
(2008) 02 DEL CK 0071

In the Delhi High Court

Case No : Criminal M.C. 2291 of 2006 and Criminal M.A. 3653 of 2006

Rahdey Shyam Bansal

APPELLANT

Vs

B.S.E.S. Rajdhani Power Ltd. and Others

RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:

Citation : (2008) 148 DLT 462

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Laliet Kumar, for the Appellant; O.P. Saxena, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973 (? CrPC?) challenges an order dated 14th March, 2006 passed by the learned Additional Sessions Judge, Karkardooma, Delhi (?Special Judge?) under the Electricity Act, 2003 (?Act?) in Criminal Complaint No. 217 of 2005 whereby the application filed by the Petitioner u/s 152 of the Act for compounding the offences was dismissed.

2. The brief facts are that the Petitioner resides at premises bearing No. 119-C, 6 Lane, Central Avenue, Sainik Farm, New Delhi and states that he was drawing the electricity through the captive power plant installed by his brother. It is further stated that the wife of the Petitioner had applied for electricity connection on 23rd June, 1997 but till date the electricity connection has not been installed. On 24th August, 2005 the officials of the BSES Rajdhani Power Limited ("BRPL") visited the premises of the Petitioner and it was found that he was illegally using the electricity supply by directly tapping from the LV mains. On that basis the Petitioner was served with a direct theft bill for Rs. 2,52,074/-.

3. According to the Petitioner, he was never involved in any theft since there was no question of taking power supply from the Respondent No. 1 BRPL.

Nevertheless without prejudice to his rights, he filed an application u/s 152 of the Act in the court of the learned Special Judge, Karkardooma prior to the filing of any complaint by the Respondent No. 1 BRPL. Para 7 of the said application, filed on 17th September 2005, reads as under:

7. Without prejudice and without admitting the factum of the inspection and legality of it, it is submitted that as per the Electricity Act, 2003 the offence can be compounded by the appropriate Government or any Officer authorized by it in this behalf may accept from the consumer or from any person, the compounding charges as per Section 152 of the Electricity Act, 2003. It is submitted for the residential purposes, Rs. 4,000/- per kw has been provided as compounded charges. It is submitted that as per the bill itself the use of electricity is residential Therefore the compounding charges for the entire load would be $12.005 \times 4000 = 48,020$.

8. It is submitted that the Applicant is ready and willing to pay a sum of Rs. 48,020/- to the Respondent towards the compounding of the offence alleged against the Applicant.

4. A reply was filed by the Respondent to the aforementioned application taking the following stand:

4. That it is further submitted that the Applicant/accused has not yet paid the theft bill. It is submitted that the Respondent will consider the prayer of the applicant after payment of the theft bill and cannot be forced to do so. It is submitted that the Respondent is contemplating filing of criminal complaint before this Hon?ble Court very soon.

It was also be mentioned that according to BRL that the application was not maintainable in the court of the learned Special Judge. They also contended that the total connected load found on inspection was 25.453 kw and not 12.005 kw as averred by the Petitioner.

5. By the impugned order dated 14th March, 2006 the learned Special Judge dismissed the application by the following order:

14.3.06

Fresh application received by way of transfer from the court of Shri Chandra Gupta, learned ASJ. It be checked and registered.

Present: Deemed Addl. P.P. for the complainant.

There is an application u/s 152 of the Indian Electricity Act for compounding the offence on behalf of the accused.

Section 152 of the Electricity Act is in derogation of the relevant provision of CrPC and it starts with a non-obstante clause. The very plain reading of the section authorizes the specified govt. or officials mentioned therein who can move for compounding a particular offence which is further fortified by sub-

clause 3 and 4 of that section. The said non-obstante clause has been mentioned in the section because there is deviation in the amount up to which the offence can be compounded and as the respective amount is much higher whatever is provided u/s 320 CrPC. But there is no deviation from the basic principle as to on whose behalf compounding of an offence can be moved Section 320 CrPC provides the category of the complainant, appropriate authority, the victim as the persons who can compound the offence. That analogy, to my mind, has not dispensed with by the plain language of Section 152 of the Electricity Act, 2003. Hence the said application is hereby dismissed for the time being.

Sd/-

ASJ,

DELHI

14.3.06

6. Mr. Laliet Kumar, learned Counsel appearing for the Petitioner contends that u/s 152 of the Act it is not open to the Respondent No. 1 to impose a condition other than what is already contained therein and once the Petitioner offered to tender the compounding fee calculated on the basis of the connected load, the Respondent No. 1 had to accept it and agree to the compounding. He relies on the judgments of the Supreme Court in P. Ratnakar Rao and others Vs. Government of Andhra Pradesh and others,, , and Paramjit Bhasin v. Union of India 8 (2005) SLT 324 rendered in the context of a similar provision under the Motor Vehicles Act, 1988 (?MV Act?) to contend that once an accused applies for compounding then the complainant would have to proceed with the compounding of the offence subject of course to not imposing a condition higher than what is contained in the statute itself.

7. Mr. Mansoor Ali, learned Counsel on behalf of the BRPL submits that the Section 152 of the Act permitted compounding of the offence only by the authorized officers of the appropriate Government. He refers to a notification dated 5th May, 2006 issued by the Government of National Capital Territory of Delhi appointing Deputy Commissioners as officers authorized to accept the compounding fee in terms of Section 152 of the Act. He accordingly submits that the application for compounding could Therefore not have been filed before the learned Special Judge. Notwithstanding the preliminary objection, he submits that the Respondent No. 1 was justified in insisting the payment of the entire theft bill as a pre-condition to accept the compounding fee.

8. Section 152 of the Act reads under:

Section 152 - Compounding of offences

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is

reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Name of Service Rate at which the sum of money for compounding to be collected per Kilowatt (KW)/ Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tension (HT)

(1) (2) 1. Industrial Service twenty thousand rupees; 2. Commercial Service ten thousand rupees; 3. Agricultural Service two thousand rupees; 4. Other Services four thousand rupees:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with Sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with Sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of Section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The compounding of an offence under Sub-section (1) shall be allowed only once for any person or consumer.

9. The legislative intent as is evident from a plain reading of Section 152 shows that compounding of an offence has to be preceded by a bilateral agreement between the complainant which is BRPL and the accused. In Sub-section (3) the words "the acceptance of the sum of money for compounding an offence in accordance with Sub-section (1) by the Appropriate Government..." indicate that the offer of the compounding fee by the accused has to be accepted by the authorized officer as designated by the Appropriate Government. Secondly, the words in Sub-section (1) to the effect "may accept from any consumer..." indicate that this is a discretionary power and it is not in each and every case that the authorized officer is required to accept the compounding fee for compounding the offence. Sub-section (4) also indicates that this is a one-time measure vis-?-vis the consumer.

10. The language of Section 200 MV Act on the other hand is different. That provision reads as under:

200. Composition of certain offences.

(1) Any offence whether committed before or after the commencement of this

Act punishable u/s 177, Section 178, Section 179, Section 180, Section 181, Section 182, Sub-section (1) or Sub-section (2) of Section 183, Section 184, Section 186, Section 189 may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the official Gazette, specify in this behalf.

(2) Where an offence has been compounded under Sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

11. The observations of the Supreme Court in P. Ratnakar Rao (supra) have to be understood in the context of the wording of Section 200 MV Act. It is no doubt true that in para 4 of the judgment of the Supreme Court in P. Ratnakar Rao it was observed thus: (para 4 pages 625-626)

4. It is not mandatory that the authorized officer would always compound the offence. It is conditional upon the willingness of the accused to have the offences compounded. It may also be done before the institution of the prosecution case. In the event of the petitioner's willing to have the offence compounded, the authorized officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated. It is a matter of volition or willingness on the part of the accused either to accept compounding of the offence or to face the prosecution in the appropriate court. As regards canalization and prescription of the amount of fine for the offences committed, Section 194, the penal and charging section prescribes the maximum outer limit within which the compounding fee would be prescribed. The discretion exercised by the delegated legislation i.e. the executive is controlled by the specification in the Act. It is not necessary that Section 200 itself should contain the details in that behalf. So long as the compounding fee does not exceed the fine prescribed by penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance.

12. However, it would not be appropriate, given the difference in the texts of Section 200 MV Act, to interpret Section 152 of the Act in the manner in which Section 200 MV Act has been interpreted by the Supreme Court.

13. As regards the contention whether a condition in addition to what is evident from the statute can be imposed for accepting the compounding fee, it requires to be observed that the compounding is of the offence by the Petitioner and the fee is for compounding that offence. It would be inconceivable that the complainant can be expected to accept the compounding fee without the theft bill being discharged. Viewed in this context, the insistence by the Respondent No. 1 that the theft bill would have to be paid as a pre-condition to accept the compounding fee, cannot be said to be unreasonable or illegal.

14. This Court finds no infirmity in the impugned order dated 14th March, 2006

passed by the learned Special Judge. No ground has been urged by the Petitioner.

15. This petition is dismissed with no orders as to costs. The interim order passed by this Court on 25th April, 2006 stands vacated. The pending application is also dismissed.

16. The parties are directed to appear before the concerned learned Special Judge on 11th March, 2008.

17. A certified copy of this order be sent to the concerned learned Special Judge within five days from today.