

Naresh Chand Singhal Vs. Ndpl

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Court : Delhi

Decided On : Sep-18-2013

Judge : Manmohan

Appellant : Naresh Chand Singhal

Respondent : Ndpl

Advocate for Def. : Mr. Rahul Malhotra

Advocate for Pet/Ap. : Mr. Sanjay Dewan, Mr. Rahul Malhotra

Judgement :

6,7, 10, 15 & 16 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 5339/2010 NARESH CHAND SINGHAL Petitioner Through: Mr. Sanjay Dewan, Advocate. versus NDPL Respondent Through: Mr. Rahul Malhotra, Advocate. With 7. + W.P.(C) 8533/2009 JAGDEEP SINGH TALWAR Petitioner Through: Mr. Sanjay Dewan, Advocate. versus NORTH DELHI POWER LTD. Respondent Through: Mr. Rahul Malhotra, Advocate. With 10. + W.P.(C) 13630/2009 INTERNATIONAL CORPORATION Petitioner Through: Mr. Sanjay Dewan, Advocate. versus NORTH DELHI POWER LTD Respondent Through: Mr. Rahul Malhotra, Advocate. With 15. + W.P.(C) 799/2011 NEM CHAND AGGARWAL Petitioner Through: Mr. Sanjay Dewan, Advocate. versus NDPL Respondent Through: Mr. Rahul Malhotra, Advocate. And 16. + W.P.(C) 905/2011 KASHMIRI LAL VOHRA Petitioner Through: Mr. Sanjay

Dewan, Advocate. versus NDPL Respondent Through: Mr. Rahul Malhotra, Advocate. Date of Decision:

18. h September, 2013. % CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J (Oral):

1. Present batch of writ petitions has been filed under Articles 226 and 227 of the Constitution challenging the speaking orders, show cause notices, inspection reports as well as demands issued by the respondent.

2. A perusal of the files reveals that it is the case of the respondent that petitioners have indulged in dishonest abstractions of energy. A Division Bench of this Court in B.L. Kantroo vs. BSES Rajdhani Power Ltd., 154 (2008) DLT 5.(DB) has held that the Special Court has exclusive jurisdiction to decide disputes pertaining to dishonest abstraction of energy. The relevant portion of the aforesaid judgment reads as under:22. It is apparent that the cases of theft under Section 135(1) involve mens rea. The jurisdiction of civil Court is not barred but the power to try offences punishable under Sections 135 to 139 is conferred exclusively on the Special Court constituted under Section 153 of the Act and the provisions of Sub-section (5) of Section 154 specifically invest Special Court with the jurisdiction to determine any dispute regarding the quantum of civil liability in theft cases whether or not the allegation of theft is disputed, is still entitled to make such a challenge to the disputed bill before the Special Court, even in cases where no criminal complaint is filed against the consumer and the amount of civil liability so determined shall be recovered as if it were a decree of a civil Court and it can act as civil Court as well as criminal Court while conducting the cases before it. xxx xxx 30. Although there is no specific provision in Section 145 of the Act for exclusion of jurisdiction of Civil Court to entertain any proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine, we are of the view that any dispute about civil liability in theft cases is impliedly excluded from the jurisdiction of civil Court in view of the provisions of Sections 153 and 154 of the Act wherein special court has got the jurisdiction to determine any dispute regarding the quantum of civil liability specifically in theft cases and

the said Court can act as civil Court as well as criminal Court while conducting the cases before it.

3. At this stage, learned counsel for the petitioners has drawn this Courts attention to a judgment of a Coordinate Bench of this Court in N.M. Soft Drinks P. Ltd. Vs. North Delhi Power Ltd., W.P.(C) 1814/2008 decided on 4th March, 2011 wherein this Court quashed a speaking order as well as demand notice on the ground that the bill had not been raised within the prescribed time schedule.

4. However, upon a perusal of the judgment in N.M. Soft Drinks P. Ltd. (supra), this Court finds that neither the Division Benchs judgment in B.L. Kantroo (supra) was brought to the notice of the Court nor the plea of alternative remedy was advanced by respondent in that case.

5. It is settled law that any conclusion or declaration arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of general nature binding as a precedent. In fact, it has been held that a decision passes sub-silentio when a particular point of law involved in the decision is not perceived by the Court or present to its mind. [See State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, (1991) 4 SCC 13. and Municipal Corporation of Delhi Vs. Gurnam Kaur, (1989) 1 SCC 101].

6. Consequently, judgment in N.M. Soft Drinks P. Ltd. (supra) offers no assistance to the petitioner. Accordingly, this Court is of the opinion that the petitioners have an alternate effective remedy to challenge the speaking orders, show cause notices, inspection reports as well as demands issued by the respondent.

7. Present writ petitions are disposed of with liberty to petitioners to avail the remedy before the Special Court, if they so desires within a period of six weeks. In the interest of justice, it is directed that the time spent in prosecuting the present petitions would not be taken into account while calculating the period of limitation for the new proceedings to be filed by the petitioners before the Special Court.

8. Mr. Rahul Malhotra, learned counsel for respondent fairly states that the interim orders passed by this Court can continue to operate till the final disposal of the

proceedings filed by the petitioners before the Special Court.

9. The aforesaid statement made by learned counsel for respondent is accepted by this Court and respondent is held by the same.

10. Needless to say, all the rights and contentions of all the parties are left open and the Special Court shall decide the matters finally without being influenced by any observation made by this Court. MANMOHAN, J SEPTEMBER 18 2013 js/rn

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