

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

**13.02.2008**

**Present: Mr.Sudhir Nandrajog, Advocate for the Petitioners.  
Mr.Pawan Sharma, Addl.P.P.for the State/R-1.**

**CrI.M.A.1838/2008**

**Allowed, subject to just exceptions.**

**Application stands disposed of.**

**CrI.M.C.482/2008**

**The petitioner no.1 is North Delhi Power Limited and the petitioner no.2 is the Chief Operating Officer of the petitioner no.1.**

**The petitioners are aggrieved by the impugned order dated 08.02.2008 passed by the learned Addl.Sessions Judge who is presiding over the special court dealing with the electricity matters.**

**A perusal of the impugned order shows that in a case of theft of electricity, the statement of the prosecution witnesses was being recorded. During the course of recording of the cross examination of one of the witnesses of the prosecution (an officer of petitioner no.1), it was stated that where the disputed bill amounts are deposited, the electricity company is not interested in prosecuting the criminal complaint. The said officer of the petitioner no.1 also produced a copy of the office order issued by the petitioner no.2, which is an inter departmental order. The office order deals with delegation of power to the Enforcement Settlement Committee and is in the following terms:  
Office Order**

**IC-CCO/D06/49 October 17, 2006**

**Sub: Delegation of Power to Enforcement Settlement Committee**

**In supersession to earlier office orders no. IC-CCO/D06/48 dated October 13, 2006, it is hereby informed that in all enforcement cases, EAC shall prepare the speaking order/final bill etc. as per the prevailing procedures and shall settle the cases only if 100% payment is received as per final bill.**

**In case the consumer disputes the speaking order/final bill issued by EAC, the same shall be put up by HoG ? EAC with proposal/recommendation to the Enforcement Settlement Committee (ESC).**

**However, if consumers are willing to pay at least 70% of the billed**

amount, EAC may accept the payment but the case should not be considered as settled and EAC would have to subsequently send the case to ESC, along with payment details for final decision and/or settlement.

The delegation of power and composition of the ESCs shall be as follows:

**Category**

**Cases having Billing amount ( in Rs.)**

**Enforcement Settlement Committee**

**1**

**Up to 1,00,000**

**Mr. D.K.Puri (Alt. Mr.Shiv Kumar), Mr. Ashok Chandok (Alt Mr.D.Basak) and Mr. Ratan Sharma (Alt.Ms.Rakhi Gupta)**

**2**

**1,00,001-10,00,000**

**As above plus Head (Commercial), HoD (RM) and HoD (HRBandM)**

**3**

**10,00,001-35,00,000**

**As above plus COO and ED (Finance)**

**4**

**More than 35,00,000**

**As above plus MD**

**A weekly meeting for the settlement of cases up to Rs.1 Lac shall be held at a fixed day to resolve cases expeditiously.**

**EAC shall prepare and circulate a monthly MIS indicating number of cases and extent of amount settled at less than 70% of final billed amount by each committee.**

**This is being issued as per approval of competent authority for information and immediate compliance by all concerned.**

**Arup Ghosh**

**Chief Operating Officer**

**The learned Addl.Sessions Judge seems to have taken offence to the existence of the office order by thereafter observing in the impugned order that no provision of law has been cited under the Electricity Act, 2003 (?the said Act? for short) under which such an office order can be issued nor is any provision of law available.**

**In the facts of the case, the bill had been issued on 18.09.2006 and was**

payable on or before 28.09.2006, but the police complaint against the accused was made on 12.09.2006 on the basis of which FIR was registered. The respondent no.2 had been summoned to clarify so that no pick and choose policy could be adopted by the officers of the petitioner no.1 while accepting the amounts as per the settlement or while lodging of the FIRs.

In my considered view, there is more than one fallacy in the impugned order. Firstly, insofar as the matter of internal circular is concerned the same has been issued by the electricity company which is now privatized and is not a government order which has to be under a statute or a provision of law. The circular has been issued putting forth uniformity in the mode and the manner of settlement of disputes. The said Act was brought into force with various objects and the main features of the bill as set out in the Statement of the Objects and Reasons of the said Act, inter alia includes Clause (xiii) which stipulates that the provision relating to theft of electricity has a revenue focus. The object is to deter theft of electricity, but at the same time, encourage settlements where the revenue aspect stands satisfied.

It is in view thereof that in various proceedings before this Court, it has been found that the electricity companies are not willing to prosecute the criminal cases so long as the financial liability is met by the consumer in pursuance to the bills raised on detection of theft of electricity. There is thus no question of there being any pick and choose policy apart from the fact that the prerogative is with the electricity company to decide as to which complaint has to be prosecuted and the uniformity in that aspect has been brought into force in pursuance to the said office order.

The learned Sessions Judge also seems to have lost sight of the fact that he is exercising criminal jurisdiction under the said Act. It is not a case of proceedings in a High Court under Article 226 of the Constitution of India where such directions/orders can be passed. A judge presides over a particular jurisdiction and the 'maryada' of that jurisdiction must be observed by the judge. He cannot step into areas which have no concern with the jurisdiction being exercised by him. On recording of evidence, if a judge comes to a conclusion that there is no case of theft of electricity made out, it is always open to the judge to acquit the accused.

In view of the aforesaid, I deem it appropriate to set aside the impugned order dated 08.02.2008 to the extent that it seeks to summon the petitioner no.2 and seeks any clarifications in respect of the legality and nature of the office order which already stands produced before the Trial Court.

The petition is accordingly allowed.

Dasti under the signatures of the Court Master.

CrI.M.A.No.1837/2008

No further directions are called for on this application.

The application stands disposed of.

**FEBRUARY 13, 2008 SANJAY KISHAN KAUL, J.**

**dm**