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**(2006) 12 DEL CK 0106**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 5350 of 2001**

Renu Puri and Another

APPELLANT

Vs

DVB

RESPONDENT

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**Date of Decision :** 08-12-2006

**Acts Referred:**

**Citation :** (2007) 136 DLT 20

**Hon'ble Judges :** S. Ravindra Bhat, J

**Bench :** Single Bench

**Advocate :** Vineet Jhanji, for the Appellant; Jayant Nath and Rajnish K. Jha, for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Ravindra Bhat, J.—Issue Rule. With consent of counsel for the parties, the matter was heard for disposal.

2. The writ petitioner claims direction for quashing of an order dated 28.5.2001; that was issued by the erstwhile Delhi Vidyut Board (hereafter "DVB") which was succeeded to by the BSES Rajdhani Power Limited.

3. By the order, the misuse charges and surcharge, towards use of electricity claimed from the petitioner had been withdrawn w.e.f. 16.2.2001 and the petitioner was required to pay the amounts on account of such allegations from 2.2.1999 to 15.2.2001.

4. The petitioner, at the relevant time, was occupier of agricultural property in village Bijwasan. He claims a part of the property was used for domestic purposes and the remaining, for purely agricultural purposes. Reliance has been placed upon revenue records and Khasra/Girdawari for the period 1994-1995 to 2000-2001. Two electricity connections were granted; one domestic, and the other, for agricultural purposes. It is claimed that from July 1999 onwards, the petitioner started receiving inflated bills which claimed that the premises were being misused. He wrote to the respondent and met with its officers from time to

time. Letters dated 14th May, 2000, 11th August, 2000, 12th December, 2000 and 16th February, 2001 have been relied upon.

5. The petitioner had also approached the Ministry of Power, Central Government which wrote to the erstwhile DVB on 20.2.2001 requiring it to take action. Consequently, the impugned letter was issued withdrawing the misuse charges w.e.f. 16.2.2001 but confirming it for the period 2.2.1999 till 15.2.2001.

6. It is submitted that the impugned demand is completely without authority of law and not based on any objective facts. The allegations of misuse were decided. The petitioner was not notified about any alleged misuse nor was the determination of such misuse, arrived at after following any fair procedure, much less reasonable opportunity or notice in that regard.

7. The position of the DVB in its counter affidavit and also during the course of hearing, by its senior counsel Mr. Jayant Nath is that as per information received from the Local Revenue Authorities, namely, the Block Development Officer(BDO), several premises were found to be misused for non-agricultural purposes. He relied upon copy of the list along with a survey report, of the BDO forwarded to the DVB. It was submitted that pursuant to the said report dated 2.8.1999, the petitioner was notified that misuse charges and higher tariffs would be made effective from 2.2.1999.

8. Learned Counsel submitted that even though a notice was issued on 6.8.1999, there was no response from the petitioner and consequently the charges for misuse were billed and the petitioner was duty bound to pay the same.

9. The factual narrative shows that the DVB appears to have acted on the basis of an inspection said to have been conducted by the Block Development Officer. Although the show cause notice dated 6.8.1999 mentions the inspection by the Block Development Officer, nevertheless the affidavit filed in these proceedings records that the DVB inspected the premises on 2.8.1999. A careful reading of the list furnished by the Block Development Officer shows that the inspection was indeed carried out by the BDO. This establishes that the petitioner's premises were never independently inspected by the DVB. The notice dated 6.8.1999 does not call upon the petitioner to answer to any allegation; it is a mere intimation that 50% misuse charges would be levied with retrospective effect from 2.2.1999 for an indefinite period till the petitioner proved that she was not indulging in misuse.

10. The materials on record unequivocally point out that the petitioner was protesting for nearly two years that her premises were never misused as alleged by the respondent. The respondent did not pay any heed to her entreaties till February 2001. It appears that the premises were inspected subsequently after the Central Government wrote to the DVB. On the basis of this, the erstwhile DVB belatedly formed the opinion that there was no misuse. However, it maintained that misuse charges and surcharge were payable for the period 2.2.1999 onwards.

11. I am of the opinion that the DVB has not acted on the basis of any independent observations or by adopting a fair procedure. The bland allegations in the counter affidavit that the premises were inspected on 2.8.1999 are not corroborated. The only reliance placed is upon the list furnished by the BDO, who had inspected the premises on 2.8.1999. This leaves no manner of doubt that before imposing the misuse, neither notice was issued to the petitioner about the allegations which led to imposition of higher tariff and rates nor was she given reasonable opportunity of meeting any charges. In these circumstances, the action of the respondent in withdrawing the misuse tariff only w.e.f. 6.2.2001 is not supportable in law. It is arbitrary.

12. In view of the above discussion, the writ petition deserves to be allowed. As per claim No. 3, the petitioner has sought a direction to the respondent to refund amounts due to her, after the withdrawal of levy of misuse charges w.e.f. 2.2.1999. Accordingly, the respondent is directed to calculate the misuse charges recovered for the period 2.2.1999 to 15.2.2001 and intimate the break up as well as refund the amounts to the petitioner within six weeks from today.

13. The writ petition is allowed in the above terms. No costs.