent, a second inspection was undertaken on 04.01.2016, when the connected load was found to be less than the sanctioned load. Misuse charges were therefore withdrawn to a limited extent with effect from 27.08.2015. However, NDMC continued to contend that the respondent was liable to make payment of misuse charges for the period 15.01.2015 to 26.08.2015.

4. The respondent approached the Forum against the aforesaid demand. By way of the impugned order dated 02.05.2017, the Forum adjudicated the complaint in favour of the respondent, as far as interpretation of Section 126(6) of the Act is concerned. The findings of the Forum are in the following terms:-

“In view of the above, the Forum is of the opinion that over loading does not come under the definition of unauthorized use of electricity as defined in the Electricity Act 2003. The matter is to be dealt with in accordance with NDMC Tariff Order for 2015-16, note No.1 superscript which stipulate surcharge of 30% on the fixed charges corresponding to excess load in KW/KVA for the specified billing cycle/billing period. As already brought out above, the information on month wise/period wise KW and KVA has been supplied by cycle/billing period. As already brought out above, the information on month wise/period wise KW and KVA has been supplied by the respondent vide their letter dated 18.04.17, and the



same has not been disputed by the complainant As such, this information may be used for computation. As per this information the complainant exceeded the sanctioned load for the months of April 2015 to October 2015. Therefore, month wise/period wise surcharge of 30% of fixed charges corresponding to excess load in KW/KVA for the specified billing cycle/billing period is payable by the complainant at the rates as per NDMC tariff order for 2015-16. Respondent is directed to revise the bill of the complainant accordingly giving cognizance to the payments already received and furnish the same to the complainant and the forum within 15 days.”¹

5. In the present writ petition, NDMC has challenged the aforesaid order. The only question urged by Mr. Nirvikar Verma, learned Additional Standing Counsel for NDMC, is that the finding of the Forum with regard to the scope of Section 126(6) of the Act is incorrect. It may be mentioned that the jurisdiction of the Forum was also challenged in the writ petition [particularly ground No. 2], but this challenge was not pressed, as recorded in the order dated 16.02.2018.

6. I have heard Mr. Verma and Mr. Deepak Vohra, learned counsel for the respondent.

7. Section 126 of the Act provides for an assessment on account of unauthorised use of electricity. The section reads as follows:-

“126. Assessment – (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the

¹ Emphasis supplied.



provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under the section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.—For the purposes of this section,—

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity—

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person

or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorised.”

8. The issue of whether this section includes cases of consumption in excess of maximum of the contracted load was considered by the Supreme Court in *Southern Electricity Supply Co. of Orissa Ltd. vs. Sri Seetaram Rice Mill*². A specific question to that effect was framed in the

² (2012) 2 SCC 108.



said judgment³. Contrasting the provisions of Sections 126 and 135 of the Act (which deals with theft of electricity), the Court has adopted a wider meaning of the term “*unauthorised use of electricity*” under Section 126 of the Act. It has been specifically held that this would include excessive use of electricity by the consumer, beyond the sanctioned load:-

“29* [Ed. : Para 29 corrected vide Official Corrigendum No. F.3/Ed.B.J./2012 dated 26-3-2012.]. Thus, it would be clear that the expression “*unauthorised use of electricity*” under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. **A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act.** On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.

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61. Unauthorised use of electricity cannot be restricted to the stated clauses under the Explanation but has to be given a wider meaning so as to cover cases of violation of the terms and conditions of supply and the Regulations and provisions of the 2003 Act governing such supply. “Unauthorised use of electricity” itself is an expression which would, on its plain reading, take within its scope all the misuse of the electricity or even malpractices adopted while using electricity. It is difficult to restrict this expression and limit its application by the categories stated in the Explanation. It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the Regulations framed and the provisions of the 2003 Act.”⁴

9. The Court summarised its conclusions in this regard as follows⁵:-

³ *Ibid.*; paragraph 12.

⁴ Emphasis supplied.

⁵ *Supra* (note 2); paragraph 87(1) and (2).



“87. Having dealt with and answered determinatively the questions framed in the judgment, we consider it necessary to precisely record the conclusions of our judgment which are as follows:

1. **Wherever the consumer commits the breach of the terms of the Agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be “in blame and under liability” within the ambit and scope of Section 126 of the 2003 Act.**

2. The expression “unauthorised use of electricity means” as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. **The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act,** besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.

3. In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126(2) is not appealable.

4. Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India.

5. The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25-7-2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the assessing officer relating to passing of an order of assessment and determining the factual controversy of the case.

6. The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the assessing authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law.”⁶

10. Mr. Verma also relies upon an order of this Court dated 19.02.2015 in W.P.(C) 4219/2013 [M/s 6 Aurangzeb Road Residents Welfare

⁶ Emphasis supplied.



Association (Regd.) vs. NDMC & Ors.], which notes that NDMC is entitled to charge misuse charges if the load on the connection in question is higher than the sanctioned load.

11. In view of the conclusions of the Supreme Court in the aforesaid judgment, the Forum has clearly erred in coming to the conclusion that overloading does not come within the definition of “*unauthorised use of electricity*” under the Act. The impugned decision of the Forum dated 02.05.2017 is therefore set aside.

12. As to the future course of action, it is noted that NDMC’s claim relates to the year 2015. However, Mr. Vohra submits that no provisional assessment order was served upon the respondent under Section 126(2) of the Act, and the procedure of filing of objections and hearing under Section 126 was also not followed. This factual position is undisputed. As NDMC purports to invoke the provision of Section 126, it is duty-bound to follow the procedure of the said provision. Therefore, instead of remanding the matter to the Forum at this stage, the writ petition is disposed of with the direction that NDMC may issue a provisional assessment order under Section 126(1) of the Act and thereafter follow the scheme of Section 126 to determine the liability of the respondent, if any. The rights and contentions of the parties, to this extent, remain reserved.

13. The writ petition, alongwith pending application, stands disposed of.

PRATEEK JALAN, J

SEPTEMBER 14, 2023/‘pv’/