IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-22908-2021 (O&M).
Date of Decision: 06.02.2024.

BHUPESH MUKHIJA

... Petitioner

Versus

UTTAR HARYANA BIJLI NIGAM LIMITED AND ANOTHER

... Respondents

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

Present: Mr. Arun Kumar Singal, Advocate, for the petitioner.

Mr. R.S. Longia, Advocate, for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the award dated 06.07.2020 passed by the Permanent Lok Adalat (Public Utility Services), Rohtak, whereby the application No.942 of 2020 filed by the petitioner has been dismissed and he has been directed to deposit 50% of the arrears of amount till 15.07.2020, whereafter the electricity connection was to be restored, and the balance 50% was to be deposited by 31.07.2020 without fail.

Briefly summarized, the facts of the present case are that the petitioner is a consumer of the respondent Distribution Licensee bearing Account No.BQ3/7. The respondent No.1-Distribution Licensee had issued a checking report dated 29.08.2019 whereby the meter of the petitioner was declared to be slow by 25.75%. Consequently, a demand of Rs.3,46,357/- was raised by the respondent Distribution Licensee against the petitioner on account of overhauling of account. The said amount was demanded, in the bill for month of November 2019. The petitioner disputed the above said demand claiming that the meter was not slow and that the checking report is incorrect. It was also averred that the amount has been demanded with respect to the period from January 2014 to June 2019 and that the same is barred under Section 56 (2) of the Electricity Act, 2003 beyond the period of limitation.

Aggrieved of the non-withdrawal of demand, the petitioner preferred an application under Section 22 - C of the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Rohtak.

Upon notice, the respondent Distribution Licensee entered appearance and submitted its response to the effect that the M & P Staff of the respondent Distribution Licensee checked the premises of the petitioner on 29.05.2019 and it was found carrying on operation after the replacement of CT, due to extension of load accuracy of meter, and on checking thereof, it was found to be running slow by 25.75%. The connection was physically checked and it was found that R & Y P.T. wire were interchanged with wrong phase association with RY and B, LT/CT reverse connection. All connections were thereafter set right and accuracy was checked again. It was further pointed out that the load of the petitioner had been extended from 19.883 KW to 39.670 KW on 18.12.2013 and as such, the respondent charged for the slowness of meter by 25.75% w.e.f. 18.12.2013. The respondent suffered a loss to the tune of Rs.3,46,357/-. The determination of dues were correct and that no surcharge had been claimed by the respondent Distribution Licensee for the said period.

Efforts for an amicable resolution of the dispute were undertaken by the Permanent Lok Adalat (Public Utility Services), Rohtak, however, the same failed to culminate in a settlement. Adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was hence initiated by the Permanent Lok Adalat (Public Utility Services), Bathinda.

Upon consideration of the rival submissions advanced and evidence brought on record by the learned counsel for the parties, the Permanent Lok Adalat (Public Utility Services), Rohtak, did not agree with the contentions of the petitioner and dismissed the application. A concession was, however, granted to the petitioner to deposit the amount as demanded in two installments. The operative part of the order passed by the Permanent Lok Adalat (Public Utility Services), Rohtak, reads thus:-

> *"6. We have gone through the record carefully in the light of the arguments of both the parties. During the course of the arguments, the counsel for the applicant did not challenge the checking report but he stressed that the applicant is ready to deposit the arrears for a period of two year only.*
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> *The counsel for the respondent submitted that the amount in question has been rightly charged and the applicant is liable to pay the arrears for the entire period. He further submitted that no surcharge for defaulting has been charged on the amount of arrears.*
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> *7 The material facts of the case are not in dispute, the Ld. Counsel for the applicant has only contended that he is not*

liable to pay the arrears for the period beyond two years. Now, the question is whether the applicant is liable to pay the arrears for the period from 01/ 2014 to 06/2019 for the entire period? The checking report, Annexure R3 have not been challenged by the applicant and on the basis of said checking report, the arrears have been calculated vide Annexure R5 and charged in the bill for the month 11/ 2019. The Hon'ble Supreme Court of India in case of Assistant Engineer Vs. Rahamutullah Khan. Civil Appeal No. 1672 of 2020 decided on 18.02.2020. has dealt with the issues "what is meaning of to be ascribed to the term "First due" in Section 56 (2) of the Electricity Act 2003. It was held as under:

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Rechun 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 mistake, the limitation period begins to run from the date when the mistake is discovered for the first time."

8 In the present case, the slowness of meter was found by the checking - staff on 29.05.2019. during the checking of the premises of the applicant. The copy of checking report as Annexure R3, which has not challenged by the applicant. On the basis of said checking report, the arrears for the period from 01/2014 to 6/2019 amounting to Rs. 3,47.357/- (Three lacs forty seven thousand three hundred fifty seven only) was claimed by the respondent from the applicant in the bill for the month of 11/2019. In view of the law Maid down by Supreme

Court of India in the Assistant Engineer (Supra), the respondent is not precluded from making demand of arrears from the applicant. Keeping in view of the circumstances of the case and the law laid done by the Supreme Court of India, we hold that the applicant is liable to pay the arrears of the entire period.

9. Admittedly, it is the responsibility of the respondent to make periodical checking of the electricity connection having load more than 20 KW. But it seems that either no checking was done during the period from 01/2014 to 06/2019 or if it was done then why the fact of slowness of meter was not brought on the record. The concerned officials of the department are liable for this lapse and causing financial loss to the department. Accordingly, we direct the competent authority to make an enquiry in this matter and an action be taken against the defaulting officials as per provisions of law.

10 In view of the facts discussed above, we direct the applicant to deposit 50% of the arrear amount in question upto 15th July and the respondent is directed to restore electricity connection of the applicant immediately after the deposit of the amount as aforesaid and the applicant is directed to deposit the remaining 50% the arrear amount upto 31st July without fail, otherwise, the applicant shall be liable to pay to surcharge on the defaulting amount. No order as to costs. We order accordingly Copy of this Award/Order be supplied to the parties free of cost. File be consigned to record room."

Aggrieved thereof, the present writ petition has been filed.

Learned counsel for the petitioner has reiterated his argument that the respondents had raised a demand for the period ranging from

January 2014 till June 2019 and that the limitation prescribed under Section 56 (2) of the Electricity Act, 2003 is two years. He further contends that the respondents could not have initiated the process of disconnection of electricity connection after a period of two years.

Controverting the argument of the petitioner, learned counsel for the respondent Distribution Licensee contends that the argument of the petitioner is based upon misreading of the statutory provisions and the period of limitation stipulated under Section 56 (2) of the Electricity Act, 2003 would come into operation only after the amount is shown first due. Where an error is detected later in point of time, the respondent Distribution Licensee would be entitled to assess and calculate the dues for the entire duration during which the error remain undetected. He further submits that the above said issue has already been dealt with and decided in matter of ***Uttar Haryana Bijli Vitran Nigam Limited and another Vs. Sat Narain Dhanwantri and another, bearing CWP No.20743-2020 decided on 22.03.2023***. By placing reliance on the aforesaid judgment, it is contended that said limitation would not be attracted in the facts of the present case since slowness of the meter was detected for the first time only when the meter was checked in the year 2019.

On a pointed query, learned counsel for the petitioner submits that the above said amount has already been deposited by the petitioner and the electricity connection already stands restored.

No other argument has been raised.

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

The contention of the petitioner that the revision of the bill could not have been carried out for the entire duration prior to the detection of error, is no more sustainable in view of the judgment in the matter of ***Uttar Haryana Bijli Vitran Nigam Limited and another Vs. Sat Narain Dhanwantri and another, bearing CWP No.20743-2020 decided on 22.03.2023***. The operative part of the judgment reads as under:-

> *"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:*
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> > *"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."*
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> *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.

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: –

> *"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."*

Further, even the Hon'ble Supreme Court thereafter has held in the matter of ***K.S. Ninan Vs. Kerala State Electricity Board reported as 2023 (3) RCR (Civil) 227*** that the period of limitation of two years starts only after the issuance of the bill and the amount having been shown in the electricity bills to be due from the consumer.

Hence, the contention of the petitioner that the demand pertaining to the period beyond two years could not have been raised is devoid of any merit in view of the position of law well settled. The petitioner cannot claim the benefit of error or mistake which is detected later in point of time.

It is also not in dispute that the bill in question has been revised on the basis of the actual consumption by factoring in the slowness of the meter and the arrears have been assessed. Thus, it is not a case where the actual consumption of the electricity is a subject matter of challenge, the bill has been revised and the arrears demanded only on overhauling due to slowness of the meter.

I find that the issue raised by the petitioner has already been decided by the Hon'ble Supreme Court in the matter of ***K.S. Ninan (supra)*** and has also been dealt with by this Court in the matter of ***Uttar Haryana Bijli Vitran Nigam Limited and another (supra)*** relied upon by the respondent Distribution Licensee.

Taking into consideration the legal precedents referred to above and the discussion as well as reasoning given by the Permanent Lok

Adalat (Public Utility Services), Rohtak, I find that there is no illegality, impropriety, perversity or mis-appreciation of law or facts by the Permanent Lok Adalat (Public Utility Services), Rohtak, in dismissing the application preferred before it.

The present writ petition is accordingly dismissed. The award dated 06.07.2020 passed by the Permanent Lok Adalat (Public Utility Services), Rohtak, whereby the application No.942 of 2020 filed by the petitioner has been dismissed, is upheld.

February 06, 2024 **(VINOD S. BHARDWAJ**
raj arora **JUDGE**

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