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

+ **W.P.(C) 14161/2009 & CM APPL. 16328/2009**

BSES RAJDHANI POWER LTD

.....Petitioner

Through: Mr.Sharique Hussain and Mr.Raghav
Awasthi, Advs.

versus

MEGA CALIBRE ENTERPRISES (P) LTD AND ANR

.....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **23.07.2024**

1. The petitioner is essentially aggrieved by the order dated 19.12.2009, passed by the Additional District Magistrate, District South, MB Road, Saket, New Delhi (hereinafter 'ADM'), wherein, while exercising powers under Section 127 of the Electricity Act, 2003 (hereinafter 'Act of 2003'), the said authority has set aside the order passed by the Assessing Officer (hereinafter 'AO').

2. As per the facts of the present case, the respondent was allegedly found to be misusing the sanctioned electricity connection during inspection inasmuch as the connection granted for industrial purposes was being used for non-domestic/commercial purposes. In pursuance of the same, a show cause notice dated 04.06.2007 was served and after extending an opportunity of hearing to the respondent, an assessment order dated 22.05.2008 was passed. It was purportedly found therein that the activities



carried out by the respondent in its premises were not covered under the industrial category in terms of the Act of 2003 and the DERC Regulations.

3. Aggrieved by the order of the AO, the respondent filed an appeal before the aforesaid appellate authority under Section 127 of the Act, which came to be allowed *vide* order dated 19.12.2009 and the decision of the AO was quashed on account of being passed without any application of mind.

4. Mr.Sharique Hussain, learned counsel appearing for the petitioner submitted that his solitary grievance hinges on the non-adherence of the provisions envisaged under Section 416 of the Delhi Municipal Corporation Act, 1957 (hereinafter 'DMC Act'). He further submitted that in the instant petition, the respondent has not been able to satisfy compliance of Section 416 of the DMC Act before the ADM, which mandatorily requires a certificate issued under the said provision.

5. According to learned counsel, the respondent was initially engaged in the business of printing credit card and bank statement, which is purely commercial task and the same cannot be construed to be industrial in nature. It is his contention that since the activities performed by the respondent is more than mere providing of services, therefore, the respondent ought to have possessed a certificate in terms of Section 416 of the DMC Act.

6. I have considered the submissions made by learned counsel for the petitioner and perused the material available on record.

7. Before dealing with the controversy at hand, it is apposite to refer to Section 416 of the DMC Act which reads as under:-

"416. Factory, etc., not to be established without permission of the Commissioner

(1) No person shall, without the previous permission in writing of the Commissioner, establish in any premises, or materially alter, enlarge or extend, any factory, workshop or trade premises in which



it is intended to employ steam, electricity, water or other mechanical power.

- (2) *The Commissioner may refuse to give such permission, if he is of the opinion that the establishment, alteration, enlargement or extension of such factory, workshop or trade premises, in the proposed position would be objectionable by reason of the density of the population in the neighbourhood thereof, or would be a nuisance to the inhabitants of the neighbourhood.*

8. The concerned authority i.e., ADM, while considering the submissions of the respondent, has held as under:-

"The Appellant, in order to show that it is an "industry" has filed licenses/permits under Registration of factories Act, 1948, Sales Tax Department (VAT), Employees Provident Fund & Miscellaneous Provision Acts, 1952, Pollution Control committee and also filled a letter dated 16.10.07 issued by Ministry of Commerce & Industry where it is mentioned that the 'printing Industry' has been classified in chapter 49 of the ITC (HS) classification and is covered by S.No. 38 (5), schedule 1 of the industries (Development & regulation) Act, 1951 & qualities as in Industrial undertaking. Taking into consideration these licenses/permits and letter dated 16.10.07 issued by Ministry of Commerce & Industry, the fact that the Appellant is an industry cannot be denied. In my view non compliance of Section 416 of DMC Act."

9. A bare perusal of the impugned order would indicate that the ADM has categorically recorded that the respondent had been functioning since the year 2000 and it already had the electricity connection in the premises in question. In order to satisfy the ADM about the fact that the activity in question falls under the definition of 'industry', the respondent appears to have produced the following documents:-

- i. Permissions granted under Registration of Factories Act, 1948, Sales Tax Department (VAT), Employees Provident Fund & Miscellaneous Provision Acts, 1952, Pollution Control Committee
- ii. A letter dated 16.10.07 issued by the Ministry of Commerce &



Industry which finds a mention that the 'Printing Industry' has been classified in Chapter 49 of the ITC (HS) classification and is covered by S. No. 38 (5), Schedule 1 of the Industries (Development & Regulation), Act, 1951.

10. It is evidently discernible from the impugned order that based upon the aforementioned documents, the ADM was satisfied that undoubtedly, the respondent fell in the category of 'industry' and mere absence of a certificate under Section 416 of the DMC Act would not deprive the respondent from the said status.

11. The ADM, therefore, has held that any non-compliance of Section 416 of the DMC Act will have to be taken care of by the concerned Corporation and the non-compliance of the same cannot be questioned in proceedings under the Act of 2003.

12. Having given a thoughtful consideration to the material available on record and in view of the facts and situation in the instant case, the Court is not inclined to interfere with the findings of fact arrived at by the authority concerned. The ADM has rightly opined that the Act of 2003 and DMC Act both operate in different spheres. Undeniably, any violation of the provisions of DMC Act would entitle the concerned authority to take necessary action against the person concerned.

13. At this stage, it is apposite to refer to the decision rendered by the Constitution Bench of the Supreme Court in the case of ***G. Veerappa Pillai v. Raman & Raman Ltd.***⁴, wherein, it was held that the writ jurisdiction has to be invoked in grave cases where the subordinate authorities have acted wholly without jurisdiction or in excess of the jurisdiction, infraction of



principles of natural justice and error apparent on the face of record. The relevant paragraph of the said case reads as under:-

“26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.”

14. In the case at hand, the impugned order apparently does not suffer from any patent illegality rather the same has been passed after thoroughly appreciating various documents which aid the case of the respondent. It is also not the case of the petitioner that on the basis of any action taken by the Corporation, the petitioner is incapacitated to extend the benefit as has been directed by the concerned authority. Thus, the Court does not deem it appropriate to interdict with the order of the ADM in exercise of extraordinary writ jurisdiction.

15. The instant petition stands dismissed and is disposed of along with pending application.

PURUSHAINDR KUMAR KAURAV, J

JULY 23, 2024/MJ

⁴ 1952 SCC OnLine SC 25