IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11430 of 2014
Date of Decision.30.01.2015

M/s Lakhani India Ltd. and another ....Petitioners

Versus

State of Haryana and others ......Respondents

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Keshav Gupta, AAG, Haryana.

Mr. Birender Singh Rana, Senior Advocate with
Mr. Pardeep Singh Poonia, Advocate and
Mr. Rajinder Paul, Advocate
for respondent Nos.2 to 5.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J.

1. The petitioner's challenge in the writ petition is to the letter dated 16.05.2014 (Annexure P-4) directing the petitioner to deposit ₹ 3 crores not credited to DHBVN account which had been drawn through cheques in favour of DHBVN against the petitioner's account. The notice demanded the amount to be deposited, on the failure of which, appropriate legal action would be initiated against the petitioner. At the time when the petition was filed and brought for orders on 30.05.2014, electricity connection had also been disconnected on the failure of the amount to be deposited. The Court ordered restoration of electricity on payment of portion of amount demanded and the point

for adjudication in this case, however, is the tenability of the demand.

2. Learned Senior Counsel appearing on behalf of the petitioners would state that in terms of Section 56 of the Electricity Act, 2003, disconnection of supply in default of payment could be made only after a notice giving 15 days time and the disconnection which was effected just immediately without giving 15 days notice was incompetent. The additional ground mounted against the demand and the disconnection was that if any demand for payment would be permissible, it shall be only for amount not reflected in the bills but raised for a liability that arises for a period within two years. According to the petitioner, since the liability had not been included in the bills and referred to period earlier than two years prior to the notice, the claim was also barred by limitation. The petitioner would rely on the bills issued immediately prior to the notice and pointed out to the fact that the amounts had been paid upto May, 2015 as per the bills raised and there was, therefore, no liability. Learned counsel for the petitioner refers me to the decision of the Madras High Court in ***K.G. Mills, Unit of the Kadri Mills (Cbe) Limited Vs. Tamil Nadu Electricity Board 2012(5) MLJ 675*** that held that the Electricity Board has power of disconnection of electricity supply in the event of failure but the Electricity Board has obligation as licensee to inform the consumer by separate communication the details of current consumption.

3. Learned counsel appearing on behalf of the Electricity Corporation would counter the submissions made by the petitioner to state that Section 56 of the Electricity Act must be understood as

requiring a notice of 15 days of the amounts not demanded already and when a demand was made for the first time with the threat of disconnection, Section 56 as per the Conditions of Supply could be incorporated in the bio monthly bills themselves and they are not required to be issued separately. The counsel would refer to the Sales Manual of DHBVN Instruction 7.1 which reads as under:-

xxxxx xxxxx xxxxx

> "2. Every consumer is expected to make the payment of his dues by the "due date". In case he fails to discharge the liability, his premises will be liable for disconnection under Section 56 of the Electricity Act, 2003. Under the provisions of Section 56 of the Electricity Act, 2003, a clear fifteen days notice in writing is required to be given to such consumer before disconnecting the supply. The notice of disconnection of supply in the event of non payment of bill is printed on the bill itself, as such, if the payment if bill is not received within 15 days after expiry of grade period (i.e. before expiry of notice period), the premises of consumer should be disconnected by the SDO without further notice or loss of time. The supply to the premises so disconnected should not be restored until full settlement of all outstanding dues and of the charges for reconnection of supply prescribed in the schedule of general and misc. charges are not made."

xxxxx xxxxx xxxxx

4. The counsel would state that the demand of ₹ 3 crores was an admitted liability in respect of bills which had been periodically raised and for which scrolls had been issued through Banks commencing from 30.01.2013 upto 16.04.2014 on the basis of 133 cheques issued for ₹ 3.06 crores. The petitioner had manipulated with the connivance of the bank staff not to credit the amounts for which the cheques were issued to the respondents' account. Consequently, the impugned notice under Annexure P-4 was issued which was in the nature of reminder to a

liability which was an admitted one and there was no fresh notice which was necessary.

5. I find that the judgment of the Madras High Court in ***K.G. Mills*** case (supra) refers to the relevant provisions of the Supply code but does not take into account the effect of the time given in the bi-monthly bills. I am of the view that the said decision does not set down the correct law under the Supply code. In ***CESC Limited Vs. Shiva Glass Company Limited and others 2012(2) WBLR 565***, the Calcutta High Court was considering the effect of Section 56 as delimiting liability only for claims arising within a period of two years and the contention is that since the demand raised was with reference to beyond the said period, it was not competent. I have already observed that it is not as if the demand had not been raised for the amounts for which the impugned notice was issued. Demand had been raised through bills and the petitioner had also admitted liability by issuing 133 cheques but the amounts had not been transferred to the respondent-Corporation by an alleged collusion of the petitioner with the banker. The amount which was demanded was, therefore, an admitted liability for which there had been already notices issued through bills. The limitation of the period of two years under Section 56 cannot be invoked to a situation where there had already been bills raised and there is an admission of liability. The said decision of the Calcutta High Court cannot, therefore, help the case of the petitioner. In ***Nandita Poultry Integrator Pvt. Ltd. Vs. Bihar State Electricity Board and others 2010 AIR (Patna) 174***, the Patna High Court was considering the effect of Section 56 that in cases where the consumer neglected to pay and where there is bona fide

dispute with regard to the liability to pay, there could not be neglect to pay. I do not find this to be any assistance in situation where there is no bona fide dispute regarding the liability at all at the time when the impugned notice under Annexure A-4 was issued. It was an amount which the petitioner was liable to pay and had been suppressed in the writ petition without setting out the circumstances that had come about by the cheques issued but not credited to the respondent-Corporation. The said decision will also not apply.

6. Further, from the arguments made by the counsel for the petitioner, I gather that the petitioner does not deny that the amounts covered through 133 cheques were in respects of subsisting liability for bills raised already. If the amounts, however, were not credited to the Corporation by appropriate bank transfer on the basis of cheques, it would only mean that the amounts covered through the bills raised had not been honoured and the time of 15 days given for the respective bills for the months when the electricity connection was available and when electricity energy was consumed by the petitioner. Consequently, the subsistence of liability itself was a proof of entitlement of the Corporation to effect a disconnection in the light of Section 56 read with the particular clause referred to above. So reckoned, I would find that the disconnection ordered for a subsisting liability on the basis of demands made during the relevant periods was justified and it was not necessary to precede Annexure P-4 notice with a provision for 15 days time for making the payment. I reject the argument made on behalf of the learned Senior Counsel appearing on behalf of the petitioner that the electricity bills produced upto 2014 did not show any subsisting

liability. On the other hand, I would find that the petitioner is guilty of suppression of fact that he makes a reference only to the bills that were raised and amounts paid upto 18.05.2014 and does not make reference to the fact that amounts covered through 133 cheques delivered by the petitioner had not been credited to the respondent-Corporation. When the petitioner was expressing himself that he was liable to make the payment, there was surely an admission that past arrears had been allowed to be accumulated to the extent of ₹ 3.06 crores and when Annexure P-4 was issued, the respondent was entitled to seek for a disconnection if the amount was not paid.

7. The case cannot simply conclude with the statement that the disconnection was justified and the petitioner would require no further remedy. There have been some interim orders passed by the Court and there was also an application filed in C.M. No.7393 of 2014 bringing to notice of the Court certain events which are taken place subsequent to the filing of the writ petition. The Senior Counsel for the petitioner would refer me to the fact that at the time when the Court issued notice on 24.07.2014, the petitioner was directed to pay ₹ 25 lacs by Tuesday following next to 24.07.2014 and another payment of ₹ 25 lacs to be done before the next date of hearing. The Court had also directed ₹ 1.25 crores to be deposited with the registry of the Court which should be released in favour of the 4th respondent. It would seem that some amounts had been paid and in the application filed by the petitioner, he would give a summary of outstanding payments standing in the name of petitioners No.1 and 2 and some electricity connection in the names of group companies. The Senior Counsel for the petitioner

would state that the 2nd petitioner is not in any way connected with any liability for the amounts which are demanded and the disconnection which was originally effected and the liability arising out of the 1st petitioner's consumption cannot be fastened to the 2nd petitioner. In the calculation given by the petitioner, the petitioner would refer to five connections to plot Nos.136, 143, 122, 165 and 131. The total amounts for all the connections aggregate to ₹ 14,48,46,739/-. The amounts paid through cheques for these five connections are said to aggregate to about ₹ 11,42,17,422/-. The petitioner would admit the net balance of ₹ 3,06,29,317/- and seeking for a credit of ₹ 1.50 crores paid after the institution of the petition, the petitioner would contend that balance of liability is only ₹ 1,31,29,317/-. The Senior Counsel for the petitioner would state that he is willing to give up three connections No.143, 122 and 265. They may be disconnected and the security deposits available with the respondent for the said three connections aggregate to ₹ 1,24,35,182/- and if that amount is deducted, only an amount of ₹ 6,94,135/- will become payable.

8. I asked the Senior Counsel appearing on behalf of the respondent whether the respondent will be willing to accept the amount and allow for the amount to be paid in few installments. The counsel appearing on behalf of the respondent states that the provision for payment in installments is not available for industrial consumers and therefore, the question of grant of time does not arise. The counsel also states that the liability of ₹ 3.06 crores and odd was only a provisional assessment of the amount which was admittedly liable to be paid under various bills for which cheques had been issued and which

could not be credited to the respondent by the fact that the respondent had not caused the amounts to be transferred within their respective due dates when the bills had been delivered. Consequently, the petitioner had become liable for surcharge and penalty and that would also require to be collected from the petitioner. The petitioner is, therefore, not correct in working out the calculation in the manner done under Annexure A-4 circulated along with the application and seek for discharge of liability on such a basis.

9. I have considered the contentions and I find merit in the plea of the respondent that the Corporation cannot be compelled to merely receive ₹ 6,94,135/- as going towards the final discharge of liability. The Supreme Court in ***Amar Amit Jaina Alloys (P) Ltd. Vs. Maharashtra State Electricity Board and others 2005(13) SCC 126*** considered the effect of arrears in payment of bills accumulation about ₹ 9 crores. The Court balanced the interest between the parties by considering the effect of disconnection of supply that would lead to the closure of factory and unemployment of about 100 workers. The Supreme Court had provided for reconnection of supply on deposit of ₹ 75 lacs towards arrears and the monthly installments of ₹ 20 lacs towards arrears in addition to payment of current electricity bills pending decision. In the instant case, there was a direction during the pendency of proceedings for reconnection and when the petitioner was put to certain terms. The same cannot be undone when the case is being disposed of and the exercise must now, therefore, be the determination of total liability and provide for a certain latitude of discretion to tide over the present crisis and ensure that the industry

does not close and the workers are not put to any serious hardship. At the same time, the Corporation that operates on public funds cannot lose its entitlement and I am, therefore, of the view that by giving temporary reprieve for the petitioner while still allowing for the Corporation to collect all their entitlements, it would meet the ends of justice.

10. Having regard to the fact that the factory was said to be running and restoration of connections had been ordered by this Court, I will allow for a temporary reprieve for the petitioner on the following conditions in the interest of justice:-

(i) Net balance of amount payable by the petitioner	: ₹ 3,06,29,317/-
(ii) Amounts paid through Court	: ₹ 1,75,00,000/-
(iii) The balance of admitted liability	: ₹ 1,31,29,317/-

The respondent may add surcharge and penalty for non-payment of amount within the dates with the liability of ₹ 3,06,29,317/- arose and the amounts may be calculated and added to the same. Out of the total amount that is so arrived at, the respondent may act on the representation made by the petitioner for disconnection of three connections namely 143, 122 and 265 and the respondent shall after disconnecting the three connections in the manner sought by the petitioner, adjust the security amounts respectively standing against the said account and give a fresh calculation to the petitioner within a week after the receipt of copy of the order. The said amount shall be paid in the interest of justice within a period of 12 weeks on demand drafts or banker's cheques drawn in favour of the respondent Corporation. If the amount is not paid, the respondent is at liberty to disconnect the service connection and take action for recovery in the process known to law.

11. The writ petition is disposed of with the above direction.

(K. KANNAN)
JUDGE

January 30, 2015
Pankaj*