

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

Date of decision: 9th July, 2010.

+ **W.P.(C) No.6812/2008**

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HARPAL SINGH

..... Petitioner

Through: Mr. Fanish K. Jain, Advocate

Versus

NORTH DELHI POWER LTD.

..... Respondent

Through: Mr. Vikram Nandrajog, Advocate
with Mr. Sushil Jaswal & Mr.
Diwakar Sinha, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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 the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The petitioner by this writ petition impugns the demand contained in the bill raised by the respondent NDPL on the petitioner for a sum of Rs.13,18,968/-. This Court while issuing notice of the petition to the respondent, vide order dated 19th September, 2008 stayed the operation of the impugned bill. The stay order has continued till date.

2. The counsel for the parties have been heard.

3. The bill impugned in this petition was raised by the respondent on the petitioner in pursuance to the notice dated 25th March, 2008 of the respondent to the petitioner. In the said notice, the respondent averred that as per the inspection conducted by its enforcement inspection team on 30th January 2008 and second inspection conducted for meter testing on 12th February, 2008, of the premises of the petitioner where the electricity meter of the petitioner was installed, the said premises were also found to be having installed therein another disconnected electricity meter in the name of one Sh. Dharam Singh and against which electricity meter of Sh. Dharam Singh a sum of Rs.12,35,186/- was due. The respondent in the said notice averred that during the inspections aforesaid, the petitioner was found unauthorizedly feeding the electricity meter of Sh. Dharam Singh from his meter. The notice in the last paragraph stated as under:-

“You are, therefore, requested to kindly arrange for payment of outstanding dues amounting to Rs.12,35,186/- or to submit your representation clarification (if any) within 7 days of the receipt of this letter, failing which pending dues of the disconnected connection shall be transferred to your account of K.No.45300141757 under regulation 49(ii), Chapter VI of Delhi Electricity Supply Code and Performance Standard Regulations 2007.

Please treat it as a notice which is without prejudice to our rights to initiate appropriate legal proceedings.”

4. The petitioner submitted a reply dated 31st March, 2008 to the respondent disputing that the meter of any Dharam Singh against which dues of Rs.12,35,186/- were claimed existed in his premises or that he was feeding the same from his meter. The petitioner in the said reply also

contended that the notice issued to him was in contravention of Regulation 49(ii) of Delhi Electricity Supply Code and Performance Standard Regulations, 2007. Without prejudice, it was stated that even if the averments in the notice were to be true, the petitioner had on receipt of the notice dated 25th March, 2008 (supra) stopped feeding the alleged disconnected meter of Sh. Dharam Singh and was not liable under Regulation 49(ii) (supra) for this reason also.

5. The respondent NDPL thereafter on 7th September, 2008 issued the impugned bill to the petitioner which was inclusive of the arrears due against the bill / meter of Sh. Dharam Singh.

6. The Regulation 49(ii) whereunder dues of Sh. Dharam Singh were purported to be recovered from the petitioner, is as under:

“The Licensee may take steps to prevent unauthorized reconnection of such consumers disconnected in the manner as mentioned above. Wherever Licensee discovers that connection has been re-connected unauthorizedly, Licensee may initiate action as per provisions of Section 138 of the Act. Further, in case Licensee discovers that the supply to such premises has been restored through another live connection, notice to registered consumer / user of such live connection shall be given to stop such illegal supply immediately failing which pending dues of disconnected connection shall be transferred to his account and non-payment of such transferred dues may be dealt with as per Sub-Regulation (i) above.”

7. The counsel for the petitioner contends that under the aforesaid Regulation, even if the averments of the respondent NDPL in the notice aforesaid were to be correct, the respondent was required to give a notice to the petitioner to stop feeding / supplying electricity to Sh. Dharam Singh and only upon failure of the petitioner to do so, could have demanded the

dues against the meter of Sh. Dharam Singh from the petitioner. Relying upon the language set out herein above in the notice dated 25th March, 2008, it is stated that the respondent on the contrary proceeded to straightaway demand the dues of Sh. Dharam Singh from the petitioner and which is not permissible in law.

8. The counsel for the petitioner also contends that the address / Khasra No. given in the bills allegedly raised by the respondent on Sh. Dharam Singh is much different from that of the petitioner though both are of village Haider Pur.

9. I have at the outset only enquired from the counsel for the respondent whether the respondent, after receipt of the reply to the notice from the petitioner conducted any further enquiry and / or whether any official of the respondent applied mind to the contentions raised by the petitioner in his reply. The counsel for the respondent states that there is no record to that effect and the record only indicates that after the notice and the reply the impugned bill was issued to the petitioner.

10. I have also enquired from the counsel for the respondent whether the respondent after receipt of the reply from the petitioner carried out any other inspection of the premises of the petitioner to find out whether the petitioner had stopped the alleged supply of electricity to the disconnected meter of Sh. Dharam Singh. The answer is again in the negative.

11. The counsel for the respondent however contends that the writ petition is not maintainable because the alternative remedy of approaching the fora created under Section 42 (5) of the Electricity Act, 2003 in which evidence etc. can be recorded is available to the petitioner. It is further

contended that the matter involves disputed questions of fact which cannot be adjudicated in the writ jurisdiction. It is yet further contended that the petition is liable to be dismissed for the reason of the petitioner having indulged in concealment and falsehood. It is urged that the petitioner has concealed from the Court that in his premises besides the meter on which the impugned bill has been raised, there are two other meters i.e. another in the name of the petitioner himself and one in the name of his son; that the inspection report is signed by the son of the petitioner and the meter testing report is signed by the petitioner himself. It is stated that the petitioner has falsely stated in the petition that the said two reports are not available with him and has also not revealed that in the writ petition that the inspection was carried out and the meter tested.

12. With respect to the contention qua Regulation 49(ii) (supra), it is contended that a defect in the language of the notice would not invalidate the demand pursuant thereto.

13. However, I find that the present is not a case merely of use of defective language. Even if the said contention of the counsel for the respondent is to be accepted and it is treated that the notice dated 25th March, 2008 was intended to be in terms of Regulation 49 (ii) (supra), the respondent still could not have proceeded to straightaway raise the bill thereafter. If the notice dated 25th March, 2008 was intended to be in the nature of a stop / desist notice only as contemplated in Regulation 49(ii) (supra), the respondent thereafter ought to have again carried out the inspection to verify whether the petitioner had stopped and desisted from the supply, as also contended by the petitioner in his reply. Admittedly, that was not done. The demand thus is contrary to the Regulations.

14. The same also meets the objection of the counsel for the respondent as to the maintainability of the present petition owing to the existence of an alternative remedy. When the action of the respondent is found to be contrary to the Regulations as is admittedly so made out in the present case, now after two years since when this petition has been pending before this Court, it is not deemed appropriate to relegate the parties to the said forum especially when no disputed questions of fact are involved and no further investigation is required and a case of pure breach of Regulation is found to have been made out.

15. Though the petition is likely to succeed on the above ground alone, before parting with the case, I must comment that once a reply / representation had been called for by the respondent and received from the petitioner, the respondent ought to have applied its mind to it before raising a demand. It has not been done in the present case. A Division Bench of this Court in *Cycle Equipments (P) Ltd. Vs. MCD* AIR 1983 Delhi 94 held:

“Further the principle of natural justice requires that there should be a fair determination of a question by quasi judicial authorities. The judicial process does not end by making known to a person the proposal against him and giving him a chance to explain. It extends further to a judicial consideration of a representation and the materials and a fair determination of the question involved. That necessitates the giving of reasons justifying the action contemplated against the affected person”.

The respondent by notice dated 25th March, 2008 asked the petitioner to within seven days give his representation / clarification if any. The petitioner so gave his clarification. However, it appears that opportunity to represent was given only to pay lip service to the rule of *audi alteram partem*, an essential ingredient of natural justice. The conduct of the respondent, by not even considering the said reply shows that the respondent

had already made up its mind and opportunity of hearing was a mere formality.

16. The counsel for the respondent has also contended that the Khasra numbers are not determinative and keep on changing and once the inspection team of the respondent had found the meter of Sh. Dharam Singh installed in the premises of the petitioner, the same ought to be believed. I am afraid that cannot be permitted. Once the consumer has disputed by giving particulars, the respondent before taking any action ought to have at least given a reasoned order as to why the representation or reply of the petitioner was not correct. The inspection report when disputed cannot be treated as the gospel truth. Moreover, in the present case there were other disputes pending before Consumer Forum between the petitioner and the respondent since prior to the notice dated 25th March, 2008 and thus it is not as if there was no reason for officials of the respondent to victimize the petitioner.

17. The contention of the respondent of the petitioner having concealed facts and indulged in falsehood also has no force. The petitioner since the reply to the notice dated 25th March, 2008 has been asking for report of inspection and of meter testing. The counsel for the petitioner has in hearing also not disputed signatures on the inspection report and the testing report but explained that though signatures were taken on spot but no copies given. The same stand was reiterated in the writ petition.

18. The petition therefore succeeds. The bill impugned in the petition is quashed. However, the respondent shall be entitled to proceed in accordance with law for recovery of the demand contained in the said bill from the petitioner and in the event of the same being done, the petitioner shall be

entitled to contest the said demand on merits.

The petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

9th July, 2010
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