

Ramesh Chand Dang Vs. B.S.E.S. Rajdhani Power Ltd.

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SooperKanoon Citation : sooperkanoon.com/680413

Court : Delhi

Decided On : Jan-07-2009

Reported in : 2009LC(DEL)314

Judge : Vipin Sanghi, J.

Acts : Electricity Act; Delhi Electricity Regulatory Commissions Regulations; [Constitution of India](#) - Article 226

Appeal No. : W.P. (C) No. 14168/2004

Appellant : Ramesh Chand Dang

Respondent : B.S.E.S. Rajdhani Power Ltd.

Advocate for Def. : Navin Chawla, Adv.

Advocate for Pet/Ap. : Laliet Kumar, Adv

Disposition : Petition allowed

Judgement :

Vipin Sanghi, J.

1. The issue that arises for consideration in this petition is whether the respondent licensee is justified in clubbing the electric load pertaining to the Package A.C. plant, which as per the inspection report prepared by the respondent was connected to the DG Set (Diesel Generator set) in the premises of the petitioner, and thereby levy a higher rate of tariff applicable to MLHT connections.

2. The petitioner is owner of premises No. C-7, Ring Road, Rajouri Garden, New Delhi and is running an eating house under the name and style of M/s Seven Seas.

3. The inspecting team of the respondent conducted an inspection in the premises of the petitioner on 28.04.2004 It was noted by the inspection team that the connected load was 83.948 KW and load of the Package AC Plant was found to be 22.50 x 6 KW, 135 KW. In the Inspection Report it was noted:

22.500 W x 6 Package AC unit was found installed but the same found operating by DG Set although the change over switch of the generator light can be changed on BSES supply but AC remain on DG set. DG Set capacity 160 KVA + 125 KVA + 63 KVA found installed.

4. A Show Cause notice dated 20.07.2004 was issued to the petitioner alleging that during inspection 'a load of 234.058 KW/HP was found connected and being used for non-domestic (light/power/mix (purpose against a sanctioned load of 11 plus KW/HP for DOMESTIC (Provisional) plus. purpose.? It was alleged that since connected load was higher than 100 KW, the billing tariff rate applicable was the rate applicable to the LIP/MLHT category. The petitioner appeared before the Assessing Officer, and according to the petitioner it

was explained to the Assessing Officer that the load of the Package AC Unit could not be clubbed to the connected load as it was exclusively being ran on the D.G. Sets and never on the electricity connection granted by the respondent. However, the presiding officer passed the impugned Speaking Order dated 29.07.2004 holding that the supply from the DG Set and the BSES system were found intermixed through the Change over switches. He held that the connected load was 218.948 KW i.e. more than 100 KW. He held that the petitioner should be billed for a connected load of 208.001 KW under MLHT category as per provisions of Tariff Schedule 2003-04 and DERC Regulations. Consequently, the respondent raised a bill on petitioner under the Mixed Load High tension (MLHT) category.

5. The petitioner, aggrieved by the impugned Speaking Order and the impugned bill, has filed the present petition challenging the same. Grievance of the petitioner is that the respondent could not have clubbed the exclusive load of the DG set with the connected load on the electricity connection of the respondent as, even from the report of the inspecting team, it is evident that the load of the Package AC units which was found on the D.G. Sets could not have been shifted to the BSES supply lines through the changeover switch.

6. Petitioner relies on various clauses and the definition contained in the 'tariff Schedule for the Year 2003-2004' as contained in notification numbered No. F.11(118)/2001-Power/2889 dated 22nd November 2001. The relevant extracts are reproduced hereunder:

Connected Load shall mean the sum of the rated capacities of all energy consuming apparatus duly wired and connected to the power supply system including portable apparatus in consumer's premises. Further, connected load shall be calculated after allowing a tolerance of 5%.

The connected load shall not include the load of spare plug sockets, stand by or spare energy consuming apparatus installed authorisedly, through change over switch, which cannot be operated simultaneously and load exclusively meant for fire fighting purposes. The equipment which is under installation and not connected electrically, equipment stored in warehouse/showrooms either as spare or for sale is not to be considered as 'connected load'. Either heating or cooling use of these apparatus/loads shall be taken into account as per prevailing season (i.e. 1st April to 30th September for cooling use and 1st October to 31st March for heating use).

8.2 Violation of provisions of Schedule 8.2.1 Change of category from LT(Low tension) to HT(High Tension) due to unauthorized load 8.2.1.1 Levy/withdrawal of bulk supply tariff The cases of change of category from NDLT/SIP (Non-domestic Low Tension/small Industrial Power) to MLHT/LIP (Mixed Load High Tension/Large Industrial Power) due to unauthorised load shall be dealt as under:

I) In case the connected load including lighting, fan and power load of the otherwise LT connection is found to be more than 100 KW, the bulk tariff (MLHT/LIP) under relevant category on LT (400 V) shall be charged till the load is brought within SIP/NDLT limit and so verified by the licensee on payment of necessary charges by the consumer.

In such cases, the billing demand will be treated as sanctioned load or maximum demand, whichever is higher.

II)....

III)....

7. Premised on the aforesaid materials the contention of the petitioner is that the exclusive load on the DG sets which could not have been transferred on the supply lines of the respondent even by the changeover switch could not have been clubbed with the load on the supply line of the respondent. He also relies on a judgment of this court in Kolmet Builders v. BSES Rajdhani Power Ltd. 144 (2007) DLT 632 to substantiate his claim.

8. On the other hand Ld. Counsel for the respondents submits that the AC load was found to be connected with the DG set through the changeover switch, making it possible for the petitioner to use the Packaged AC Unit by drawing the power from the BSES supply system whenever they required. It is further averred that no load of the petitioner was exclusively connected to the DG set and the same was intermixed with the BSES system through the changeover switch and thus the entire load, including the load of the Package AC Unit, was rightly taken into consideration. It is also argued that the petitioner is estopped from approaching this Court under Article 226 of the [Constitution of India](#), the petitioner having settled the impugned bill of Rs. 4,32,097.00/- for Rs. 3,89,787/-.

9. Having considered the contentions of both parties and after taking into account the aforesaid materials, I am inclined to agree with the petitioner that the respondent is not justified in clubbing the load of the package A.C. Unit with the connected load to change the category of the petitioner to MLHT consumer. 'Connected Load' means the sum of all loads duly wired and connected to the power supply system. Surely, the packaged A.C. load on the DG sets does not fall in the aforesaid category, in so far as neither was the load of the Package A.C. Unit found wired, nor found connected to the Power supply system of the respondent. It is evident that the Package AC Unit was completely insulated from the Power Supply system of the respondent. It could be run and stopped only by use of the D.G. Sets and not otherwise. If the D.G. Sets were not to be used, or were not functional, the Package AC Unit could not be run, because even by use of the changeover switch, the load of the Package AC Unit was found to be only on the D.G. Set. In that sense, the Package AC Unit and the D.G. Sets could be said to be a stand alone unit. The second para in the definition of 'connected load' says that the connected load shall not include load of spare energy consuming apparatus installed authorizedly through change over switch which cannot be operated simultaneously. The purport of the aforesaid exclusion from the definition of 'connected load' is that where a load is connected, such that the said load can only be utilized as a standby i.e. when the supply from the licensee has stopped by resort to a changeover switch, the same would not be included within the definition of connected load.

10. The case in hand presents a similar though not identical, situation. A plain reading of the report of the inspecting team would establish this fact, where it categorically records that:

22.500 W x 6 Package AC unit was found installed but the same found operating by DG Set although the change over switch of the generator light can be changed on BSES supply but AC remain on DG set. DG Set capacity 160 KVA + 125 KVA + 63 KVA found installed.

11. The interpretation to the aforesaid observations in the inspection report as advanced by learned Counsel for the respondent cannot be accepted. Learned Counsel for the respondent has tried to lay great emphasis on the observation...although changeover switch of the Generator light can be changed on BSES supply.... However, he has no explanation for the immediately following words in the same sentence viz. 'but A.C. remain on D.G. Set.' In my view, the aforesaid observation could only mean that the lighting load was connected to the BSES Supply System through the changeover switch, but not the load of the Package AC Unit.

12. The aforesaid report admits of no ambiguity in its interpretation and the only way the same can be interpreted grammatically and reasonably is to mean that the load of the Package A.C. Unit was found exclusively on the D.G. Sets and that the same was not transferred on the BSES Supply System even upon using the changeover switch. The submission of Learned Counsel for the respondent that what was noted at the time of inspection was only the situation found existing at the relevant time also cannot be appreciated. The respondent cannot assume that after the inspection was over, the petitioner had manipulated the wiring so as to place the load of the Package AC Unit on the BSES Supply System. There has to be a factual basis for subjecting the consumer to such adverse civil consequences and the respondent cannot act merely on the basis of suspicion and its imagination.

13. As aforesaid, the inspection report is clear and does not admit of two interpretations. Even if one were to

agree that the said report is capable of two interpretations, unless there is any other material or circumstance available to support the interpretation canvassed by the licensee/respondent, the interpretation that the court would normally adopt would be the one in favour of the consumer and against the licensee since the inspection report is authored by the officers/representatives of the licensee.

14. In Komlet case (supra) while dealing with the issue of clubbing the load of two separate connections this court repelled the endeavor of the licensee to resort to such a move and held the same to be in direct conflict with the provisions of the Electricity Act. The relevant extract from this decision reads as under:

11. Given the fact that it is possible to have separate electricity connections for a premises and that a premises can be even a part of a building, it is permissible to have separate electricity connections in the same building and in respect of the same consumer. The connected load in respect of each of the connections can easily be determined. The clubbing of separate electricity connections, even according to the DERC Order and ARR is permissible only when it is - proved that the connections for one portion is being used to supply other portions or the connections are used in a unified premises.

12....

13....

14. Clause 8.2.1.1 of the Tariff 2003-04 requires that the connected load in respect of each connection should be found to be more than 100 KW. It also does not envisage clubbing of two separate connections in a unified premises. The word 'establishment' having not been defined, the petitioners are justified in contending that in the context of supply of electricity in terms of the applicable tariff, the word 'establishment' has to be understood as premises.

15. The resultant position is that if the respondents want to charge a higher tariff then in terms of Clause 8.2.1.1 of the relevant tariff for the year 2003- 04 it will have to establish factually that the connected load in respect of each separate connection is more than 100 KW. There is no other statutory basis on which the respondent can do this. They cannot possibly rely upon Clause 2.36.35.4 in the ARR Order to justify the levy of a higher tariff after clubbing of the consumption against separate connections in the premises of the same consumer. There is much force in the contention of the petitioners that in any event the essential condition for the applicability of the said clause has not been shown to exist factually in any of these cases.

15. While Komlet (supra) was a decision concerning the clubbing of the connected load of two independent connections to apply the higher tariff rate applicable to MLHT connections, in the present case there is only one connection, and the endeavour is to club the load exclusively on the D.G. Sets to the connected load. Keeping in view the ratio of Komlet (supra), and in the facts of the present case, I find force in the contention of the petitioner that the exclusive load of the DG set could not have been clubbed with the BSES supply to arrive at the total connected load. The observations made by the inspecting team are self explanatory and categorically establish that the load of the Package AC unit cannot be shifted to the BSES supply.

16. A perusal of the impugned Speaking Order shows that the same is cryptic and does not deal with the inspection report in question. It merely states that the supply from the DG Set and BSES System was found 'intermixed' through changeover switches. However, it is not even noticed that in the inspection report itself it had been categorically noted that the load of the package AC unit continues to remain on the DG Sets and is not transferred on the BSES supply lines even after the use of the changeover switch. Consequently, I am of the view that the impugned Speaking Order as well as the impugned bill cannot be legally sustained and are liable to be quashed.

17. However, there is one other aspect that needs to be considered. After the passing of the impugned Speaking Order and the raising of the impugned bill by the respondent for Rs. 4,33,097/-, it appears that the petitioner approached the respondent and settled the said bill for Rs. 3,89,787/- . Thereafter the petitioner

was granted time to make payment and the payment was made even beyond the due date aggregating to Rs. 2,66,000/-. Consequently, the petitioner took advantage of the aforesaid settlement and warded of the threat of disconnection of the electricity supply till the filing of the present petition on 23.08.2004 In my view, therefore, the amount paid by the petitioner of Rs. 2,66,000/- to the respondent cannot be directed to be refunded to the petitioner even though I have held the impugned Speaking Order and the impugned bill to be illegal. The petitioner has derived benefit of the settlement with the respondent by making payment of Rs. 2,66,000/-. However, the petitioner cannot be compelled to make payment of the impugned bill or even the remaining amount at which the petitioner had settled the impugned bill i.e for Rs. 3,89,787/-. Since the said settlement cannot be said to be for any lawful consideration. I, therefore, allow this writ petition and while quashing the impugned Speaking Order and the impugned supplementary bill for MLHT assessment, direct that the respondent shall not enforce the recovery of the balance amount of the said bill from the petitioner and petitioner shall also not be entitled to recover the amount of Rs. 2,66,000/- paid by it to the respondent. With these directions the petition stands disposed of.

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