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S.D. Technical Services Pvt. Ltd. Vs. D.E.S.U. and ors.

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Court : Delhi

Decided On : Apr-17-2006

Reported in : 130(2006)DLT26

Judge : Pradeep Nandrajog, J.

Acts : Indian Electricity Act, 1910 - Sections 20, 23(3) and 24; Electricity (Supply) Act, 1948; Delhi Municipal Corporation Act, 1957 - Sections 283; Constitution of India - Articles 19(1) and 21; Delhi Electricity Control Order, 1959

Appeal No. : WP(C) Nos. 121/92, 1732/1997, 3728/98, 2883/2001 and CM. No. 13174/02

Appellant : S.D. Technical Services Pvt. Ltd.;kanwal Kishore Manchanda;ram Prakash Kanwal Kishore

Respondent : D.E.S.U. and ors.;m.C.D. and ors.;delhi Vidyut Board and anr.

Advocate for Def. : Avnish Ahlawat, Adv. for BSES, ; Sandeep Sethi, Sr. Adv., ;

Advocate for Pet/Ap. : C.M. Chopra, Adv.,; Sandeep Sethi, Sr. Adv. and; Aly Mirza

Judgement :

Pradeep Nandrajog, J.

1. A complex set of facts have been woven by the parties in the 4 captioned writ petitions and thereforee before noting the issues which arise for consideration in the 4 writ petitions, it would be advisable to note the relevant facts.

2. On 25.9.1967, Late Shri Ram Prakash obtained perpetual leasehold rights in his favor from DDA in respect of property bearing municipal No. B-87 Mayapuri Industrial Area, Phase I, New Delhi.

3. He constructed an industrial building on the land. Delhi Electric Supply Undertaking held a license to supply electricity in Delhi under the Indian Electricity Act, 1910 and the Electricity (Supply) Act 1948. Late Ram Prakash applied for 2 electric connections. One was for light and the other was for power. The 4 captioned petitions concern the sanction taken for industrial power being K. No. 14-ZK/521706. Load sanctioned was 73.73 KW.

4. The facts at this stage as are a little hazy but they are otherwise unconnected with the dispute but need to be stated in the factual backdrop of the litigation. Late Ram Prakash probably constituted a firm by the name of M/s Ram Prakash Kamal Kishore. This was his sole proprietory firm. The power connection and the light connection was obtained in the name of the firm.

5. Ram Prakash had a daughter name Raksha Arora. He had a son name Kamal Kishore. It appears that initially Ram Prakash entered into a contract with his son to share profits in the business of M/s Ram Prakash Kamal Kishore i.e. the firm became a partnership firm. Thereafter, his son retired from the partnership. Daughter, Raksha Arora was inducted as a partner.

6. From a part of the premises at B-87 Mayapuri Industrial Area, Phase I, the partnership firm M/s Ram Prakash Kamal Kishore did business. Vide a lease/license dated 1.3.1983, the remaining part was given possession of to M/s S.D.Technical Services (P) Limited, writ petitioner of WP(C) No. 121/1992.

7. Both electricity connections i.e. for light and power continued to remain in the name of M/s Ram Prakash Kamal Kishore. S.D. Technical Services Pvt. Ltd. also started using the industrial power and industrial light connection.

8. Ram Prakash executed a will on 23.2.1990. He died on 25.7.1990. Dispute arose between his daughter Raksha and son Kamal Kishore. Reason of the dispute was the will. The brother and sister gave different interpretation to the will. Problem under the will was that without defining the specific share of the brother and the sister, Ram Prakash made a bequest to the effect that the tenanted portion with M/s S.D.Technical Services Pvt. Ltd. stands bequeathed to his son and the portion in possession of the firm M/s Ram Prakash Kamal Kishore would be inherited by his daughter.

9. Due to the aforesaid nature of bequest, the brother and sister started claiming more area in the building in the respective possession of M/s Ram Prakash Kamal Kishore and M/s S.D. Technical Services Pvt. Ltd.

10. Raksha Arora filed a suit for permanent injunction and other consequential reliefs on the original side of this Court. The suit was registered as Suit No. 3726/1990.

11. On 28.1.1991, Enforcement Team of DESU carried out an inspection at B- 87 Mayapuri Industrial Area Phase-I. A connected load of 149.2 KW was noted.

12. As per tariff applicable, industrial connections less than 100 KWs were classified in the Small Industrial Power (SIP) category. Connections above 100 KWs were classified in the category of Large Industrial Power (LIP) category. Tariff in the LIP category was much higher. Additionally, a minimum power factor of 0.85 had to be maintained in the LIP category. The inspection further revealed that 1 phase of the CT meter had stopped and the supply was operational on the other 2 phases. 1 glass rivet was also found missing.

13. Since the registered consumer was M/s. Ram Prakash Kamal Kishore, a show cause notice dated 4.4.1991 alleging excess load/load violation, sub-letting and low power factor was issued to the registered consumer requiring it to respond to the show cause notice.

14. No reply was received to the show cause notice from the firm and accordingly on the basis of the inspection report DESU raised a bill as per tariff in the LIP

category as also penalty for low power factor and sub-letting. Bill was in sum of Rs. 1,70,777.19.

15. Since the bill was not cleared electricity supply was disconnected on 4.9.1991.

16. M/s. Ram Prakash Kamal Kishore approached DESU to clear the bill in installments. A sum of Rs. 85,000/- was paid and on 4.10.1991 the supply was restored.

17. Balance amount was not cleared and accordingly DESU disconnected the electricity supply for non payment of the remaining sum.

18. Raksha Arora moved an application in Suit No. 3726/1990. Vide order dated 3.12.1991, DESU was imp leaded as a defendant in the Suit.

19. Before any orders could be obtained in the suit, M/s S.D. Technical Services Pvt. Ltd. filed WP(C) No. 121/1991 alleging disconnection as a mala fide act of DESU and at the behest of Raksha Arora. M/s S.D.Technical Services Pvt. Ltd. questioned the bill raised by DESU. It sought quashing of the bill and additionally prayed that in future DESU be directed to raise bills in the SIP category.

20. On 17.1.1992, at an ex-parte preliminary hearing, on the very first date when writ petition was listed, directions were issued that on M/s S.D. Technical Services Pvt. Ltd. paying on the basis of tariff applicable in the SIP category for the electricity consumed, electricity supply would be restored.

21. In view of the order dated 17.1.1992 electricity supply had to be restored by DESU.

22. On 22.5.1992 Rule was issued in WP(C) 121/1992. An interim order was passed as under:-

CM 202/1992

We have heard the learned Counsel for the parties. By order dated 17th January, 1992, this Court directed the petitioner to pay on the basis of SIP charges for the electricity already consumed. Mrs. Ahlawat states that they have calculated the

amount for the period from September 1991 to February 1992 on SIP basis at Rs. 44,000/- approximately. We understand the average consumption seems to be Rs. 11,000/- per month. Without going into the merits as to how much amount is due on SIP basis for the period prior to this, we made ad hoc calculation at the rate of Rs. 11,000/- per month. After calculating all the amounts due from the petitioner and after adjusting a sum of Rs. 85,000/- we direct the petitioner to pay or deposit a sum of Rs. 44,000/- with respondent No. 1. It is also stated by Mrs. Ahlawat that on the basis of LIP charges, the amount due from the petitioner is the tune of Rs. 5,00,000/- approximately. The petitioner would furnish a security to the satisfaction of the Registrar for the amount of Rs. 4,00,000/- within 8 weeks. In future, the respondent No. 1 would sent bills to the registered consumer and will also send a copy of the bill to the petitioners and respondent No. 3 for payment. The bill so raised would show the charges on the basis of SIP as well as on the basis of LIP. The petitioner would go on depositing the amount calculated on the basis of SIP and would also give security to the satisfaction of the Registrar of the difference of the amount calculated on the basis of SIP and LIP after every six months.

Mrs. Chopra has delivered a cheque of Rs. 44,000/- to the respondent No. 1, bearing No. 226256 drawn on Oriental Bank of Commerce, Naraina, New Delhi, dated 22nd May, 1992 and states that the cheque would positively be encased on presentation. The DESU would restore the electricity within 72 hours from now.

23. In terms of the order dated 22.5.1992, M/s S.D.Technical Services Pvt. Ltd. was to furnish a security to the satisfaction of the Registrar for the difference of the amount calculated on the basis of the bill as per LIP and SIP tariff for the reason under interim order M/s. S.D. Technical Services Pvt. Ltd. was to clear the future bills as also the arrears applying tariff in SIP category and for the remaining amount DESU had to be secured.

24. Security furnished by M/s S.D. Technical Services Pvt. Ltd. was repeatedly rejected by the Registrar. Final security furnished was rejected vide order dated 4.7.1994. The order records that 3 surety bonds which were furnished from time to time were inadequate.

25. M/s. S.D. Technical Services Pvt. Ltd. sought modification of the order which mandated security to be furnished. The said application which was registered as CM No. 7580/1993 was dismissed vide order dated 5.7.1994.

26. Since the term of the interim order dated 22.5.1992 of furnishing security to the satisfaction of the Registrar was not complied with by M/s. S.D. Technical Services Pvt. Ltd. and since its application seeking modification of the said order was also dismissed, DESU disconnected the electricity supply.

27. Another front was opened in Suit No. 3726/1990.

28. Disposing of, amongst others is No. 7672/1994 learned Single Judge on the original side of this Court vide order dated 5.9.1994 directed as under:-

The pending applications are disposed of in accordance with the following arrangement:-

(i) Supply of electricity by DESU to the plaintiff shall be restored at the earliest by energising the connection installed in the name of M/s. Ram Prakash Kamal Kishore.

(ii) The plaintiff shall not be bound to supply electricity to the defendant No. 1. The defendant No. 1 may secure an independent electric connection on an application being made and subject to fulfilling the usual formalities, the DESU shall provide the defendant No. 1 with independent electric supply. Before the defendant No. 1 be entitled to secure independent connection, he shall furnish security for payment of amount of difference in demand calculated on SIP and LIP basis for future. In respect of the arrears already accrued, charges calculated on SIP basis shall be deposited by defendant No. 1 with DESU.

(iii) Though the charges will be paid and security furnished by defendant No. 1 now, he shall be entitled to reimbursement with interest calculated at the rate of 18 per cent per annum from any one from whom the defendant No. 1 is held entitled to reimbursement ultimately, in accordance with the orders either of the Division Bench hearing the writ petition or by this Court.

29. In the order dated 5.9.1994, learned Single Judge held against M/s. S.D. Technical Services Pvt. Ltd. as under:-

In view of the undertakings given by defendant No. 1 before this Court and before the Division Bench as also in view of the several orders made by the Division Bench, the defendant No. 1 should be held bound to clear the arrears of electricity before securing fresh supply through independent connection.

30. Needless to state, defendant No. 1 in the Suit was M/s. S.D. Technical Services Pvt. Limited.

31. DESU did not get its dues. Security was not furnished. Electricity supply remained disconnected.

32. When the aforesaid battle was being fought with DESU, another suit was filed on the original side of this Court by Kamal Kishore. The suit was registered as Suit No. 687/1997. In the said suit, Kamal Kishore claimed partition of property No. B-87 Mayapuri Industrial Area Phase-I and additionally prayed that a mandatory injunction be issued against MCD and DESU to grant him a separate industrial license and electricity connection respectively.

33. Vide judgment and decree dated 8.2.1996, Suit No. 3726/1990 filed by Raksha Arora was dismissed and Suit No. 687/1993 filed by Kamal Kishore was decreed.

34. Armed with the judgment and decree dated 8.2.1996, Kamal Kishore applied to DESU for a separate electricity connection for the portion of the property which fell to his share as per the judgment and decree dated 8.2.1996. 35. By the year 1997 Delhi Vidyut Board (DVB) was constituted under the Electricity (Supply) Act, 1948. It took over the license to supply electricity in Delhi from DESU.

36. When Kamal Kishore sought a separate electricity connection, electricity dues outstanding for the entire property were to the tune of Rs. 21,13,926.25. Vide letter dated 22.8.1996 DVB asked for clearance of the said sum.

37. Disowning his liability to pay, Kamal Kishore filed CW No. 1732/1997 praying that a mandamus be issued to DVB to grant a separate electricity connection

without insisting that he should pay the sum of Rs. 21,13,926.25.

38. Kamal Kishore could not manage any interim orders. His writ petition got tagged on with WP(C) No. 121/1992.

39. Raksha Arora also opened up another front. She filed WP(C) No. 3728/1998. In the writ petition she claimed that M/s. S.D. Technical Services Pvt. Ltd. (arrayed as respondent No. 2) was obliged to clear the electricity dues and since electricity connection was common, mandamus be issued to DVB to restore the electricity supply without demanding any amount from the firm M/s. Ram Prakash Kamal Kishore. In the writ petition she averred that issue of liability of M/s. S.D. Technical Services Pvt. Ltd. would be adjudicated in WP(C) No. 121/1992.

40. A hotch pot was created by the parties. Orders were obtained in suits and in writ petitions. There were 4 players in the field. One was DESU/DVB which insisted on clearance of the outstanding amounts and stood by the inspection report. The other player was M/s. S.D. Technical Services Pvt. Ltd. which occupied a part of the premises as a lessee/licensee. The third was Raksha Arora who inherited part of the property under will of her father. The fourth was Kamal Kishore who inherited the portion of the property occupied by M/s. S.D. Technical Services Pvt. Limited. The problem got compounded because a single connection was being used by Raksha Arora and by M/s. S.D. Technical Services Pvt. Limited. Since interim order dated 22.5.1992 in WP(C) No. 121/1992 was not complied with, electricity supply was disconnected. Under no circumstances could it be restored even under an interim order unless DESU/DVB was provided with adequate security cover.

41. Hoping that the best possible forum for the parties was where same kind of a negotiated settlement could be arrived at, vide order dated 20.8.1998 this Court referred the dispute as raised in the 3 writ petitions for conciliation before the Lok Adalat constituted by DVB.

42. Unfortunately, the Lok Adalat could not resolve the dispute. Neither party was prepared to budge even an inch. On 26.3.2001 the Presiding Officer of the Lok Adalat recorded no settlement.

43. Raksha Arora, as partner of M/s. Ram Prakash Kamal Kishore filed another WP(C) No. 2883/2001 alleging that the Lok Adalat had no jurisdiction to return the reference unanswered. She questioned the legality of order dated 26.3.2001.

44. In the mean-while, against the judgment and decree dated 8.2.1996 Raksha Arora filed an appeal before the Division Bench which was registered as RFA(OS) No. 13/1996.

45. Probably realizing that it was virtually a dead end for it, M/s S.D. Technical Services Pvt. Ltd. filed a CM No. 10349/1997 praying that it be allowed to withdraw its writ petition. Vide order dated 8.12.1997 the same was allowed without notice to the respondents.

46. CM No. 2043/98 was filed in CW No. 121/92. It was prayed that the order dated 8.12.1997 be recalled. Said application was filed by Raksha Arora. It was stated in the application that under protection of the ex-parte ad interim order dated 17.1.1992 and the order dated 22.5.1992, till question of security bond furnished by M/s S.D. Technical Services Pvt. Ltd. was decided and security bond was rejected, M/s. S.D. Technical Services Pvt. Ltd. enjoyed benefit of electricity and it could not be permitted to withdraw the writ petition till it cleared the outstanding amount.

47. Vide order dated 17.4.1998 CM No. 2043/98 was allowed. Writ petition No. 121/92 was restored.

48. On 13.12.2001 CM 13174/2001 was filed by petitioner praying that leave be granted to amend WP(C) No. 121/92. Paras 32 to 36 were sought to be inserted.

Additionally, Grounds 'J' to 'Z' are also sought to be urged.

49. Since WP(C) No. 121/1992 had remained pending for over 9 years, when amendment was sought and since even amendment application remained pending for 5 years, with consent of parties it was decided that the amendment application as also the 4 captioned petitions be heard together for final disposal.

50. I would accordingly take up CM No. 13174/2001 for decision at the first instance for the reason if amendment is allowed a wider issue would have to be decided in the context of the amendment sought.

51. As noted above, amendments prayed are to insert paras 32 to 46 of the writ petition as also Grounds 'J' to 'Z'. The amendment read as under:-

32. That the alleged inspection by Enforcement Department of the Respondent No. 1 on 28.01.1991 was carried out in collusion and conspiracy with and on the behest of the Respondent No. 2 herein who has been unduly harassing and coercing the Petitioner to vacate the tenanted premises as the same is apparent from the counter reply of the Respondent No. 2 filed the present petition. The Respondent No. 2 has not only vehemently supported the illegal action of Respondent No. 1 but has clearly exceeded her brief. For instance in para 4 of the Writ Petition it is pleaded that 'the tariff for the year 1990-91 does not show to have the requisite approval from the Municipal Corporation of Delhi thereforee, the enhancement in charges of the electricity by the Respondent No. 1 DESU is totally unauthorized.' In its counter reply to para 4, the Respondent No. 1 has clearly admitted the statement of the Petitioner whereas the Respondent No. 2 in her counter reply to para 4 has stated that 'the approval of the concerned authority was duly obtained. Further the collusion and connivance between the Respondent Nos. 1 and 2 is also apparent from the fact that although the alleged inspection was carried out in relation to the consumption of electricity by the Petitioner too yet, the Petitioner was not purposely served with the post inspection show cause notice whereas the Respondent No. 1 allegedly served such notice upon the Respondent No. 2, so was done with a sole aim of keeping the Petitioner in dark regarding inspection and conversion of tariff charges from SIP to LIP so as to leave the Petitioner unheard and undefended. In fact the collusion between the Respondent Nos. 1 and 2 and fraud is writ large which percolates through out the entire pleadings thereforee the show of alleged inspection and report dated 28.01.1991 both are vitiated and are nullity in law.

33. That the Petitioner was undisputedly in legal occupation of premises in question on 28.1.1991 but the Respondent No. 1 did not give prior information to

the Petitioner at all before conducting the alleged inspection on 28.1.1991 as required under Section 20 of Indian Electricity Act, 1910.

34. That after the alleged inspection on 28.1.1991, the Respondent No. 1 failed in discharging its legal and mandatory duty cast upon it under Clause 7 of Delhi Electricity Control Order, 1959 to report to the Chief Commissioner within 4 (four) days, in fact till date, of its coming to of alleged contravention of the provisions of Clause 4 (four) of the Order, 1959, i.e. alleged connected load in excess of sanctioned load thereforee, the inspection and report both are illegal.

35. That after conducting the alleged inspection and before disconnecting the power supply to the workshop of the Petitioner, the Respondent No. 1 did not serve any show cause notice upon the Petitioner as was incumbent upon and compulsorily required under the law. The Petitioner being a known legal consumer of the electricity supplied by Respondent No. 1 since 1983, the Petitioner was entitled in law for a similar show cause notice, as allegedly given to registered consumer though without filing proof of its service, similarly no notice under Section 24 of Indian Electricity Act, 1910 was ever given before disconnecting the power supply which deprived the Petitioner of fulfillment of his legal and fundamental right of being heard before condemning as enshrined in the Constitution and thereforee violates the basic principle of natural justice.

36. That the alleged inspection was conducted on 28.1.1991 not only without any prior notice either to the Petitioner or to the registered consumer but also in absence of both. Since the Respondent No. 1 is refusing to recognise the Petitioner's status as a legal consumer under the law, thereforee, it was legal obligation upon the Respondent No. 1 to conduct the inspection on 28.1.1991 in the presence of registered consumer but the report does not bear the signature of the registered consumer as well as a witness which demonstrates that the alleged inspection never took place consequently the report dated 28.1.1991 was prepared without any actual inspection at the site.

37. That in law there is a procedure for carrying out the inspection as provided under the Indian Electricity Act. The Respondent No. 1 has not followed that well established procedure. The connected load which has been shown in the report

dated 28.1.1991 is totally wrong and fabricated. It is submitted that the Petitioner Company is a manufacturer of components of Air Brakes for Railway Rolling Stock for which the following equipment with the load showing against each equipment was installed and in use on 28.1.1991 and for that matter at all relevant times. These are the only equipment which can be taken into consideration for the purpose of calculating connected load on 28.1.1991 or on any other date for that matter.

1. Lathes - 6 total load 13 HP2. Drilling Machines - 5 total load 6.5 HP3. Grinders - 2 total load 1.5 HP4. Hacksaw - 2 total load 2.0 HP5. Compressor - 1 total load 3.0 HP6. Water Pump - 1 total load 2.5 HP7. A/C 1 Ton - 2 total load 3.5 HP8. Fans 25 X 60 watts total load 2.0 HP9. Lamps 30 X 40 watts total load 1.7 HP10. Air coolers 80 watts total load 0.5 HP11. Pedestal fans 80 watts total load 0.5 HP----------Total load 36.7 HP----------38. That the Petitioner submits that the Company was never engaged in production of casting or forging, being only a light machine shop and thereforee, there was no question of any electric furnace being used as alleged in the report dated 28.1.1991.

39. That the Petitioner submits that since the Company was under taking installation and commissioning work of instrumentation at various power stations and fertilizer plants outside Delhi, a lot of mobile equipment were kept at the premises No. B-87 Mayapuri Industrial Area Phase I, New Delhi which were apparently taken into account to calculate the connected load. It is further submitted that inspection report dated 28.1.1991 suggests that the officials of Respondent No. 1 had taken into consideration the apparatus/equipment which had no fitted cable or wiring connection to the electricity supply which could not be done under the relevant provision of law defining 'connected load' applicable to tariff for the year 1990-91 according to which 'aparatus which have no fitted cable or wiring connected to supply shall not be included in the connected load' thereforee the impugned report has showed a totally false connected load to fasten the liability upon the petitioner.

40. That Enforcement Department team of the Respondent No. 1 which allegedly conducted inspection on 28.1.1991 was not a properly and legally structured team

as per requirement of relevant law thus the alleged inspection itself rendered illegal and nullity.

41. The petitioner submits that it can be seen from the comparison of impugned report dated 28.1.1991 in which the connected load of the Petitioner is shown at 149.2 HP and claimed to be the basis of conversion of tariff rates from SIP to LIP whereas the second inspection report dated 30.4.1997 done as per direction of this Hon'ble Court the connected load of the Petitioner is shown only at 3.50 KW.

42. That inflated and increased charges on LIP tariff rates coupled with levy of surcharge and huge penalties claimed by the Respondent No. 1 from the Petitioner on the basis of impugned inspection report dated 28.1.1991 are in contravention and violation of the provisions of Section 23(3) of the Indian Electricity Act, 1910.

43. That the facts of present case leave no manner of doubt that the alleged inspection dated 28.1.1991 is an act of fraud and deliberate deception played upon the Petitioner by the Respondent No. 1 in collusion with and connivance of Respondent No. 2 of securing the impugned inspection report by taking unfair advantage of the absence of the Petitioner with a well thought design of coercing the Petitioner to vacate the tenanted premises. It was an act of deception in order to gain by Petitioner's loss.

44. That since 1983 the Petitioner had all throughout been charged only on SIP tariff rates basis till the alleged inspection on 28.1.1991 when the electricity charges have been shifted from SIP to LIP tariff rates along with levy of 50% misuse charges and other penalties solely on the basis of inspection dated 28.1.1991. The Petitioner submits that such conversion from SIP to LIP tariff rates by the Respondent No. 1 is without authority of law in as much as no approval from Municipal Corporation of Delhi was obtained for fixing new higher rates of charges as compulsorily required under Section 283 of DMC Act, 1957.

45. That the officials of Respondent No. 1 have acted in bias and arbitrary manner while preparing the impugned report dated 28.1.1991 which is reflected and described in hereinabove in quite wholesome. It is submitted that the net effect of

bias was that it completely negated fairness, reasonableness which has conclusively lead to arbitrariness and mala fide thereforee, the impugned inspection is illegal ab-initio.

46. That the contents and thesis of impugned inspection and report runs contrary to the electricity bills raised by the Respondent No. 1 itself three years prior and after of the date of alleged inspection on 28.1.1991 which show the level and pattern of consumption of electricity has remained the same whereas the charges for the same have been inflated and increased several folds by making additions of penalties and surcharges illegally. The Respondent No. 1 resorted to such harsh punitive action of disconnection of supply of electricity illegally which has resulted in closure of the factory completely since 1994 leading to huge financial reoccurring losses and mental agony to the Petitioner who happens to be a very Senior Citizen. The Petitioner reserves his legal right to take appropriate action under appropriate law to redeem his grievances by claiming proportionate damages from erring Respondents by filing a law suit. Grounds J to Z:-

J. That the alleged inspection by Enforcement Department of the Respondent No. 1 on 28.1.1991 was carried out in apparent collusion, conspiracy and in connivance with and on the behest of the Respondent No. 2. It is submitted that unholy collusion and connivance runs into the rule of law thereforee, the show of inspection and report dated 28.1.1991 both are vitiated and are nullity in the eyes of law consequently deserves quashing by this Hon'ble Court.

K. That the Petitioner was undisputedly in legal occupation of premises in question on 28.1.1991 and legal consumer of electricity but the Respondent No. 1 did not give any prior information to the Petitioner before conducting the alleged inspection on 28.1.1991 as required under Section 20 of Indian Electricity Act, 1910 thereforee, same can not stand the scrutiny of law.

L. That after conducting the alleged inspection on 28.1.1991, the Respondent No. 1 failed in discharging its legal and mandatory duty cast upon it under Clause 7 of Delhi Electricity Control Order, 1959 to report to the Chief Commissioner within 4 (four) days, in fact till date, of its coming to of alleged contravention of the provisions of Clause 4 (four) of the Order, 1959 i.e. alleged connect load in excess

of sanction load thereforee, the inspection and report both are illegal which is liable for quashing in this petition.

M. That after conducting the alleged inspection and before disconnecting the power supply to the workshop of the Petitioner the Respondent No. 1 did not serve any show cause notice upon the Petitioner as was incumbent upon and mandatorily required under the law. The Petitioner bearing a known legal consumer of the Respondent No. 1 since 1983, the Petitioner was entitled in law to a similar show cause notice, as allegedly given to registered consumer though without substantiating evidence of its service, which deprived the Petitioner of fulfillment of his legal and fundamental right of being heard before condemning as enshrined in the Constitution and thereforee violation of basic principle of natural justice and the report deserves outright quashing on this ground alone.

N. That the alleged inspection was conducted not only without any prior notice either to the Petitioner or to the registered consumer but also clearly in absence of both thereforee same is contrary to well settled can one of law which renders the impugned report totally illegal.

O. That in law there is a procedure for carrying out the inspection as provided under the Indian Electricity Act. The Respondent No. 1 has not followed that well established procedure thus the impugned report is contrary to law and can not be acted upon at all.

P. That the connected load which has been shown in the report dated 28.01.1991 is totally wrong and fabricated as the impugned inspection report dated 28.1.1991 suggests that the officials of Respondent No. 1 had taken into consideration the apparatus/equipment which had no fitted cable or wiring connection to the electricity supply which could not be done under the relevant provision of law defining 'connected load' applicable to tariff for the year 1990-91 according to which 'apparatus which have no fitted cable or wiring connected to supply shall not be included in the connected load' thereforee the impugned report has showed a totally false connected load to fasten the liability upon the petitioner thereforee, a nullity in the eyes of law.

Q. That the team of the Respondent No. 1 which allegedly conducted inspection on 28.1.1991 was not a properly and legally structured team as per requirement of law as there was no Asstt. Civil Engineer with the team which renders the impugned report nullity in the eyes of law and deserves quashing by this Hon'ble Court.

R. That it can be easily seen from the bare comparison of impugned report dated 28.1.1991 in which the connected load of the Petitioner is shown at 149.2 HP and claimed to be the basis of conversion of tariff rates from SIP to LIP rates whereas the second inspection report dated 30.4.1997 done on the request of the Petitioner and as per direction of this Hon'ble Court the connected load of the Petitioner is shown only at 37.7 HP and this single fact demolishes the impugned report totally.

S. That inflated and increased charges on LIP tariff rates coupled with a levy of surcharge and penalties claimed by the Respondent No. 1 from the Petitioner on the basis of impugned inspection report dated 28.1.1991 are in contravention and violation of the provisions of Section 23(3) of Indian Electricity Act, 1910.

T. That inflated and increased charges on LIP tariff rates coupled with levy of surcharge and penalties claimed by the Respondent No. 1 from the Petitioner on the basis of impugned inspection report dated 28.1.1991 are not only in contravention and violation of the provisions of Section 23(3) of Indian Electricity Act, 1910 which have forced the Petitioner who is a senior citizen of India, to close its workshop completely since 1994 which amounts to flagrant violation of the fundamental rights of the Petitioner guaranteed under Articles 19(1)(g) and 21 of the Constitution.

U. That the facts of present case leave no manner of doubt that the alleged inspection dated 28.1.1991 is an act of fraud and deliberate deception played upon the Petitioner by the Respondent No. 1 in collusion with and connivance of Respondent No. 2 of securing the impugned inspection report by taking unfair advantage of the absence of the Petitioner with the design of coercing the Petitioner to vacate the tenanted premises. It is act of deception in order to gain by Petitioner's loss. The acts of fraud and deception on the part of State authority like Respondent No. 1 can not be allowed under any circumstances thereforee, this

Hon'ble Court would be more than justified to quash the impugned report dated 28.1.1991.

V. That since 1983 the Petitioner had all throughout been charged only on SIP basis till inspection on 28.1.1991 but subsequent thereto the electricity charges have been shifted from SIP to LIP tariff rates along with levy of 50% misuse charges and other penalties purely on the basis of inspection dated 28.1.1991 and same is without authority of law in as much as no approval from Municipal Corporation of Delhi was obtained for fixing new higher rates of charges as compulsorily required under Section 283 of DMC Act, 1957.

W. That the officials of Respondent No. 1 acted in bias and arbitrary manner while conducting the alleged inspection and preparing the impugned report dated 28.1.1991 which is reflected and described in herein above in quite wholesome manner. Such glaring bias has completely negated the concept of fairness, reasonableness which has conclusively lead to arbitrariness and malafide thereforee, the impugned inspection is illegal ab-initio.

X. That the contents and thesis of impugned inspection and report runs contrary to the electricity bills raised by the Respondent No. 1 itself pertaining to period three years prior and three after of the date of alleged inspection on 28.1.1991 which show the level and pattern of consumption of electricity has remained the same throughout whereas the charges for the same have been inflated and increased several folds by making additions of penalties and surcharges illegally.

Y. That the impugned inspection report is contrary to the facts and circumstances of the case and against the well settled principles of relevant law as laid down by Hon'ble Supreme Court of Indian and this Hon'ble Court in various judicial pronouncements thereforee the impugned inspection report is illegal ab-initio and nullity in the eyes of law.

Z. That Respondent No. 1 failed in discharging its legal obligation cast upon it by the condition No. XIV of Tariff for the year 1991-92 to conduct a surprise inspection within one year of first inspection dated 28.1.1991 to ascertain the connected load of the Petitioner for the purpose of deciding the rates of tariff for

the following year thereforee, the impugned inspection lost its validity.

52. While seeking amendment, in paras 3 to 7 of CM No. 13174/2001 it is stated as under:-

3. That the Petitioner was not at all aware of the reasons of shifting/conversion of the tariff rates from SIP to LIP and raising the electricity bills for the period from May to November of 1991 on LIP tariff basis to Respondent No. 2 uptil she disclosed in her pleadings in one of her applications in her Suit bearing No. 3726/90 that the Enforcement Department of Respondent No. 1 carried out an inspection of meters installed at premises No. B- 87 Mayapuri Industrial Area, Phase-I, New Delhi on 28th January, 1991 according to which connected load in respect of consumption of electricity by the Petitioner was found 149.2 HP i.e. far in excess of the sanctioned load and in so far as the Respondent No. 2 was only 42 HP.

4. That at the time of filing of the present Writ Petition, the Petitioner was neither aware of the inspection carried out by the Enforcement Department of Respondent No. 1 on 28th January, 1991 nor received any show cause notice subsequent thereto nor the copy of the report dated 28.1.1991 was supplied to the Petitioner consequently the Petitioner was totally unaware about the inspection and the contents of the report dated 28.1.1991 but the Petitioner was not in position to make any specific averment therein about the various illegalities committed by the Respondent No. 1 in conducting the inspection and could not challenge the inspection and report dated 28.1.1991 on specific legal grounds in the originally laid Writ Petition before this Hon'ble Court. It is most respectfully submitted that inspection and report dated 28.1.1991 is the very basis of shifting tariff charges from SIP to LIP and levy of 50% misuse charges along with substantial penalties and the inspection and report dated 28.1.1991 is ultimate cause of controversy between the parties in the present Petition.

5. That the Respondent have filed their respective counter replies to the Writ Petition and Petitioner has filed its rejoinder affidavit to the reply of Respondent No. 1.

6. That a Division Bench of this Hon'ble Court vide its order dated 20.8.1998 was pleased to refer the present Writ Petition along with other cases related to parties namely FAO (OS) No. 298/94, CWP No. 2243/98, CWP No. 3728/98 and CWP No. 1732/97 to the Conciliation Board of the Respondent No. 1 but due to uncooperative attitude and vested interest of Respondent No. 2 and limited powers of the Conciliation Board/Lock Adalats, the matters could not be finally resolved thus sent back to this Hon'ble Court.

7. That in view of the subsequent unfolding developments taking place during the course of proceedings of the present Petition and other related case before this Hon'ble Court and the Conciliation Board/Lock Adalats, the full view and nature of undoubtedly null and void ab-initio inspection report dated 28.1.1991 has emerged. The Petitioner submits that in absence of specific averments in the originally laid Writ Petition about the facts and circumstances in regard to conduct of inspection of meters by Enforcement Department of Respondent No. 1 at the premises No. B-87 Mayapuri Industrial Area, Phase-I, New Delhi and its report of even date and in absence of grounds of challenge, this Hon'ble Court would found it most difficult to determine the real question in controversy between the parties.

53. A perusal of the averments made in paras 3 to 7 of CM 13174/2001 shows that according to M/s S.D. Technical Services Pvt. Ltd. it was not aware of the reasons of shifting/conversion of the tariff from SIP to LIP category. That it learnt about the same from the pleadings of Raksha Arora in suit filed by her i.e. Suit No. 3726/1990 that the Enforcement Department of DESU had carried out an inspection. In para 4 of the application it is categorically averred that the petitioner was not aware of any inspection carried out on 28.1.1991. Though S.D.Technical Services Pvt. Ltd. admitted in para 4 of the application that it had mentioned about the said inspection in the writ petition but stated that it was not in a position to make specific averments therein about the various illegalities committed by DESU when inspection was carried out.

54. As per the application, complete knowledge of the inspection dawned upon M/s. S.D. Technical Service Pvt. Ltd. during conciliation proceedings before the Lok Adalat.

55. Proposed amendments intend to challenge the report by labeling the same as fabricated and motivated at behest of Raksha Arora. Evident from proposed para 37 sought to be inserted is the fact that the petitioner, S.D. Technical Services Pvt. Ltd., intends to even challenge the equipment noted in the inspection report. Further challenge is on the ground that neither any prior notice of the inspection was given nor representative of S.D.Technical Services Pvt. Ltd. was associated during inspection.

56. A perusal of the pleadings in WP(C) No. 121/1992 and in particular para 18 reveals that the petitioner was fully aware of the inspection report inasmuch as it has made reference to the factual content of the inspection report. Para 18 of the writ petition reads as under:-

18. That it is important further to note that in the inspection report also, according to the Respondent No. 1 DESU, the seal was found intact and that all cables and meters installed at the Petitioner's premises were found intact. According to the definition of the expression 'connected load' as given in the Tariff for the year 1990-91 published by the Respondent No. 1 DESU, 'connected load shall mean the sum of the rated capacities.... Apparatus which have no fitted cable or wiring connected to the supply shall not be included in the connected load.... It appears that the Respondent No. 1 DESU has arbitrarily made additions of the rated capacities of all energy consuming apparatus lying at site irrespective of the fact that such apparatus was having fitted cable or wiring connected to the supply or not.

57. A perusal of the averments made in para 18 of the writ petition shows that in respect of the inspection a factual averment has been made that the seal was found intact at the time of inspection and all cables were found intact. Second assertion made is that the inspecting team arbitrarily made additions of the rated capacity of all energy consuming apparatus lying at site irrespective of the fact that such apparatus was not fitted or connected to the supply.

58. It is obvious that the petitioner was fully aware of the inspection and its contents. How else could it plead that the inspection noted that the seals and cables were intact. How else could the petitioner plead that machines which were

lying at site but were not connected to the supply line were included in the inspection report and were rated.

59. That apart, counter affidavit was filed by DESU on 12.8.1994 with advance copy to the Counsel for the petitioner. Inspection report was annexed as Annexure R-1/3. Show cause notice issued to M/s. Ram Prakash Kamal Kishore was annexed as Annexure R-1/4. On 19.9.1994, the petitioner filed a rejoinder to the counter affidavit filed by DESU.

60. In para 3 of the brief facts in the counter affidavit filed by DESU reference was made to the inspection report and the show cause notice. Petitioner responded to the said averments in the counter affidavit when it filed the rejoinder. Replying to para 3 of the brief facts stated in the counter affidavit filed by DESU, petitioner once again questioned the inspection report in the context of certain equipment admitted to be lying in the premises but allegedly not connected to the supply system.

61. Reasons set out in the application seeking amendment at the belated stage are obviously false. Petitioner S.D. Technical Services Pvt. Ltd. was aware of the inspection report and had access to the same when the writ petition was filed.

62. No doubt, approach by courts towards amendment of pleadings is liberal. As against amendments to defenses a more liberal approach has been taken by the Courts when the pleadings of the plaintiff/petitioner are sought to be amended. If otherwise meritorious, amendments have been held not to be disallowed only on grounds of delay, but this is subject to the defendant being capable of recompense by way of costs.

63. Power to allow an amendment is undoubtedly wide, but wider the discretion, greater should be the care and circumspection. Though delay, negligence, indifference or slipshodness by themselves are no grounds to deny amendment but that does not mean that a party can seek amendment as per its desire. Where party applying for amendment is acting mala fide and the Court is of the opinion that the application is not bona fide and lacks good faith, it may be a good ground to reject an amendment. Further, where a stand is sought to be altered or an

admission is sought to be taken away, unless duly explained, a Court would be justified in not permitting amendment.

64. For 3 reasons amendment sought must be rejected. The first is that in my opinion petitioner is acting mala fide. Evidenced by conduct of the petitioner when it got the writ petition dismissed as withdrawn is the fact that save and excepting prolonging the litigation, petitioner intends nothing more. It would be interesting to note that while withdrawing the writ petition, petitioner stated that in view of the preliminary objections raised by DESU, petitioner was of the opinion that it would be on no use for the petitioner to litigate on the issue. The second reason why the amendment has to be disallowed is again the mala fide of the petitioner and lack of good faith. As noted above, pleadings in the writ petition clearly show that petitioner had knowledge about the contents of the inspection report evidence by pleadings in para 18 of the writ petition. Additionally, when DESU filed counter affidavit in August 1994, petitioner got access to the inspection report and while filing a rejoinder a month later, petitioner questioned the inspection report on the limited ground that rated capacity of machines which were just lying at the site not connected to the supply lines were wrongly included. A false assertion has now been made in the application seeking amendment that the petitioner got access to the inspection report in the conciliation proceedings before the Lok Adalat.

65. Third reason why amendment must fail is that a contradictory plea is now sought to be raised by questioning the very existence of some machines which have been listed in the inspection report. This stand is at complete variance with the pleadings in the writ petition and the rejoinder wherein limited challenge to the inspection report has been made by alleging that some equipment and machines which were just lying at the site and were not connected to the supply line have been included for purposes of rating.

66. CM 13174/2001 is accordingly dismissed.

67. Raksha Arora has stopped appearing in the proceedings for the last over 3 years. On this short ground alone WP(C) No. 3728/1998 and WP(C) No. 2883/2001 filed under her instructions and through her, merit dismissal for non prosecution.

68. The core question which arise for consideration are whether DESU was entitled to raise the impugned bills on LIP tarrif with penalty for subletting and low power factors; whether the owner of the property are liable to clear the arrears under the impugned bills; whether S.D. Technical Services Pvt. Ltd., is liable to pay the bills.

69. The inspection report Annexure R-1/3 records a connected load of 149.2 KWs. It records a shunt capacitor of inadequate reading installed. The inspection report was followed by a show cause notice dated 26.3.1991 issued to M/s. Ram Prakash Kamal Kishore, the registered consumer. It did not challenge the notice.

70. Challenge to the inspection report by S.D. Technical Services Pvt. Ltd. is, as per its pleadings in para 18, that some machines lying at site but not connected to the supply were rated. What these machines are have not been stated. Pleadings are vague and lack in material particulars. They have to be ignored. As regards subletting the same is an admitted fact as it is the common case of the parties that S.D. Technical Pvt. Ltd. was not the registered consumer and was using the electric supply without permission from DESU.

71. I accordingly hold that challenge by S.D. Technical Services Pvt. Ltd. to the inspection report fails.

72. On the issue whether S.D. Technical Services Pvt. Ltd. was entitled to a show cause notice, issue stands conclusively decided by a learned Single Judge of this Court in the decision reported as : AIR2002 Delhi478 , Inndev Engineers (India) Pvt. Ltd. v. DVB. I may note that Inndev Engineers (India) Pvt. Ltd. is the sister concern of M/s. S.D. Technical Services Pvt. Limited.

73. DESU had sought to recover the outstanding dues for the writ premises i.e. B-87 Mayapuri Industrial Area, Phase-I, New Delhi payable by M/s. S.D. Technical Services Pvt. Limited from Inndev Engineers (India) Pvt. Ltd. In the said decision, holding that Inndev Engineers (India) Pvt. Ltd. was a separate company and refusing to lift the corporal veil it was held that outstanding dues in respect of premises No. B-87 Mayapuri Industrial Area, Phase-I (the writ property in the instant petitions) could not be recovered from M/s. Inndev Engineers (India) Pvt.

Limited. Dealing with the issue as to who would be liable, learned Single Judge held that the jural relationship is between the licensee supplying electricity and the registered consumer, meaning thereby that the electricity supply company has to put the registered consumer to notice before taking any action. In written submissions filed by M/s S.D. Technical Services Pvt. Ltd. justifying withdrawal of the writ petition filed by it, placing reliance upon afore-noted decision, it was stated as under:-

1. That the present petitioner is not the registered consumer in respect of electricity connection in question. The electricity connection was in the name of a firm M/s Ram Prakash Kanwal Kishore under which the petitioner is a tenant. This Hon'ble Court in its judgment : AIR2002 Delhi478 has held that :If a registered consumer permits a third party to use electricity from his connection, it is a matter between a consumer and such third party. In case of any default in payment of dues it is the registered consumer only who is liable to make payment to the supplier. In case the registered consumer has any sustainable claim against the third party who has been consuming electricity supplied through his meter, he may make recoveries from such a third party but the supplier has no concern with any dispute between the registered consumer and third party nor it can initiate any action against such third party for the reason that there is no privity of contract between the two.

74. Another learned Single Judge of this Court, in the decision reported as AIR 1985 Del 257, Puneet Plastic Industries v. Rawat Hosiery and Ors. held that between the person to whom electricity supply was sub-let and the electricity supply company, there was no privity of contract and thereforee a sub-letter of electricity was not entitled to any notice from the electricity supplying company where on the ground of sub-letting and misuse, penalty was imposed while raising the bills.

75. On the 2nd question whether the owners of the property are liable to clear the bills, issue stands conclusively adjudicated by a recent Division Bench judgment of this Court dated 22.3.2006 in LPA No. 223-24/2006, Mrs. Madhu Garg and Anr. v. NDPL.

76. In view of the general conditions of supply and the tariff, Division Bench has held that the owner of a property, even a subsequent purchaser, is liable to clear the electricity dues in respect of electricity connection to a premises.

77. I need hardly note any another decision as I am bound by the latest pronouncement on the issue rendered by a Division Bench of this Court.

78. I accordingly hold that Raksha Arora and her brother Kamal Kishore who have inherited property No. B-87 Mayapuri Industrial Area, Phase I are jointly and severally liable to clear the outstanding dues before they are entitled to re-exercitationof the disconnected supply or a fresh connection. They would in turn be entitled to recover the sum from S.D.Technical Services Pvt. Ltd.

79. On the last issue of the liability of M/s S.D. Technical Services Pvt. Ltd., the answer is simple. Notwithstanding the fact that the legal relationship is between the person in whose name electricity supply has been sanctioned and the electricity supply company, actual consumer would also be liable to clear the electricity dues. This liability flows from the private contract between him and his landlord where it is stipulated that he would clear the electricity dues.

80. Mrs.C.M.Chopra, learned Counsel for S.D. Technical Services Pvt. Ltd. urged that Kamal Kishore Manchanda has filed Suit No. 1559/2003 in this Court inter alias seeking a mandatory injunction against S.D. Technical Services Pvt. Limited to clear the outstanding electricity dues. She urged that this issue would be decided in the suit.

81. I am afraid, the said submission of learned Counsel for S.D. Technical Services Pvt. Ltd. in the facts and circumstances of the present case has to rejected.

82. The reason is found in the order dated 17.4.1998 passed by this Court allowing CM 2043/1998 and as a consequence thereof recalling order dated 8.12.1997 permitting S.D. Technical Services Pvt. Ltd. to withdraw the writ petition.

83. While recalling the order permitting S.D. Technical Services Pvt. Ltd. to withdraw the writ petition, Division Bench of this Court noted that notwithstanding

the normal rule of a writ petitioner not being compelled to continue with the litigation when it desired to withdraw the proceedings, instant case would justify a decision on merits, it was held as under:-

The withdrawal of this petition results in the interim orders passed in this petition being vacated and if the petitioner has taken any benefit thereof the same is liable to be reimbursed or restituted for failure of the petitioner to comply with the conditions subject to which the interim orders were made, as submitted by the Counsel for the respondent No. 2, applicant.

84. It would be relevant to note that under order dated 17.1.1992 in WP(C) No. 121/1992 electricity was restored. Order dated 22.5.1992 modified the ex- parte order requiring petitioner to furnish security to the satisfaction of the Registrar and subject to the furnishing of the security, petitioner was to pay as per SIP charges and DESU was restrained from disconnecting electricity supply. Petitioner failed to furnish the security to the satisfaction of the Registrar of this Court and vide order dated 23.5.1994 it was held that if the petitioner does not comply with the order dated 22.5.1992 out of 14 days DESU would be entitled to disconnect the electricity supply. Only thereafter electricity supply was disconnected.

85. As a result of the interim order, S.D. Technical Services Pvt. Ltd. continued to enjoy the benefit of electricity. Demand raised when writ petition was filed was in sum of Rs. 1.7 lacs out of which Rs. 85,000/- has already been paid. Due to continued consumption of electricity by S.D. Technical Services Pvt. Ltd. the demand went up to over Rs. 21 lacs when due to non compliance with the interim orders, electricity was disconnected. S.D. Technical Services Pvt. Ltd. have to recompense as it took benefit of the interim order passed by this Court.

86. I accordingly hold that M/s. S.D. Technical Services Pvt. Ltd. is liable to clear all outstanding electricity dues pertaining to the connection in question qua which a grievance has been raised in WP(C) No. 121/1992.

87. On the issue whether a Lok Adalat can return a reference unanswered, needless to state when reference was made, Lok Adalat functioning was not a statutory Lok Adalat. Even otherwise where a dispute cannot be resolved by the

Lok Adalat it would have no option but to return the reference unanswered.

88. The 4 writ petitions stand disposed of as under:

(A) WP(C) No. 121/1992 is dismissed holding that in addition to the registered consumer and the successor in interest, writ petitioner, M/s. S.D. Technical Services Pvt. Ltd. is liable to clear the electricity dues as per bills raised pursuant to the inspection dated 28.1.1991 in respect of premises bearing municipal No. B-87 Mayapuri Industrial Area, Phase-I, New Delhi.

(B) WP(C) No. 1732/1997 is dismissed.

(C) WP(C) No. 3728/1998 is dismissed.

(D) WP(C) No. 2883/2001 is dismissed.

89. No costs.

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