

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P.A. No.20630 of 2022**

**M/s. Prabhu Poly Pipes Limited  
Vs.  
West Bengal State Electricity Distribution  
Company Limited and others**

|                      |   |                                               |
|----------------------|---|-----------------------------------------------|
| For the petitioner   | : | Mr. Adhip Chandra Kar,<br>Mr. Manoj Kumar Roy |
| For the WBSEDCL      | : | Mr. Srijan Nayak,<br>Mrs. Rituparna Maitra    |
| Hearing concluded on | : | 24.11.2022                                    |
| Judgment on          | : | 29.11.2022                                    |

**Sabyasachi Bhattacharyya, J:-**

1. The petitioner is a consumer of electricity under the respondent no.1, the West Bengal State Electricity Distribution Company Limited (WBSEDCL).
2. Initially, the petitioner was enjoying a low tension bulk service connection, which was converted subsequently to high tension service connection due to enhancement of load from August 7, 2014.
3. A bill was raised by the WBSEDCL on November 5, 2019 for the first time for the period September, 2014 to April, 2019 on the ground of arrear, since a wrong multiplying factor was allegedly applied. The bill was raised for the billing cycle October, 2019 with the reading date as November 1, 2019. The total amount of dues as per the bill was Rs.1,90,05,225/-, out of which the due for the current period was Rs.7,09,649.44p and the

alleged arrears for the period from September, 2014 to April, 2019 comprised of the balance. The petitioner has made payment with regard to the current consumption but has challenged the alleged arrears of Rs.1,83,07,977/-.

4. The learned Senior Advocate appearing for the petitioner argues that the claim of the WBSEDCL for the period September, 2014 to April 2019 is palpably barred by Section 56(2) of the Electricity Act, 2003 (hereinafter referred to as, “the 2003 Act”), as on November 5, 2019. It is submitted that, as per the decision of the Supreme Court in *Assistant Engineer(D1) Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan*, reported at (2020) 4 SCC 650, the “first due” date as contemplated in Section 56(2) of the 2003 Act is the date when the bill is issued for the first time to the consumer. In the present case, it is argued, since the bill was raised only on November 5, 2019, the same was barred under the aforesaid provision of law.
5. The learned Senior Advocate also submits, on instruction, that a substantial amount has already been paid in terms of the bills raised in lieu of arrears. The petitioner is agreeable to clear off the balance amount of quarterly installments of Rs.15 lakh each, starting from December, 2022 which would take the last installment prior to the completion of the year 2023.
6. Learned counsel appearing for the WBSEDCL places reliance on the Supreme Court Judgment of *M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others*, an unreported judgment dated October 5, 2021 passed in Civil Appeal No.7235 of 2009. In the said judgment, the

Supreme Court reiterated the ratio of *Rahamatullah Khan* (supra) inasmuch as the “first due” would mean the date on which the bill is issued.

7. However, in the said latter judgment, it was also observed by the Supreme Court that the decision in *Rahamatullah Khan* (supra) was distinguishable on facts. The Supreme Court also observed in *M/s. Prem Cottex* (supra) that the second part of Section 56(2) of the 2003 Act is an exception to the law of limitation.
8. In the present case, it is contended by the WBSEDCL, the bill was raised only on November 5, 2019 and the said arrears were arrived at on the basis of less billing. It is submitted that after the LT bulk service connection was converted to HT bulk service connection due to enhancement of contractual load on August 7, 2014, the particulars of meter and switch gear were uploaded in the data-base prior to raising the bill. During such process, the CT ratio of switch gear was originally set at 50/5A, but erroneously got registered at 25/5A in the data-base. Hence, the net multiplying factor of 500 was imposed for calculation of billing instead of actual net Multiplying Factor (MF) of 1000 from the billing cycle September, 2014.
9. When the matter was noticed prior to raising the bill for the cycle May 2019, the same was communicated to the petitioner vide Memo No. SHE/Bulk/941341400/488 dated May 31, 2019 stating all relevant facts. It was also indicated in the said Memo dated May 31, 2019 that the unclaimed part of the bill would be served shortly to the petitioner and prior to finalizing the arrear bills, one meeting was to be conducted as per the convenience of the petitioner. Accordingly, the entire process was

allegedly described in a meeting with the petitioner at the office of the respondents on June 26, 2019.

10. Subsequently, a joint inspection was conducted on July 12, 2019 and an inspection report was handed over to the petitioner the same day confirming that the Switch Gear CT ratio was to be set at 50/5A and actual net multiplication factor would be 1000. Subsequently, the unclaimed part of the bill was calculated considering the applicable tariff rate and rebate and ultimately, after several meetings, the bill was raised on November 5, 2019.
11. It is, thus, argued that the erroneous calculation was a bona fide error on the part of the WBSEDCL, for which the public exchequer ought not to be penalized by giving an undue advantage to the petitioner.
12. Learned counsel for the distribution licensee argues that since the petitioner undisputedly consumed electricity at the rate as indicated in the arrear bill, the said claim was legitimate and the WBSEDCL was entitled to issue subsequent notices of disconnection for non-payment of the dues by the petitioner.
13. Upon a consideration of the submissions of counsel, the present adjudication, it is seen, revolves around the interpretation of Section 56 of the 2003 Act.
14. Section 56 of the 2003 Act is set out below:

***“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."*

- 15.** A two-Judge bench of the Supreme Court, in *Rahamatullah Khan* (supra), had, *inter alia*, arrived at the conclusion that the obligation to pay electricity charges arises after the bill is issued by the licensee-company, although the liability arises on consumption. If the consumer fails to pay the charges within the stipulated period as set out in the bill, they get carried forward to the next bill as arrears.
- 16.** A distinction was drawn between sub-sections (1) and (2) of Section 56 and it was held that while the Distribution Licensee is entitled to recover dues by other modes, it was not permitted to disconnect the electricity supply by the operation of Section 56(2).

17. Section 56(2) was interpreted not to preclude the licensee-company from raising a supplementary demand after the expiry of the limitation period of two years but only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the limitation period of two years has expired.
18. Other modes of recovery which may be initiated by the licensee-company for recovery of a supplementary demand, it was held, are not restricted. On the other hand, it was observed that sub-section (1) of Section 56 confers a statutory right to the licensee-company to disconnect the supply of electricity if the consumer neglects to pay the electricity dues, which right is subject to the limitation of two years provided by sub-section (2) of Section 56.
19. It was clarified by the Supreme Court that Section 56(2) did not preclude the licensee-company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or *bona fide* error. However, it did not empower the licensee-company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand.
20. The Supreme Court, in paragraph no.4.4 of *Rahamatullah Khan (supra)*, observed that the word “due” has been used under Section 56(1) as well as under Section 56(2) and refers to the amount for which the demand is raised by way of a bill. The term “first due” would, therefore, imply when the demand is raised for the first time. It was, thus, held that the bill raised by the licensee-company would be the starting point for the exercise of power under sub-section (1) of Section 56.

21. In paragraph no.9.2 of *Rahamatullah Khan* (supra), the Supreme Court also discussed the provisions of Section 17(1)(c) of the Limitation Act, 1963 which provides that in case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could, with reasonable diligence, have discovered it.
22. On the other hand, in *M/s. Prem Cottex* (supra), the Supreme Court, sitting in a co-ordinate bench of two Judges, discussed the implication of *Rahamatullah Khan* (supra). It was observed by the Supreme Court that the bar contemplated in Section 56 actually operates on two distinct rights of the licensee, namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect was held to be actually an exception to the law of limitation. Under the law of limitation, it was observed, what is extinguished is the remedy and not the right. However, Section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection.
23. The Division Bench, in *M/s. Prem Cottex* (supra), went on to observe that once it is held that the term “first due” would mean the date on which the bill is issued and once it is held that the period of limitation would commence from the date of discovery of the mistake, then the question of allowing the licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. However, it was held in the penultimate paragraph of *Rahamatullah Khan* (supra) that the licensee may take recourse to any remedy available in law for recovery of the additional demand but barred from taking recourse to disconnection of supply under Section 56(2) of the Act.

24. The Supreme Court, in *M/s. Prem Cottex* (supra), accordingly, observed that the Supreme Court, in *Rahamatullah Khan* (supra), was persuaded to take the view that it did on account of certain peculiar facts. The consumer in that case was billed under a particular Tariff Code for the period from July, 2009 to September, 2011. But after audit, it was discovered that a different Tariff Code should have been applied. A bill was raised subsequently for the aforesaid period.
25. The Supreme Court went into an analysis of whether the raising of an additional demand, by itself, would tantamount to any deficiency in service, clothing the consumer fora with the power to deal with the dispute. The said question, it was held, was not raised or considered in *Rahamatullah Khan* (supra).
26. It is note-worthy that in both the cited judgments, the proceedings arose from consumer disputes brought before the designated fora.
27. The matter was then discussed from another angle in *M/s. Prem Cottex* (supra) and it was held that if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under sub-section (2) of Section 56 will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect.
28. The crux which can be distilled from the above two judgments is that the Supreme Court, in no uncertain terms, interpreted the “first due” date to be the date when the bill was raised for the first time.
29. In the present case, the bill for the additional amount was raised for the first time on November 5, 2019 and, as such, following the principle laid

down in the Supreme Court Judgments, the limitation started running only from November 5, 2019.

30. As such, it cannot be said that the limitation, either for recovery of such amount under sub-section (1) of Section 56 or for the purpose of disconnection of electricity for non-payment as envisaged in sub-section (2) thereof, commenced.
31. Moreover, taking into account the provision of Section 17(1)(c) of the Limitation Act, 1963, as reiterated by the Supreme Court in both the judgments, in a case where there has been a mistake or a *bona fide* error, the licensee-company was not precluded from raising an additional or supplementary demand even after the expiry of the limitation period.
32. However, the question of applying such principle to the present case is unnecessary, in view of the first due date having been held by the Supreme Court to be the date of raising of the bill (here, the additional/supplementary bill) for the first time.
33. In the present case, the additional bill was raised for the first time on November 5, 2019 for the entire period from September 2014 to April, 2019, which was the unclaimed part of bill from such previous billing cycle, owing to a *bona fide* error on the part of the WBSEDCL in applying the correct parameters and multiplying factor.
34. Hence, it cannot be in doubt that the WBSEDCL was entitled to claim the amount payable on the said bill at that juncture, since it had been claimed within two years from the discovery of the mistake in May, 2019.
35. Although the liability of the petitioner to pay, under normal circumstances, would have arisen from the date when the amounts became due, the

liability and obligation to pay have merged in the present case by converging on the starting point of November 5, 2019, when the additional amount became “first due”. In view of the amount having been claimed by way of the additional bill within limitation and thereafter having been shown by the WBSEDCL in subsequent bills, there cannot be any doubt that the WBSEDCL was well within its power and not barred by limitation in any manner to claim the amount at that juncture.

- 36.** Subsequently, the WBSEDCL, on the non-payment of the petitioner of the said amount, sought to take resort to Section 56(1) of the 2003 Act for disconnecting the said electricity supply of the petitioner.
- 37.** I find no illegality in such exercise on the part of the WBSEDCL, since the bar of limitation stipulated in Section 56 (2) is not applicable in the circumstances of the instant case.
- 38.** Thus, in the facts of the present case, as discussed above, the WBSEDCL is entitled both to recover the amount of additional claim and to disconnect the supply of electricity of the petitioner in the event such amount is refused to be paid by the petitioner within the contemplation of Section 56 of the 2003 Act.
- 39.** However, since the learned Senior Advocate appearing for the petitioner has submitted that the petitioner is willing to clear off the due amount on additional bills by quarterly installments of Rs.15 lakh, each starting from December, 2022, in deference to such submission and since the ultimate purpose of the WBSEDCL is to recover public money and not merely to disconnect electricity supply, such opportunity ought to be given to the petitioner to clear all dues.

- 40.** Hence, W.P.A. No.20630 of 2022 is disposed of by directing the petitioner to pay the entire amount due in lieu of additional electricity charges for the billing cycle September, 2014 till April, 2019 by four (04) quarterly installments of Rs.15 lakh each. The first of such installment shall be paid by the petitioner by the 31<sup>st</sup> day of December, 2022. The next three (03) installments shall be paid respectively within March 31, 2023, June 30, 2023 and September 30, 2023 respectively. The remaining amount of dues, if any, shall be rounded off with the last installment as indicated above.
- 41.** Along with such installments, the petitioner shall go on paying the current electricity charges in accordance with law to the WBSEDCL. In the event the petitioner deposits such installments and the current electricity charges in time, the WBSEDCL shall not disconnect the electricity supply of the petitioner on the ground of non-payment of the outstanding arrears of the period September, 2014 to April, 2019.
- 42.** However, in default of payment of even one of the said installments, along with current electricity charges, it will be open to the WBSEDCL to disconnect the electricity supply of the petitioner upon a notice of Seven (07) days.
- 43.** There will be no order as to costs.
- 44.** Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**

**Later**

When the above judgment is passed today, it is pointed out by the learned Senior Advocate appearing for the petitioner that the petitioner has already deposited one of the instalments to the tune of Rs.15 lakh with the WBSEDCL.

Hence, the amount which has already been deposited shall be deducted from the instalments payable pursuant to the judgment passed today.

**( Sabyasachi Bhattacharyya, J. )**