

(2006) 08 DEL CK 0032

Delhi High Court

Case No: Writ Petition (C) 2234 of 2006

BSES Rajdhani Power Ltd.

APPELLANT

Vs

Consumer Grievance Redressal F

RESPONDENT

Date of Decision: Aug. 4, 2006

Acts Referred:

- Electricity Act, 1910 - Section 24

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: Jayant Nath and Rajnish K. Jha, for the Appellant; Vishnu Mehra and Sakshi Mittal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Ravindra Bhat, J.

Issue Rule. Heard counsel for the parties.

2. In this writ proceeding the claim is for quashing of the directions of the Consumer Grievance Redressal Forum dated 7.4.2005 in a complaint made by the second respondent (hereafter referred to as "the Consumer"),

3. The facts in so far as they are relevant for deciding the disputes are as follows:

The consumer is owner of the premises, being S-349, Greater Kailash-II, New Delhi; the erstwhile Delhi Electric Supply Undertaking (which was succeeded by the DVB and later after re-organization of the Electricity Companies, by the petitioner in these proceedings) hereinafter referred to as "BSES" granted electricity connection. The consumer had let out the premises to one Ms. Rashmi Monga. It is the common case of the parties that between 1995-1999 although the erstwhile DVB, the predecessor concern of the petitioner, kept sending periodical bills for the electricity consumed, no payment was made. The consumer alleges that there was some collusion between the officers of the erstwhile DVB and in the said tenant. However,

after passage of time it would not be possible to pin-point the exact reasons why the amounts were not recovered.

4. In this background, the consumer informed the DVB some time in 1999 that the tenant was defaulting in the payment of electricity dues. At that stage DVB woken up and disconnected the electricity supply to the premises; inter se the disputes existed between the landlord and tenant which led to the filing of civil proceedings and culminating a decree. During the pendency of those proceedings, the tenant had approached this Court by filing a writ petition. When that petition was pending the tenant was asked to deposit a sum of Rs. 50,000/-. Subsequently the matter was referred to Lok Adalat at the behest of the tenant and the Court also required, has to deposit of Rs. 1,00,000/- towards electricity dues. The supply to the premises had apparently been restored; however, the electricity supply was disconnected yet again on 11.10.2000. Ultimately, the tenant vacated the premises in October, 2002 pursuant to a decree of the civil court. The consumer approached the BSES for grant of fresh electricity connection. At that stage the BSES insisted that unless an amount of Rs. 3,75,480/- towards the arrears after adjustment of a sum of Rs. 50,000/- was paid, it would not be possible to restore the electricity supply.

5. Aggrieved the consumer approached the Commission which, inter alia, recorded as follows while disposing off the complaint:

vii) It was on 4.10.04 when Dr. Gupta approached Head Customer Care of BRPL through a letter stating the above facts and in response to that, the competent authority of BRPL approved the Waiver of "LPSC" amounting to Rs. 2,17,625/- and sent a bill for Rs. 1,57,855/- payable in six bi-monthly installments of Rs. 26,310/- each. It was also confirmed by Dr. Gupta that he had already paid two installments, and the first one of which was mandatory for restoration of the connection.

ix) According to him, it was due to negligence of the DVB/ BSES that resulted in accumulation of dues, as supply had not been disconnected at appropriate time in accordance with the rules.

At this point, Sh. Nalwaya, Business Manager, Division Alaknanda could not explain to the Forum as to why electrical supply had not been disconnected for a long period of years, i.e September, 1995 to August 1999, when no payments were forthcoming from the user of the connection.

However, Sh. Nalwaya indicated that supply had been disconnected promptly on receipt of a letter from Dr. Gupta during August, 1999. He also mentioned that Dr. Gupta had already been granted the favor of Waiver of LPSC amounting to Rs. 2,17,625/- and the balance amount of electricity consumption charges of Rs. 1,57,855/- was to be recovered in six bi-monthly installments as per approval of the competent authority of BRPL. He also confirmed that two installments had already been received against this amount.

When Dr. Gupta was told by the Forum that payment of two bi-monthly installments tantamounts to his concurrence for the bill of consumption charges raised by BRPL, he reacted sharply by saying that he had no option, but to make the payment under protest to get the supply restored. According to him, this could not be taken as his agreement for payment of electricity charges.

Although, CGRF (BRPL) is convinced that under the circumstances elaborated above, Dr. Gupta, the owner of the flat and the complainant, was/is not obliged to make any payment of dues accumulated up to the date of disconnection, i.e 11.10.2000, yet keeping in view the fact that he has already made payment of two installments towards electricity consumption charges (LPSC having been waived off by the competent authority of BRPL separately), CGRF orders that he will not be liable to make payment towards the balance bi-monthly installments. Dr. Gupta, however, will continue to make the payments against the current bills raised by BRPL.

The grievance of the complainant will stand closed at this stage. Orders of the Forum are required to be complied within 21 days of the receipt as per Regulation 9(6) of guidelines issued by DERC vide Notification dated 11th March, 2004

6. It is an admitted position that the petitioner had deposited two bio-monthly installments itself amounting to Rs. 52,000/-. During the pendency of the present writ petition pursuant to the orders of the Court, the consumer has admittedly deposited two further installments working out to a further amount of Rs. 52,000/-. Thus he has deposited total amount of Rs. 1,04,000/-. The controversy, Therefore, is as to whether the Forum committed an error of law or overstepped its jurisdiction in holding that the consumer was not liable to pay more than two installments.

7. Mr. Nath, learned senior counsel for the petitioner relied upon provisions of Section 24 of the Indian Electricity Act, 1910 to say that even though the option of filing a suit existed at the relevant time nevertheless as a service provider it was open for the concern namely, the DVB to take action and disconnect electricity supply for non-payment of dues. It was contended that in such instances there is no period of limitation and the public utility is obliged to withhold supply, if payment of dues is not made. It was also contended that whatever the arrangement between the consumer and his tenant, the primary liability of that was of the consumer who was the registered consumer of the metre.

8. Learned Counsel also relied upon the two judgments of the Supreme Court reported as [M/s. Swastic Industries Vs. Maharashtra State Electricity Board](#), the Division Bench of this Court in Madhu Garg v. NDPL 2006 (1) 88 DRJ 595 to say that the liability is that of the landlord.

9. Mr. Mehra, learned Counsel for the respondent justified the order of the Forum and stated that the landlord cannot be burdened with the liability for consumption of electricity of a tenant and that in the peculiar facts of this case the DVB, which took no action for four years suddenly woke up only after the landlord lodged a

complaint. It was contended that for the four year period nothing was disclosed as to why the DVB did not take timely action in disconnecting the electricity supply. Counsel strongly relied upon the circumstance that DVB finally woke up only after the landlord himself approached and sought for appropriate remedial action. In these circumstances it was urged that the order of the Forum directing payment of only two installments was an equitable one.

10. The factual narrative would disclose that the DVB for reasons best known to it and which are not forthcoming even as on date by the petitioner, did not chose to take action. It is a matter of speculation as to whether its officials were in collusion with tenant but is a matter of record that the consumer approached the service provider and complained of non-payment of dues which led to the disconnection. Learned Counsel for the consumer had also urged that the writ petition preferred by the tenant in which interim orders were issued requiring deposit of sums of monies, did not implead the landlord consumer even though he was a necessary party. In these circumstances it is claimed that the equities in this case would lie in favor of dismissing the petition.

11. The provision of Section 24 as interpreted by the Supreme Court undoubtedly gave option to the service provider to take remedial action and disconnect the electricity supply. The existence of power, Therefore, cannot be disputed. The question, however, is whether in the peculiar circumstances of this case where the registered consumer himself stepped forward and asked the service provider to enforce its obligation upon the non-payment of dues by the concerned party/ occupier, the landlord itself should be saddled with all the liability. It has not been disputed by the parties that in the intervening writ proceedings by the tenant, the service provider was a party. It chose to accept the amount from the tenant and did not at that stage insist upon the right to recover it from the landlord. This is a significant factor on which in my opinion the liability of the consumer is judged.

12. Apart from the above circumstances one more factor which has to be noticed is that out of the amount of Rs. 3,75,480/- a sum of Rs. 2,17,625/- has been waived by the petitioner on account of LPSC charges. The rationale (if indeed was a liability) for waiver is not forthcoming. These factors in my opinion were property taken into consideration by the Forum while balancing the equities.

13. Since it is an undisputed fact that pursuant to the orders of this Court two further installments of Rs. 26,000/- each were deposited, I am of the opinion that no further orders are required in this petition. I, Therefore, confirm the order of the Forum and also make the interim order dated 24.3.2006 absolute.

14. In view of these peculiar facts, so far as deposit of further amount of Rs. 52,000/- is concerned, the petitioner would not be entitled to recover any further amounts towards the past liability.

15. The writ petition is disposed off, with the modification of the Forum's order, in terms indicated above. No costs.