2023:PHHC:050298

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

225 **CWP-20743-2020**
Date of Decision: 22.03.2023

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANR
... Petitioner
VERSUS

SAT NARAIN DHANWANTRI AND ANR
... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.
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Present: Mr. R.S. Longia, Advocate
for the petitioner.

Mr. Arun Singal, Advocate
for respondent No.1.
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VINOD S. BHARDWAJ, J. (ORAL)

The question which arises for determination in the present petition is as to whether the petitioner-Distribution Licensee-Electricity Company can seek recovery of additional/supplementary demand where such collection could not be done on account of a bonafide mistake, even beyond a period of two years.

The challenge in the present petition is to the Award dated 12.02.2020 (Annexure P-5) passed by the Permanent Lok Adalat (Public Utility Services), Rohtak in Application No.04 of 2020, whereby the application of the respondent-Applicant under Section 22-C of the Legal Services Authority, 1987 was allowed and the demand raised by the petitioner-Distribution Licensee was set aside by relying on Section 56(2) of The Electricity Act, 2003.

Briefly summarized the facts of the present case as pleaded are that the respondent-applicant is consumer of the Electricity Connection No.NT-1107 NDS (New Account No.5648460000) in his premises at Delhi Road, Near Bajrang Bhawan Rohtak. The load of the respondent-applicant was enhanced in the month of September 2015 after deposit of the fee of Rs.44,000/- vide receipt No.091696/276 dated 29.09.2015. The respondent-applicant claims that he was informed that the multiplying factor which was earlier 8, will be increased to 20 in the new High Capacity meter. The computerized system of the Nigam is fed with the permanent entries in the software to automatically compute the energy bill. Due to clerical mistake/default, the entry of enhanced multiplying factor could not be entered in the system, resultantly the bills continued to be generated on old multiplying factor of 8 instead of 20 upto 31.10.2019 w.e.f. 05.11.2015. The lapse was purportedly pointed by the Audit party whereupon the error was detected and a revised bill raising the demand was sent. Vide letter No.2186 dated 14.11.2019, an additional demand of Rs.16,90,393/- was raised. The respondent-applicant approached the officials of the petitioner-Distribution Licensee, who assured him that the issue shall be looked into. He, thus, made payment of the current bill of Rs.23,861/- on 09.12.2019, however, on 04.01.2020, the petitioner-Distribution Licensee disconnected the electricity supply to the premises of the respondent-applicant. Consequently, an application under Section 22-C of the Legal Services Authorities Act, 1987 was instituted by the respondent-applicant before the Permanent Lok Adalat (Public Utility Services), Rohtak against the demand as well as disconnection of electricity supply.

Upon notice, the respondent (petitioner herein) firstly challenged the jurisdiction of the Permanent Lok Adalat without submitting any detailed written statement. The arguments were considered by the Permanent Lok Adalat and a detailed zimni order was passed on 08.01.2020 directing the petitioner-Distribution Licensee to submit a detailed reply. The respondent-applicant was also directed to deposit 40% of the disputed amount till the final outcome of the case. Reply was thereafter filed on 31.01.2020 wherein it was submitted that the amount of Rs.44,000/- deposited was credited in the account of the respondent-applicant towards load extended from 26 KW to 49.998 KW under NDS category and the multiplying factor to be charged was 20 instead of 8. However, it was noticed during the internal audit of the petitioner-Distribution Licensee that the bills were continued to be issued with the multiplying factor of 8 instead of 20 on the sanctioned load of 25 KW instead of the enhanced load of 49.998 KM. The same thus resulted in a difference of Rs.16,90,393/-. The demand was thus raised after noticing the aforesaid anomaly and taking into consideration the correct multiplying factor, which was already known to the respondent-applicant himself. A show cause notice vide memo No.2186 dated 14.11.2019 was also issued to the respondent-applicant to afford him an opportunity of hearing, however, he chose not to appear before the petitioner-Distribution Licensee.

Upon consideration of the respective submissions advanced and the witnesses produced on record, the Application filed by the respondent-applicant was allowed by the Permanent Lok Adalat (Public Utility Services), Rohtak by referring to Section 56(2) of The Electricity Act, 2003 and held that the petitioner-Distribution Licensee cannot raise the demand for a period of more than two years, when it was raised for the first time. The application thus was partly accepted and the demand by the petitioner-Distribution Licensee was held to be permissible only for the period of two years prior to 06.11.2019. The relevant extract of the said Award read thus:

> *"15. It is not in dispute before us by the counsel for the parties that this demand was not shown as continuously recoverable prior to 06.11.2020 i.e. bill for the month of November 2019. Thereafter, this amount was shown as demand/outstanding vide notice dated 14.11.2019 and thereafter it was shown as outstanding demand vide electricity bill dated 23.01.2020 for the first time in the bill. It means, therefore, that under Section 56(2) of The Electricity Act, 2003, the respondents were entitled to recover the arrears on 06.11.2019 for the period prior to two years only. It means, therefore, that the arrears could be recovered by the respondents from the petitioner from 04.11.2017 to 06.11.2019 and not prior to that because it would be hit by the provisions of Sub-Section 2 of Section 56 of Electricity Act, 2003.*
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> *16. Keeping in view the above discussions, the respondents under the provisions of Section 56(2) of Electricity Act, 2003 cannot raise the demand for more than two years when it was raised for the first time on 14.11.2019. Accordingly, this petition is partly accepted and it is held that respondent can raise the demand prior to 06.11.2019 for 2 years only. The demand notice dated 14.11.2019 and bill dated 23.01.2020 are set aside. However, the respondents would be at liberty to issue the fresh bill raising the demand on the basis of checking/audit report of two years prior to 06.11.2019."*

Aggrieved of the same, the present writ petition has been filed raising various issues.

Written statement on behalf of the respondent-applicant has also been filed wherein, he has placed reliance on Section 56(2) of The Electricity Act, 2003 and averred that the Award passed by the Permanent Lok Adalat

(Public Utility Services), Rohtak is in consonance with the statutory scheme and does not suffer from any illegality or perversity.

Learned counsel for the petitioner-Distribution Licensee hence, argued that the Permanent Lok Adalat (Public Utility Services), Rohtak has partly accepted the application under Section 22-C of the Legal Services Authority, 1987 by placing reliance on Section 56(2) of The Electricity Act, 2003. He contends that the aforesaid Award is based on misreading of the provisions of Section 56(2) of The Electricity Act, 2003 and that the Hon'ble Supreme Court has already upheld that a Distribution Licensee-Electricity Company cannot be precluded from raising additional or supplementary demand after expiry of period of limitation of two years in case such demand could not be raised earlier due to a bonafide mistake. The only restriction imposed against the powers of the Distribution Licensee is against taking coercive measures to effectuate recovery of such additional/supplementary demand.

Counsel for the respondent-applicant, however, reiterates the submission noticed above and justifies the Award in question. He further contends that the discretion exercised by the Permanent Lok Adalat (Public Utility Services), Rohtak should not be ordinarily interfered with unless there is some grave illegality, irregularity, perversity or misappreciation/non-appreciation of the evidence adduced on record.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

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:

> ***"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."*

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.*
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> *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: –*
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> *"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."

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.

It must also not be forgotten that supply of energy under The Electricity Act, 2003 is on account of contract between the parties. Retention of any benefit which a person is not entitled under the contract does not confer a right and rather creates an obligation to indemnify for the consumption of such grid/energy used.

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.

It is also worthwhile to mention that the respondent-applicant has nowhere also challenged or disputed the claim of the petitioner-Distribution Licensee that a wrong multiplying factor of 8 was applied instead of 20. The abovesaid factual aspect having not been disputed, this Court is also not entering into the said factual aspects.

The present petition is accordingly allowed and consequently, the impugned Award dated 12.02.2020 (Annexure P-5) passed by the Permanent Lok Adalat (Public Utility Services), Rohtak is set aside. The petitioner-Distribution Licensee is thus held entitled to claim the amount as assessed towards the arrears owing to erroneous application of multiplying factor as per law laid down by the Hon'ble Supreme Court.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

22.03.2023
rajender

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