24.06.2024
Sl. No.3(DL)
srm

W.P.A. No. 14183 of 2023

Shyamsundar Dalal

Versus

The Ombudsman, West Bengal State Electricity Regulatory Commission & Ors.

Mr. Malay Bhattacharya
…for the Petitioner.

Mr. Debjit Mukherjee
…for the WBSEDCL.

1. Despite service, none appears on behalf of the West Bengal State Electricity Distribution Company Limited. Affidavit-of-service is taken on record.
2. Mr. Debjit Mukherjee, learned Advocate, who usually appears on behalf of the West Bengal State Electricity Distribution Company Limited (in short WBSEDCL) is requested to appear in this case on behalf of the WBSEDCL. His appointment be regularised.
3. The petitioner has challenged the final order passed by the Ombudsman dated September 15, 2022 as also an order of review dated April 17, 2023 passed in GR Case No.W-78 SB/2022.

4. The petitioner alleges that the order suffers from irregularities on the following grounds:-
   (a) Section 56(2) of the Electricity Act, 2003 debars the distribution company from recovering any due after a period of two years from the date when such sum first became due, unless such sum had been shown continuously as recoverable as arrears of charges for electricity supply. The licensee would also not be entitled to cut off the supply.
   (b) The grievance redressal officer as also the Ombudsman failed to take into consideration that the bill which was subsequently raised were for periods beyond two years.
   (c) The legal bar was ignored by the authorities, despite specific contention of the petitioner.
   (d) The bill dated September 28, 2021 for Rs.2,65,299/- was sent to the petitioner illegally and the disconnection following such bill was also illegal. Such disconnection could not have been effected on December 6, 2021 for non-payment of the alleged bill which was raised for the period beyond two years from the alleged date of cosumption.

5. The alleged actions of the authorities was challenged by the petitioner before the grievance redressal officer. Thereafter, the petitioner preferred a representation before the Ombudsman. The said representation was registered under Section 42(6) of the Electricity Act, 2003, being W-78 SB/2022. It appears that a joint inspection was held, which reflects that the disconnection continued.
6. The first grievance of the petitioner before the Ombudsman was that Sections 56(1) and 56(2) of the Electricity Act would be a complete bar for such claim. The Ombudsman was of the view that dues of the petitioner had been claimed for the first time on September 28, 2021 when the bill was raised. The period of limitation ran from that day.
7. The Ombudsman came to the conclusion that as the bills were first claimed on September 28, 2021, the bar under Section 56(2) of the Electricity Act, 2003 would not apply. The Ombudsman directed that the amount claimed should be paid in 20 equal monthly instalments and no late payment of surcharge should be claimed for such period.

8. A final order was thereafter passed by the Ombudsman taking into consideration the facts and it was held as follows:-

> "As regard last point, i.e. disconnection of the petitioner's SMP line being consumer ID No.200767868, the petitioner's case is that this service line was disconnected on 06.12.21 illegally. On the other hand, the OP has stated that no disconnection was ever made. Accordingly, a Joint Inspection was held. On the basis of Joint Inspection, this forum came to the conclusion that no disconnection was made. But after careful perusal of the Inspection Report, it is found that the metering outgoing cables were disconnected and sealed by no.3160581. From this fact, it is clear that disconnection was made and thereafter seal was given. Now, the licensee has nowhere stated that the seal being no.3160581 does not belong to them. Thereafter, at the time of inspection, the licensee connected the line and other two seals have been fixed at terminal site. So, it is evident that after disconnection seal no.3160581 was given and thereafter line was connected and other two seals were given. From this fact, it is clear that disconnection was obviously made and that was made by the licensee. Accordingly, the findings of this forum on the point of disconnection should be and need be modified."

9. As it was held that the licensee had disconnected the STW connection bearing consumer ID No.2007678668 illegally, in view of the provisions of the regulations, the licensee was held liable to pay the compensation to the petitioner from December 6, 2021 to the date previous date of joint inspection. The licensee was directed to pay compensation to the petitioner @ Rs.100/- per day from

December 6, 2021 to July 6, 2022 in terms of Clause 15 of Notification No.46/WBERC and Clause 3 of the Notification No.61/WBERC. Accordingly, the appeal was disposed of.

10. With regard to the time barred claim the ombudsman held as follows:-

> "Section 56(2) of the Act provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer 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 of the electricity.
> In the case in hand, the dues of the petitioner have become first due on 28.09.2021 when the bill was raised. So from the date of first due the arrear is not barred under Section 56(2) of the Electricity Act."

11. Section 56(2) of the said Act is quoted below for convenience:

> "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 arrears of charges for electricity supplied and the licensee shall not cut of the supply of the electricity."

12. It states that no sum due from any consumer under Section 56 would be recovered after period of two years from the date when such sum became first due. The Hon'ble Apex Court has interpreted the said provision of

law. According to the Hon'ble Apex Court, in case of any error on the part of the authority or the meter reader, such error or mistake or omission could be corrected by issuance of bill at a later stage, which may be beyond the period of two years. The provision was interpreted to mean that only if there was any neglect on the part of the consumer to pay the dues which were charged by the distribution company and such dues were not claimed within two years, then 56(2) of the said Act would be a bar.

13. The relevant portions of the decision of the Hon'ble Apex Court in the matter ***Prem Cottex vs Uttar Haryana Bijli Vitran Nigam Limited and Ors.*** reported in ***(2021) 20 SCC 200*** is quoted below:"

> "13. But a careful reading of Section 56(2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If sub-section (2) of Section 56 is dissected into two parts it will read as follows:
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> (i) 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; and
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> (ii) the licensee shall not cut off the supply of electricity.
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> Therefore, the bar actually operates on two distinct rights of the licensee, namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect, is actually an exception to the law of limitation. Under the law of limitation, what is

extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, dehors through a court of law. However, Section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation.

14. Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan [Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan, (2020) 4 SCC 650]) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paras 9.1 to 9.3 of Rahamatullah Khan [Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan, (2020) 4 SCC 650]), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan [Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan, (2020) 4 SCC 650] says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under sub-section (2) of Section 56 of the Act" (SCC p. 658, para 9).

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21. Coming to the second aspect, namely, the impact of sub-section (1) on sub-section (2) of Section 56, it is seen that the bottom line of sub-section (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words "where any person neglects to payany charge for electricity or any some other than a charge for electricity due from him".

22. Sub-section (2) uses the words "no sum due from any consumerunder this section". Therefore, the bar under sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to sub-section (1) which deals specifically with the negligence on the part of a person to pay any charge

for electricity or any sum other than a charge for electricity. What is covered by Section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

23. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumerunder this section", appearing in sub-section (2).

24. The matter can be examined from another angle as well. Sub-section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in Rahamatullah Khan [Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan, (2020) 4 SCC 650] and Section 56(2) will not go to the rescue of the appellant."

14. Under such circumstances, the writ court cannot sit in appeal over such findings. It is the case of licensing company that although the submersible pump had been connected in 2015, the reading was not taken by the

person authorised to do so and the authority found the mistake later and issued the bill. The limitation according to the Apex Court runs from the date of issuance of the bill.

15. The authorities have issued a bill, asking the petitioner to pay the amount in instalments. The petitioner has been adequately compensated for the illegal disconnection and this Court is of the view that if the subsequent bills were raised on account of mistake, as interpreted by the Hon'ble Apex Court, such mistake could be rectified by the licensing company. The Ombudsman also granted compensation as the disconnection was found to be not in accordance with law.

16. This Court cannot go into a fact finding enquiry into the decision of the Ombudsman. The only interference by this Court is by extending the period for payment. The petitioner was suddenly faced with an enormous amount of bill. The petitioner is directed to pay the entire amount in 30 equal monthly instalments. First of such instalment shall be paid within July 8, 2024 and will continue month by month till liquidation of the entire amount.

17. Needless to mention, the current charges shall be paid, as raised by the authorities, and failure to pay any of the instalments shall result in disconnection of the supply.
18. The writ petition is, thus, disposed of.
19. There shall be no order as to costs.
20. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)