IN THE PUNJAB AND HARYANA HIGH CORUT AT CHANDIGARH

244 **CWP-9603-2020**
Date of Decision: 12.01.2023

M/S A.K. AUTOMOBILES PRIVATE LIMITED
... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS
... Respondents

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

Present: Mr. Vishal Sharma, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. B.R. Mahajan, Sr. Advocate with
Ms. Shubhra Singh, Advocate
for the respondents No.2 and 3.

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VINOD S. BHARDWAJ, J. (ORAL)

The present petition seeks quashing of the impugned bill dated 11.06.2020 (Annexure P-4) passed by the respondents, whereby the respondents have raised an additional demand of Rs.29,08,180.50/- including Rs.1,34,894.85/- for consumption of units from 01.04.2020 to 01.05.2020 i.e. for 14,600 units during the period of COVID lockdown.

Learned counsel contends that the petitioner is a registered partnership firm and the retrospective additional demand by the respondent No.3 vide Bill No.636279905896 dated 11.06.2020 (Annexure P-4) is illegal and arbitrary and is in contravention of Section 56 (2) of the Electricity Act, 2003.

Learned counsel for the petitioner has submitted that the impugned bill has been raised for the period of national lockdown due to COVID-19. Arrears on account of Peak Load Exemption Charges (PLEC) for the period from August 2015 till April 2020 have also been claimed, even though such claim is illegal as per The Electricity Act, 2003 and the Regulations framed thereunder. Section 56(2) of The Electricity Act, 2003 prohibits the respondents from seeking recovery of dues that are more than 2 years old unless such demand is shown as recoverable. The said period of two years has to be computed from the date when the amount became due. The interest of consumer cannot be ignored and Distribution Licensee cannot seek recovery prohibited in law.

Reference is made to Sales Circular No.D-45/2013 (Annexure P-9) dated 10.09.2013 to support the argument. It is averred in the said Sales Circular that no sum due from any connected consumer shall be recoverable after a period of two years from the date when such sum became due for the first time unless such sum has been shown continuously to be recoverable as arrear of charges for electricity supply. Further, Clause–(iv) of the said Sales Circular also contemplates that the amount of arrears exists in respect of a consumer, which could not be recovered despite having been assessed, for a period of more than two years when it first became due, would be the liability of the officers/officials responsible for the said delay.

Learned counsel for the petitioner contends that the respondents have raised a demand for the span of six years commencing from August, 2015 till April 2020 and by arbitrarily incorporating the entire amount in the bill dated 11.06.2020 and have thus raised an exorbitant demand from the petitioner ignoring the abovesaid Sales Circular. Since the amount in question was not being shown continuously as recoverable arrears, hence, any demand which is relatable to a period beyond two years cannot be raised from the petitioner. Besides, a detailed procedure has been prescribed for effecting recovery of such arrears and that the respondent-Distribution Licensee is obligated to take recourse to the procedure laid down in the Sales Circular for effecting any recovery of the dues.

Written statement on behalf of the respondents No.2 and 3 has been filed, wherein it has been averred that the bill in question has been raised on the basis of actual consumption recorded in the electricity meter installed in the premises of the petitioner for the month of June 2020. The Peak Load Exemption Charges have been claimed as a part of billing as per the consumption recorded in the meter and are levied as per Sales Circular No.39 of 2014.

Learned counsel for the petitioner responded that the demand in question pertains to the period commencing from 2015 to 2020, however, the said aspect is not reflected from the bill in question. Reliance to substantiate the said assertion is placed on Annexure P-6, which is, however, not generated by the respondent-Distribution Licensee or any authorized officer rather it has been specifically admitted by the learned counsel for the petitioner that the same is an unauthorized and unapproved hand-written note. Resultantly, the contention of learned counsel for the petitioner that the bill referred to and under dispute in the present petition pertained to a demand for the period from 2015 to 2020 cannot be said to be established from undisputed documents on record. The prime grievance about the demand is thus based on a disputed question of fact.

Insofar as the issue of Section 56 of the Electricity Act, 2003 and its applicability is concerned, the same has already been decided by the Hon'ble Supreme Court in the matter of ***Superintending Engineer Ajmer Vidyut Vitran Nigam Ltd. Vs. Rehamatulla Khan*** bearing ***Civil Appeal***

No.1672 of 2020 vide judgment dated 18.02.2020 and as such, the effect of the Sales Circular and the entitlement of the Distribution Licensee to recover the arrears, if found to be incorporated as a part of the Bill dated 11.06.2020, is concerned, the same are yet to be determined. The issue, however, arises is as to whether the billing dispute raised by the petitioner at this juncture can be directly brought for adjudication before the High Court.

Learned counsel for the petitioner places reliance on the judgment of the Hon'ble Supreme Court in the matter of ***PTC India Ltd. Vs. Central Electricity Regulatory Commission*** passed in ***Civil Appeal No.3902 of 2006 dated 15.03.2010*** to contend that in relation to the dispute where principles of natural justice have not been followed, the writ jurisdiction of the High Court would not be precluded and the High Court would be within its domain to exercise its power of judicial review to mitigate the hardships extended to a consumer on account of illegal, unjust and unsustainable orders.

The position in law laid down by the Hon'ble Supreme Court is not disputed. However, the issue as to whether the there is a brazen violation of the principles of natural justice and/or as to whether the issue being agitated involves the aspect of compliance of principles of natural justice is primary. Raising a bill is not an adjudicatory function of the Distribution Licensee. Resultantly, the bill which has been generated on account of consumption of energy does not partake a quasi judicial function necessitating compliance of principle of nature justice. The dispute in present case being a billing dispute, the Haryana Electricity Regulatory Commission has already notified the Electricity Supply Code, 2004 in exercise of the powers conferred under Section 50 of the Electricity Act, 2003.

It is also relevant to point out that the Haryana Electricity Regulatory Commission has already notified the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations 2020, in exercise of the powers conferred under Section 181 of the Electricity Act, 2003 and all other enabling powers vested in the Commission in that behalf in supersession of the earlier Regulations on 21.04.2020. The Relevant Provisions of the aforesaid Regulations read thus:

"<u>DEFINITIONS</u>

1.5 In These Regulations, unless the context otherwise requires:-

(a) XXXX XXXX XXXX XXXX

(b) XXXX XXXX XXXX XXXX

(c) XXXX XXXX XXXX XXXX

(d) *"Complainant" means & includes any of the following who have a grievance as defined in these regulations and makes a complaint;*

(i) a consumer as defined under sub-section 15 of section 2 of the Act;

(ii) any consumers association registered under any law for the time being in force;

(iii) any un-registered association or group of consumers where the consumers have common or similar interest;

(iv) in case of death of a consumer, his legal heirs or authorized representative;

(v) any other person claiming through or authorized by or acting as agent for the consumer and affected by the service or business carried out by the distribution licensee;

(vi) an applicant for a new electricity connection.

(e) *"complaint" means any grievance in writing made by a complainant that:*

(i) <u>an unfair trade practice or a restrictive trade practice has been adopted by the licensee in providing electricity service;</u>

(ii) the electricity services hired or availed of or agreed to be hired or availed of by him suffer from defect or deficiency in any respect;

(iii) <u>a licensee has charged for electricity services mentioned in the complaint, a price in excess of the price fixed by the commission</u>;

(iv) electricity services which are hazardous to life and safety when availed, are being offered for use to the public in contravention of the provisions of any law for the time being in force or of any licence;

(v) violation has occurred of any law or licence requiring the licensee to display the information in regard to the manner or effect of use of the electrical services; or

(vi) breach has occurred of any obligation by the licensee which adversely affects any consumer or which the Forum may consider appropriate to be treated as a complaint."

(g) "consumer grievance" *means & includes any complaint relating to any fault, imperfection, short coming, defect or deficiency in the quality, nature and manner of service or performance in pursuance of a licence, contract, agreement or under Electricity Supply Code or in relation to Standards of Performance specified by the Commission <u>including payment of compensation or billing disputes of any nature or recovery of charges by the licensee and matters relating to the safety of the distribution system</u> having potential of endangering the life or property. However, the matter pertaining to Open Access granted under the Act and Section 126, 127, 135 to 140, 142, 143, 146, 152 and 161 of the Act shall not form grievance under these regulations."*

The aforesaid Regulations specify the consumer complaint handling procedure as well as the jurisdiction of the Commission. The Forum has also been given powers to issue interim directions pending final disposal of such grievance under Regulation 2.46 thereof. The same is extracted herein-after-below:-

"***Special Provision : Interim Order:***

2.46

Upon request of the Complainant, the Forum may issue such interim orders pending final disposal of the grievance as it may consider necessary including but not restricted to grant of temporary injunction to stay or prevent or restrain such act as the Forum thinks fit.

Provided that the Forum shall have the powers to pass such an interim order in any proceeding, hearing or matter before it, as it may consider appropriate if the Complainant satisfies the Forum that prima facie, the Distribution Licensee has threatened or is likely to remove or disconnect the electricity connection, and has or is likely to contravene any provisions of the Act or any rules and regulations made thereunder or any order of the Commission, provided that the Forum has jurisdiction on such matter. Provided further that, except where it appears that the object of passing such the interim order would be defeated by delay, no such interim order shall be passed unless the opposite party has been given an opportunity of being heard.

Provided also that where any injunction has been granted by the Forum without notice to the opposite party, the Forum shall make efforts to finally dispose of the application within 30 days from the date on which the injunction was granted.

Provided also that any interim order may be reviewed/set aside by the Forum on an application made by any party if it is found that the complainant has made a false or misleading statement."

A reasoned order is to be passed by the Forum. Similar provisions for Ombudsman have also been prescribed therein. The aforesaid Regulations were amended vide Notification dated 06.04.2022, however, the same has in no way diluted the authority of the Consumer Grievances Redressal Forum and has merely prescribed that the Consumer Grievances Redressal Forum shall be established to cater to the needs of Circle(District/Zone and Company level) in accordance with the Regulations and would also establish one or more Corporate Consumer Grievances Redressal Forum. A special mechanism for resolution of Corporate Consumer Grievances has been provided for under Regulation 2.4. Similar provisions of interim orders and monitoring of consumer grievances have also been retained therein. The said Regulations provided for redressal of monetary complaints on the basis of pecuniary jurisdiction as well in Regulation 2.8 thereof. The same is extracted as under:-

> "***2.8 Monetary Complaints***
>
> *Complaints relating to the supply of electricity by distribution licensee involving monetary disputes including but not limited to wrong billing, application of wrong tariff or difference of service connection charges/general charges or security (consumption), overhauling of account due to defective/inaccurate metering, levy of voltage surcharge, billing of supplementary amount or any other charges except those arising on matters pertaining to Open Access granted under the Electricity Act, 2003 and Sections 126, 127, 135 to 140, 142, 143, 146, 152 and 161 of the Act shall be disposed of by the respective Forum in accordance with these Regulations as per the monetary limits specified in Regulations 2.8.1 and 2.8.2 hereunder;*
>
> ***2.8.1 Corporate Forum***
>
> *(i) The Corporate Forum shall have the jurisdiction to dispose of all the monetary disputes of an amount exceeding Rs. Three lakhs (Rs.3,00,000/-) in each case. Provided that the complaint/representation is made within two years from the date of cause of action.*
>
> *(ii) Any complainant aggrieved by non-redressal of his grievance within the time period specified by the Commission or is not satisfied with the redressal of the complaint by the Zonal or Circle Forum may himself or through his authorized*

representative, approach the Corporate Forum in writing for the redressal of his grievance.

Provided that the Corporate Forum shall entertain only those complaints against the orders of Zonal or Circle Forum, as the case may be, where the representation is made within 2 months from the date of receipt of the orders of respective Zonal/Circle Forum, as the case may be.

Provided further that the Corporate Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements.

2.8.2 Zonal/Circle/Divisional Forum:

(i) Zonal Forum:

The Zonal Forum shall have the jurisdiction to dispose of the complaints involving monetary disputes of an amount exceeding Rs.One lakh (Rs.1,00,000/-) and up to Rs. Three lakh (Rs.3,00,000/-) in each case.

(ii) Circle Forum:

The Circle Forum shall have the jurisdiction to dispose of the complaints involving monetary disputes of an amount up to Rs.One lakh (Rs.1,00,000/-) in each case."

The billing related issues are dealt with under Regulation 2.22 of the said Regulations as well and the special provision for interim order has been kept intact under Regulation 2.37.

"***Special Provision: Interim Order:***

2.37 *Upon request of the Complainant, the Forum may issue such interim orders pending final disposal of the grievance as it may consider necessary including but not restricted to grant of temporary injunction to stay or prevent or restrain such act as the Forum thinks fit.*

Provided that the Forum shall have the powers to pass such an interim order in any proceeding, hearing or matter before it, as it may consider appropriate if the Complainant satisfies the Forum that prima facie, the Distribution Licensee has threatened or is *likely to remove or disconnect the electricity connection, and has or is likely to contravene any provisions of the Act or any rules and regulations made thereunder or any order of the Commission, provided that the Forum has jurisdiction on such matter. Provided further that, except where it appears that the object of passing such the interim order would be defeated by delay, no such interim order shall be passed unless the opposite party has been given an opportunity of being heard.*

Provided also that where any injunction has been granted by the Forum without notice to the opposite party, the Forum shall make efforts to finally dispose of the application within 30 days from the date on which the injunction was granted.

Provided also that any interim order may be reviewed/set aside by the Forum on an application made by any party if it is found that the complainant has made a false or misleading statement."

A reference to the aforesaid Regulations shows that the statute has prescribed for Consumer Grievances Redressal mechanism where a tariff is being demanded over and above the tariff approved by the appropriate Commission. The above statutory authorities have been duly constituted and are required to decide the complaints in a time-bound manner. Even the powers of granting interim directions have been conferred upon the authorities under the statutory framework.

Further, the judgment of the Hon'ble Supreme Court in the matter of **Magadh Sugar & Energy Limited Versus State of Bihar and others, 2021 SCC Online SC 801,** while relying on the judgment in the matter of **Whirl pool Corporation Versus Registrar of Trademarks (1998) 8 SCC 1, Mumbai and Harbanslal Sahni Versus Indian Oil Corporation Limited (2003) 2 SCC 107** as well as in the matter of **Radha Krishan Industries Versus State of Himachal Pradesh, 2021 SCC OnLine SC 334** summarized the principles governing exercise of writ petition despite presence of alternative remedy. The same is extracted as under:-

> "***25.*** *While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in* ***Whirl pool Corporation Versus Registrar of Trademarks, Mumbai*** *and* ***Harbanslal Sahni Versus Indian Oil Corporation Limited.*** *Recently, in* ***Radha Krishan Industries Versus State of Himachal Pradesh****, a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:*
>
> "*28. The principles of law which emerge are that:*
>
> *(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
>
> *(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
>
> *(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c)* ***the order or proceedings are wholly without jurisdiction****; or (d) the vires of a legislation is challenged;*
>
> *(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not*

be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right of liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

In view of the aforesaid provisions, the notified Regulatory framework and also the judgment of the Hon'ble Supreme Court, the petitioner has an alternative efficacious remedy under Section 42 (5) of the Electricity Act, 2003 and the Regulations framed thereunder. The present petition would not be maintainable at this stage. The petitioner would, however, be at liberty to approach the CGRF or such other Forum as is available to him under the law for seeking redressal of his grievance, if any.

Petition stands disposed of accordingly.

(VINOD S. BHARDWAJ)
12.01.2023. **JUDGE**
rajender

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