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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 24th March, 2025
+ **LPA 1055/2006 & CM APPL. 7361/2006**
M/S S.D.TECHNICAL SERVICES P.LAppellant
Through: None.

versus

D.E.S.U. (D.V.B.) & ORS.Respondents
Through: Mr. Meet Malhotra, Senior Advocate
with Mr. Anupam Varma, Mr. Nikhil
Sharma and Ms. Simran Kohli,
Advocates for R-4.

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+ **LPA 1608/2006 & CM APPL. 9266/2006**
KANWAL KISHORE MANCHANDAAppellant
Through: None.

versus

M.C.D & ORSRespondents
Through: Mr. Manish Srivastava and Mr. Yash
Srivastava, Advocates for R-BSES-
RPL

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. Prior to lunch, the Appellant's Counsel had sought an adjournment on the ground that he has been recently engaged.
3. Considering this is a Letters Patent Appeal of 2006, the Court had asked the Counsels to appear in the post lunch session.



4. In the post lunch session, Mr. Meet Malhotra, Id. Senior Counsel appearing for the Delhi Electric Supply Undertaking ('*DESU*') now Bombay Suburban Electric Supply ('*BSES*') submits that any dues prior to 2002 cannot be enforced by BSES. Hence the appeal can be allowed, due to the change in circumstances.

5. Heard. None appears for the Appellants. These are two appeals filed under Clause 10 of the Letters Patent, which have been filed assailing the impugned order dated 17th April, 2006 passed by the Id. Single Judge.

6. The facts that can be gleaned from the said judgment are that the Appellant- M/s S.D. Technical Services Pvt. Ltd., entered into a license agreement with M/s. Ram Prakash Kanwal Kishore, which is stated to be a partnership firm. The same conducted its business at the premises, bearing no. B-87, Mayapuri Industrial Area Phase-I, New Delhi (*hereinafter, the 'premises'*). The said partnership firm was being run in one part of the premises and the remaining portion was given to M/s S.D. Technical Services Pvt. Ltd. The two firms had a common electricity connection and disputes arose with respect to their respective electricity charges. Due to non-clearance of electricity bills, the electricity supply for the premises was disconnected on 04th September, 1991 by the Respondent No. 1. Thereafter, on 4th October, 1991 the Appellant discharged part liability by paying a sum of Rs. 85,000/- to the Respondent No. 1 and subsequently, the electricity was restored. However, due to the remaining unpaid dues not being paid to the Respondent No. 1, it again disconnected their electricity supply on 3rd December, 1991.

7. In the meantime, M/s S.D. Technical Services Pvt. Ltd. approached the Court by way of a W.P.(C) 121/1992 challenging the electricity disconnection.



8. An interim order was granted to restore the electricity on 22nd May, 1992 subject to the payment of Rs.44,000/- by M/s S.D. Technical Services Pvt. Ltd. to Respondent No. 1. The security for the remaining amount, which was to be furnished, was repeatedly rejected by the Registrar and finally, the DESU disconnected the electricity supply yet again.

9. Parallely, in the suit, the dispute between the Respondents, Arora family and M/s S.D. Technical Services Pvt. Ltd. continued. The firm, M/s S.D. Technical Services Pvt. Ltd. was being fastened with the liability of electricity.

10. In the meantime, certain partition disputes between the parties also arose. Suit No. 3726/1990 was filed seeking Partition between the family members of Mr. Arora.

11. The Arora family then filed a writ petition bearing ***W.P.(C) 1732/1997*** *inter alia* seeking a separate electricity connection. Further, vide the said petition, Mr. Kamal Kishore prayed that the same may be provided without clearance of dues of over Rs. 21,00,000/-. The Arora family had *inter se* disputes, which then worsened the situation, insofar as the electricity dues were concerned. In this background, the Id. Single Judge passed the impugned order dated 17th April, 2006, directing as under:-

“86. I accordingly hold that M/s. S.D. Technical Services Pvt. Ltd. is liable to clear all outstanding electricity dues pertaining to the connection in question qua which a grievance has been raised in WP(C) No.121/1992.

87. On the issue whether a Lok Adalat can return a reference unanswered, needless to state when reference was made, Lok Adalat functioning was not a statutory Lok Adalat. Even otherwise where a dispute cannot be resolved by the Lok Adalat it would have no option but to return the reference unanswered.



88. *The 4 writ petitions stand disposed of as under :-*

- (A) *WP(C) No. 121/1992 is dismissed holding that in addition to the registered consumer and the successor in interest, writ petitioner, M/s. S.D> Technical Services Pvt. Ltd. is liable to clear the electricity dues as per bills raised pursuant to the inspection dated 28.1.1991 in respect of premises bearing municipal no. B-87 Mayapuri Industrial Area, Phase-I, New Delhi.*
- (B) *WP(C) No. 1732/1997 is dismissed.*
- (C) *WP(C) 3728/1998 is dismissed.*
- (D) *WP(C) 2883/2001 is dismissed*
89. *No costs.”*

12. Thus, only in one of the writ petitions, *i.e., W.P.(C) 121/1992*, partial relief was granted. The remaining writ petitions being, *W.P.(C) 1732/1997*, *W.P.(C) 3728/1998* and *W.P.(C) 2883/2001* were dismissed by the Id. Single Judge. It is this judgment which is under challenge.

13. The basic issue in this case is with respect to whether the Appellants are liable to pay the electricity dues and if so in what proportion.

14. Mr. Meet Malhotra, Id. Senior Counsel has taken the Court through the order dated 16th May, 2008 passed by the GNCTD, after the disbanding of DESU /DVB was disbanded and creation of BSES. In terms of the said order, the Hon’ble Lt. Governor at the relevant time bearing in mind, the public interest, had directed as under:-

“In exercise of the powers conferred by section 108 of the Electricity Act, 2003 (36 of 2003) read with Govt. of India, Ministry of Home Affairs Notification number U-11030/2/2003/UTL dated the 20th February, 2004, the Lt. Governor of the National Capital Territory of Delhi, in view of policy involving public interest, hereby gives the following directions to the Delhi Electricity



Regulatory Commission:

1. *The Delhi Electricity Regulatory Commission, shall ,*
 - (1) *direct the Discoms to write off the principal dues against sale of power during DESU/DVB period in respect of the private electricity consumers and to waive off their late payment surcharge as well pertaining to that period only, **except the cases under litigation at any forum and at any level.***
 - (2) *direct the Discoms not to raise any bill on the private electricity consumers pertaining to sale of power in DESU/ DVB period **excluding the cases under litigation at any forum and at any level.***
 - (3) *direct the Discoms to implement the above decisions (1) & (2) from the next immediate billing cycle.”*

15. As can be seen from the above, all principal dues were to be written off during the DESU/ DVB period with respect to private electricity consumers, including late payment surcharge. However, the cases which were under litigation at any forum were exempt from this benefit. This exception was then considered by a Id. Single Judge of this Court in **W.P.(C) 8568/2009** and **13046/2009** wherein *vide* judgment dated 02nd December, 2010, it was held that the benefit as provided in the order dated 16th May, 2008 would be extendable to other persons who may have filed litigations as well. The operative portion of the said judgment read as under:-

*“20.Reverting to the instant case, the object of the impugned Notification is also the reduction of litigation and acknowledgement of the fact that the Respondent was unable to recover arrears of stale claims. Neither of the above objects have been achieved by excluding the benefit of the Notification dated 16th/19th May 2008 to the cases where the demand for arrears of the electricity dues is under challenge in courts. Applying the ratio of the decision in **All India Federation of***



***Tax Practitioners**, it must be held that the exclusion of the consumers who have challenged the demand of arrears of electricity dues in courts from the ambit of the benefit of Notification dated 16th/19th May 2008 is discriminatory and violative of Article 14 of the Constitution of India.*

21. Consequently, the portion of Clauses (1) and (2) of the impugned Notification dated 16th/19th May 2008 which excludes “the cases under litigation at any forum and at any level” is struck down as being violative of Article 14 of the Constitution of India. A consequential mandamus is issued to the Respondent to extend the benefit of the impugned Notification dated 16th/19th May 2008 to the two Petitioners and all others who are similarly situated.”

16. In view of the above position, the dues of the Appellants would longer be recoverable. The Id. Single Judge’s judgment was dated prior to the above developments.

17. In this background, the appeals are allowed. All the demands of DESU/ DVB against the Appellants shall stand waived off.

18. These appeals are accordingly, disposed of. All pending applications, if any, stands disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MARCH 24, 2025/v/nd/rks