IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-7311-2018 (O&M)
Date of decision: 05.11.2024

Navneet Kumar ...Petitioner

VERSUS

State of Haryana and others ...Respondents

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

Present :- Mr. Fateh Saini, Advocate;
Mr. Arastu Chopra, Advocate;
Ms. Gaganpreet Kaur, Advocate; Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG Haryana.

Mr. R.S. Longia, Advocate for respondents No.2 to 5-UHBVN.

None for respondents No.6 to 8.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenging Clause 21-A incorporated in Sales Circular No. U-03/2013 issued by the Uttar Haryana Bijli Vitran Nigam vide memo No.Ch-04/Settlement of Billing Disputes/CGM/C-I dated 16.01.2013 on the subject of recovery of outstanding dues from the defaulting premises, the petitioner has approached this Court with a further prayer for seeking quashing of the comments received through SMS dated 01.03.2018 about the premises being defaulting premises.

2. Learned counsel for the petitioner contends that the petitioner had purchased the commercial shop from one Smt. Usha Devi vide sale deed dated 22.11.2017. The said shop had been purchased by Smt. Usha Devi from one Smt. Geeta Rani on 23.10.2017. After purchasing the said shop, the petitioner came to know that the electricity connection bearing electric meter No.M1-502 stands in the name of the tenant, namely, Mr. Faquir

Chand son of Bhagirath, resident of VPO Mullana, who was inducted by the previous owner and that he was a defaulter due to pending bills w.e.f. 13.01.2015. A letter dated 06.12.2017 was written by the petitioner to the respondent-Distribution Licensee for disconnection of the electric meter but the same was not done till 26.02.2018. The electricity supply of the petitioner was, eventually, disconnected by the respondents on 27.02.2018. An application was thereafter moved by the petitioner for release of a new electricity connection on the same date vide application No.A15-218-167 and the application money was also transferred online. However, a message was received by the petitioner on 01.03.2018 as per which the premises was informed to be defaulter of Rs.90,861/- in the name of said Mr. Faquir Chand son of Bhagirath. The petitioner continued to visit the respondents and he requested that the arrears stood in the name of said Mr. Faquir Chand son of Bhagirath (tenant) and that the petitioner was not under any obligation to pay the same. He contends that the respondents in the meanwhile had also issued a Notification incorporating Clause 21-A in the terms and conditions of electric energy w.e.f. 16.01.2013 to the effect that the new connection or reconnection shall not be given to any premises where there are arrears on any account due to the Nigam. The relevant extract of Clause 21-A in the terms and conditions of electric energy dated 16.01.2013 and impugned in the present petition is extracted as under:

> ***"21-A (a) When there is transfer of ownership or right of occupancy of premises, the registered consumer shall intimate the transfer of right of occupancy of the premises within 15 days to the Assistant Engineer/Assistant Executive Engineer***

concerned. Intimation having been received, the service shall be disconnected unless application for transfer is allowed. If the transferee desires to enjoy the service connection, he shall pay the outstanding dues, if any, to the Nigam and apply for transfer of the service connection within 30 days and execute fresh agreement and furnish fresh security. New Consumer number shall be allotted in such cases canceling the previous number.

(b) Reconnection or new connection shall not be given to any premises where there are arrears on any account due to the Nigam unless these are cleared in advance. If the new owner/occupier/allottee remits the amount due from the previous consumer, the Nigam shall provide reconnection or new connection depending upon whether the service remains disconnected/dismantled as the case may be. The amount so remitted will be adjusted against the dues from the previous consumer. If the Nigam gets the full or partial dues from the previous consumer through legal proceedings or otherwise, the amount remitted by the new owner/occupier to whom the connection has been effected shall be refunded to that extent. But the

amount already remitted by him/her shall not bear any interest.

(c) The above proposed provisions of clause 21-A (a) & (b) shall be applicable to existing consumers also where defaulting amount exists against premises occupied by such consumer."

3. Learned counsel for the petitioner has vehemently argued that the said Clause is contrary to the law settled by the Hon'ble Apex Court in the matter of **M/s Isha Marbles Versus Bihar State Electricity Board** reported as **(1995) 2 S.C.C. 648** and that the same cannot be enforced against the subsequent purchaser. The demand was also stated to be unsustainable in view of the bar contained under Section 56(2) of the Electricity Act, 2003.

4. Responding to the arguments of the learned counsel for the petitioner, learned counsel for respondent-Distribution Licensee refers to the judgment passed by the Hon'ble Supreme Court in the matter of **Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and Anr. Vs. Rahamatullah Khan @ Rahamjulla** reported as (2020) 4 SCC 650 pertaining to Section 56(2) of the Electricity Act, 2003 wherein it was held that the Corporation is not precluded from raising additional or supplementary demand after expiry of period of limitation of two years in case of a *bona fide* mistake. The obligation to pay would arise only when a bill is issued by the Licensee Company quantifying the charges to be paid. That would be the stage when a charge becomes "first due" even though the liability to pay may relate to a period prior thereto for consumption of electricity. The operative paragraphs of the judgment reads thus:-

"*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.

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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, this Court held that :–

> ***"<u>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</u>. 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."

5. Reference is also made to the judgment of the Hon'ble Supreme Court in the matter of **M/s Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Limited and others** reported as **2021 (4) RCR (Civil) 422,** reiterating the ***Rahamatullah Khan's case*** **(supra)** and holding that if the licensee has not raised any bill, the limitation would not start running. The bar for recovery in disconnection, as stipulated under Section 56 of the Electricity Act, 2003, would not come into effect or come to the rescue of such a consumer. The operative part of the same reads thus:-

"26. 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 and Section 56(2) ***will not go to the rescue of the appellant."***

6. On the aspect as to whether the recovery could be effected from the subsequent occupier of the premises or not, he has referred to the judgment of the Hon'ble Supreme Court passed in the matter of **K.C. Ninan Vs. Kerala State Electricity Board and others** reported as 2023(3) RCR (Civil) 227 wherein it has been held that the new owner of premises can be held liable to clear the electricity arrears of the previous owner as a pre-condition for availing electricity supply and that such a condition shall have a statutory character. The operative part of the judgment is extracted as under:-

"328. The conclusions are summarised below:

a. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;

b. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer

only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;

c. ***For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;***

d. ***A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;***

e. ***The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;***

f. ***The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;***

g. ***The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a***

statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;

h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;

i. The implication of the expression "as is where is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and

j. In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers."

7. Reference is also made to the judgment passed by the Hon'ble Supreme Court in the matter of **Dakshin Haryana Bijli Vitran Nigam Limited** Vs. **M/s. Paramount Polymers Pvt. Ltd.** reported as **2007(1) RCR (Civil) 396**, holding that a transferee consumer is liable to pay outstanding dues and the sale of premises without paying arrears of electricity dues would fasten the liability on the subsequent purchaser.

8. Further, this Court had also recognized the right of the

Distribution Licensee to recover the arrears from the purchaser in the judgment dated 18.09.2017 passed in **CWP-17600-2017** titled as **S.N. Bajaj Alloys Vs. Punjab State Power Corporation Ltd and others.**

9. It is further submitted that the judgment passed in the matter of **M/s Isha Marbles (supra)** relied upon by the petitioner is thus no more a valid law and the same stands distinguished in the subsequent judgments passed by the Hon'ble Supreme Court.

10. No other argument has been advanced by the learned counsel for the parties nor any other judgment is cited.

11. Learned counsel for the petitioner is not in a position to dispute that the sale circular was issued in the year 2013 and was hence already in force when the property was purchased by him. He is also not in a position to dispute that the position in law as expounded by the Hon'ble Supreme Court in the matter of **Isha Marbles** (supra) is no more a good law in view of subsequent judgments in the matters of **M/s Prem Cottex** (supra) and **Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited** (supra). The foundation of the case set up by the petitioner thus does not survive.

12. The present writ petition is accordingly dismissed.

13. All pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

05.11.2024
Mangal Singh

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