(2006) 08 DEL CK 0240

In the Delhi High Court

Case No : Writ Petition (C) 20189 of 2004

Shri S.K. Maheshwari APPELLANT

Vs

BSES Yamuna Power Ltd. RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:

Delhi Electricity Regulatory Commission (Performance Standards Metering and Billing) Regulations, 2002 — Regulation 21
Electricity Act, 2003 — Section 126, 135

Citation : (2006) 91 DRJ 236

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Mukul Dhawan, for the Appellant; M.S. Vinayak, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The legality and justification of an electricity bill for the sum, of Rs. 1,37,494/- issued by the Respondent BSES Rajdhani Power Ltd (hereafter variously, ''BSES'' Ltd and ''the utility'') has been questioned, in these writ proceedings.

2. The facts necessary for the purpose of deciding the dispute are that the petitioner, an electricity consumer, carrying on business in printing, was issued with the impugned bill, whereby the utility demanded an amount of Rs. 1,37,994/-.

3. The basic facts are not in controversy. The utility does not allege, either in its return in these proceedings, or during the course of hearing, that the petitioner was guilty of indulging in any theft of electricity or ''dishonest abstraction of electricity'' falling within the description under Sections 126 and 135 of the Electricity Act, 2003. Yet, it alleges that although the meter was not tampered, its clock (time setting) was faulty. At one stage, it half heartedly alleged that the petitioner consumer had utilized magnetic devices, which distorted the true reading. However the main ground urged, is that the electricity meter truly

reflected the consumption, which was to the tune of 373 KW, as against a sanctioned load of 75 KW.

4. Mr. Dhawan, learned Counsel for the consumer submitted that the utility acted without authority of law, in raising an exhorbitant bill. The meter was faulty, he urged; Therefore, the utility had to replace it, and could not have, under any stretch of the imagination, indulged in fanciful and arbitrary billing demands. It was contended that the utility realized this position, as is evident from its action, in replacing the meter, in December, 2004 It also did not find any fault with the petitioner, or determine him to be culpable, and Therefore did not impose tariff applicable in the case of dishonest abstraction of electricity.

5. Mr. Vinayak, counsel for the utility, on the other hand, submitted that the meter failed only in one parameter, and Therefore, the BSES rightly did not raise any demand on the basis of theft or dishonest abstraction of electricity. It was claimed that the utility demanded the sum in question on the basis of the ''CMRI''/computer data, downloaded in respect of the petitioner''s premises, which revealed that the actual consumption was much higher than the sanctioned load, and that was exactly the basis of the demand.

6. Counsel also submitted that Clause 10.2 of the relevant Tariff order, authorized the utility to justifiably demand the amounts billed, in this case. That provision reads as follows:

in case Maximum Demand indicated by Maximum Demand Indicator (MDI) of NDLT/SIP connection is found to be more than 100 KW the bulk tariff (MLHT/LIP) under relevant category for LT (400 V) shall be charged for six months after the load is brought in the SIP/NDLT limit.

7. The facts of this case show that the Petitioner, a consumer of electricity, faced problems, when he received the impugned bill; the respondent utility inspected the meter installed by it in the premises, and found it faulty in one respect. It Therefore agreed to change the meter, and did so. However, it claims that the billing was on the basis of actual consumption of 373 KW for one day, and not because the meter was faulty. Its counsel stated that the utility rightly did not bill on the basis of ''dishonest abstraction of electricity'' since the inspection did not reveal any wrongdoing or malpractice by the consumer.

8. The Delhi Electricity Reforms Commission (Standards of Metering and Billing) Regulations 2002, which prescribes the method for billing by the utility, where a meter is found defective, reads as follows:

21. Billing during the period defective/burnt meter remained at site

(i) The consumer shall be billed (for the period meter remained defective) based on the estimated energy consumption by taking the consumption pattern of the consumer for the 6 months prior to and 6 months after the period during which the meter remained defective. The amount already paid by the consumer by way of provisional bills for the period meter remained non functional or defective, shall be adjusted in this bill.

(ii) In cases where the recorded consumption of past six months prior to the date meter became defective, is either not available or partially available, the consumption pattern as obtained from such lesser period along with the above mentioned subsequent six months'' pattern shall be deemed sufficient for estimation of consumption.

(iii) In case, the Maximum Demand Indicator (MDI) of the meter at the consumer''s installation is found to be faulty or not recording at all (unless tampered), the demand charges shall be calculated based on billing demand during corresponding months/billing cycle of previous year, when the meter was functional and recording correctly. In case, the recorded MDI of corresponding month/billing cycle of past year is also not available, the highest of the billing demand during 6 months succeeding meter replacement shall be considered.

9. The facts of this case do not show that the MDI (Maximum Demand Indicator) of the BSES meter was faulty; hence the reliance placed on Para 10.2 of the relevant Tariff Order (extracted above) is not apt. This is because the BSES itself changed the meter, and Therefore did not bring it in line with SIP/ NDLT limits. Its Explanation that consumption on a single day, was 373KW, formed the basis of the impugned demand.

10. I am also of the view that the conduct of BSES is such that Regulation 21 is inapplicable. It did not wait for the six month period, to observe the consumption pattern, and work out the formula stipulated in that provision.

11. In these circumstances, the question is whether the impugned bill is legal. If indeed, the Explanation of BSES that it did not bill on the basis of dishonest abstraction of electricity were correct, then its stand bristles with contradiction, because any load, consumed, or connected, above the sanctioned load can fall within the meaning of that expression. Yet, it chose not to apply it. The rationalization, given during course of hearing was that inspections do not yield information, and the BSES cannot keep a vigil at all times, cannot be accepted. If its case is that the consumer acted in gross contravention of the sanctioned load, as is sought to be projected, there ought to be some material, and not merely its ipse dixit, on the basis of CMRI data, which was admittedly not given to the petitioner at the relevant time. As far as Explanations go, there could be more than one, not all necessarily attributable to the consumer''s alleged culpability. Electrical surges are not an unknown phenomenon. Being a utility, which is in possession of all the data connected with the supply, the BSES has to disclose that there was nothing in the supply, or attributable to the supply, which resulted in a consumption of 373 KW on a single day.

12. The foregoing discussion leads to the conclusion that application of neither the Tariff Order nor Regulation 21 is consistent with the course of action adopted by the BSES. Therefore, the bill impugned to the extent it levies demand charges is liable to be set aside. The writ petition is accordingly allowed. The respondent

is directed to correct the bill, after reducing the amount demanded on the basis of consumption of 373 KW, and after appropriately adjusting amounts already paid.

