

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

**LPA-2304-2017 (O&M)
Reserved on : 06.02.2023
Pronounced on: 22.02.2023**

Bharat Sanchar Nigam Ltd.Appellant(s)

Versus

Punjab State Power Corporation Ltd. & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Anil Rathee, Advocate, for the appellant.

Mr.Divansh Khanna, Advocate, for
Mr.Vaibhav Narang, Advocate, for respondent Nos.1 to 4.

G.S. Sandhawalia, J. :-

Consideration in the present Letters Patent Appeal, filed by the appellant-writ petitioner, is to the order dated 05.09.2017 of the Learned Single Judge passed in CWP-1637-2015 titled *Bharat Sanchar Nigam Ltd. Vs. Punjab State Power Corporation Ltd. & others*, wherein the writ petition was dismissed.

2. The learned Single Judge crystallized the controversy to the extent that the connection was installed in the premises of the appellant on 17.10.2002 and was checked on 17.06.2005. During the period of 32 months, total consumption was 412410 units and after the CT/PT which had been changed, the consumption had arisen to 644792 units in 32 months and thus, the Corporation was justified in coming to the conclusion that one of the phases was not contributing and therefore, it had to pay for the energy from the date CT/PT meter was installed.

3. A perusal of the paperbook would go on to show that vide the communication dated 09.06.2004 (Annexure P-1) the appellant had

brought to the notice of the Corporation that there was sparking in one phase and the workers of the Corporation were not able to rectify the sparking and due to faulty contact they were not getting stable voltage for the smooth running of the Exchange and damage had been caused on 17.06.2005 and the power supply to the Telephone Exchange had been disrupted. Resultantly, a demand of Rs.8,90,394/- was raised on 07.11.2005 (Annexure P-3) on the ground that the checking which was done on 17.06.2005 and it was found that its Red Phase related CT was torn and that it had not been contributing from 17.10.2002. The same had been objected to on 09.11.2005 (Annexure P-4) and dispute was sought to be referred to the Disputes Settlement Committee.

4. Initially, a suit was filed on 16.02.2006 seeking injunction from disconnecting the electricity supply and seeking a declaration that the demand raised on 07.11.2005 was wrong. The Civil Court noticed that the inspection was not done in the presence of the officials of the appellant and they were right for making the payments in 2 equal instalments also. However, the injunction was declined on the ground that they could go to the Disputes Settlement Committee and the suit was barred under Section 41(h) of the Specific Relief Act, 1963. The same was dismissed on 23.05.2012 (Annexure P-7) and the appeal was dismissed on 31.07.2013 (Annexure P-8) by the Lower Appellate Court, Ludhiana by noticing that part payment had been deposited. Regular Second Appeal No.4940 of 2013 was partly allowed on 28.01.2014 (Annexure P-9) with direction to withdraw the appeal as well as the civil suit and to approach the authority constituted under the Electricity Act, 2003 by noting that 50% of the amount to the tune of Rs.4,45,197/- had already been paid on 07.03.2006.

5. The Zonal Redressal Grievance Committee noticed that after the change of CT/PT the consumption for 32 months had arisen to 644792 units and the consumption 412410 unit as Red Phase is taken, then the average comes to 61861 units and held that the record was in order and the disputed amount was payable. Resultantly, the bill was raised for remaining amount of Rs.4,45,197/- and interest was also levied from 07.03.2006 onwards to 15.05.2014. Eventually, the Consumer Grievances Redressal Forum of the Corporation also came to the conclusion that there was 1/3rd less consumption and the R-phase current in DDL was regularly showing as 'zero' and therefore, upheld the demand on 22.07.2014 (Annexure P-15).

6. Appellant met no success before the Ombudsman on 11.12.2014 and the appeal No.30 of 2014 (Annexure P-18). Resultantly, the writ petition had been filed wherein a plea was taken that since the Electricity Act, 2003 had come in operation w.e.f. 10.06.2003, the demand could not go beyond the date when the Act was not in operation and therefore, challenge was raised.

7. The said aspect was never considered by the learned Single Judge and the only defence is that this new plea had not been taken in the Civil Suit or in the appeal or before the authorities.

8. The issue being legal and having been settled by the Apex Court, we are of the considered opinion that it merits consideration to the limited extent that the new Act had come into force on 10.06.2003 and there is a limitation prescribed under the said Act, upto 2 years of the same under Section 56(2) when the first demand became due. Apparently, the amount became due only when the checking was done on 17.06.2005 and

the demand was made on 07.11.2005 and therefore, the Corporation is not entitled for any claim beyond the period of 07.11.2003.

9. Section 56 of the 2003 Act reads as under:-

“Section 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. A Division Bench of the Madhya Pradesh High Court (Gwalior Bench) in **M/s Gwalior Distilleries Ltd., Rairu Vs. M.P. Madhya Kshetra Vidyut Vitaran Company Ltd. & others, 2012 (2)**

RCR (Civil) 84 also examined the said proposition wherein a show cause noticed had been issued on 14.07.2000 and supplementary demand had been raised against the company. While noting the provisions of Section 56(2), 174 & 175 of the Electricity Act, 2003, it was held that the Act had not been made effective with retrospectivity and therefore, the liability could not be enforced beyond a period of 2 years as prescribed under Section 56(2) of the said Act. Reliance was placed upon the provisions of Section 174 that it had an overriding effect, to come to the conclusion that liability after a period of 2 years could not be enforced. Resultantly, it was held that no notice was issued to the respondents within a period of 2 years after coming to the force of the Act as the earlier litigation was inter-se the parties and therefore, the writ petition was allowed while setting aside the order of the learned Single Judge. Relevant portion of the judgment reads as under:

“13. From [Section 174 of the Electricity Act, 2003](#), it is clear that Act to have overriding effect. However, the aforesaid Act has not been made effective with retrospective effect, hence, the liability of the appellant which accrued under the [provisions of the Electricity \(Supply\) Act, 1948](#) continued into force but the question is as to whether that liability can be enforced after coming into the effect of Act, 2003 w.e.f. 10-6-2004 after a period of two years. Admittedly, after 10-6-2003, if a period of two years be calculated then the respondent can enforce the liability upto 10-6-2005 and even though when the petition was dismissed as withdrawn vide order dated 21-2-2006, then the respondent can enforce the liability after a period of two years, i.e., in the year 2008 but the respondents in this case issued notice (Annexure P-1), dated 7-1-2009, admittedly beyond a period of two years. Law of limitation is a procedural law. It is an admitted fact that the **Electricity Act, 2004** has not been made effective with retrospectively. It means that the liability accrued to the appellant to continue to be in force after enforcement of the Act. 2003 but

the aforesaid liability could not be enforced beyond the period of two years as prescribed by Section 56 (2) of the [Electricity Act, 2003](#) because Section 174 of the Act of 2003 has overriding effect. Even otherwise there would be inconsistency of two laws. The Supply of **Electricity Act, 1948 and the Electricity Act, 2003** in regard to enforcement of the liability.

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On the basis of aforesaid principle of law laid down by the Hon'ble Supreme Court, in our opinion, the respondents-Electricity Board cannot enforce the liability after a period of two years from the date of dismissal of the writ petition.

17. The arguments advanced by the learned Counsel for the respondents that the liability was under the old **Act, i.e., the Electricity (Supply) Act, 1948, hence, the provision of Section 56 (2) of the Electricity Act, 2003**, would not be applicable, could not be accepted. Learned Counsel relied on a decision of the Division Bench of this Court and Single Bench of this Court, i.e., [2010\(3\) M.P.H.T. 454 \(DB\)](#) and [2007\(1\) M.P.H.T. 528](#). In the aforesaid judgments the liability was enforced within a period of two years from the date of coming into the force of the Act of 2003, hence, the judgments are distinguishable but in the present case, admittedly, no notice was issued by the respondents within a period of two years as required under Section 56 (2) of the Act of 2003 even after coming into force of the Act of 2003 or final disposal of the Writ Petition No. 677/2000 of this Court.

18. Consequently, the writ appeal filed by-the appellant is hereby allowed. The impugned order passed by the learned Single Judge is hereby quashed.”

11. As noticed, the issue is for the period from 17.10.2002 to the checking which was done on 17.06.2005 due to the sparking taking place and resultantly, the power supply being shut-down and it was for the first time the Corporation had realized that the red-phase was not contributing and made the demand for the said period which was beyond the period of

same became due for the first time on 07.11.2005 (Annexure P-3). Thus, the claim can only be raised from 07.11.2003.

12. The issue of the bar was also subject matter before the Apex Court in **‘Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan @ Rahamjulla’, (2020) 4 SCC 650**. In the said case the dispute was regarding the bill for the period from July, 2009 to September, 2011 and the bill had been raised under the wrong tariff code and, therefore, rate as such was different. The licensee company had issued show cause notice dated 18.03.2014 for raising additional demand and consumer/complainant had filed a consumer complaint, which had been initially allowed. In appeal, thereafter, the order had been set aside by the State Commission, but the National Consumer Disputes Redressal Commission held that the additional demand was barred by limitation under Section 56 (2) of the 2003 Act. Resultantly, the matter had reached the Apex Court. The issue was framed whether the period of limitation of 2 years as provided under Section 56 (2) would be applicable to the additional or supplementary demand. It was, accordingly, held that the period of limitation of 2 years would commence from the date when the electricity charge first became due and it restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum had been shown continuously to be recoverable as arrears of electricity supplied in the bills raised for the past period. Resultantly, it was held that it restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, but it did not restrict other modes of recovery which can be initiated by the licensee company for recovery of a

supplementary demand. Accordingly, it was noticed that the mistake in bill had been discovered in the year 2014 for the period from July, 2009 to September, 2011 and, therefore, coercive method of disconnection of electricity connection could not be undertaken. Accordingly, the licensee company was given liberty to take recourse to any remedy available in law for recovery of additional demand, but barred the disconnection of supply of electricity.

13. Relevant part of the judgment in **Rahamatullah Khan @ Rahamjulla (supra)** regarding the restriction as such to recover the additional amount reads as under:-

“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. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under [Section 56\(2\)](#) had by then already expired. [Section 56\(2\)](#) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under [Section 56\(2\)](#) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. As per [Section 17\(1\)\(c\)](#) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. In [Mahabir Kishore and Ors. v. State of Madhya Pradesh](#), (1989) 4 SCC 1 this Court held that :—

“[Section 17\(1\)\(c\)](#) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.”

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. 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.

9. We extend our appreciation to Mr. Devashish Bharuka, Advocate who has very ably assisted this Court as Amicus Curiae.

The present Civil Appeals are accordingly disposed of in the aforesaid terms.

All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.”

14. Thus, from the above, it would be apparent that on account of the delay in rectification as such the respondent-Corporation is stopped from taking any coercive method of recovery of the amount beyond 07.11.2003 and if it has to do so, it would only have to take remedy available in law for recovery of the additional amount, but cannot disconnect the supply of electricity. A similar view has also been taken by us in LPA-1509-2018 titled *Baldeep Singh Vs. The Punjab State Power Corporation Limited & others*, decided on 01.02.2023 while relying upon the judgment of the Apex Court in Rahamatullah Khan @ Rahamjulla (supra).

15. Accordingly, the present appeal is allowed to the extent that the recovery beyond 07.11.2003 is not permissible and the disconnection cannot be done of the appellant on account of arrears which are outstanding and they are free to take their recourse in accordance with law, if permissible. Resultantly, the demand can only be raised from 07.11.2003 on the basis of the checking report conducted on 17.06.2005 which shall accordingly be done. Accordingly, the Corporation shall raise a supplementary demand from 07.11.2003 only. The amount which has already been paid of Rs.4,45,197/- shall be accordingly adjusted and the balance amount shall if not paid become payable along with interest which the appellant shall be liable to pay.

16. The appeal stands allowed in the above-said terms.

(G.S. SANDHAWALIA)
JUDGE

22.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes