

CASE NO.:
Appeal (civil) 7817 of 2003

PETITIONER:
U.P. Power Corporation Ltd. & Anr

RESPONDENT:
M/s. Lohia Brass (P) Ltd. & Ors

DATE OF JUDGMENT: 25/07/2006

BENCH:
H.K.SEMA & A.K.MATHUR

JUDGMENT:
J U D G M E N T

W I T H :

Civil Appeal Nos. 7828, 7831, 7829, 7830, 7842, 7827, 7840, 7839, 7837, 7838, 7836, 7835, 7834, 7823, 7826, 7825, 7832, 7833, 7821, 7822, 7854, 7918, 7851, 7850, 7849, 7841, 7853, 7852, 7843, 7847, 7848, 7846, 7845, 7824, 7844, 7820, 7818, 7819, 7859, 7857, 7856, 7855, 7860, 7858, 7861, 7862, 7864, 7863, 7865, 7866, 7867, 7868, 7881, 7880, 7878, 7877, 7876, 7879, 7869, 7870, 7871, 7875, 7874, 7872, 7883, 7885, 7882, 7884, 7886, 7887, 7873, 7888, 7889, 7890, 7892, 7891, 7893, 7894, 7895, 7898, 10078, 10079, 9935-9936 of 2003, C.A.No. 3156 of 2006 @ S.L.P.(c) No.8296 of 2004 & C.A. No.2793 of 2004

A.K.MATHUR, J.

Leave granted in S.L.P. (c) No.8296 of 2004.

All this batch of appeals involves similar questions of law. Therefore, they are disposed of by this common order. At the outset, we may point out that there are conflicting decisions rendered by the Division Bench of the High Court of Allahabad at Allahabad dated 25.5.2001 passed in Civil Miscellaneous Writ Petition No.41013 of 2000 [M/s. India International Exporters (MBD) Ltd. & Anr. vs. State of U.P. & Ors.] and another judgment rendered by the High Court of Allahabad, Bench at Lucknow on 19.3.2001 passed in Writ Petition No.1117 of 2001 with regard to the interpretation of the notification issued on 30.4.1984 and as amended on 21.5.1984.

In order to dispose of this batch of appeals, the facts stated in C.A.No.7817 of 2003 are taken into consideration. The respondents (herein writ petitioners) by writ petition challenged the demand raised by the U. P. Power Corporation through various bills purporting to realize penalty from each of the writ petitioners for violation of peak hour restriction, before the High Court of Allahabad.

State Government of Uttar Pradesh issued a notification under Section 29-B of the Indian Electricity Act, 1910 (hereinafter to be referred to as Act of 1910) known as U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use) Order, 1977 which was published in the official gazette. This order was amended on 30.4.1984, known as U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use) (1st Amendment) Order, 1984 by which Clause 9 of 1977 Order was amended and it was substituted by the following :

" 9(1) Without prejudice to the provisions contained in Section 42 of the Indian Electricity Act, 1910, all Chief Zonal Engineers, Superintending Engineers, Executive Engineers, Assistant Executive Engineers and Assistant Engineers of Uttar Pradesh

State Electricity Board, the Chief Electrical Inspector, all Deputy Electrical Inspectors and all Assistant Electrical Inspectors to the State Government are authorized to disconnect the supply summarily without notice in relation to such installation as are found upon inspection made by them to have contravened the provisions of this Order. The supply shall remain disconnected for the period specified below:

- (a) Contravention first in point of time \026 5 days
- (b) Contravention second in point of time \026 10 days
-) Contravention third in point of time- 20 days
- (d) Contravention fourth in point of time-

permanently

Provided that for the purpose of this clause any contravention prior to May 1, 1984 shall not be taken into account.

(2) In addition to above, such consumers shall be liable to pay the penalty for each contravention as follows:

- (a) Consumers having contracted load upto 100 KVA, at Rs.50 per KVA on their contracted load.
- (b) Consumers having contracted load above 100 KVA and upto 500 KVA at Rs.30 per KVA on their contracted load subject to minimum of Rs. 5, 000.
-) Consumers having contracted load above 500 KVA at the rate of Rs.20 per KVA on their contracted load subject to minimum of Rs.15, 000.

The reconnection shall only be done after payment of penalty and expiry of the above specified disconnection period whichever is later. "

The amended order of 1984 was initially applied from 1.5.1984 to 21.5.1984. The State Government again issued another order known as U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use) (Second Amendment) Order, 1984 on 21. 5.1984 and it was made applicable with effect from 1.5.1984. By this Clause III of the first amendment order was substituted and the same was made applicable with effect from 1.5.1984 and was to remain in force until withdrawn. It is alleged that the said order was not withdrawn by the State Government and is still in force. The Corporation in order to check the malpractice by the consumers installed electronic meters which are computerized and can be downloaded for 35 days which will show the details of consumption including any violation of peak hours restriction in last 35 days. Thereafter, the Board issued a circular on 15.10.1998 to the effect that penalty for peak hours restrictions will be imposed as per the meter reading inspection report. However, it was pointed out by the communication dated 7.4.1999 that for violation of restriction of peak hours on the basis of meter reading inspection report for the first time, one penalty for one month may be imposed on the bill. However, for the second bill and thereafter, the procedure for penalty will remain the same as mentioned in the circular dated 15.10.1998. In this factual matrix, the Division Bench of the Allahabad High Court after reading these two circulars dated 15.10.1998 and 7.4.1999 took the view that in view of the order dated 7.4.1999, the consumer cannot be levied with penalty for each alleged contravention but once only on the basis of alleged meter reading report, meaning thereby that each such report will be treated as one contravention. One meter reading inspection report which stores data for 35 days, shall be treated as one contravention irrespective of the fact that in report number of contraventions might have been made of peak hour restriction but one meter reading inspection report shall be construed as one contravention. Aggrieved against this order dated 25.5.2001 passed by

the Division Bench of the Allahabad High Court in Civil Miscellaneous Writ Petition No.45171 of 2000 the present special leave petition was filed and on 12.9.2003 leave was granted by this Court.

The question before us is limited. Whether one meter reading inspection report which can download 35 days data should be construed as single violation of peak hour restrictions irrespective of fact number of contravention might have been made by consumer during 35 days. In fact, the Division Bench has referred to two circulars dated 15.10.1998 and 7.4.1999. Learned counsel for the appellants submitted that both the circulars have been misinterpreted by the Division Bench. It was never meant that one report shall be constructed to be one contravention only though the consumer might have contravened peak hour restrictions number of times during the 35 days. As against this, learned counsel for the respondents supported the judgment of the Division Bench of the High Court.

However, in order to appreciate the controversy both the circulars dated 15.10.1998 and 7.4.1999 are reproduced as under :

" Uttar Pradesh State Electricity Board

Commercial Division
Shakti Bhawan Extension, Fourth Floor,
14, Ashok Marg, Lucknow.

No.1367/v.sk.(vp)

Dt.15.10.1998.

All Chief Engineers \026Region
All Chief Engineers- Zone
General Manager, KS/LS
U.P. State Electricity Board.

Sub: Regarding non-compliance of restrictions of
Peak Hours.

The letter No.3024-CU-2 dated 3.9.97 issued on the above mentioned subject is hereby cancelled and it is to inform that the Board had installed static Meter at the premises of industrial Units, in which the activities of consumers, related to electric supply, are recorded in M.R.I. In case of violation of electric supply in peak hours, the violation is recorded in the M.R.I. As per section 22-B of Indian Electricity Act, 1910 there is a provision of penalty and electricity disconnection for violation of restrictions of peak hour. Penalty and disconnection is to be on the number of violations. As per section 42 of the Indian Electricity Act, the violation of restrictions is a crime and a criminal case can be initiated for the same.

The disconnection and penalty will be levied for and on all the occasions of occurrence of violation, irrespective of the time of receiving the information. Therefore, whenever MRI computer print is taken, the number of violations by consumer shall be taken to be as many time as indicated in MRI. There will be no relaxation, nor the violations will be considered to be as one violation and will be treated separately. The S.D.O., Junior Engineer and Lineman in whose area these violations have been committed by the consumers, should also be considered to be penalized at the Chief Engineer

level because of their failure to stop these violations. In this regard it is ordered that power cut penalty will be imposed for all point of power cut violations. As far as the question of electricity disconnection is concerned, in the cases where M.R.I. has not been got done in time, the temporary disconnection, on the basis of situation of this case, can be considered. But at least 5 days disconnection penalty will be imposed for the first disobedience. Action be taken on the matter accordingly.

Sd/-
(O.N.Mishra)
Chief Engineer (Commercial)

No.V.SK(VP) even date.
Copy to the following for information and necessary action.

1. All Superintending Engineers, Electricity Distribution Circle, U.P. State Electricity Board.
2. All Executive Engineers, Electricity Distribution Division, U.P. State Electricity Board.

Uttar Pradesh State Electricity Board
(Vanijya Sakandh)
Commercial Division
Shakti Bhawan Extension, Fourth Floor,
14, Ashok Marg, Lucknow.

No.1504/CU-II/ Electronic Static Meter Dt.7.4.1999.

All Chief Engineers (Distribution) Zone
General Manager, Kesa, Kanpur/Lesa, Lucknow
All Chief Engineers(Zone) Superintending Engineer,
State Electricity Distribution Circle, Noida
U.P.State Electricity Board.

In continuation of this office's circular No.49/CU-2/ Electronic Static Meter /73 dated 6.1.99 and No.804/CU-2 Electronic Static Meter /73 dated 25.2.99, on the matter of penalty for violation of restrictions related to peak Hours, the decision has been taken in the meeting of Management Committee of the Board held on 16.3.99 that " For violation of restrictions of peak hours on the basis of M.R.I. report for the first time, one penalty for one month may be imposed in the bill. For second bill and thereafter the procedure of penalty will remain same as mentioned in the circular No.1367-V.SK(V.P.) dated 15.10.98".

Please ensure the action accordingly.

Sd/-
(O.N.Mishra)
Chief Engineer (Commercial)

Endst.No.1504(I) /CU-II/even date. 7.4.99
Copy to the following for information and necessary action.

1. All Superintending Engineers, Electricity Distribution Circle/ City Distribution Circle
2. All Executive Engineers, Electricity Distribution Division/ City Distribution Division

Sd/-
(O.N.Mishra)
Chief Engineer (Commercial)."

A perusal of both these notifications makes it very clear that by communication dated 7.4.1999 the only relief was given for one time and it was not meant to be given relief for all time to come. For violation of restrictions of peak hours on the basis of M.R.I. report for the first time, one penalty for one month may be imposed in the bill. For second bill and thereafter the procedure of penalty will remain same as mentioned in circular dated 15.10.1998. Therefore, according to the circular dated 15.10.1998, whenever M.R.I. computer print is taken, the number of violations by consumer shall be taken to be as many time as indicated in M.R.I. and it was clearly mentioned that there will be no relaxation nor the violations will be considered to be as one violation and will be treated separately. It was also mentioned that the S.D.O., Junior Engineer and Lineman in whose area the violation has been committed by the consumers should be considered to be penalized at the Chief Engineer level because of their failure to stop the violation. The circular also further clarified that whenever M.R.I. has not been got done in time, the temporary disconnection, on the basis of situation of the case can be considered. But at least 5 days disconnection penalty will be imposed for the first disobedience. Therefore, reading of these two circulars makes it very clear that for violation of restrictions of peak hours on the basis of M.R.I. report for the first time, one penalty for one month was to be imposed in the bill. Therefore, by the circular dated 7.4.1999 one time concession was given to the consumers but it was not meant to be for all time to come. Both these circulars clearly contemplate that for each contravention penalty will be levied and not simply because the violations have been recorded in one M.R.I. report, therefore, the same will be considered to be as one violation. Hence, the view taken by the Division Bench of the Allahabad High Court is prima facie not borne out on reading of these circulars. Therefore, we are of opinion, the view taken by the Division Bench of the Allahabad High Court cannot be sustained.

Mr.Suri, learned counsel appearing for the respondents tried to challenge the validity of the circulars and the orders issued from time to time. We asked Mr. Suri whether the validity of these circulars has been challenged in the writ petitions before the High Court or not. We ourselves have gone through each of the appeals and the judgment of the High Court and we found out that in none of the writ petitions the grievance as to the validity of the circulars has been agitated nor was it argued before the High Court. Therefore, the validity of the circulars cannot be questioned before us. It may be relevant to mention here that a similar matter came up before the High Court of Allahabad, Bench at Lucknow and the Division Bench by its order dated 19.3.2001 has considered the similar question and after considering both the circulars observed as follows :

" Subsequently the Circular dated 7th April, 1999 has been issued which says that the Prabandh Samiti of the Parishad has decided on 16th March, 1999 that on the basis of the first Meter Reading Inspection Report, the consumer would be saddled with the penalty for one violation in one month but thereafter on the basis of the MRI the action can be taken for repeated violations as per Circular dated 15th October, 1998."

Therefore, the view taken by the Division Bench of Lucknow Bench of the High Court is correct. It is unfortunate that the Lucknow Bench decided the writ petition on 19.3.2001 and the Allahabad Bench decided the matter on 25.3.2001 yet learned counsel appearing for the

Electricity Board did not bring the aforesaid judgment of the Lucknow Bench to the notice of High Court at Allahabad. Be that as it may, we are of opinion that the view taken by the Division Bench of the High Court at Allahabad is not correct. This judgment dated 25.5.2001 passed by the Division Bench of the High Court at Allahabad has been subsequently followed in rest of the writ petitions. Therefore, all these appeals have been filed by the appellant-Corporation. In view of the above, we are of opinion, the judgment dated 25.5.2001 passed by the Division Bench of High Court at Allahabad cannot be sustained and the same is set aside. Consequently, all the Civil Appeals filed by corporation are allowed and the writ petitions filed by the writ petitioners before the High Court are dismissed. No order as to costs.

Subsequently, the Division Bench of Allahabad High Court has not followed their earlier judgment which was challenged by the Corporation in the above appeals. The Division Bench of the High Court of Allahabad by its order dated 21st August, 2003 dismissed the writ petitions of the consumers and did not give them any relief. Aggrieved against this order, Civil Appeal Nos.9935-9936, 10078 and 10079 of 2003 were filed by the consumers before this Court. As similar matters were pending, therefore, they were also entertained by this Court and tagged with it. However, we have already taken a view in aforesaid appeals that the view taken by the High Court at Allahabad and their order dated 25.5.2001 cannot be sustained. Therefore, we do not find any merit in these appeals by consumers. Hence, these appeals are dismissed with no order as to costs.

So far as Civil Appeal No.2793 of 2004, is concerned, in the present case, the order dated 21.8.2003 passed by the High Court has been challenged. The Division Bench of the High Court has followed the judgment delivered in Civil Misc. Writ Petition No.11225 of 2003[M/s. Prachi Leathers (P) Ltd. & Anr. vs. U.P. Power Corporation Limited & Ors.]. Learned counsel for the appellant pointed out that in fact the decision given in M/s. Prachi Lathers (P) Ltd. (supra) was in connection with leather industry and the appellant is cold storage unit which is specifically exempted as is apparent from communication issued on 9.4.1986 by the Chief Engineer (Commercial), Lucknow in which it is mentioned that the Government in exercise of the power under Clause 10 of 1977 order exempted the Cold storage from the peak hour restrictions. Learned counsel for the appellants submitted that the appellant industry is a continuous process consumer. Therefore, the circular referred in communication of Chief Engineer will govern the case of the appellants. It appears that the Division Bench was under impression that the present case is also governed by the judgment in M/s. Prachi Lathers (P) Ltd. (supra) where the Division Bench has dismissed the writ petition. Therefore, we are of opinion, that the view taken by the Division Bench by its order dated 21.8.2003 cannot be sustained and the same is set aside. Consequently, this appeal is allowed and the case is remitted back to the High Court of Allahabad to consider whether the cold storage industry is a continuous process consumer and whether it has been exempted by the aforesaid communication issued by Chief Engineer (Commercial), Lucknow dated 9.4.1986.