

**Devraj Vs. Bses Yamuna Power Ltd.**

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**Court :** Delhi

**Decided On :** Feb-22-2011

**Judge :** Rajiv Sahai Endlaw, J.

**Acts :** [Electricity Act, 2003](#) - Section 42(5)

**Appeal No. :** W.P.(C) No.5360/2010

**Appellant :** Devraj

**Respondent :** Bses Yamuna Power Ltd.

**Advocate for Def. :** Mr. K. Datta, Adv.

**Advocate for Pet/Ap. :** Mr. Deepak Pathak, Adv.

**Judgement :**

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported No in the Digest?

1. The writ petition impugns the order dated 16th November, 2009 of the Office of Electricity Ombudsman constituted under the [Electricity Act, 2003](#). The only question falling for adjudication being as to whether the electricity dues claimed from the petitioner are time barred or not, need was not felt to call for any counter affidavit and the counsel for the respondent appearing on advance notice heard

finally.

2. The undisputed facts are that the petitioner has an industrial electricity connection; no bills with respect thereto were raised since the date of installation; the petitioner in the year 2003 approached the Permanent Lok Adalat with the grievance of the bills having not been raised; the Permanent Lok Adalat vide order dated 14 th August, 2003, finding a total sum of `94,446/- to be then due from the petitioner up till 20th May, 2003 made provisions for payment thereof in installments. However even thereafter no bills were raised. On 27th July, 2004, the meter was changed under the scheme of mass replacement of electro mechanical meters; however no bills were raised thereafter also.

3. The petitioner in or about the year 2008 approached the Consumer Grievance Redressal Forum (CGRF) constituted under Section 42(5) of the [Electricity Act, 2003](#) with the case that the electricity dues if any against him had become time barred and for a direction to the respondent to raise a correct bill on him.

4. It was the case of the respondent before the CGRF that inadvertently the master date of the meter installed at the premises of the petitioner could not be punched in the system and due to which no bills were raised; that as per the reading taken on 7 th July, 2008, a sum of `1,19,101.16 paise against the old meter for the period after 20 th May, 2003 and a sum of `7,41,886.51 paise for the period after the change of the meter was due from the petitioner. It was further pleaded that under Regulation 16(xi) and 44(iv) of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 it was the duty of the petitioner as consumer to complain of non receipt of the bill and the petitioner had not made any complaint at all and could not escape the liability for the electricity actually consumed by him.

5. Per contra, the petitioner relied upon Section 56(2) of the Act to contend that the dues not recovered within two years had become time barred. It was further contended that for the deficiency in service and mistake of the respondent in non-punching of the master date, the petitioner could not be burdened with heavy payment.

6. The CGRF held that the petitioner had not submitted any document in support of his claim of approaching the respondent with the complaint of non-receipt of bills after 20th May, 2003 and thus was liable to pay the amounts demanded. However, the petitioner was permitted to pay the amount in eight monthly installments without Late Payment Surcharge (LPSC). Compensation of `2,000/- was also awarded to the petitioner for inconvenience caused due to non-raising of bills by the respondent.

7. The petitioner being not satisfied, preferred an appeal to the Office of Electricity Ombudsman. The Ombudsman vide order dated 16th November, 2009, impugned in this writ petition, after going through the accounts and giving adjustment of the lump sum payment made by the petitioner since the order of the CGRF, found a sum of `5,06,875.78 paise to be due from the petitioner and permitted the same to be paid in ten monthly installments.

8. This writ petition was preferred after more than eight months of the order of the Ombudsman. There is no explanation whatsoever for the unusual delay in preferring the writ petition. Be that as it may, the question urged being purely legal, the counsels for the parties have been heard.

9. The mainstay of the case of the petitioner is Section 56(2) of the Act which is as under:-

"(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut-off the supply of electricity."

10. The question as to when the electricity charges become first due is no longer res integra. The Single Judge of this Court in H.D. Shourie v. Municipal Copn. of Delhi 32 (1987) DLT 73 held that the electricity charges become due and the limitation for recovery thereof commences only when the bill therefor has been raised. The Division Bench in appeal reported as MCD (DESU) v. H.D. Shourie 53

(1994) DLT 1 reiterated that liability to pay accrues when liability is quantified and bill is raised. The counsel for the respondent has also drawn attention to *Swastic Industries v. Maharashtra State Electricity Board* (1997) 9 SCC 465 upholding the order of the National Consumers' Disputes Redressal Commission holding that even where the electricity distribution company had woken up after nine years to make the claim, the electricity dues had to be paid. Attention is also invited to the judgments of this Court in:-

(i) *D.R. & Co. v. D.V.B.* 130 (2006) DLT 158 laying down that even though consumer has to pay for the electricity consumed from the moment of consumption but there is no limit for raising demand.

(ii) Order dated 14th November, 2006 of the Appellate Tribunal for Electricity in Appeal Nos.202 & 203 of 2006 interpreting Section 56(2) aforesaid and the Terms & Conditions for Supply of Electricity, 2004 then in force and holding that the same were identical to the provisions earlier existing and reiterating that the bar of two years in Section 56(2) would come into play only after two years from the date of raising of the bill and not from the date of consumption.

(iii) *Brihanmumbai Municipal Corporation v. Yatish Sharma* AIR 2007 Bombay 73 also holding that the payment for electricity consumed falls due only upon service of bill.

(iv) Judgment dated 16th July, 2009 of the Division Bench in LPA No.211/2009 titled *N.D.M.C. v. Karam Chand Thapar & Brothers P. Ltd.* with reference to Section 56(2) of the Act and reiterating that an Electricity Undertaking is entitled to issue the bill for consumption of electricity even after three years of the date of consumption.

11. Though the counsel for the petitioner has referred to judgment of a Single Judge of this Court in *NDMC v. Ashok Kumar Ahuja* 154 (2008) DLT 50 but the same was discussed by the Division Bench in the judgment aforesaid and held to be not applicable.

12. Applying the aforesaid law, in the present case admittedly no bill was raised for the electricity consumed by the petitioner, till the petitioner approached the CGRF. It could not thus be said that the demand had become time barred as contended by the petitioner.

13. There is thus no merit in the writ petition; the same is dismissed. I refrain from imposing any costs. The petitioner if has not paid the dues aforesaid till now, to clear the same within four weeks from today. If the dues are not so cleared, the petitioner shall become liable for Late Payment Surcharge besides other remedies of the respondent.

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