

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20125-2021
Date of Decision: 26.10.2021

Uttar Haryana Bijli Vitran Nigam Ltd. and others

. . . . Petitioners

Vs.

Permanent Lok Adalat for Public Utility Services, Yamuna Nagar and
another

. . . . Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO

Present: - Mr.Prateek Mahajan, Advocate, for the petitioners.

M.S. RAMACHANDRA RAO, J.

In this Writ Petition the petitioner seeks a writ of certiorari to quash award dated 06.04.2021 passed by the Permanent Lok Adalat for Public Utility Services, Yamunanagar [for short 'the PLA'] in application No.4977/YNR/2016.

The Background Facts

Respondent No.2 is a consumer of Non Domestic Supply (NDS) category electric connection with the writ petitioners.

The meter provided to respondent No.2 to record the consumption of respondent No.2 was found to be defective and was replaced on 09.10.2012.

After replacing of the defective meter, the account of respondent No.2 was not overhauled by the petitioners which according to the petitioners resulted in deficit in energy units charged.

Three years later, an audit was conducted in October 2015, and at that time, it is alleged by the petitioners that an internal audit party

of the petitioners found that a sum of Rs.59,195/- was to be recovered from respondent No.2 on account of deficit in energy units charged for months of July 2012, September 2012 and November 2012 because of failure to overhaul the account of respondent No.2 after the defective meter of respondent No.2 was replaced.

This amount of Rs.59,195/- was added to the bill of the petitioners issued on 06.10.2015 and it is alleged that the said amount was regularly shown as arrears in the bills of respondent No.2 thereafter.

Later on 15.6.2016, the account of the respondent No.2 was again overhauled by the internal audit party for the period from February 2011 to October 2013. As per this audit report, a sum of Rs.2,46,057/- was found due allegedly from respondent No.2 including the amount already indicated in October 2015. Thus the audit party found a further sum of Rs.1,67,635/- as due from the respondent no.2, after excluding the earlier amount already added to his bills since October, 2015.

A legal notice was got issued by the petitioners to respondent No.2 on 21.7.2016 demanding this amount.

The Application of Respondent No.2 Before Respondent No.1 Under Section 22C of The Legal Services Authorities Act, 1987

Respondent No.2 then filed an application under Section 22C of the Legal Services Authorities Act, 1987, questioning the legal notice dt. 21.7.2016 on the ground that it contravened Section 56(2) of the Electricity Act, 2003 [for short 'the Act'] as the amount demanded related to period which was more than three years old, and its recovery is barred by period of limitation of 2 years prescribed by the said provision.

The Stand of Petitioners before the Respondent No.1

Petitioners filed a written statement opposing this contention and insisting that their demand was justifiable and in accordance with law. They alleged that they had rightly issued the legal notice to respondent No.2 for recovery of Rs.1,67,635/- as respondent No.2 was in arrears of the same.

The Order Dt. 06.04.2021 of Respondent No.1

Respondent No.1 then passed the impugned order on 06.4.2021 agreeing with the contention of respondent No.2 that as per Section 56(2) of the Act, no sum due from any consumer could be recovered after the period of two years from the date when such sum became first due. It held that the claims of the petitioners to pay arrears as per (i) bill dated 10.5.2016 issued by it and also (ii) another notice dated 21.7.2016 issued by it to respondent No.2, were time barred. It restrained the petitioners from recovery of the same since they were time barred debts.

Assailing the same, this Writ Petition is filed.

The Contentions of Counsel for Petitioners

Counsel for the petitioners contended that the view of respondent No.1 is erroneous; that its interpretation of Section 56(2) of the Act is not correct; that the said provision does not preclude the licensee company from raising a supplementary demand after the expiry of limitation period of two years and it only restricts the right of the licensee to disconnect the electricity supply due to non-payment of dues after expiry of the period of limitation of two years.

According to the petitioners, it does not restrict other modes of recovery which may be initiated by the licensee for recovery of a supplementary demand.

Reliance is placed on Section 17(1)(c) of the Limitation Act, 1963 and it is contended that in case of a “mistake”, the limitation period would begin to run from the date when the “mistake” was discovered for the first time; and since the “mistake” was allegedly discovered in October 2015 and June 2016, the bills issued in 2015-2016 and legal notice dated 21.7.2016 were well within limitation.

Reliance is also placed on the decision of the Supreme Court of India in *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. Vs. Rahamatullah Khan alias Rahamjulla*¹.

In the said judgment, the Supreme Court had held that the period of limitation of two years for recovery of dues of electricity charges would commence from the date on which the electricity charges become first due under Sub Section (2) of Section 56 of the Act and the said provision does not preclude the licensee company from raising a supplementary demand after the expiry of limitation period of two years. It was observed that the said provision only restricts the right of the licensee to disconnect the electricity supply due to non-payment of dues after the period of limitation of two years has expired, but it does not restrict other modes of recovery which may be initiated by the licensee company for recovery of the supplementary demand.

The Consideration by the Court

It is undisputed that it is the obligation of the petitioners to overhaul the account of respondent No.2 after replacement of a defective meter provided by it to respondent No.2.

If the petitioners were negligent in making such overhauling of the account of respondent No.2 after the change of the defective meter and its replacement by a new meter on 09.10.2012, it cannot contend that it's inaction or negligence was a "mistake" and seek to claim the benefit under Section 17(1)(C) of the Limitation Act.

A reading of the said judgment in *Assistant Engineer (D1) (1 Supra)* shows that an additional demand was raised by the licensee company on 18.3.2014 for the period July 2009 to September 2011 contending that there was a mistake in the billing under a *wrong tariff code* and this was discovered on 18.3.2014. The Supreme Court held that though the limitation period of two years under Section 56(2) of the Act had by then already expired, the said provision did not preclude the licensee company from raising an additional or supplementary demand after the expiry of limitation period under Section 56(2) of the Act in case of a mistake or a *bona fide* error. Reliance was placed on Section 17(1)(c) of the Limitation Act by the Supreme Court observing that in case of a mistake the limitation period begins to run from the date when the mistake is discovered for the first time. The Supreme Court then held that since the mistake was discovered in that case on 18.3.2014, the period of limitation would commence from the date of such discovery of mistake i.e. 18.3.2014

and the licensee company was, therefore, justified in taking steps to recover the arrears.

In the instant case, if one were to look at the written statement filed by the petitioners before respondent No.1, there is no mention about any 'mistake' having been committed by its employees or such alleged mistake being discovered on a particular date which would make the demand raised by petitioners on respondent No.2 to be one within the period of limitation by applying Section 17(1)(c) of the Limitation Act.

If the petitioners wish to rely on an 'exception' to escape the bar of limitation, they must plead the said exception specifically before respondent No.1 by placing on record the factual basis for such plea. Without doing so, it is not open to the petitioners to seek to raise such a plea before this Court for the first time and seek to get the benefit of the decision in *Assistant Engineer (D1) (1 Supra)*.

I am also of the opinion that the negligence of the petitioners in overhauling the account of respondent No.2 after replacement of the defective meter of respondent No.2 on 09.10.2012 cannot be projected by the petitioners as a case of mistake, and they cannot justify the recovery of the amounts demanded by them under the bill dated 10.5.2016 and notice dated 21.7.2016 from respondent No.2 on that basis.

I, therefore, do not find any merit in the Writ Petition. It is accordingly dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

26.10.2021

Vivek

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No