

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

% Reserved on : May 24, 2007
Date of Decision : June 11, 2007

+ W.P.(C) 4838/2004 & CM No.13744/2006

CROWN WHEELS P.LTD. Petitioner
Through Mr.S.C.Nigam, Advocate.

versus

BSES RAJDHANI POWER LTD. Respondent
Through Mr. Arun Monga with
Mr. Varun Kumar, Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The petitioner is running a small scale industry for manufacturing of automobile parts at premises No. 77 Maya Puri, Delhi and it has a sanctioned industrial power connection of 120 HP (89.2 KWs) against K.No.002-1316309 and 3 KW of industrial lighting against K.No.1316317-IL. These electricity connections were granted to it by erstwhile Delhi Vidyut Board ('DVB').

2. An inspection was carried out by the DVB on 3.4.1989. The report noted that the connected load was 220.25 HP against the sanctioned load of 120 HP and 2.7 HP of industrial lighting. Further it was alleged that there was subletting to M/s. Okhla Small Scale Industries, a unit in the adjacent premises. On the basis of the said inspection reprot a letter dated 1.6.1989 was issued by the DVB to the petitioner levying a penalty for exceeding the load and for subletting.

3. The petitioner disputed this liability by contending that Okhla

Small Scale Industries was a separate unit with a separate connection. The petitioner sought a fresh inspection and deposited the necessary charges. A second inspection took place on 25.8.1989. This time the inspection report showed the consumption in three distinct parts in respect of each separate connection and consumer. As far as the petitioner was concerned the connected load was shown as 105 HP. The connected load for Okhla Small Scale Industries was shown separately.

4. In the meanwhile the petitioner filed a Civil Suit for perpetual injunction against the DVB for levying LIP tariff on the basis of the inspection report dated 3.4.1989, which subsequently stood annulled by the inspection report dated 25.8.1989. By an order dated 1.6.1990 the Civil Judge declined interim relief of restoration of electricity and noted that the electricity could be restored only upon deposit of the disputed amount of Rs.45,201.49 without prejudice to the rights of the petitioner. The petitioner filed an appeal being MCA No. 274/1990 which was allowed by the judgment dated 27.3.1991 passed by the Additional District Judge ('ADJ'). The ADJ held that the disconnection was without justification and accordingly ordered reconnection by passing the following order:

“I, therefore, direct the respondent to restore the electricity of the appellant subject to the appellant's paying reconnection charges and depositing Rs.10,000/- with the respondent. This Rs. 10,000/- would be adjustable against the normal bill raised by the respondent at SIP rates without prejudice to the contention of the parties or the liability to pay charges at LIP rate. Appeal is accepted.”

5. Meanwhile a third inspection of the premises took place on 26.7.1990. This inspection report also noted the consumption in respect of the petitioner, separately. It is claimed by the Respondents

that this inspection also revealed that the connected load was found to be 222.098 HP plus 15.6 KW which was more than the sanctioned load.

6. Pursuant to the order dated 27.3.1991 passed by the ADJ, the petitioner deposited Rs.10,000/- and the electricity supply was restored. The petitioner claimed that it had been regularly paying the bill at the SIP tariff. There was a fire in the factory on 31.3.1993 and on the advice of the Delhi Fire Service, the electricity supply was disconnected by the DVB from the feeding point. Thereafter, despite the petitioner making payment of the current charges, the DVB failed to restore the electricity. The petitioner's industrial activity thereafter came to a halt. Meanwhile, with the enactment of the Delhi Electricity Reforms Act, 2000, the DVB came to be replaced by the BSES Rajdhani Power Ltd.

7. The petitioner applied on 24.5.2001 to the Permanent Lok Adalat ('PLA') for restoration of the supply and withdrawal of LIP tariff which was proposed to be imposed. During the pendency of the proceedings before the PLA, pursuant to an order dated 25.4.2003, the petitioner was afforded a hearing and a Speaking Order dated 18.6.2003 was passed holding that there was misuse and that the LIP tariff was payable. By its proceedings dated 23.3.2004 the PLA recorded the failure in the dispute getting settled, and passed the following order on:

“Today Sh.D.S.Nabiyal, BM(BS) submits that the movement of the file has been traced but the file is with Deputy General Manager, Enforcement. This case has been pending in this Court since May, 2001 and it is unfortunate that the respondent company is not showing any seriousness to settle the dispute and has failed to produce even the bills which according to the

respondent company are to be raised on the basis of three inspections mentioned above and the petitioner had been suffering without supply of electricity since 1993.

Ld. Counsel of the petitioner submits that in view of these facts, the petitioner has exhausted his patience and is not in a position to wait for any further period as the petitioner now wants to approach some other Court for redressal of his grievance. The petitioner is now at liberty to approach any other Court/Forum for redressal of his grievance.

In view of these facts, I am constrained to close this case as unsettled. I further direct that a copy of this order be sent to Ld. Member Secretary, Delhi Legal Services Authority and C.E.O. BSES Rajdhani Power Ltd. New Delhi for information.”

8. Thereafter the present writ petition was filed by the petitioner in this Court on 5.4.2004 praying for a direction to the Respondent to restore the electricity supply and for a direction to the Respondent to pay a penalty for not complying with the Orders of the Court. The counter affidavit has been filed by the successor entity BSES Rajdhani Power Ltd. It was stated that the petitioner could not dispute the liability to pay the electricity charges on LIP tariff and that in any event the petition was barred by laches.

9. This Court on 6.4.2004 directed notice to issue in the writ petition but no interim order was made. Meanwhile the Civil Suit filed by the petitioner was dismissed for default by the Civil Court on 23.10.1993. On 19.8.2004 this Court requisitioned the file of the concerned Suit.

10. The petitioner has since, on 31.10.2006, filed an application CM No. 13744 of 2007 in which it is pointed out as under:

“the petitioner continues to be without electricity and the small

industrial unit run by the petitioner is somehow surviving on generating sets for the last over 13 years, whereas nothing is due to the respondents and it is their obligation to supply uninterrupted electricity for which the requisite statutory agreement subsists.”

The petitioner mentioned the above facts and explained how the Respondent was obliged to give the petitioner a fresh connection failing which they should be asked to pay a penalty of Rs.1,000/- per day for the period of delay in granting electricity connection beyond 5.2.2006. Enclosed with the said CM No. 13744/2007 is the copy of an application made by the petitioner under the Late Payment Surcharge (LPSC) waiver scheme. Under this Scheme the consumer can avail of the benefit if he agrees to withdraw the cases pending before the courts. A declaration has to be signed in the office of the BSES Rajdhani Power Ltd. The petitioner on 3.1.2006 wrote to the BSES Rajdhani Power Ltd seeking to avail of the benefit of the LPSC waiver scheme. It informed the Respondent that Writ Petition (C) No. 4838/2004 (i.e the present petition) would be withdrawn upon the restoration of electricity supply with the deposit of the billed amount.

11. It is submitted by Mr. S.C.Nigam, learned counsel for the petitioner that the inspection reports did not indicate any misuse by the petitioner and therefore the demand of LIP tariff was unjustified. Moreover, no show cause notice was issued to the petitioner prior to the demand of LIP tariff. A reference is also made to the proceedings before the PLA. He accordingly prayed that the writ petition should be allowed and a mandamus for re-connection of electricity be issued. Finally, it was submitted that since the petitioner had complied with all the conditions attached to the LPSC waiver Scheme, its application

thereunder should be considered by the Respondent.

12. Appearing on behalf of the BSES Rajdhani Power Limited, Mr. Arun Monga, learned counsel submitted that this was a case of excess consumption. He referred to the counter affidavit in which it is stated as under:

“That the contents of paragraphs 5 are admitted being matter of record except that during the course of inspections it was found that the petitioner's connection and another industrial units connection i.e. M/s. Okhla Small Scale Industry are co-beneficiaries of each other. However, it is wrong to allege that the load violation was on account of inter-mixing of load as the petitioner was independently using load excess of the sanctioned load detected during the course of inspections on 3.4.1989, 26.7.1990 and 13.12.1990.”

13. It was submitted by Mr. Monga that the petitioner must clear all the liabilities before seeking a reconnection. A reference is made to the show cause notice issued on 1.6.1989. The meter readings of the petitioner's premises were also referred to. The allegation that the petitioner had not received the notice of disconnection dated 30.3.1993 was refuted by pointing out that on 28.4.1993 the petitioner had sent a legal notice to the DESU about the show cause notice being received which required the petitioner to pay Rs.16,78,232.98. It is accordingly pointed out that this plea of non-receipt of the show cause notice is contrary to the record. As regards the plea of not being heard, Mr. Monga points out that before the PLA, this plea was taken care of and a Speaking Order was passed after hearing the petitioner. Finally, he submitted that his instructions were that the application by the petitioner for availing the benefit of the LPSC waiver Scheme was not being considered only because of the pendency of the present petition.

14. The Court finds that the justification for raising the demand as per the inspection report cannot really be examined in these proceedings for the simple reason that its validity was put in issue in the Civil Suit by the petitioner and that Civil Suit got dismissed for default on 23.10.1993. The petitioner took no steps thereof either to revive the suit or file an appeal. Having opted to invoke a certain remedy against these inspection reports, the petitioner should have exhausted the other avenues available in law instead of seeking to agitate that issue by way of a fresh petition. The Court is not inclined to permit the petitioner to reopen that issue in these proceedings.

15. As far as the PLA is concerned no fault can be found with the conclusion of the Presiding Officer that the case could not be settled in the facts and circumstances of the case.

16. The only issue that requires to be considered is whether the petitioner's case should be considered under the LPSC waiver scheme. The petitioner has made its application in this regard. It appears to have also made up to date payments. It is now for the Respondent to consider to dispose of the said application in accordance with the law. With this writ petition being disposed of by this Order, there should be no impediment in the Respondent considering the said application. The only relief therefore that can be granted to the petitioner is in the form of a direction to the Respondent BSES Rajdhani Power Limited to process and dispose of the application made by the petitioner for waiver of the late payment surcharge within a period of four weeks from today and in any event not later than 10.7.2007. If the petitioner is aggrieved by the decision on the said application, it can avail of the statutory remedies available

to it in law. It hardly need be mentioned that since the issue is only about misuser charges, the dispute, if any, would have to be thereafter raised before the Consumer Grievance Redressal Forum constituted under Section 42(5) of the Electricity Act, 2003. However the petitioner will not be permitted to reagitate the contentions in this writ petition concerning the validity of the inspection reports.

17. With these directions the writ petition is disposed of with no order as to costs. The application stands disposed of.

June 11, 2007
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Sd/-
S. MURALIDHAR, J