

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10536 OF 2019

Maharashtra State Electricity Distribution Co. Ltd. ... Petitioner
Vs.
Principal, College of Engineering, Pune ... Respondent

Mr. Rahul Sinha i/b. DSK Legal for Petitioner.
Mr. S. R. Nargolkar a/w. Ms Sherrie Rebello for Respondent.

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 27, 2020
Pronounced on : JUNE 09, 2020

P.C.:

1. Heard Mr. Rahul Sinha, learned counsel for the petitioner and Mr. S. R. Nargolkar, learned counsel for the respondent.
2. Maharashtra State Electricity Distribution Company Limited is the petitioner and Principal, College of Engineering, Pune is the respondent.
3. This petition has been preferred by the petitioner under Articles 226 and 227 of the Constitution of India assailing the legality and correctness of the order dated 02.04.2019 passed by the Electricity Ombudsman, Mumbai.
4. To appreciate the challenge made, it would be apposite to briefly narrate the facts hereunder.
5. Respondent is the College of Engineering, Pune. Its student hostel is owned and funded by the Government of Maharashtra. Respondent is a High Tension (HT) consumer of the petitioner since 03.03.1988. Both premises i.e. college and hostel have separate single point HT bulk supply connection. In so far hostel is concerned, there are 11 buildings which are used purely for residential purpose

where about 2200 students and staff reside.

6. On 03.03.1988 electricity connection was provided to the respondent under HT-VI tariff category for the purpose of using electricity for the student hostel.

7. Maharashtra Electricity Regulatory Commission issued a tariff order on 14.10.2010 following which petitioner also issued a circular for even implementation of the tariff order across the State of Maharashtra. Accordingly, the tariff category of the respondent was changed from HT-VI to HT-11B with effect from April, 2012.

8. Another tariff order dated 16.08.2012 was issued by the Maharashtra Electricity Regulatory Commission whereby tariff category of hostels and dharamshalas were categorized under LT-I (Residential) category.

9. By tariff order dated 05.09.2012, the tariff category of the respondent was changed to HT-IX (non-express). Subsequently, another tariff order was issued on 26.06.2015 following which tariff category of the respondent was changed from HT-IX (non-express) to HT-IXA with effect from June, 2015.

10. During auditing of the accounts of the petitioner by the Comptroller and Auditor General (CAG) for the year 2015-16, it was pointed out that petitioner had applied lower tariff of HT-IX (public service) instead of LT-I tariff since August, 2012.

11. Following such objection raised by the CAG, petitioner had carried out inspection on 03.02.2018 and thereafter on 17.03.2018 had cross-checked the documents relating to supply of electricity to hostels and dharamshalas. On verification, it was found that respondent was wrongly categorized as HT-IX A instead of LT-I tariff category. It is stated that such a mistake was an inadvertant

one on the part of the petitioner. To rectify the mistake, tariff category of the respondent was changed. In this connection, a differential bill dated 17.03.2018 from September, 2012 onwards was raised against the respondent for an amount of Rs.2,21,87,380.00 without charging interest etc.

12. Respondent raised objection dated 27.04.2018 to the change of tariff category and also to the consequential raising of the differential bill. Petitioner was requested to continue charging the respondent under HT-IX A instead of LT-I tariff category.

13. It appears that such objection raised by the respondent was not considered by the petitioner. In the meanwhile, alleging that respondent had failed to pay the dues as per the differential bill dated 17.03.2018, petitioner issued disconnection notice dated 21.06.2018 under Section 56 of the Electricity Act, 2003.

14. Respondent challenged the supplementary i.e., the differential bill as well as the disconnection notice before the Internal Grievance Redressal Forum, Pune of the petitioner. However, by order dated 19.07.2018, the Internal Grievance Redressal Forum dismissed the petition of the respondent.

15. This order dated 19.07.2018 along with the differential bill and disconnection notice were challenged by the respondent before the Consumer Grievance Redressal Forum, Pune of the petitioner. Petitioner filed reply to the said petition filed by the respondent. Thereafter both the sides were heard.

15.1. Consumer Grievance Redressal Forum passed order dated 10.12.2018 partly allowing the petition of the respondent. Petitioner was directed to re-assess the bill for a period of 24 months prior to the date of inspection and to recover the tariff difference without claiming any interest, penalty etc. It was observed that if the consumer i.e. the respondent was not satisfied with the above decision, he could

file representation before the Electricity Ombudsman, Mumbai within 60 days from the date of receipt of the order.

16. Carrying forward its grievance, respondent filed representation before the Electricity Ombudsman, Mumbai assailing the order dated 10.12.2018 and seeking the related reliefs. Petitioners filed a reply to the representation filed by the respondent. Thereafter both the parties were heard.

16.1. On 02.04.2019, Electricity Ombudsman, Mumbai allowed the representation of the respondent by setting aside the order dated 10.12.2018 passed by the Consumer Grievance Redressal Forum. The revised supplementary bill raised by the petitioner was also set aside, clarifying that petitioner would be entitled to recover tariff from the respondent as LT-I tariff category from February, 2018.

17. Aggrieved, present writ petition has been filed by the petitioner seeking the relief as indicated above.

18. Mr. Sinha, learned counsel for the petitioner has assailed the impugned order passed by the Electricity Ombudsman dated 02.04.2019 contending that the learned Ombudsman had misdirected himself while setting aside the order dated 10.12.2018 passed by the Consumer Grievance Redressal Forum. Referring to Section 56(2) of the Electricity Act, 2003, he submits that the Consumer Grievance Redressal Forum had correctly appreciated the said provision while passing the order dated 10.12.2018. The said authority was justified in limiting the revised bill for a period of 24 months prior to the date of inspection. Learned counsel for the petitioner has also referred to a Full Bench decision of this Court dated 12.03.2019 in Writ Petition No.10764 of 2011 (*Maharashtra State Electricity Distribution Company Limited Vs. Electricity Ombudsman*) and other connected cases and submits that the Full Bench was called upon to answer

amongst others the question as to whether irrespective of the provisions of Section 56(2) of the Electricity Act, 2003, a distribution licensee can demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges. Full Bench answered the question by holding that distribution licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges. By misconstruing the said order of the Full Bench, learned Ombudsman committed a manifest error by holding that since the licensee had changed the tariff category of the respondent from HT-IX to LT-I from February, 2018, the revised tariff category would be prospectively applicable from that date. Therefore, the impugned order being unsustainable in law and facts may be set aside and quashed.

19. *Per contra*, Mr. Nargolkar, learned counsel for the respondent supports the order passed by the Electricity Ombudsman. He has also referred to Section 56(2) of the Electricity Act, 2003 as well as to the Full Bench decision and submits that the impugned decision is in conformity with the Full Bench decision, more particularly, the interpretation given to Section 56(2). He therefore submits that no case for interference is made out and the writ petition should be dismissed.

20. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

21. Since Section 56 of the Electricity Act, 2003 is central to the debate, the same may be adverted to at the outset. Section 56 reads as under:-

"56. Disconnection of supply in default of payment.-

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to

recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

- (a) an amount equal to the sum claimed from him, or
- (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(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."

21.1. As extracted above, the heading of Section 56 is 'disconnection of supply in default of payment' and it has got two sub-sections. As per sub-section (1), where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may cut off or disconnect supply of electricity to such person. However before cutting off supply or disconnection, a 15 days' clear notice in writing has to be given to such person and such cutting off or disconnection shall be without prejudice to the rights of the licensee or the generating company to recover such charge or other sum by suit. Moreover such cutting off or disconnection shall continue till such charge or other sum together with any expenses incurred in the process are paid.

21.2. There is a proviso below sub-section (1). As per the proviso, supply of electricity shall not be cut off or disconnected if such person deposits the amount claimed under protest or deposits the electricity charges for each month calculated on the basis of average charge of electricity paid by him during the preceding 6 months pending disposal of any dispute between him and the licensee.

21.3. Sub-section (2) starts with a *non-obstante* clause. It says that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer under Section 56 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. Thus, sub-section (2) has an overriding effect. It prohibits recovery of any sum from a consumer after a period of two years from the date when such sum became first due. This prohibition can be relaxed only if the licensee can show that such sum is continuously recoverable as arrears of electricity supply. Beyond the said period of two years, the licensee shall not cut off the supply of electricity.

22. The Full Bench in **Maharashtra State Electricity Distribution Company Limited** (*supra*) was called upon to render its opinion on the following three questions:

- "(i) Whether irrespective of the provisions of Section 56(2) of the Electricity Act, 2003, Distribution Licensee can demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges;
- (ii) Whether the charges for electricity consumed become due only after a demand bill issued by the Distribution Licensee and whether the Distribution Licensee can issue a demand bill even for the period preceeding more than two years from the date of issuance of demand bill notwithstanding the provision of Sub-section 2 of Section 56 of the Electricity Act, 2003;
- (iii) Which of the Judgments of the Division Bench namely Awadesh S. Pandey v/s. Tata Power Co. Ltd., reported in AIR 2007 Bombay 52 or the Judgment of the Division Bench in the case of

Rototex Polyester & Another, reported in 2010(4) have correctly interpreted the provisions of Section 56(2) of the Electricity Act."

23. As would be evident, this proceeding is concerned only with question No.1. While rendering its opinion, the Full Bench carefully analysed Section 56 of the Electricity Act, 2003. Regarding sub-section (1), Full Bench held as under:

"65. Section 56 deals with disconnection of supply in default of payment. Now, where the person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, then the power to disconnect is conferred and which power has to be exercised in the manner set out by sub-section (1). This indeed is a drastic power and that can be resorted to only to take care of a neglect to pay the charge. If there is neglect, then, naturally in a consolidating statute enough provision has to be made to ensure that the charges are paid regularly. Electricity is a material resource and belongs to the public. It is very difficult for the State to ensure regular electricity supply to those who require the same regularly. In fact, equal distribution of material resources so as to achieve common good is the constitutional goal. That is enshrined in Article 39(b) and (c) of the Constitution of India. Thus material resources have to be evenly distributed and merely because those who cannot afford to pay for these resources, the State, by stepping in, has to ensure that they are not deprived of the use and enjoyment of the same. For ensuring that the constitutional goal is truly fulfilled that the Authorities have been conferred with such powers. That would ensure maintenance of compliance, in the sense that the electricity supply would be assured on payment of charges and regularly. Those who neglect to pay the charge cannot as a matter of right claim the supply of electricity to their premises or establishments. By continuing to supply electricity to such defaulters, the Authorities would not be in a position to ensure continuity in the said supply. Eventually, breaks and interruptions in supply or lack of regularity of supply affects the public at large. It is in public interest and for public good that defaulters are to be deprived of the supply of electricity. To enable that, this distinct and separate power is conferred in the licensee or the generating company. The first limb of the section [sub-section (1)] is expansive and covers charges for supply of electricity or any other sum. The reason for that is obvious and namely, the neglect to pay any charge for electricity or any sum other than a charge for electricity which may be due from any person to a licensee or the generating company. This may be due in respect of supply, transmission

or distribution or wheeling of electricity to him. It is bearing in mind the various facets of the services rendered that the charge or any sum other than a charge for electricity may be due. To enable the disconnection of supply in default of payment, that the power in terms of sub-section (1) is conferred. Pertinently, it is without prejudice to the rights to recover such charge or other sum by Suit. Further, it is not only the supply of electricity but for that purpose disconnection or cutting electric supply line or other works which are the property of the licensee or the generating company through which the electricity may have been supplied, transmitted, distributed or wheeled, that the power has been conferred. The discontinuation will go on until such charge or other sum together with any expenses incurred in cutting off or reconnecting the supply are paid but no longer. Thus this is not a permanent disconnection in that sense. It is possible to obtain a reconnection after payment. Further, the proviso says and in clearest terms that the supply of electricity shall not be cut-off if such person deposits, under protest, the amount or the charges in terms of Clause (a) or (b) of the proviso. The word 'neglect' having been employed in the section, that connotes something which is not legally supportable. The word neglect has been legally interpreted to mean something more than mere want of the discretion. Something like the breach of a duty or legal obligation existing at the time. In *Advanced Law Lexicon* by P.Ramanatha Aiyar, 3rd Edition, Volume-3, Reprint 2007, this expression / word is defined with reference to decided cases as an omission to pay without a reasonable cause. Hence, the proviso clarifies that when there is a dispute between the parties, then, a bona fide dispute comprehends no neglect to pay. If sub-section (1) is read in this manner, it presents no difficulty and a balance can be struck. If there is a neglect to pay, then the consequences may be visited. These consequences can be visited if the conferment of power to disconnect is exercised in terms of sub-section (1) and not otherwise. There has to be a notice in writing of fifteen clear days and then only the cutting off or disconnection is possible. Besides this, the foundation for such an exercise of power is neglect to pay. So long as there is no neglect but a bona fide dispute is raised, and if the notice of disconnection is issued, then, by the proviso opportunity or chance is given to bring in the sum and deposit it under protest pending disposal of the dispute. If such a deposit is made, even if it is under protest, the supply of electricity cannot be cut-off."

23.1. Thus Full Bench held that power of disconnection of electricity supply is a drastic power which can be resorted to only in case of neglect to pay. If there is

neglect to pay, the consequences shall follow subject of course to the procedural safeguards. But if there is no neglect but a *bona fide* dispute is raised and if disconnection notice is issued, then in terms of the proviso opportunity has to be granted to the consumer to pay such amount, even under protest, in which event supply of electricity cannot be cut off or disconnected.

23.2. In so far sub-section (2) of Section 56 is concerned, the Full Bench held as under:

"66. By sub-section (2), the category or the beneficiary of electric supply, namely, the consumer, is covered. As far as that consumer is concerned, by an overriding effect, sub-section (2) says that Section 56, which may have a marginal heading as disconnection of supply in default of payment, but so far as the consumer is concerned, no sum due from him under Section 56 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. If this condition is satisfied, then alone the licensee shall cut-off the supply of electricity and not otherwise. Now the issue raised before us is very specific. We do not think that there is any difficulty or confusion in understanding the ambit and scope of the section. Sub-section (2), which is not in the nature of a proviso, as contended by the learned Advocate General, but is an independent provision which applies only to consumers. All the words and expressions that are employed and used in the section in hand have been defined. Unless the context otherwise requires, the definition is as set out in Section 2 and its clauses. In the case of sub-section (2) of Section 56, it is the consumer to whom the electricity is supplied. He cannot be vexed in the event the licensee is negligent in recovering the amount due. The licensee can recover the amount due from the consumer only for a period of two years when such sum became first due. In the event, after two years the licensee wants to recover the amount, then it is the obligation and duty of the licensee as well to show the sum due from the consumer continuously as recoverable as arrears of charges for the electricity supplied to the consumer. The supply may be already effected and the charges may be unpaid. However, in the running / monthly bills which are despatched to the consumer, such sum has to be continuously shown as recoverable as arrears of charges of electricity and then alone, after the period of two years, the recovery is permissible. The precondition for disconnection of electricity in the case of any consumer is distinctly set out. In addition to a fifteen days' clear

notice in writing before disconnection, the licensee must also satisfy the Court or the Legal Forum that there was not only a neglect to pay on the part of the consumer but additionally the licensee has initiated the steps in terms of this provision before the expiry of two years. In case this section is invoked against any consumer after two years, then, action in terms thereof will be permissible only after the sum which was first due has been shown continuously or carried as recoverable as arrears of charges for the electricity supplied. This is ordinarily done by intimating or notifying to the consumer, in the running or monthly bills, such arrears together with the charges for the electricity supplied in the given month.

67. So understood, we do not see any difficulty or any conflict and if the action is challenged in a Court of law, that Court will have to decide the issue on a case-to-case basis. The fulfilment of condition as set out in the sub-sections will be an issue to be decided on the basis of the facts and circumstances in each case. No general rule can be laid down. In terms of the specific conditions of the provision, the fulfilment thereof, in a given case, can be determined, decided and adjudicated upon. If the action is challenged on the ground that the preconditions are not satisfied, then as well, a decision will depend on the facts and circumstances of each case. There cannot be any conflict or confusion once the matter is approached in this manner."

23.3. Interpreting sub-section (2), Full Bench held that by itself it is an independent provision applying only to consumers. The Full Bench clarified that the consumer cannot be vexed in the event the licensee is negligent in recovering the amount due. The licensee can recover the amount due from the consumer only for a period of two years when such sum became first due. In the event the licensee wants to recover the amount after two years, then it is the obligation and duty of the licensee to show the sum due from the consumer as continuously recoverable as arrears of charges for the electricity supplied to the consumer. Explaining further, Full Bench clarified that the supply may be already affected and the charges may be unpaid. But in the monthly bills despatched to the consumer, such sum has to be continuously shown as recoverable as arrears of electricity charges and then alone after the period of two years the recovery is permissible.

24. Keeping the above in mind, the impugned order may now be examined. Learned Ombudsman noted that in the audit report of CAG dated 22.04.2016 it was observed that incorrect tariff category of HT-IX was made applicable to the consumer (respondent herein) instead of LT-I since September, 2012. Following this inspection was carried out by the petitioner on the premises of the respondent on 03.02.2018. According to the petitioner, tariff category of LT-I ought to have been applied to the respondent from September, 2012. Accordingly, petitioner did two things. Firstly, the tariff category of the respondent was changed to LT-I from February, 2018 and accordingly charged. Secondly, a supplementary or differential bill dated 17.03.2018 was issued to the respondent for recovery of Rs.2,21,87,380.00 towards tariff difference retrospectively from September, 2012 to January, 2018. Learned Ombudsman referred to HT-IX tariff category introduced by the tariff order dated 05.09.2012 wherein it was mentioned that the said tariff would be applicable to educational institutions, hospitals etc. which would also include sports club, health club, gymnasium, swimming pool, etc. attached to the educational institution, situated in the same premises and exclusively meant for the students of such educational institution. He also referred to an earlier decision of the Electricity Regulatory Commission in Case No.24 of 2001 dated 11.02.2003 wherein it was held that there should be no retrospective recovery of arrears on the basis of any abrupt re-classification of a consumer even though it might have been carried out on the basis of report by the Auditor. In such cases, the billing should be prospective as it cannot be construed to be a case of escaped billing. Finally he referred to the opinion rendered by the Full Bench. On that basis learned Ombudsman held that when the bill of arrears was issued for the first time on 17.03.2018 to the petitioner changing the tariff category from HT-IX to LT-I from February, 2018, the revised tariff category would be applicable prospectively from February, 2018. Consequently, the order of the Consumer Grievance Redressal Forum dated 10.12.2018 as well as the revised supplementary bill dated 17.03.2018 were set aside.

25. From a careful consideration of the above, it is quite evident that the present is not a case covered by sub-clause (1) of Section 56. It is not a case of non-payment of electricity charges, not to speak of neglect in paying the charges. Right from the beginning when the respondent became a consumer under the petitioner its tariff category was changed from time to time by the petitioner and was accordingly billed. It is not the case of the petitioner that the respondent had defaulted in the payment of such electricity bills. It was only after the CAG pointed out that respondent ought to have been charged under tariff category LT-I from September, 2012, that petitioner carried out inspection in the premises of the respondent on 03.02.2018. Thereafter the tariff category of the respondent was changed to LT-I from February, 2018 but at the same time, a supplementary bill dated 17.03.2018 for the differential amount was issued retrospectively from September, 2012.

26. While examining 56(2) the Full Bench held that a consumer cannot be vexed in the event the licensee is negligent in recovering the amount due. If the views of CAG is treated as correct, in that event the electricity charges on the basis of tariff category LT-I became due from September, 2012. For the next two years from September, 2012 there is nothing on record to show that the petitioner had raised any bill or attempted to recover electricity charges from the respondent under LT-I tariff category. Even after two years no such bills were raised. First time on the basis of LT-I tariff category bill was raised on 17.03.2018. The language used in sub-section (2) is "when such sum became first due" in contradistinction to such sum being first billed. Period of limitation will commence when such sum became first due. Admittedly, as per the petitioner such charge or sum became first due in September 2012 but billed for the first time on 17.03.2018. In such circumstances, it was not open to the petitioner to raise the supplementary bill retrospectively on 17.03.2018 for the period from September, 2012 and thereafter issue disconnection notice.

27. That being the position, Court finds no error or infirmity in the impugned decision.

28. Before parting with the record it may also be pointed out that a closer look at HT-IX tariff category would indicate that the said tariff category was applicable to educational institutions and sports club, gymnasium, swimming pool, etc. attached to the educational institution, situated in the same premises and exclusively meant for the students. A view can legitimately be taken that educational institution would also include hostels situated within the premises of the educational institution and where students thereof reside. If sports club, gymnasium, swimming pool, etc. attached to such institution and situated in the same premises exclusively meant for the students are covered by the said tariff category there is no reason to exclude the hostel where the students reside from the ambit of the expression 'educational institution'. Therefore, on this count also raising of the supplementary bill is highly questionable, in addition to being impermissible under sub-section (2) of Section 56.

29. For all the aforesaid reasons, Court is of the view that there is no merit in the writ petition. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)

Minal Parab