

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

**LPA-1509-2018 (O&M)
Reserved on: 24.01.2023
Decided on: 01.02.2023**

Baldeep Singh

....Appellant

Versus

The Punjab State Power Corporation Limited and others

.... Respondents

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

Present: Mr. Brijesh Nandan, Advocate for the appellant.

Ms. Samridhi Sareen, Advocate for respondent Nos.1 to 5.

G.S. Sandhawalia, J.

Present Letters Patent Appeal has been filed by the consumer against the judgment dated 30.08.2018 passed by the learned Single Judge in CWP No.1174 of 2017, wherein the only benefit as such which was granted regarding the interest element which had been levied regarding the electricity bill, which was held to be waived off. The appellant was permitted to deposit the balance amount in first installment of 1/3rd amount and remaining in equal five installments within 4 months from the date of receipt of certified copy of the order.

2. The learned Single Judge while dealing with Clause 93.1 of the Electricity Supply Instructions Manual came to the conclusion that the issue involved was on account of a complaint of wrong application of multiplying factor and no case for interference was called for in the impugned order dated 26.12.2016 (Annexure P-1). It was, accordingly, noticed that against the demand of ₹24,94,336/- which was for a period of more than 6 years by way of overhauling accounts, the deposit of

₹9,60,000/- had already been done and resultantly the balance amount was directed to be paid as noticed above.

3. Challenge in the writ petition by the appellant as such was to the decision of Ombudsman, Electricity, Punjab dated 26.12.2016 (Annexure P-1), wherein petition had been filed challenging the order dated 12.08.2016 (Annexure R-4) of the Grievances Redressal Forum which had upheld the decision of the Zonal Dispute Settlement Committee in its meeting held on 21.04.2016 charging the amount of ₹23,96,680/- from the period September, 2009 to October, 2015.

4. It was the case of the appellant before the Ombudsman that the meter had been replaced in September, 2009 and, thereafter, the consumption had remained consistent and after more than 6 years on account of the checking done on 21.10.2015 the billing had been enhanced on account of the fact that multiplier factor of MF=1 had been applied instead of MF=2. It was submitted that the fault lay on the part of the concerned officers and if they had pointed out any mistake at the time of recording monthly readings, the same could have been sorted out. Reliance had been placed upon the judgment of the Single Bench passed in **CWP No.14559 of 2007 'Tagore Public School Vs. Punjab State Electricity Board and another**, which had been upheld in **LPA No.734 of 2010 'Punjab State Electricity Board Vs. Tagore Public School and another'** decided on 29.06.2010. Similarly, reliance was placed upon judgment passed in **CWP No.17699 of 2014 'M/s Park Hyundai Vs. Punjab State Power Corporation Ltd. and others'** decided on 19.12.2015 that arrears could not be raised beyond more than 6 months.

5. A perusal of the order of the Ombudsman dated 26.12.2016 (Annexure P-1) would go on to show apart from noting contention of both

the sides, no reasoning was given as to why the benefit was not to be granted and the demand notice dated 23.10.2015 (Annexure R-2/T) had been upheld and can be termed as a non-speaking order. Relevant part of the said order reads as under:-

“The Respondents, in defense of their claim argued that the demand is correctly raised in view of the note given below made there under, as amended from time to time and is squarely covered under the amended Regulations applicable w.e.f. 01.01.2015. Therefore, the decision dated 12.08.2016 of CGRF taken in appeal Case No: CG-71 of 2016 is held good as the demand raised vide Notice dated 23.10.2015 is found justified and recoverable. Accordingly, it is directed that the amount excess/short, after adjustment, if any may be recovered/refunded from/to the petitioner with interest under the provisions of ESIM=114.

The appeal is dismissed.”

6. Resultantly, the writ petition had been filed seeking the benefit as such of provisions of Section 26 (6) of the Electricity Act, 1910 (for short ‘1910 Act’) which has been controverted by filing reply that the provisions of the Electricity Act, 2003 (for short ‘2003 Act’) were applicable and Section 56 (2) provided that there was a limitation of two years when the sum first became due and therefore, the date of the first bill and demand notice was the date when the demand become due. Resultantly, the judgment in Tagore Public School (supra) as such was sought to be distinguished on the ground that it was a case under the provisions of 1910 Act.

7. The reasoning given by the learned Single Judge is that on account of the wrong application as such regarding the wrong multiplier factor the liability had occurred and, therefore, the respondent-Corporation was entitled to raise the said demand.

8. As noticed above, the demand is on account a bill which was raised on 23.10.2015 and which is for the period from September, 2009 to October 2015 and, therefore, 2003 Act would be applicable. The provisions of the said Act would go on to show that there is a bar for raising a demand beyond the period of 2 years and the same was subject matter of consideration before the Apex Court in '**Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan @ Rahamjulla**', (2020) 4 SCC 650.

9. 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.

10. 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.”

11. 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 a 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.”

12. 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 October, 2013 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.

13. Resultantly, in view of the above, we are of the considered opinion that reliance upon Section 26 of the 1910 Act and the judgment which were rendered in pursuance of the said statutory provisions would not be applicable, in view of the fact that the 2003 Act had come into force and, therefore, the provisions of Section 56 (2) of the 2003 Act which would be applicable. Similarly, the judgment passed in ‘**Bombay Electricity Supply & Transport Undertaking Vs. Laffans (India) Pvt. Ltd. and another**’, (2005) 4 SCC 327 referred to by the counsel for the appellant would also be not applicable, as it was again a dispute which was pertaining to the year 1998 and, therefore, the new Act had not come into force and reliance had been placed upon 26 (6) of the 1910 Act.

14. Accordingly, the appeal is allowed to the extent that the recovery further beyond October, 2013 is not permissible and shall be done by taking recourse, if permissible in accordance with law, but the

disconnection as such cannot be done of the appellant on account of the arrears which are outstanding as per the bill on the basis of checking report conducted on 21.10.2015 by raising a demand from September, 2009 to October, 2015. Any such recovery shall also be done after adjusting the sum of ₹9,60,000/- which already stands paid out of the ₹24,94,336/- claimed.

15. The appeal stands disposed off in the abovesaid terms.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

February 01, 2023
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes