

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

Judgment Reserved on: 22.02.2024
Judgment Pronounced on: 02.04.2024

205 CWP-13285-2016

PUNJAB STATE POWER CORPORATION LTD. ... Petitioner

VERSUS

VINAY GUPTA AND ANOTHER ... Respondents

213-1 CWP-24564-2018

M/S MB RICE AND GENERAL MILLS ... Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION LTD. AND ANR. ... Respondents

AND

213-2 CWP-3255-2019

B.M. AIR CONDITIONING PRIVATE LTD. ... Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION LTD. AND ANR. ... Respondents

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

Present: Ms. Meena Bansal, Advocate
for the petitioner in CWP-13285-2016.

Mr. Govind Goel, Advocate
for the petitioners in CWP-24564-2918 and
CWP-3255-2019 and for respondent No.1 in
CWP-13285-2016.

Mr. Narinder Singh, Advocate
for respondent No.2 in CWP-13285-2016.

Mr. H.S. Jugait, Advocate for respondent No.2
in CWP-24564-2018 and CWP-3255-2019.

Ms. Monica Chhibber Sharma, Advocate and
Ms. Priyanka Goyal, Advocate for respondent-PSPCL.

VINOD S. BHARDWAJ, J. (ORAL)

As identical issues arise for determination, all these three writ petitions are being decided by a common judgment, with the consent of the parties.

While CWP No.13285-2016 has been filed by the Punjab State Power Corporation Limited against the order dated 29.01.2016 passed by the Electricity Ombudsman, Punjab partly allowing the appeal No.54 of 2015 filed by the consumer and directing him to only pay consumption charges amounting to Rs.23,23,020/-, the CWP No.24564-2018 has been filed by the petitioner/consumer challenging the order dated 11.09.2018 passed by the Electricity Ombudsman in Appeal No.24 of 2018 confirming the demand of Rs.17,48,486/- raised by the PSPCL as difference due to applying erroneous multiplying factor for a period of nearly three years. A similar writ petition bearing No.CWP-3255-2019 has been preferred by the petitioner-consumer against the order dated 22.01.2019 passed by the Electricity Ombudsman in Appeal No.64 of 2018 affirming the demand of Rs.20,45,769/- for similar reasons.

FACTS OF CWP-13285-2016

Respondent No.1- Vinay Gupta is a consumer of the petitioner-Distribution Licensee and his premises were checked by the Addl. Superintending Engineer, MMTS-II, Jalandhar on 30.05.2014. It was reported that the meter capacity -/5 Amp was not matching with the CT/PT ratio of 10/5 Amp. At the time of release of connection CT/PT unit of capacity 10/5 Amp and meter of 5/5 Amp capacity were provided and accordingly, the billing was to be done by applying a multiplying factor of 2, whereas energy bills during the period from June 2010 to May 2014 were erroneously issued without applying

the required multiplying factor, resulting into lesser billing during the said period. Hence, memo No.721 dated 03.06.2014 was issued to respondent No.1 for an amount of Rs.23,23,020/- raised by AEE, Commercial, Unit-II Jalandhar. The meter in question was also checked in the ME Lab on 26.11.2014, where the capacity of the meter as -/5 Amp and capacity of CT/PT unit as 10/5 Amp was authenticated and confirmed.

The respondent No.1 –consumer challenged the Memo No.721 dated 03.06.2014 before the Zonal Disputes Settlement Committee, which decided the issue in favour of the petitioner-Corporation vide order dated 21.05.2015 and held that the amount in bill was recoverable from the respondent No.1-Consumer alongwith interest as per the PSPCL instructions. Aggrieved of the said decision, a petition No.CG-81 of 2015 was preferred by the consumer before the Consumer Grievance Redressal Forum, which upheld the decision of the Zonal Disputes Settlement Committee vide order dated 25.08.2015. A further appeal bearing No.54 of 2015 was preferred by the respondent No.1-Consumer before the Electricity Ombudsman. The said appeal was partly allowed vide order dated 29.01.2016 in terms of the judgment dated 19.12.2015 passed in the matter of M/s Park Hyundai in CWP No.17699 of 2014 and it was held that the petitioner-Distribution Licensee is not entitled to recover the amount on account of application of the correct multiplying factor for the entire period.

Aggrieved of the said order, the present writ petition was filed by making a reference to the provisions contained in ESR 73.8 and condition No.23 of the Conditions of Supply.

Written statement was filed on behalf of respondent No.1-Consumer, wherein the factual aspect, as noticed above, was not disputed and it was averred that the respondent No.1-Consumer had been paying the electricity bills without any default and that there had been no Unauthorized Use of Electricity. It is further averred that the meter was required to be checked by the officials at regular intervals and that the detailed procedure prescribed under the Electricity Supply Instructions Manual having not been followed by the petitioner-Distribution Licensee, the respondent No.1-Consumer cannot be held liable. It was further stated that the matter in question has already been decided in favour of the respondent No.1-Consumer in terms of the judgment passed in the matter of M/s Park Hyundai Versus PSPCL and that the said judgment did not suffer from any infirmity or illegality, hence, the same was not stayed by the Appellate Bench and that even the LPA against the same has later been dismissed.

FACTS OF CWP-24564-2018

Insofar as this petition is concerned, the consumer-petitioner has filed the same against the order 11.09.2018 passed by the Electricity Ombudsman.

It has been averred in the petition that the petitioner was sanctioned Medium Supply (MS) category electricity connection with account No.300447193 with a sanctioned load of 98.090 KW. The said connection has been fully functional at the premises of the petitioner since 10.09.2014, when the meter was installed there. It is further averred that since the installation of CT/PT unit on 10.09.2014, the premises of the petitioner was checked on 05.06.2014 by the officials of the contesting respondent. During the said

checking, the officials found that the meter ratio was 5/5, whereas the CT/PT was of 10/5 capacity and consequently, a multiplying factor of 2 was required to be applied. A demand of Rs.17,48,486/- was raised as the arrears of electricity dues on account of wrong application of multiplying factor. It is averred that the officials of the respondent-Distribution Licensee did not follow the instructions 102.10 and 102.11 of the Electricity Supply Instructions Manual, which stipulate the safeguards to be followed in relation to multiplying factor at the time of installation of the meter. The said instructions are extracted as under:-

"102.10 Meter and CTs of matching ratio:

All out efforts may be made to install the meters and CTs of the same current ratio so as to eliminate in multiplying factor.

102.11 Multiplying factor to be indicated in red ink:

Where meters and CTs of different current ratio were/are installed due to reasons of non-availability of matching CTs, the multiplying factor must be indicated in red ink on the consumer case, meter reading book (Kalamju) and ledger so that it could be applied correctly. It shall also be written in indelible ink on the meter. AE./AEE/XEN shall have a consolidated record for all industrial and three phase connections in a bound register for all such connections which have multiplying factors. Such register shall be updated whenever there is any change in the meter of CTs."

It is also averred that the checking of the meter was required to be undertaken every six months as per instruction 104.1, which is reproduced as under:

104. CHECKING OF CONNECTIONS:

In order to arrest the tendency on the part of the consumers to indulge in unauthorized use of electricity (UUE) or theft of

*electricity or extensions in load, it is essential to conduct periodical checkings. **Such checks must be exercised by the concerned officers as per schedule.***

104.1 Checking Schedule: i) All NRS / industrial and Bulk Supply connections with load up to 50 KW in the jurisdiction of J.E. shall be checked by him atleast once in every six months All other three phase connections shall be checked by him atleast once a year in addition to carrying out checking of 50% single phase connections.

ii) The AE/AEE/XEN (DS) shall check all the connections except LS/BS/RT (HT/EHT) having connected load more than 50 KW atleast once in every six months. Additionally, he will check all the small power connections atleast 50% (not less than 250) of the other 3 phase and 10% general connections each year.

iii) The Sr.XEN/Addl. SE(DS) shall check all the connections except LS/BS/RT (HT/EHT) having connected load more than 100 KW in his jurisdiction atleast once in every year. Additionally, he will check 5% of the three phase industrial connections having load less than 100 KW.

iv) The Dy.CE/SE (DS) shall check all the connections except LS/BS/RT (HT/EHT) having load more than 500 KW every year. Additionally, he must carry out random checking of other 3 phase connections having load less than 500 KW."

Challenging the abovesaid demand of Rs.17,48,486/-, that was raised after a period of nearly three years from the date of installation of the meter, the petitioner filed a petition before the Consumer Grievances Redressal Forum (CGRF), however, the said demand was upheld by the CGRF vide its order dated 09.04.2018. Aggrieved of the dismissal of the petition by the CGRF, the petitioner invoked the remedy of filing a representation/appeal before the Electricity Ombudsman after depositing the 40% of the total amount required for maintaining the appeal before the Electricity Ombudsman. Vide order dated

11.09.2018, the appeal/ representation filed by the petitioner was also rejected by the Electricity Ombudsman and the demand raised by the respondent-Distribution Licensee was upheld. Hence, the present writ petition has been filed.

Written statement had been filed by the respondent-Distribution Licensee wherein the factual aspect, as noticed above, remained undisputed and it is contended that the account of the petitioner-consumer was overhauled from 10.09.2014 (the date of release of electricity meter) till the date of applying multiplying factor of 2 instead of 1. A notice was served upon the petitioner-consumer vide memo No.1084 dated 07.06.2017 for depositing the amount of Rs.17,48,486/- and the petitioner-consumer was permitted to deposit the same in 10 equated monthly installments. The petitioner-consumer paid four monthly installments. Reference was also made to Regulation No.21.5 of Supply Code 2014, which is extracted as under:

"21.5 Overhauling of Consumer Accounts

21.5.1 Inaccurate meters.

If a consumer meter on testing is found to be beyond the limits of accuracy as prescribed hereunder, the account of the consumer shall be overhauled and the electricity charges for all categories of consumers shall be computed in accordance with the said test results for a period not exceeding six months immediately preceding the: a) date of test in case the meter has been tested at site to the satisfaction of the consumer or replacement of inaccurate meter whichever is later; or

b) date the defective meter is removed for testing in the laboratory of the distribution licensee.

Sr.No.	Consumer Meter Accuracy class	Accuracy class as per CEA Metering	In-Service maximum permissible
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	as per C	Regulations*	error as per IS C ode**
1.	Upto 650 volts	1.0 or better	+ 2.5%
2.	Above 650 volts & upto 33 KV	0.5S or better	+1/-%
3.	Above 33 KV	0.2S or better	+0.5%

* Central Electricity Authority (installation and Operation of Meters) Regulations, 2006, as amended from time to time.

** IS 15707: 2006 & IS 14697:1999

Note: Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued."

It is contended that it was not a case where the accuracy of the meter was under challenge; rather it was a case of applying wrong multiplying factor while raising the bill. The account was thus required to be overhauled for the entire duration for which the mistake continued. The said act of the respondent-Distribution Licensee has been affirmed by the CGRF as well as the Electricity Ombudsman.

FACTS OF CWP-3255-2019

The facts of the said petition are also similar to the facts of CWP-24564-2018 except for the dates and the period on which the connection was released and dues have been assessed. Hence, the said facts are not being reiterated herein for the sake of brevity.

ARGUMENTS OF PSPCL

Learned counsel for the Distribution Licensee-PSPCL has argued that the cases involving incorrect connections and defective CTs and PTs or calculation mistakes etc. are not governed under Regulation No.73.8 and are

rather governed under Condition No.23 of the Conditions of Supply, which is extracted as under:

“where the accuracy of the meter is not involved and it is a case of incorrect connection and defective CTs and PTs, genuine calculation mistake etc. charges will be adjustable in favour of Board/Consumer, as the case may be for the period the mistake of the defect continued.”

Hence, unlike a defective meter where a period for which a demand can be raised is prescribed, in the case where the accuracy of the meter is not involved, the adjustment/overhauling of the account can be done for the entire period for which the defect/mistake remained undetected. Reference was also made to Section 26 of the Electricity Act, 2003 and Rule 93 of Section VI of the Electricity Supply Instructions Manual, which deals with the payment of arrears not originally billed under Rule 93. The same reads thus:

"93. PAYMENT OF ARREARS NOT ORIGINALLY BILLED

93.1 There may be certain cases where the consumer is billed for some of the dues relating to previous months/years or otherwise as arrears on account under assessment/unauthorized electricity pointed out or use of demand/load surcharge by internal auditor detected by the authorized officers either owing to negligence of the PSPCL employees or due to some defect in the metering equipment or due to application of wrong tariff/ multiplication factor or due to mistake in connection or other irregularities/ malpractices etc. In all such cases separate bills shall be issued giving complete details of the charges levied. Such charges shall be shown as arrears in the subsequent electricity bills regularly till the payment is made. Supplementary bills shall be issued separately giving complete details of the charges in regard to theft cases, slowness of meters, wrong connections of the meter and unauthorized use of electricity etc. In such cases the copy of relevant instructions under which the

charges have been levied shall also be supplied to the consumer for facilitating the quick disposal of cases by consumer forums if approached by the consumer.

93.2 Limitation:

Under section 56(2) of the Act 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 arrears of charges for electricity supplied."

Reference is also made to the judgment of **Assistant Engineer (D1)**

Ajmer Vidyut Vitran Nigam Ltd. and Another Versus Rahamatulla Khan alias Rahamajulla reported as **(2020) 4 SCC 650 (bearing Civil Appeal No.1672 of 2020 decided on 18.02.2020)** which has dealt with the meaning of expression "first due" and had held that the said charge will become first due only after a bill is issued to a consumer and not in relation to an amount which has not been demanded. Reference is also made to the judgment dated 05.10.2021 of the Hon'ble Supreme Court passed in the matter of **M/s Prem Cottex Versus Uttar Haryana Bijli Vitran Nigam Ltd. and others** bearing **Civil Appeal No.7235 of 2009**, wherein the decision of **Ajmer Vidyut Vitran Nigam (supra)** was reiterated and it was held that limitation under Section 56(2) of the Electricity Act, 2003 shall commence after a bill is raised and not at any time prior thereto. Consequently, the defective billing, which went unnoticed, cannot be stated to be time barred after a demand of overhauling is made and the bill is raised within the prescribed limitation on detection of such error.

ARGUMENTS OF CONSUMERS

Counsel for the consumer(s), on the other hand, have argued that the Electricity Act, 2003 imposes a limitation of two years for raising a demand.

Once the said period comes to an end, the consumer cannot be fastened with the liability for the entire duration and that the amount in question would be recoverable only for a period of six months prior to detection of such mistake/error/defect.

It was held by this Court in the matter of *M/s Park Hyundai (supra)* that where the Distribution Licensee had itself been at lapse in performing its statutory obligations and carrying out checking of the electricity meters, as per rules, the consumer cannot be burdened with the obligation to clear the dues even though the negligence is attributable entirely to the Distribution Licensee-PSPCL.

No other argument has been raised by either side.

CONSIDERATION

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Before proceeding further in the matter it will also be appropriate to refer to certain other Regulations/Statutory Provisions involved in the present petition. The same are reproduced as under:

“56. Disconnection of the supply in default of the payment:-

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

While the learned counsel for the consumers have emphatically argued that the Electricity Supply Instructions Manual mandates that the Distribution Licensee installs the meters and CTs of the same current ratio so as to eliminate the multiplying factor and is also obligated to regularly carry out inspection of the premises as well as the meters, hence, the failure on the part of the Distribution Licensee to carry out its exercise of installing correct CTs/PTs and also to conduct a physical verification of the meters within the prescribed time scale should come to the aid of a consumer as the necessary checks/instructions having not been adhered to by the PSPCL. Therefore, a right would thus accrue in their favour and they would be entitled to perceive that the electricity bill had been rightly raised and that there is no default or defect therein. Reference was also made to Regulation 21.5.1 of the Electricity Supply Code, 2014 to contend that in the case of an inaccurate meter, the overhauling of the account cannot travel beyond a period of six months immediately preceding the testing of the meter as prescribed thereunder.

The arguments advanced by the counsel for the consumers, however, fail to impress upon and convince this Court in holding that the demand for the entire duration, when a wrong multiplying factor had been applied, would be non-est and is liable to be set aside. So far as Regulations 21.5.1 of the Electricity Supply Code, 2014 is concerned, the same talks about overhauling of an account in an event of an inaccurate meter. A note appended to the said Regulation itself reads that "Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period for which the mistake remains continued."

It is well settled proposition of law that a provision is to be read as a whole and as such, the explanatory note in Regulation 21.5.1 of the Electricity Supply Code, 2014 cannot be ignored while construing the true meaning and intent of the said Regulation. The Regulation, thus, does not perceive the mistake in applying a wrong multiplying factor to be a defect of the meter.

It is further evident that the meter in question had been duly sent to the ME Lab for testing and that there was no defect found in the meter and the error was detected only in raising a wrong bill by not applying the correct multiplying factor. Hence, once the correctness of the meters and the CTs/PTs is not in dispute, and the only issue pertains to a mistake at the stage of raising the bills on account of non-application of correct multiplying factor, the consumers would not be justified in claiming that an indefatigable right has accrued in its favour and that he is no more liable to pay the charges for actual consumption of electricity. Once the benefit of energy consumption has already been derived, the consumer, as per law, cannot refuse to pay the legitimate dues for the use of such energy. A mere administrative/supervisory lapse on the part of the employee(s) of the Distribution Licensee in not reporting any error the CTs/PTs and/or in applying incorrect multiplying factor, would not give rise to a presumption that the bills has been rightly raised and that there is no other dues.

By the very nature that it is a mistake, the same has to be accepted in its primary sense. A unilateral mistake does not create a waiver/acquiescence or estoppel against the Distribution Licensee to seek recovery of the amount, to which it is legally and validly entitled. If a view to the contrary is accepted, it would be easy for a mischievous person to connive with the subordinate officials

of the Distribution Licensee and make a wrong entry/action and thereafter, continue to evade payment of electricity dues.

The limitation for overhauling the account on account of an inaccurate meter is prescribed for a period of six months or the actual period, whichever is less, the same is not applicable to the facts of the present petition as it is not a case of an inaccurate meter. Hence, the contention of the consumer(s) that the dues could not exceed beyond a period of six months from the date of detection of the error is liable to be rejected by relying on Clause 21.5.1 is thus misconceived.

Referring to a failure of PSPCL in deploying current CT/PT or irregular checking to claim a right is again misconceived. Desirability of procedural safeguards is not always a mandate against asserting its rights thereafter. Failure to follow the procedural safeguard cannot be construed as an estoppel against PSPCL as the Regulations do not so provide. Any such interpretation would amount to legislation as fastening the liability of such undue benefit on other consumers, who are later required to make up for the loss through enhanced tariff. Regulation 102.10; 102.11 or 104.1 do not suggest or conclude a view advanced on behalf of the consumer. The argument thus deserves to be rejected.

The same now leads to the next issue as to whether the Distribution Licensee can claim an amount for a period beyond two years since the limitation for effecting recovery has been capped at two years under Section 56(2) of the Electricity Act, 2003.

A perusal of the statutory provisions shows that a period of two years has been fixed w.e.f. the date when the sum became first due. The

abovesaid phrase “first due” has been examined by the Hon'ble Supreme Court in the matter of ***Ajmer Vidyut Vitran Nigam (supra)***. The relevant extract of the said judgment is reproduced hereinafter below:

“XXX XXX XXX

5.6 *The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid.*

Electricity charges would become “first due” only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.

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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6.3 *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.

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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.”

(emphasis supplied)

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.”

Further, in the matter of *M/s Prem_Cottex (supra)* the abovesaid proposition of law was again followed by the Hon'ble Supreme Court. The relevant extract of the same is reproduced hereinafter below:

"11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term “first due” in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.

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15. 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, de hors 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.

16. 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) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), 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 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 subsection (2) of section 56 of the Act”.

17. It appears from the narration of facts in paragraph 2 of Rahamatullah Khan (supra) that this Court was persuaded to take the view that it did, on account of certain peculiar facts. The consumer in that case was billed under a particular tariff code for the period from July 2009 to September 2011. But after audit, it was discovered that a different tariff code should have been applied. Therefore, a show cause notice was issued on 18.03.2014 raising an additional demand for the period from July 2009 to September 2011. Then a bill was raised on 25.05.2015 for the aforesaid period. Therefore, the consumer successfully challenged the demand before the District Consumer Forum, but the Order of the District Forum was reversed by the State Commission on an appeal by the licensee. The National Commission on a revision filed by the consumer, set aside the order of the State Commission and restored the order of the District Forum. It was this Order of the National Commission that was under challenge before this Court in Rahamatullah Khan (supra).

18. Eventually, this Court disposed of the appeals, preventing the licensee from taking recourse to disconnection of supply, but giving them liberty to take recourse to any remedy available in law for recovery of the additional demand. Therefore, the decision in Rahamatullah Khan (supra) is distinguishable on facts.

19. Even otherwise there are two things in this case, which we cannot overlook. The first is that the question whether the raising of an additional demand, by itself would tantamount to any deficiency in service, clothing the consumer fora with a power to deal with the dispute, was not raised or considered in Rahamatullah

Khan (supra). The second is the impact of Subsection (1) of Section 56 on Subsection (2) thereto.

20. The fora constituted under the Consumer Protection Act, 1986 is entitled to deal with the complaint of a consumer, either in relation defective goods or in relation to deficiency in services. The word “deficiency” is defined in Section 2(1)(g) of the Consumer Protection Act, 1986 as follows: “2(1)(g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

21. The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.

22. In fact, even before going into the question of Section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that the recourse taken by the licensee for recovery of the amount, can be put to test in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

23. Coming to the second aspect, namely, the impact of Subsection (1) on Subsection (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. Subsection (1) starts with the words “where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him”.

24. Subsection (2) uses the words “no sum due from any consumer under this Section”. Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (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 subsection (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.

25. 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 Subsection (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 consumer under this Section”, appearing in Subsection (2).

26. The matter can be examined from another angle as well. Subsection (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. Subsection (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 Subsection (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 and Section 56(2) will not go to the rescue of the appellant.

This Court has also followed the Hon'ble Supreme Court in the matter of ***Bank of India Versus The Punjab State Power Corporation Ltd. and others*** reported as ***(2017) 4 PLR 527 (bearing CWP No.8228 of 2015 decided on 21.08.2017)***. The relevant extract of the same is reproduced hereinafter below:

“11.The words used in Section 56(2) of the "from the date when such sum became first due" would, thus, mean that on the date on which the demand is raised by the licensee to the consumer and the bar created of the period within which the amount is to be recovered is of two years from the date when such sum became first due, meaning thereby, if hypothetically demand is raised and no action is taken for its recovery for the period of two years, then according to this provisions, the said recovery would be barred by limitation.”

It is evident from a perusal of the above that an amount becomes first due only after it is detected and does not intend to confer a right when the mistake or fraud remained undetected. Hence, the relevant date is the date of detection and not the date when the mistake of fraud occurred.

The judgment in the case of ***Park Hyundai (supra)*** is thus no more a correct position in law and no right can be perfected by relying on the same.

CONCLUSION

The position having been well settled by the Hon'ble Supreme Court, the same requires no further consideration. The orders/judgments passed by the Electricity Ombudsman directing the Distribution Licensee to recalculate the demand by applying correct multiplying factor only for a period of six months preceding the date of checking is thus unsustainable in light of the judgments pronounced by the Hon'ble Supreme Court in the matters noticed above.

CWP-13285-2016 titled as Punjab State Power Corporation Ltd. Versus Vinay Gupta and another is accordingly allowed and the order dated 29.01.2016 is thus set aside and the demand raised by the Distribution Licensee is affirmed. The remaining writ petitions bearing No.CWP-24564-2018 and CWP-3255-2019 are hence dismissed.

Photocopy of this order be placed on the files of other connected cases.

02.04.2024.
Rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No