In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P. No. 20607 (W) of 2004

Kusum Iron & Steel Limited and another
Vs.
West Bengal State Electricity Board and others

For the petitioners	:	Mr. Subir Sanyal, Mr. Sutirtha Das
For the distribution licensee	:	Mr. Srijan Nayak, Ms. Mitali Bhattacharya, Mr. Kanak Kiran Bandopadhyay
Hearing concluded on	:	02.02.2022
Judgment on	:	09.02.2022

Sabyasachi Bhattacharyya, J:-

1. In the present writ petition, the petitioner has challenged a Demand Bill raised by the West Bengal State Electricity Board (WBSEB), a distribution licensee, on August 16, 2004.

2. The first ground taken by the petitioner is that the claim was rendered time-barred as on August 16, 2004, since the last due date, even as per the details given by the distribution licensee, for the alleged arrear bills was January 7, 2000. As per Section 6 of the West Bengal Electrical Undertakings (Recovery of Dues) act, 2000 (in short "the 2000 Act"), the limitation in respect of any suit or proceeding by or on behalf of an electrical undertaking for the recovery of any dues under the said Act was three years from the date from which the period of limitation would begin to run under the Limitation Act, 1963, against a like suit by a private person.

3. Learned counsel appearing for the petitioner argues further that the electric supply to the petitioner's meter was disconnected on the allegation of theft, pursuant to the provisions of the then prevailing Section 24 of Indian Electricity Act, 1910 (hereinafter referred to as "the 1910 Act"). A criminal case was also instituted pursuant to the complaint lodged on the allegation of theft. However, the charge of theft was ultimately negated by the Chief Electrical Inspector in the month of January-February, 1998.

4. The relevant provision under the Electricity Act, 2003 (for the sake of brevity "the 2003 Act"), came into force much thereafter on May 26, 2003.

5. Subsequently, however, the criminal case on the allegation of theft against the petitioner and its agents was dismissed, thereby discharging the petitioner from the allegation of theft.

6. Hence, it is submitted that the disconnection on the ground of theft was rendered invalid and the electric connection of the petitioner's premises ought to have been restored by the present distribution licensee, that is, the West Bengal State Electricity Development Corporation (WBSEDCL) without charging any further amount.

7. Learned counsel appearing for the Distribution Licensee controverts the above contentions and submits that the subsequent acquittal of the petitioner on the ground of theft has got no direct bearing on the notice of demand sent against the petitioner on August 16, 2004.

8. It is submitted that, as per the well-settled law, the acquittal or discharge of a consumer on the ground of theft cannot *ipso facto* be sufficient to invalidate the provisional or final assessment made against the consumer.

9. Moreover, it is argued by the Distribution Licensee that the plea of limitation is a premature one insofar as no suit or proceeding for recovery of the claimed amount has been filed by the Distribution Licensee or the erstwhile electrical undertaking against the petitioner at any point of time till date.

10. Upon perusing the materials-on-record and the pleadings, the relevant dates in the instant matter are as follows:

	Dates	**Events**
i)	February 27, 1998	Chief Electrical Inspector's order directing supplementary bill to be raised, thereby invalidating the prior bills.
ii)	June 15, 1998	A supplementary bill to the tune of Rs.51,96,125/- was raised by the electrical undertaking pursuant to the direction of the Chief Electrical Inspector, Government of West Bengal.
iii)	January 7, 2000	The last due date on the arrear bills allegedly payable by the petitioner.
iv)	August 16, 2004	Demand notice sent by the Distribution Licensee on arrear bills raised earlier.

11. In the present case, initially bills were raised by the electrical undertaking, that is, the WBSEB against the petitioner upon disconnection of the petitioner's line on the allegation of theft of electricity.

12. Upon a challenge being preferred before this Court, a learned Single Judge, sitting in writ jurisdiction, remanded the matter to the Chief Electrical Inspector for an assessment of the actual arrears due from the petitioner, in view of the petitioner having taken a specific plea of the concerned electric meter being faulty from the inception.

13. Pursuant to such direction of this Court, the Chief Electrical Inspector gave adequate hearing to both the interested parties and assessed the bases for recalculation of the arrears, ultimately directing the WBSEB to raise a supplementary bill.

14. Such supplementary bill was raised on June 15, 1998 pursuant to the order of the Chief Electrical Inspector. A chart contained with the said bill indicated the dates of default of the respective bills, covering the period from May, 1997 to December, 1999. The due dates of each of the bills were individually given in the chart, which ranged from June 25, 1997 till January 7, 2000. As such, even as per the break-up given by the WBSEB, the last date till which the payable bills were due was January 7, 2000.

15. Upon alleged non-payment of the said supplementary bill, the impugned demand notice was sent on August 16, 2004.

16. As per Section 24 of the predecessor Act, that is, the 1910 Act, where any person neglects to pay any charge for any energy, or any sum, other than a charge for energy due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer. Under sub-section (2) of Section 24, where any difference or dispute arose in respect of the above action, the licensee would not exercise its powers conferred by the Section until the electrical inspector had given his decision on the reference made in such regard to him.

17. The said provision was supplanted by the provisions of the 2000 Act. Section 3 of the 2000 Act provided that where any dues are payable by a consumer to an electrical undertaking, the prescribed authority may, at any point of time after the expiry of a period of Thirty (30) days from the date within which such dues are payable, serve, or caused to be served, on the consumer or his authorised agent a notice of demand stating the name of the consumer, the amount payable by him and the name of the undertaking to whom the amount was due. However, the proviso thereto stipulated that a notice under that Section shall not be served or caused to be served on a consumer for any dues in respect of which a difference or dispute has been referred to the Electrical Inspector under Section 24 of the 1910 Act. Explanation II to the said Section clearly provided that any dues to an electrical undertaking shall be deemed to be payable within the date specified in the bill in that behalf.

18. Section 5 of the 2000 Act provided that if the amount of the dues for which a notice of demand had been served under Section 3 was not deposited with the prescribed authority within the period referred to in Section 4(1) or within the period so extended by the prescribed authority, such amount would be recoverable as an arrear of land revenue, notwithstanding anything to the contrary contained in the 2000 Act or any other law for the time being in force or any instrument or agreement having effect by virtue of any law other than the 2000 Act.

19. Most crucially, Section 6 of the 2000 Act provided for the limitation in that regard. Section 6 specifically stipulated that notwithstanding anything contained in the Limitation Act, 1963 or any other law for the time being in force, the period of limitation in respect of any suit or proceeding by or on behalf of the electrical undertaking for the recovery of any dues under the 2000 Act shall be three years from the date from which the period of limitation would begin to run under the Limitation Act, 1963, against a like suit by a private person.

20. A like provision to Section 24 of the 1910 Act is Section 56 of the successor statute, that is, the 2003 Act which also provides for disconnection of electricity in default of payment. However, Section 56(2) of the 2003 Act provides that, notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer under Section 56 of the 2003 Act shall be recoverable after the period of two years from the date when such sum first became 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. Section 185 of the 2003 Act is also relevant in context, since, during pendency of the writ petition, the 2003 Act came into force.

22. Section 185 provides that save as otherwise provided in the 2003 Act, the 1910 Act was thereby repealed.

23. Section 185(2)(a) stipulates that, notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, insofar as it is not inconsistent with the provisions of the 2003 Act, be deemed to have been done or taken under the corresponding provisions of the 2003 Act.

24. Thus, in the present case, the disconnection to the supply-line of the petitioner under Section 24 of the 1910 Act, which was effected prior to the 2003 Act coming into force, would be deemed to have been done under the corresponding provisions of the 2003 Act and, thus, valid.

25. The 2000 Act only provided modalities for the recovery of dues and had to be read in the context of the 1910 Act at the relevant juncture when the impugned demand notice was issued, that is, on August 16, 2004.

26. There are two components to the notice of demand. First, the notice might have preceded a proceeding or suit by the electrical undertaking for recovery of dues. Secondly, the demand of arrears could be deemed as a justification for the disconnection of electric supply, which could not be restored unless, pursuant to the provisions of Section 24 of the 1910 Act, steps were taken for deposit of the amount due, subject to the adjudication of an electrical inspector, if referred.

27. As far as the first consequence is concerned, it would be premature to decide on limitation for such a proceeding for recovery of the dues, simply because no such proceeding or suit has been initiated by the distribution licensee till date.

28. However, we have to read the provisions of Sections 3 and 6 of the 2000 Act in conjunction, for coming to a conclusive finding as regards the veracity of the demand notice itself. As per Section 3, such notice could be issued at any time after the expiry of a period of thirty (30) days "from the date within which such dues were payable, served or caused to be served on the consumer or his authorised agent". The only restriction was that if a matter had been referred to the Electrical Inspector under Section 24 of the 1910 Act, no such notice could be served.

29. In the present case, the last due date for the arrears has to be ascertained from the supplementary bill ultimately raised by the WBSEB. It is clear from the records that the initial bill raised by the WBSEB was challenged by the petitioner in a writ petition before this Court and the issue was sub judice till the learned Single Judge directed the Chief Electrical Inspector to reassess the dues. Pursuant to the proviso to Section 3 of the 2000 Act, the demand notice could not be issued under Section 3 till the matter was pending before the Chief Electrical Inspector. The said Inspector, upon reassessing the dues, ultimately came to the conclusion that a supplementary bill was to be raised by the WBSEB.

30. Such order of the Electrical Inspector was passed on February 27, 1998, whereas the supplementary bill to the tune of Rs.51,96,125/- was raised on June 15, 1998. Upon subsequent alleged non-payment of the amounts by the petitioner, the impugned demand notice was issued by the licensee on August 16, 2004. The last due date as per the break-up given with the said notice for the arrears was January 7, 2000. Thus, the demand notice was admittedly issued after the passage of three years from the last due date.

31. Explanation II of Section 3 of the 2000 Act clearly specifies that any dues to an electrical undertaking shall be deemed to be payable within the date specified in the bill in that behalf.

32. However, as per Section 3 of the 2000 Act, the notice could have been issued at any time after the expiry of a period of thirty (30) days from the date within which such dues were payable. Since the last dues were payable, as observed above, till January 7, 2000, the time for issuing the notice of demand, even as per Section 3 of the 2000 Act, commenced immediately upon expiry of thirty (30) days from January 7, 2000 that is on February 6, 2000 approximately. Hence, reading Section 6 of the 2000 Act in proper perspective, the limitation period for a suit for recovery of the dues was three years from the date from which the limitation would begin to run under the Limitation Act, 1963 in case of a suit of a private person, that is, three years from the last due date till which the amount was payable, which was February 6, 2000. Hence, logically the last date of limitation for instituting a suit or proceeding for recovery of dues expired approximately on February 5, 2003. However, the demand notice was raised only on August 16, 2004 when such suit had already become time-barred.

33. Hence, the money component as per the impugned demand notice could not be recovered any longer by a suit or proceeding from the petitioner by the distribution licensee.

34. Be that as it may, no such proceeding or suit for recovery has been filed till date by the distribution licensee, which patently renders the objection as to limitation premature and academic.

35. However, as far as the second ingredient of the demand notice is concerned, the entitlement of the WBSEB to disconnect power supply to the petitioner's meter on the ground of theft had already arisen upon such purported theft being reported by the WBSEB, pursuant to Section 24 of the 1910 Act.

36. Thus, there was no error committed by the licensee at the relevant juncture, immediately at the point of discovery of such purported theft, to cut off the electric connection of the petitioner on such allegation. It is only the perception of theft of the licensee which is sufficient to justify such a disconnection under Section 24 of the 1910 Act. Such perception being reasonably there at the relevant juncture and being subsequently followed up by initiating a criminal action against the petitioner, there was sufficient justification for the disconnection at the relevant point of time.

37. Hence, the provisions of Section 24 were applicable in their full rigour against the petitioner in respect of such disconnection.

38. Sections 3 and 6 of the 2000 Act, thus, had no bearing on such act of disconnection. Thus, even if the recovery of dues by a suit or proceeding stood subsequently time-barred, such disconnection would not be automatically invalidated or deemed illegal on the subsequent discharge/acquittal of the petitioner on the allegation of theft in the criminal proceeding.

39. Proceedings for assessment of dues within the purview of Section 24 of the 1910 Act or Sections 56, 126 and 127 of the 2003 Act, do not have any nexus with the disconnection of electric supply or subsequent re-connection. Hence, the time-bar stipulated in Section 6 of the 2000 Act cannot have any bearing in the context of such disconnection.

40. The entitlement of the petitioner to restoration of the electric connection is not dependent on the limitation for recovery of dues by a suit or proceeding, but can only be tested within the ambit of Section 24 of the 1910 Act and/or Section 56(1) or Sections 126 and 127 of the 2003 Act.

41. On a perusal of Section 185 of the 2003 Act, which contains the repeals and savings clause, it will be evident that the action taken under Section 24 of the 1910 Act, as it is not inconsistent with Section 56 or Section 126 or, for that matter, Section 135 of the 2003 Act, would be deemed to have been taken under the corresponding provisions of the 2003 Act, that is, Section 56 of the latter Act.

42. Hence, restoration of such connection can only be legitimized upon the consumer either putting in the entire amount as assessed or challenging the same successfully before either the Chief Electrical Inspector under the 1910 Act or the appellate authority under Section 127 of the of the 2003 Act. No such challenge having been levelled against the assessment of dues or the demand notice by the petitioner at any point of time on the money component of the demand notice, the restoration cannot be effected in favour of the petitioner unless the petitioner deposited the entire amount in time. In view of the petitioner having given a go-by to such remedy, such reconnection and/or fresh connection can only be given to the petitioner upon the petitioner complying with all formalities for taking a new connection and clearing the previous dues.

43. Thus, the demand notice cannot be quashed as a whole, since the said notice was also the justification for disconnection of electricity of the petitioner and not only a prospective suit for recovery of dues.

44. Thus, even if a subsequent suit for such recovery is palpably time-barred, the disconnection is not rendered illegitimate automatically by the subsequent acquittal of the petitioner from the criminal case on the ground of theft. The yardstick for adjudication of a criminal case is "beyond reasonable doubt" on the touchstone of strict proof.

45. However, the assessment by an appellate authority or Chief Electrical Inspector as regards the dues of the petitioner is a civil assessment in nature, governed by the test of "preponderance of probabilities".

46. Even apart from the yardsticks of the two being different, in view of the above discussions, it is clear that the criminal proceeding, in respect of which the petitioner was subsequently acquitted, stood on an entirely different footing than the incidents of disconnection.

47. Hence, the demand notice cannot be set aside as a whole, nor can restoration of electric connection to the petitioner, without compliance of all formalities in that regard afresh, be directed.

48. Hence, the present writ petition fails in all its aspects.

49. Accordingly, W.P. 20607 (W) of 2004 is dismissed on contest in the light of the above observations.

50. There will be no order as to costs.

51. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)