

CASE NO.:
Appeal (civil) 4465 of 2007

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

RESPONDENT:
M/s Bonds & Beyonds (India) (P) Ltd.

DATE OF JUDGMENT: 24/09/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4465 OF 2007
(Arising out of S.L.P. (C) No.17051 of 2001)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court holding that the demand raised by the appellant-Corporation through various bills purporting to realize penalty for violation of peak hour restrictions cannot be maintained. The question was whether one Meter Reading Inspection Report (in short 'MRI') should be construed as single violation of the commercial restrictions irrespective of the fact that a number of contraventions might have been made by consumers during the period covered by the said report.

3. The State Government of Uttar Pradesh issued a notification under Section 22-B of the Electricity Act, 1910 (hereinafter to be referred to as "the Act of 1910") known as the 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 the U.P. Electricity (Regulation of Supply, Distribution, Consumption and Use) (1st Amendment) Order, 1984 by which clause 9 of the 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 the Uttar Pradesh State Electricity Board, the Chief Electrical Inspector, all Deputy Electrical Inspectors and all Assistant Electrical Inspectors to the State Government are authorised 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\027

- (a) Contravention first in point of time \027 5 days
- (b) Contravention second in point of time \027 10 days
- (c) Contravention third in point of time \027 20 days
- (d) Contravention beyond third point of time \027 Permanently:

Provided that for the purposes of this clause any contravention prior to 1-5-1984 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 up to 100 kVA, at Rs 50 per kVA on their contracted load.

(b) Consumers having contracted load above 100 kVA and up to 500 kVA at Rs.30 per kVA on their contracted load subject to minimum of Rs 5000.

(c) 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."

4. 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 the 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 computerised and can be downloaded for 35 days which will show the details of consumption including any violation of peak hours restriction in the 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 the report a 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.4214 of 2001, the appeal has been filed by grant of special leave.

5. A perusal of both these notifications makes it very clear that by communication dated 7-4-1999 the relief was given only for one time and it was not meant to be operated in future. For violation of restrictions of peak hours on the basis of MRI report for the first time, one penalty for one month could be imposed. For second bill and subsequent bills, the procedure of penalty will remain the same as mentioned in the circular dated 15-10-1998. Therefore, according to the circular dated 15-10-1998, whenever MRI computer print is taken, the number of violations by a consumer shall be taken to be as many times as indicated in MRI 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 SDO, Junior Engineer and Lineman in whose area the violation has been committed by the consumers should be considered to be penalised at the Chief Engineer level because of their failure to stop the violation. The circular also further clarified that whenever MRI 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 MRI 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 times 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 MRI 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 clearly, unsuitable, and cannot be sustained.

6. A similar issue was considered in U.P. Power Corpn. Ltd. and Another v. Lohia Brass (P) Ltd. and Ors. (2006 (7) SCC 220) and it was held that High Court's view is unsustainable.

7. The appeal is accordingly allowed with no order as to costs.