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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8228 of 2015
Date of decision:21.08.2017

Bank of India …Petitioner

Versus

The Punjab State Power Corporation Limited and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. J.S.Jaidka, Advocate,
for the petitioner.

Mr. Vishal Chaudhri, Advocate,
for respondents no.1, 2, 4 and 5.

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<u>Rakesh Kumar Jain, J.</u>

The petitioner-bank has a commercial (NRS) category electric connection bearing Account No.CS-01/0012F with a sanctioned load of 60.90 KW, operating under Model Town (Special) Division, Ludhiana. This connection was checked by the Additional SE/Enforcement-II, Ludhiana vide Enforcement Checking Register (ECR) No.1/916 dated 03.01.2014. In the checking report, the meter was found running slow by (-) 8.0%. The Additional SE/Enforcement-II, Ludhiana also found that the Multiplier Factor (MF) was appearing as 0.5 on the bills issued to the petitioner, whereas on checking, the meter ratio was found 200/5 Amp. and CD ratio was also found 200/5 Amp., as per which the applicable MF should be 1.0.

Accordingly, account of the petitioner was overhauled by the Punjab State Power Corporation Limited (hereinafter referred to as the

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"respondent-Corporation") from March 2006 (the date of installation of the meter) to June 2013 with MF 1.0 and for a period of July 2013 to December 2013 with MF 1.0+8.0 slow respectively. The respondent-Corporation passed the provisional order of assessment, asking the petitioner to pay ₹10,13,813/- vide notice dated 10.01.2014.

The petitioner-bank challenged the notice of demand before the Zonal Level Disputes Settlement Committee, PSPCL, Ludhiana (hereinafter referred to as the "Committee"), where it relied upon Section 56(2) of the Electricity Act, 2003 (hereinafter referred to as the "Act") to contend that the recovery is barred by limitation but the Committee dismissed the claim of the petitioner-bank holding that the amount charged is correct and recoverable.

Aggrieved against the order of the Committee, the petitioner filed a petition before the Forum for Redressal of Grievances of Consumers (hereinafter referred to as the "Forum"). The Forum had found that the KWH meter along with CTs were replaced on 29.07.2005 vide MCO No.60/87538 dated 28.07.2005 as old meter and CTs were got burnt. The respondent-Corporation got issued 20 no. LT CTs meters, 20 sets of LT CTs of 200/5A capacity each from ME Lab vide SR No.6/1004 dated 21.01.2005. These sets include one set of CTs 200/5A with Serial No.4793, 7497 and 8094, presently installed in the premises of the petitioner. According to the respondent-Corporation, at the time of installation of CTs, the concerned official erroneously entered the CTs ratio as 100/5 Amp. instead of 200/5 Amp. in CA-21/22 register as well as on the MCO. Accordingly, the bills (after replacement of meter/CTs) were raised by applying MF 0.5, treating CTs ratio as 100/5 Amp., whereas correct capacity was 200/5 Amp. and the resultant MF was equal to 1. This mistake was detected by the Additional SE/ Enforcement-II and accordingly, account of the petitioner was overhauled for the period from 03/2006 to 06/2013 by applying MF 1+slowness factor of 0.8% as during checking, meter was also found slow by 8.0%. The Forum also dealt with the contention of the petitioner regarding application of Section 56(2) of the Act, in which the expression "sum became first due" has been referred to and a reference has also been made to the order passed by the Appellate Tribunal for Electricity dated 14.11.2016 in the case of **Ajmer Vidyut Vitran Nigam Limited vs. M/s Sisodia Marble & Granites Private Limited and others,** in which it has been held that the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer and, thus, the date of the first bill/demand notice for payment shall be the date when the amount shall become due and the period of two years has to be counted from the said date in terms of Section 56(2) of the Act. It is also found by the Forum that the decision in **M/s Sisodia Marble & Granites Private Limited's case (supra)** was upheld by the Supreme Court in Civil Appeal No.D 13164 of 2007. The Forum also referred to an order passed by the Bombay High Court in Writ Petition No.7015 of 2008 titled as "**M/s Rototex Polyester & Anr. vs. Administrator of Dadra & Nagar Haveli Electricity Department** and an order of the Jharkhand High Court in the case of **M/s Tata Steel Ltd. vs. Jharkhand State Electricity Board and others,** in which it has been held that the period of two years would run from the date when the demand was raised. Thus, the Forum took the following decision against the petitioner-bank:-

> "* To uphold the decision taken by ZDSC, Ludhiana, in its meeting held on 21.03.2014, however overhauling of

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account with correct MF be ensured from 29.07.2005 to the date of replacement of the metering equipment.

* Action be initiated against the delinquent Officers/Officials for not recording correct ratio on various documents and sending wrong advice to computer centre, resulting in wrong preparation of bills.

* Forum further decides that the balance amount recoverable/refundable, if any, be recovered/refunded from/to the consumer, along with interest/surcharge as per instructions of PSPCL.

* As required under section-19(1) & 19(1A) of Punjab State Regulatory Commission (Forum & Ombudsman) Regulation-2005, the implementation of this decision may be intimated to this office within 30 days from the date of receipt of this letter."

Still aggrieved, the petitioner filed an appeal before the Ombudsman, Electricity Punjab. The Ombudsman passed a detailed order, dealing separate issues, and decided the issue regarding application of Section 56(2) of the Act, which reads as under:-

> "2nd issue involved in the Petition regarding claim being barred by limitation under the provisions of Limitation Act and Section 56(2) of Electricity Supply Act-2003, have also been scrutinized at length. Though, no specific provision of Limitation Act was mentioned in the written submissions, but during oral arguments held on 05.02.2015, a copy of decision in S.A. No:243 of 1989 dated 24.07.2000 adjudicated by the Madras High Court was placed by the Petitioner and it was argued that the period of limitation for claiming electricity dues is three years and no dues beyond a period of 3 years can be charged under the provisions of Section 30(b) and 33 of the Limitation Act. This ruling is regarding mistake in billing due to wrong application of tariff and mistake in billing in respect of one service connection of the consumer out of two connections. In my view, here tariff means the chargeable rates in accordance with the schedule of tariff as approved by the concerned Commission. The consumer is holder

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> of one connection only and the mistake do not relate to wrong application of tariff as the dispute in the present case is regarding slowness of meter and wrong application of multiplying factor measuring actual consumption of the consumer. Thus I do not consider this ruling relevant to the present dispute. So far as the limitation of charges for a period of two years under Section 56(2) of Electricity Act-2003 is concerned, the expression “sum became first due” referred to in this Section has been interpreted by the Appellate Tribunal for Electricity in its order dated 14.11.2006 in the case of Ajmer Vidyut Vitran Nigam Limited V/S M/s Sisodia Marble & Granites Private Limited and others vide Para-17 of this order, wherein it has been held that the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer and thus the date of the first bill/demand notice for payment shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section-56(2) of the Electricity Act, 2003 shall start. This decision of the Appellate Tribunal has also been upheld by the Hon'ble Supreme Court of India in Civil Appeal No.D-13164 of 2007. Accordingly, in view of this order of the Appellate Tribunal as held by the Hon'ble Supreme Court, the charges become due for payment only after a bill or demand notice for payment is sent by the Licensee to the consumer. In the present case, undisputedly, the bills were sent to the petitioner on 10.01.2014 read with letter dated 05.02.2014 and period of limitation for recovery of the bill under Section 56(2) of the Act starts from the date of issue of 1st notice. In view of these discussions, I consider that argument put forth on behalf of the petitioner, in this regard, is not maintainable and he cannot be allowed any benefit under the provisions of the Limitation Act or the Electricity Act-2003.”

Still aggrieved, the petitioner-bank has challenged the orders of the Committee, Forum and the Ombudsman before this Court in this petition on the ground that Section 56(2) of the Act has been wrongly interpreted. It is also submitted that even the recovery beyond the period of three years cannot

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be effected by a civil suit.

On the other hand, counsel for the respondent-Corporation has submitted that it is a case of wrong application of MF. In this regard, he has referred to Clause 21.5 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014, dealing with the overhauling of consumer accounts, especially note appended to this Clause, wherein it is provided that *"where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued".* It is also submitted that Section 56(2) of the Act has already been interpreted by various Courts and the limitation to bar recovery beyond two years would start from the date when the sum became first due.

I have heard learned counsel for the parties and perused the available record with their able assistance.

Since the question involved in this case is about the interpretation of Section 56(2) of the Act much-less in regard to the period of limitation, therefore, it would be relevant to refer to Section 56(2) of the Act, which is reproduced as under:-

> "**56. Disconnection of supply in default of payment--**
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> (1) xxx xxx xxx xxx
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> (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 the electricity."

In **M/s Sisodia Marble & Granites Pvt. Limited's case (supra),**

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it is approved by the Supreme Court, as stated by the respondents and not denied by the petitioner during the course of hearing, that *"thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer"*.

The words used in Section 56(2) of the Act "from the date when such sum became first due" would, thus, mean that on the date on which the demand is raised by the licensee to the consumer and the bar created of the period within which the amount is to be recovered is of two years from the date when such sum became first due, meaning thereby, if hypothetically demand is raised and no action is taken for its recovery for the period of two years, then according to this provision, the said recovery would be barred by limitation.

Thus, in my considered opinion, keeping in view the aforesaid facts and circumstances, there is hardly any ground to interfere in this petition and hence, the same is hereby dismissed, though without any order as to costs.

August 21, 2017 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No