

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

+ **CM(M) 155/2009 & CM No.2875/2009**

% Date of Decision : March 02, 2009

IZHAR AHMAD & ANR. Petitioners
Through: Mr. S.D. Ansari, Advocate

versus

B.S.E.S.RAJDHANI POWER LTD.
& ANR. Respondent
Through: Ms. Anjali Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | Yes. |
| 3. Whether the judgment should be reported in the Digest? | Yes. |

J U D G M E N T

MANMOHAN, J : (Oral)

CM No. 2876/2009

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM(M) 155/2009 & CM No.2875/2009

1. Present petition has been filed under Article 227 of Constitution of India read with Section 151 CPC against order dated 05th November, 2008 whereby Additional District Judge has upheld an order dated 05th November, 2008 passed by Civil Judge whereby petitioners' application under Order 39 Rule 4 CPC has been dismissed. Both the Civil Judge and Additional District Judge have primarily dismissed the petitioners' application on the ground that as no injunction was operating, petitioners' application under Order 39 Rule 4 CPC was not maintainable and

by virtue of said application, petitioners cannot seek a review of an earlier order disposing of their application under Order 39 Rules 1 and 2 CPC. Both the Courts below were also of the view that in view of Regulations 15(ii) and (iv), petitioners would not be entitled for a new electricity connection unless outstanding dues in respect of suit premises were cleared.

2. Learned counsel for petitioners submitted that as respondent No.1/BSES, had initiated proceedings against respondent No.2 under Section 135 of the Electricity Act, 2003, BSES had an efficacious remedy to invoke provision under Section 154 (v) by moving an appropriate application for recovery of its dues. He further submitted that respondent No.1/BSES had an efficacious remedy under Section 154 (v) to get the alleged theft amount determined by filing an appropriate application.

3. He further submitted that recovery can be made by BSES against whom proceedings have been initiated under criminal provisions and petitioners cannot be asked to pay unless and until the civil liability is determined by the special Court. According to him, petitioners are not affected by an act of theft allegedly committed by respondent No.2 and petitioners cannot be asked to pay civil amount especially in view of the fact that no allegation had been made against them in respect of theft.

4. However, learned counsel for respondents submitted that petitioners being owner of premises are liable to make payment of direct theft bill as well as other outstanding regular dues against the premises before grant of new connection as per provisions of Delhi Electricity Supply Code and Performance

5. She further submitted that Sections 135 and 154 of the Electricity Act, 2003 (hereinafter referred to as "EA, 2003") only pertain to determination of criminal liability as well as quantum of fine that is to be recovered from a person who is alleged to have fraudulently abstracted the energy. She submitted that these two provisions in no way impair or take away the right of BSES to insist on owner of premises paying for electricity dues prior to electricity connection being restored. She further drew my attention to a judgment of Division Bench of this Court in ***Madhu Garg & Anr. v. North Delhi Power Ltd.*** reported in ***129 (2006) DLT 13 (DB)*** in which this Court has held as under:

"10. In exercise of the power vested in it by the DERA, the DERC issued Tariff Order dated May 23, 2001 which states:

*"General Conditions of Supply
2.1 Supply of electricity in all cases is subject to the condition that—*

(iv) The applicant deposits developments charges, advance consumption deposit and all such charges as maybe applicable including outstanding dues against the premises and/or disconnected connection(s)."

11. Thus, the General Conditions of Supply clearly prohibits supply of electricity to an applicant unless he deposits the outstanding dues against the premises for which supply of electricity is sought. A copy of the Tariff Schedule for the year 2001-2002 as contained in the Tariff Order is Annexure R1.

12. It is stated in paragraph 5 of the counter affidavit that DERC being a statutory Commission is empowered under Section 28(2) of DERA to prescribe the terms and conditions for the determination of the supply of electricity. It is stated that the Tariff Order issued by the DERC is statutory in force and as such is binding on the respondent. Hence, supply of electricity to the premises cannot be made unless the outstanding dues are cleared, otherwise there will be violation of

the statutory conditions laid down in the Tariff Order.

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16. In view of the General Condition of supply, it is the duty of the new owner/occupant to himself make enquiries and find out whether there was such dues or not. The General conditions of supply are statutory in nature (being delegated legislation), and hence the question of bona fide or mala fide does not arise, and in either case the new owner/occupant of the premises has to pay the dues against the previous owner/tenant, if he wishes the electric supply to be continued/restored.

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27. In our opinion, an interpretation of the law which furthers the preservation and protection of public property ought to be adopted. If arrears of electricity charges outstanding in respect of electricity supplied to a premises were to be permitted to be equated with a contractual claims of damages, it would encourage dishonest consumers to raise some dispute or other in respect of such arrears and evade the consequences of non-payment of electricity charges viz. disconnection /non-resumption of supply."

6. In my opinion, owner of a premises applying for a re-connection /or a fresh connection of electricity by virtue of Regulation 15 of Delhi Electricity Supply Code and Performance Standards Regulations, 2007, has to pay all dues which would include even payment of direct theft bill with regard to said connection. The Regulation is clear and unambiguous in its intent and language.

7. In my view, there is no conflict or overlapping between Regulation 15 and Section 154 of EA, 2003. The issue of reconnection has only been dealt with in Regulation 15. I may mention that the legality and validity of Regulation 15 has not been impugned by the petitioners in any proceedings till date or

even in the present petition.

8. The intent of such a regulation is to ensure that electricity companies do not have to 'run around' to recover their dues and any person who applies for re-connection makes payment of all dues including surcharges and payment of fraudulent abstraction charges before grant of new connection or reconnection of the said premises.

9. Further, in my opinion, judgment of Division Bench of this Court in ***Madhu Garg*** (Supra) is very categorical and it has even considered judgment of the Hon'ble Supreme Court in ***Isha Marbles v. Bihar State Electricity Board*** reported in ***1995 (2) SCC*** which was also referred to by Mr. S.D. Ansari, Advocate, during the course of his argument. Consequently, petitioners/owners of premises have to clear all outstanding including payment of direct theft bills.

10. It is, however, made clear that petitioners would be entitled, if so permissible and in accordance with law, to challenge the alleged dues raised qua petitioners' property. In view of aforesaid observations, present petition and pending application being devoid of merit are dismissed but with no order as to costs.

MANMOHAN,J

MARCH 02, 2009
jsr/rn