**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP-5877-2019
Date of decision: 16.11.2023**

UTTAR HARYANA BIJLI VITRAN NIGAM LTD AND OTHERS

......Petitioners

VERSUS

M/S SHREE DURGA SPINNING MILL AND ANOTHER

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. R.S. Longia, Advocate
for the petitioners.

Mr. Bhuwan Vats, Legal Aid Counsel
for respondent No.1

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the award dated 26.10.2018 (Annexure P-3) passed by respondent No.2-Permanent Lok Adalat (Public Utility Services), Panipat whereby the application under Section 22–C of the Legal Services Authorities Act, 1987 was allowed and the demand raised by the petitioner-Distribution Licensee has been set aside.

2. Despite the respondent having been served as per the report dated 22.04.2020, the respondent No.1, has chosen not to enter appearance.

The matter was adjourned to enable appearance on behalf of the respondent No.1, however, no one has entered appearance, it was ordered to be proceeded against ex-parte vide order dated 13.07.2023. The matter was still adjourned to enable representation on behalf of the said respondent. Since there was no representation, the matter has been heard by seeking assistance from Mr. Bhuwan Vats, who is the Legal Aid Counsel, to assist on the facts on behalf of the respondent No.1.

3. Counsel for the petitioner-Distribution Licensee has contended that respondent No.1 is a consumer of the petitioner-distribution licensee and is running an industry under the name and style of M/s Shree Durga Spinning Mill at Panipat. The said respondent is a large supply consumer of the petitioner having electricity connection No. LS125. On its demand, load on its connection was increased from 224-285 kw to 378.970 kw with CD from 280 KVA to 421 KVA vide office order No. 20/86 dated 26.11.2013, which was made effective w.e.f. 06.12.2013. However, inadvertently the bill for the month of December, 2013 was wrongly issued without considering the increased load and continued to be raised accordingly. The above mistake went unnoticed and was pointed out for the first time by the Audit party on 25.06.2015 in its audit note. After re-verification of the entire record, the audit note was found to have been justifiably raised. An amount of Rs. 1,66,848/- was thus found recoverable from the respondent No.1 as per the applicable tariff rate. Since the load on the connection of the consumer has been enhanced on his application and after furnishing of an undertaking that he will pay all the consequential enhanced charges, the amount was thus recoverable from the respondent No.1. The said amount was thus added in the running bill of the consumer for the month of March,

2017 in the column of sundry charges. The respondent No.1, consumer approached the officials of the petitioner-distribution licensee to enquire about the above said charge and the same was explained to it. No dispute qua the assessment and the demand on the basis of enhanced load was raised by the respondent-consumer. However, the respondent preferred an application under Section 22-C of the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services).

4. The petitioner entered appearance before the Legal Services Authorities and raised its objections against maintainability of the said application and to the validity of the demand. After the failure of the conciliation proceedings, adjudication was initiated by the Permanent Lok Adalat (Public Utility Services) and on consideration of the rival submissions, the Permanent Lok Adalat (Public Utility Services) allowed the said application vide award dated 26.10.2018 by relying upon Section 56 (2) of the Electricity Act, 2003 alongwith cost and litigation expenses of Rs.5000/-. The respondent No.1-consumer was held not liable to pay the above amount of Rs.1,66,848/- towards sundry charges claimed by the petitioner-distribution licensee in its bill pertaining to the month of March, 2017.

5. The Legal Aid Counsel nominated today in the Court has additionally contended that the respondent No.1-Consumer had been regularly making payment of the bills raised to him. A huge amount was however demanded by the petitioner as sundry charges. When the respondent No.1 approached the petitioner-authorities and sought explanation about the same, the petitioner was informed that it was on account of objection pointed out by the Audit party The claim in question

was however barred in terms of Section 56 (2) of the Electricity Act and despite the respondent approaching the superior-higher authorities, the requisite correction was not done. The respondent No.1 was thus constrained to approach the Permanent Lok Adalat (Public Utility Services) under the Legal Services Authorities Act, 1987. Upon consideration of the submissions, the Permanent Lok Adalat (Public Utility Services), Panipat rightly allowed the said application and set aside the illegal and arbitrary demand raised by the petitioner-distribution licensee.

6. The Legal Aid Counsel has further drawn attention to the following extract of the award passed by the Permanent Lok Adalat (Public Utility Services), Panipat:-

> "*14. In Para no.2 of the reply on merits, the respondents has specifically mentioned that "audit party checked the account of the connection no. LS125 of the applicant on 25.06.2015 and found that the load of the applicant was extended from 224.285 KW to 378.970 KW with CD 280 KVA to 421 KVA vide SJO no. 20/86 dated 26.11.2013, which was effected on 06.12.2013, but the bill of December, 2013 was not rendered to the applicant on extended load. Therefore, the difference of amount of Rs. 1,66,848/- was chargeable in the account of the applicant." The respondent has added the amount of Rs. 1,66,848/- in the electricity bill. issued in the March 2017 as sundry charges. The above mentioned amount certainly was claimed after two years from the date the amount became due towards the applicant, even if version of the respondents is presumed to be correct. In this way claim of the respondents regarding payment of the amount of Rs. 1,66,848/- as sundry charges is barred by limitation as provided under section 56(2) of the electricity Act 2003 which for the same of convenience's reproduced below:-*

> *Section 56(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".*
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> *Under Section 56(2) of the Electricity Act restrictions have been put for recovery of arrears pertaining to the period prior to two years from consumer (unless the arrear have been continuously shown in the bills The restriction have been considered necessary to protect the consumer from arbitrary billings*
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> *15. In this way in this case respondent- Nigam claimed an amount of Rs. 1,66,848/- from the applicant by mentioning in the electricity bill as sundry charges. Findings can be safely given that the respondent-Nigam is not entitled to recover the above mentioned amount from the applicant. Resultantly it is held that the applicant is not liable to pay an amount of Rs. 1,66,848/- which has been unnecessarily added in his bill for the month of March 2017.*

7. Responding to the above, counsel for the petitioner has argued that the award suffers from misappreciation of provisions of Section 56 (2) of the Electricity Act, 2003 as also the judgments of the Hon'ble Supreme Court of India as well as judgment of this Court. He places reliance on judgment of the Hon'ble Supreme Court dated 19.05.2023 in the matter of ***"K.C. Ninan versus Kerala State Electricity Board"*** passed in ***Civil Appeal No. 2109-2110 of 2004*** dated 19.05.2023. The relevant extract of the same is reproduced as below:-

"The conclusions are summarised below:

a. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;

b. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;

c. For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;

d. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;

e. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;

f. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new

> *owner have a reasonable nexus with the objects of the 2003 Act;*
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> *g. The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;*
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> *h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;*
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> *i. The implication of the expression "as is where is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and*
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> *j. In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.*

8. Referring to the above, it is submitted by the counsel that the power to initiate recovery in terms of Section 56 (2) of the Electricity Act, 2003 is not prohibited and is independent of the power to disconnect the electrical supply for effecting recovery under the said provision. A reference is also made to the judgment of this Court dated 22.03.2023 passed in ***CWP-20743-2020*** titled as ***"Uttar Haryana Bijli Vitran Nigam Ltd. and another versus Sat Narain Dhanwantri and another"*** wherein this Court had

allowed the writ petition filed by the Distribution Licensee and had set aside the award passed by the Permanent Lok Adalat (Public Utility Services), Rohtak under similar circumstances where a bill had been revised since the earlier bills had been raised by applying a wrong multiplication factor. The relevant extract of the said judgment reads thus:

> *"Since the controversy in question revolves only around the interpretation and application of Section 56(2) of The Electricity Act, 2003, the same is extracted as under:*
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> > ***"56(2) of The Electricity Act, 2003***
> >
> > *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."*
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> *It is evident from the perusal of the aforesaid provision that the Distribution Licensee is precluded from seeking recovery of any sum due from a consumer after a period of two years from the date when such sum became first due, unless such sum has been shown continuously as arrears of charges for electricity supply and the licensee shall not cut off the supply of electricity. The aforesaid provision has been interpreted by the Hon'ble Supreme Court in the matter of* ***Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatualla Khan @ Rahamjulla*** *bearing* ***Civil Appeal No.1672 of 2020 arising out of SLP (Civil) NO.5190 of 2019 decided on 18.02.2020.*** *The relevant extract of the same is reproduced hereinafter below:*

"6. The next issue is as to whether the period of limitation of two years provided by Section 56(2) of the Act, would be applicable to an additional or supplementary demand.

6.1 Prior to the coming into force of the Electricity Act, 2003, the Indian Electricity Act, 1910 governed the law pertaining to the use and supply of electricity in India. Section 24 of the Indian Electricity Act, 1910 read as follows :–

"24. Discontinuance of supply to consumer neglecting to pay charge.

(1) Where any person neglects to pay any charge for 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 charger or other sum, together with all expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:

Provided that the prohibition contained in this subsection shall not apply in any case in *which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."*

The Standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok Sabha, opined that Section 56 of the 2003 Act is based on Section 24 of the 1910 Act.

The Standing Committee further opined that a restriction has been added for recovery of arrears pertaining to the period prior to two years from consumers, unless the arrears have been continuously shown in the bills. Justifying the addition of this restriction, the Ministry of Power submitted that: –

"It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings."

6.2 ***In Swastic Industries v. Maharashtra State Electricity Board, (1997) 9 SCC 465*** *this Court while interpreting Section 24 of the Indian Electricity Act, 1910 held that: –*

"5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it."

(emphasis supplied)

6.3 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 (2) of Section 56 of the Act.

6.4 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).

7. Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.

8. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011."

9. He submits that it is evident from the perusal of the aforesaid judgment that the position in law has been well laid down by the Hon'ble

Supreme Court that the period of limitation of two years only restricts the right of the licensee to disconnect the electricity supply for non-payment and does not deny it a right to seek recovery of the above amount.

10. It is further argued that supply of energy under The Electricity Act, 2003 is on account of contract between the parties. Retention of any benefit to which a person is not entitled under the contract does not confer a right on the consumer to retain the same and rather creates an obligation on the consumer to indemnify for the consumption of such grid/energy used, as per the basic tenets of the law of contract.

11. It is submitted that the interpretation accepted by the Permanent Lok Adalat (Public Utility Services), Rohtak is not based on correct interpretation of law as interpreted by the Hon'ble Supreme Court. The Award passed by the Permanent Lok Adalat accordingly suffers from an illegality, perversity and impropriety and is hence liable to be set aside. The demand raised by the petitioner-Distribution Licensee is thus upheld.

12. He further submits that the aforesaid judgment was subject matter of challenge in Letters Patent Appeal No. 998 of 2023 and that the same has been dismissed as withdrawn by the respondent-consumer therein vide order dated 02.08.2023. Hence, the judgment of this Court was not interfered with and the same has been upheld by the Division Bench as well.

13. The Legal Aid Counsel appearing on behalf of respondent No.1 although makes an effort to wriggle out of the scope and operation of the aforesaid judgment, however, the submission advanced by the counsel does not inspire any confidence.

14. I have heard learned counsel appearing on behalf of the petitioner as well as Legal Aid Counsel and have gone through the

documents appended alongwith instant petition and also the judgment of Hon'ble Supreme Court of India.

15. It is apparent from a perusal of the aforesaid judgment, that the provisions of Section 56 (2) of the Electricity Act, 2003 would come into play, only on occurrence of an eventuality of an amount having become due for the first time and a period of 02 years having elapsed thereafter where an error has not been noticed and a wrong benefit had been availed by a consumer due to above lapse, the provision would not be applicable. Further, the Hon'ble Supreme Court has further clarified in the above judgment that even in a case where the amount due for the first time is not recovered within a period of 02 years of being shown due, recovery can still be effected & only the coercive measure of disconnection be not initiated. Undisputedly, the connected load went unnoticed and the electricity bills continued to be raised on the unextended load. The said aspect & error in billing had not been disputed by the respondent No.1-consumer. Even during the course of proceedings instituted before the Permanent Lok Adalat (Public Utility Services), Panipat, there was no dispute pertaining to the assessment of the amount. In the absence of any denial/dispute qua the questions of fact raised above or the demand assessed, it has to be construed that the demand was assessed in accordance with the connected load and as per the applicable tariff only.

16. Further, the specific case of the petitioner distribution licensee was that the bills had been raised at the unextended load and that the said anomaly came to the notice only in December, 2015. Hence, the period of limitation is to commence when the said fact first came to the notice of the distribution licensee. The demand in question having been raised in the bill

for March, 2017, hence, the same was raised within limitation of two years prescribed under Section 56 (2) of the Electricity Act, 2003. Thus the right of recovery of the above said amount had been rightly invoked by the petitioner-distribution licensee and that the said right has been recognized to be a valid and enforceable right by the Hon'ble Supreme Court on India not only in the judgment of ***K.C. Ninan*** (Supra) but also in the judgment of ***"Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Limited and another versus Rahamatualla Khan @ Rahamjulla"*** bearing Civil Appeal No. 1672 of 2020 arising out of SLP (Civil) No. 5190 of 2019 decided on 18.02.2020 and relied upon in the judgment of ***"Uttar Haryana Bijli Vitran Nigam Ltd. and another versus Sat Narain Dhanwantri and another".***

17. In view of the above, I find that the award passed by the Permanent Lok Adalat (Public Utility Services), Panipat suffers from improper appreciation of law and facts which arose for consideration of the Permanent Lok Adalat (Public Utility Services). The failure to refer to the correct position in law would go to the rest of the award & render is bad, illegal & unsustainable. Exercise of a discretion which is in violation of correct position in law cannot be protected or approved. The same vitiates the award and render the conclusions drawn by it liable to be set aside.

18. The present writ petition is accordingly allowed. The award dated 26.10.2018 (Annexure P-3) passed by respondent No.2-Permanent Lok Adalat (Public Utility Services), Panipat in ***Application No. 173/17*** titled as ***"M/s Shree Durga Spinning Mill versus Uttri Haryana Bijli Vitran Nigam Ltd."*** is set aside.

All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)

NOVEMBER 16, 2023 **JUDGE**

Vishal Sharma

Whether speaking/reasoned	**:**	Yes/No
Whether Reportable	:	Yes/No