IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.21007 of 2019
and
WMP.Nos.20184 & 20186 of 2019

Needle Industries (India) Private Limited,
Ketti, The Nilgiris
Tamil Nadu 643 243
HTSC Nos.31 & 39
Represented by its Managing Director
T.A.Devagnanam ...Petitioner

Vs

1. The Superintending Engineer,
Nilgiris Electricity Distribution Circle,
Tamil Nadu Generation & Distribution
Corporation Limited (TANGEDCO),
Udhagamandalam.

2. Tamil Nadu Generation &
Distribution Corporation Limited,
(TANGEDCO) rep. by its Chairman,
10th Floor, 144, Anna Salai,
Chennai 600 002.

3. The Deputy Financial Controller,
Tamil Nadu Generation &
Distribution Corporation Limited,
(TANGEDCO),
Nilgiris Electricity Distribution Circle,
Udhagamandalam. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd Respondent with respect to the High Tension Bill dated 04.07.2019 for the month of June 2019 pertaining to HTSC No.31 (Service No.039094820031) belonging to the Petitioner and quash the same as illegal in so far as it relates to the amount of Rs.20,38,976/- levied in Page.No.3 under the caption “Affecting Adjustments” and forbear the Respondents, their men, agents and representatives from levying or enforcing any charges on the Petitioner except in accordance with Section 56(2) of the Electricity Act, 2003.

For Petitioner : Mr.Krishna Srinivasan
for Mr.S.Ramasubramaniam

For Respondents : Mr.Abul Kalam
Standing Counsel

O R D E R

Heard Mr.Krishna Srinivasan, learned counsel for Mr.S.Ramasubramaniam, learned counsel appearing for the petitioner and Mr.Abul Kalam, learned Standing Counsel appearing for the respondents.

2.The petitioner has challenged a High Tension invoice dated 04.07.2019 pertaining to HTSC.No.31 relating to the period August 2015. The impugned invoice seeks to raise a demand after a period of four years when the time of consumption. The primary argument that is raised relates to the bar of limitation.

3.Admittedly, there is a difference of 3,68,939 units generated by the WTG as recorded by the authorities and as logged by the petitioner. The aforesaid difference had escaped the attention of TANGEDCO and no due was raised in this regard.

4.The error was brought to the notice of the authorities on 24.10.2015 by the petitioner under communication dated 24.10.2015 received on 26.10.2015 by the respondents. The communication states that with respect to the subject matter, which is the WTG 'generation units difference', as per records, the WTG generated units for the month of August was 3,34,483. In the monthly HT current consumption bill, the WTG unit taken into account was a sum of a Rs.7,03,422/-. There was thus a difference of 3,68,939 units, difference called for verification and reconciliation.

5. Thus, the fact that the petitioner had been granted excess credit in regard to 3,68,939 units has been noticed by the petitioner and duly brought to the notice of the respondents as early as on 26.10.2015. Despite this, no action was initiated by the respondents to reverse the credit. The subsequent current consumption bill (CC bill) did not make an adjustment, as specifically sought for by the petitioner on 24.10.2015.

6. For the first time, on 02.04.2019, the authorities write to the petitioner proposing to demand a sum of Rs.23,79,973/- as a supplemental claim on account of short collection of energy charges, putting it to notice that the demand in this regard

would be included in the current consumption bill for the ensuing month and should be remitted by the petitioner, in time.

7.The authorities also make it clear under communication of letter dated 15.04.2019 that this supplementary demand has been made only pursuant to a BOAB Audit for the period 2016-2018 conducted by the Internal Audit Department. Audit slip dated 21.03.2019 reads as follows:

> 'HT SC No 31 & 39, M/S NEEDLE INDUSTRIES (INDIA) Pvt Ltd.
>
> During the Course of review of HT bill file along with wind mill statement in respect of the above consumer it is seen that the Peak hour Reading relating to WF NO.63 M/s.NEEDLE INDUSTRIES (INDIA) PVT LTD) has been incorrectly entered in the windmill statement i.e. 3161.60 instead of 2985.43 in the month of 08/2015 as cnfirmed vide Lr.No:EE/WFP/AEE/MRT/Udt/F.WF SC.No.C63/D.No.553/15, Dt.12.08.2015 and resulted in excess adjustment of wind energy units which is detailed in the working sheet.
>
> Therefore the short collection of Energy charges of Rs.20,38,876/- may be arrangement to be collected from the above consumer and the fact intimated to Audit.'

8.The petitioner objected to the proposed demand on account of the elapse of time, but ultimately an order came to be passed on 08.05.2019, rejecting the objection filed by the petitioner on 26.04.2019 and confirming the supplementary demand. Hence, this writ petition.

9.Reliance is placed by the the petitioner upon the provisions of Section 56(2) of the Electricity Act, 2003 (in short 'Act') which deals with disconnection of supply in default of payment. The provision is extracted hereunder:

> '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."

10.The petitioner specifically relies upon the limitation prescribed under sub clause-2 of Section 56, as extracted above. The clause has been interpreted and explained by the Hon'ble Supreme Court in the case of Assistant Commissioner D1, Ajmer Vidyut Vitran Nigam Limited and Another Vs. Rahamatullah Khan alias Rahamjulla [(2020) 4 SCC 650].

11.Section 56 deals with disconnection of supply in default of payment. The provisions of sub-Section-1 state that in the event of default in payment of Electricity charges, the licensee should issue notice of not less than 15 days and thereafter, and till such time payment has not been effected in the interim, cut off the supply of electricity. The proviso thereto states that the electricity supply shall not be disconnected, if the demand was remitted, though under protest, or if the entirety of the demands remitted or electricity charges due from the consumer in each month calculated on the basis of average charge for electricity paid during the proceeding expense be remitted, whichever is less, are remitted though under protest.

12.Sub-Section-2 thereof sets out the limitation in regard to the period within which the consumption demand may be raised and states that no sum due from any consumer shall be recoverable after a period of two years unless the amount of arrears have been quantified and are shown as recoverable, in the interim period.

13.Thus, the pre-conditions for doing away with the period of limitation of two years are where the arrears had been (i) quantified by authorities and (ii)shown as recoverable in their records, if the aforesaid two pre-conditions are not satisfied. The limitation would commence two years. This is my understanding of Section 56.

14.The Hon'ble Supreme Court in the case of Rahamatullah (supra) reiterates this aspect in paragraph-7.5 thereof reading as follows:

> '7.5 The period of limitation of two years would commence from the date on which the electricity charges became “first due” under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period. If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became “first due”, it would defeat the object of Section 56 (2).'

15.The pre-conditions are specifically referred to in paragraph-7.5 of the judgment. The restriction placed upon the right of the licensee company to disconnect electricity connection is conditional upon such sum reflecting continuously as recoverable as arrears in the bills raised for the past years. In that case, such pre-condition had been satisfied as noted at paragraph-9 and an additional demand raised on 18.03.2014.

16.The error committed in that case was that though the arrears had been quantified, such quantification had been effected under the wrong Tariff Code. Admittedly, the arrears related for periods prior to two years, being July 2009 to September 2011. However, insofar as the arrears had been quantified, though under the wrong Tariff Code, the Court held that the pre-condition as set out under Section 56(2) had been complied with by the authorities and thus, the bar of limitation would not apply.

17.In my considered view, the clear language of Section 56 (2) as well as the ratio in Rahamatullah's case are applicable on all fours to the present matter as well.

18.This decision has also been subsequently applied by a learned single Judge of this Court in the case of ITC Limited vs. TANGEDCO and others (WP.No.20436 of 2018 dated 30.11.2021).

19.On 17.02.2022, I had passed the following order in this matter:

'The petitioner challenges a demand of electricity made on 04.07.2019 relating to the period 2015 on the ground that the pre-condition under Section 56(2) of the Electricity Act, 2003 has not been satisfied.

2. Section 56(2) reads as follows:

56. Disconnection of supply in default of payment:

......

......

3. Thus, the language of the provision is clear to state that the limitation for recovery is not circumscribed by any period as long as the licencee has quantified the amount due and has continuously shown the amount as recoverable in its records. The judgment of the Hon'ble Supreme Court in the case of Assistant Commissioner D1, Ajmer Vidyut Vitran Nigam Limited and Another Vs. Rahamatullah Khan alias Rahamjulla [(2020) 4 SCC 650] also clarifies this position unambiguously in the following paragraphs 7.4, 7.5 and 9.3:

7.4. 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. This statutory right is subject to the period of limitation of two years provided by sub-section 92) of Section 56 of the Act.

7.5. The period of limitation of two years would commence from the date on which the electricity charges became “first due”under sub-Section (2) of Section 56. This provision restricts the right of the licencee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period. If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became “first due”, it would defeat the object of Section 56(2).

9.3. In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18-3-2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.

4. In the present case, the counter merely states that the delay in raising a demand is attributable to a bona fide inadvertent mistake that may well be so. However, such bona fide mistake would come to the rescue of the licencee only if the quantification of arrears had been done in time and they have been reflected in its records.

5. To ascertain whether the records comes to rescue, Mr.Abul Kalam, learned counsel for the respondents seeks some time. List on 25.02.2022. Records to be produced.'

20.Opportunity was thus granted to the respondents to enable them to produce records to establish their defence that the arrears have been quantified and reflected as arrears in the records. Today Mr.Abul Kalam would confirm that the quantification of arrears has taken place only in 2019 when the error had been brought to the notice of the authorities by the Internal Audit Department.

21.Thus, between the years 2015 and 2019, the authorities had clearly and entirely missed the bus, as far as the arrears in question are concerned. There has been no quantification, no recording of the arrears and thus the bar of limitation will be applicable to the present case.

22.The impugned demand is liable to be set aside and I do so. This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Superintending Engineer,
   Nilgiris Electricity Distribution Circle,
   Tamil Nadu Generation & Distribution
   Corporation Limited (TANGEDCO),
   Udhagamandalam.

2. The Chairman,
Tamil Nadu Generation &
Distribution Corporation Limited,
(TANGEDCO)
10th Floor, 144, Anna Salai,
Chennai 600 002.

3. The Deputy Financial Controller,
Tamil Nadu Generation &
Distribution Corporation Limited,
(TANGEDCO),
Nilgiris Electricity Distribution Circle,
Udhagamandalam.

+1cc to Mr.S.Ramasubramanian, Advocate, S.R.No.15308

+1cc to Mr.M.Abulkalam, Advocate, S.R.No.15611

W.P.No.21007 of 2019 and
WMP.Nos.20184 & 20186 of 2019

AK-II(CO)
SU(25/04/2022)