216 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP No. 4184 of 2012
Date of decision: 1.02.2016

Jasvir Singh

..........Petitioner

versus

Punjab State Power Corporation Ltd. and another

..........Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. B.S.Guliani, Advocate
for the petitioner.

Mr. Rinku Dahiya, Advocate
for the respondents.

Rakesh Kumar Jain, J.(Oral)

The petitioner is running his business under the name and style of M/s J.Sons, Ghanta Ghar Chownk at Ludhiana. Earlier the said premises was owned by one Prem Chand in which three phase electricity meter was installed. The consumer account No. was E23/CS01/0016F with sanctioned load of 106.40 KW. The number of the meter is 04229503, Make L & T, Capacity 3 X 100/5 A having multiplying Factor of 1(M.F.1). The connection is running under unit No. 3 of City Centre Special Unit Ludhiana.

The respondent had issued the electricity bills to the petitioner on the basis of said electricity meter with M.F.1. On 1.07.2010, Junior Engineer of the respondent, checked the meter and sealed the same. The sealed meter was sent to ME Lab for its checking. Laboratory gave its report on 7.07.2010 that there was no tampering with the meter. However, the petitioner received a demand notice dated 9.07.2010, asking him to pay ₹ 25,50,028/- within a period of 15 days failing which his electricity connection was threatened to be disconnected as according to the respondent the Multiplier factor was wrongly applied as 1 instead of 2. Recovery was sought to be made of the amount of ₹ 25,50,028/- from the period of October 2004 to 5.02.2010. The petitioner challenged the demand notice by way of writ petition bearing CWP No. 13066 of 2010 which was later on withdrawn with permission to file appeal against the said notice.

The appeal had to be filed by depositing 1/3rd of the amount of the demand notice. The petitioner had deposited the 1/3rd amount of the demand notice and filed the appeal before the Appellate Authority constituted under the Indian Electricity Act, 2003(for short, the Act). The said appeal was dismissed on the ground that it had no jurisdiction to entertain and decide the appeal as the demand was not raised under Section 126 of the Act, against which the appeal was maintainable only under Section 127 of the Act.

After disposal of the appeal, the respondent directed the petitioner, vide letter dated 12.08.2011, to approach the Zonal Level Dispute Settlement Committee for redressal of his grievance as per the commercial circular No. 40/2006 within 15 days failing which the electricity connection of the petitioner was to be disconnected. The petitioner then approached the Zonal Level Dispute Settlement Committee, Ludhiana but his appeal was dismissed vide order dated 7.10.2011. Thereafter, the petitioner filed the appeal before the Consumers Grievances Redressal Forum, Patiala, which was also dismissed on 25.012012 in which it was held that the amount has rightly been charged from the petitioner w.e.f. 2-12-2004 i.e. date from the installation of meter to change of meter/CTs i.e. 5-7-2010 alongwith surcharge and interest.

In pursuance of the aforesaid order passed by the Zonal Level Dispute Settlement Committee, Ludhiana, the respondent had issued a fresh demand notice dated 22.02.2012 vide memo No. 785 for the recovery of ₹ 20,99,348/- i.e. ₹ 17,00,018/- towards principal amount and ₹ 3,99,330/- towards interest after deducting a sum of ₹ 8,50,010/- already deposited by the petitioner towards 1/3rd of the earlier bill when he had filed the appeal.

Counsel for the petitioner has argued that the respondent could not have asked for the amount for the period from October, 2004 till February, 2010 on account of application of wrong formula as the limitation for such a recovery is of two years as provided in Section 56(2) of the Act. It is also submitted that in Section 56(2) of the Act, the period of two years limitation has already been mentioned for recovery under Section VI of Electricity Supply Instructions Manual(for short, 'instructions manual') issued by Punjab State Power Corporation Limited in which Rule 93.2 deals with it which is read as under:-

> *"Under Section 56(2) of the Act no sum due from any consumer 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 arrears of charges for electricity supplied."*

Counsel for the petitioner has further submitted that in similar matter, the Division Bench of this Court in LPA No. 734 of 2010, titled as *Punjab State Electricity Board vs. Tagore Public School and another,* decided on 29.06.2010, held that "*Thus the recovery could not have been for more than six months which the respondent school was bound to pay. Besides, we cannot loose sight of the fact that a school is being fastened belatedly after 5 years with a huge liability of ₹ 7,32,720/- as a result of the mistake of the appellant itself for which the respondent school cannot be made liable."*

It is fairly submitted by counsel for the petitioner that the period of six months, mentioned by the Division Bench is in terms of Section 26(6) of the Electricity Act, 1910. It is also submitted that the said decision of the Division Bench has now been upheld by the Supreme Court in *SLP No. 29678 of 2010* titled as *Punjab State Electricity Board Now PSPC Ltd. vs. Tagore Public School and another* has been dismissed on 29.06.2010. The order passed by the Supreme Court is as under:-

> *"We find no merit in this petition. The Special Leave Petition is dismissed."*

Counsel for the petitioner has also referred to a decision of the Supreme Court in the case of *U.P.Power Corporation Limited and others vs. Vimla Devi and another 2015(12) Scale 221* in which the Supreme Court has held that *"the short* *assessment for the long period, the bills can be revised for that period but limiting to twelve months."*

Counsel for the petitioner has thus, submitted that since it is not a case where the amount first due has been shown continuously as arrears of charges for electricity supply and has been asked abruptly in the year 2010, assessing from the period October 2004 onwards, cannot be demanded by the respondent as it has become time barred under Section 56(2) of the Act and clause 93.2 of the Instructions Manual.

Counsel for the respondents did not contest the argument of counsel for the petitioner.

I have heard learned counsel for the parties and perused the available record.

The facts are not much in dispute. The only issue involved in this case is "***as to whether Section 56(2) of the Act would apply to the given facts and circumstances?"*** In order to appreciate the arguments, Section 56(2) of the Act reads as under:-

> *"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 the electricity."*

It is not a case of the respondents that the amount, demanded by them, was shown as the amount due continuously, as recoverable, as arrears of charges in the subsequent bills issued to the petitioner after October, 2004 onwards. Rather, the case of the respondent is that the amount which had been charged from the petitioner was calculated at Multiplier 1 though according to them, it should have been Multiplied by factor of 2. By virtue of the application of Multiplier of 2, the amount has been increased which has been demanded from the petitioner. But in view of the decision of the Court in the case of *Tagore Public School(supra)*,upheld by the Supreme Court, and the provisions of the Section 56(2) read with clause 93.2 of the instructions manual, it is held that in such circumstances, as narrated above, the respondent cannot set up a claim of the time barred debt from the petitioner after the expiry of two years, if it is not shown as a continuous arrears in the bills served upon the petitioner.

In view of the aforesaid discussion, I find merit in the petition and the same is hereby allowed. The impugned orders dated 9.07.2010(Annexure P-3), 7.10.2011(Annexure P-1), 25.01.2012(Annexure P-2) and 22.02.2012(Annexure P-5) are quashed. It is needless to mention here that on 6.03.2012 in the order passed by this Court, time was granted upto 14.03.2012 for depositing the remaining amount sought to be recovered in pursuance of the demand notice. Till that date, the respondents were directed not to disconnect the electricity connection. Therefore, the amount deposited by the petitioner in terms of the demand notice shall be refunded to him within a period of two months and in case this order is not complied with within two months then the petitioner would be entitled for interest @7% after expiry of two months.

A copy of this order be supplied to counsel for the respondent under the signatures of Bench Secretary of this Court.

[Rakesh Kumar Jain]
Judge

1st February, 2016
Shivani Kaushik