IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3086 OF 2024

Maharashtra State Electricity Distribution )
Company Limited )
Through the office of the Dy. Executive Engineer, )
At – New Contessa Substation, )
Near Bharat Gas Agency, Post – TAPS, )
Tal Palghar, District Palghar, Pin – 401504 )... Petitioner

Versus

Suhasini D. Naik )
C/o. Hotel Blue Diamond, Tal. Boisar, )
District Palghar, Boisar (West) – 401501 )
Consumer No. 0030110044757 )... Respondent

.....

- Mr.Rahul Sinha a/w Mr.Soham Bhalerao i/b DSK Legal, for the Petitioner.
- Mr. Gaurav Lele, Advocate for Respondent.

CORAM : R. M. JOSHI, J.

RESERVED ON: 13th AUGUST, 2024.
PRONOUNCED ON : 21st AUGUST, 2024.

JUDGMENT :

1. Petitioner Electricity Distribution Company takes exception to the order dated 15.11.2022 passed by Consumer Grievance Redressal Forum (for short "**CGRF**") in Case No. 071 of 2022 filed by the respondent, whereby direction was issued to revise recovery bill considering only 7939 units for consumption for the month of November-2020.

**2.** Parties are referred to as electricity company and consumer for the sake of convenience. There is no dispute about the fact that the consumer has been allotted electricity connection under No. 0030110044757 with connection load of 24.50 KW. On 14.02.2020 consumer applied for Solar Rooftop net metering connection and accordingly it was sanctioned for a load of 18.5 KW on 09.06.2020. Pursuant to the sanction, consumer purchased necessary meters, current transformers (for short "**CT**") required for the said connection. The meter and CT were tested at MSEDCL, Vasai, testing laboratory on 17.06.2020 and 03.09.2020 respectively. It was found that the said meter and CT were "OK" i.e. suitable for installation. In November-2020, rooftop solar connection was released by electricity company by installing tested meters and CT in consumer's premises by replacing the then existing meter. Thereafter, regularly, bills were issued towards payment of electricity charges on the basis of meter reading recorded therein. Electricity company initiated scrutiny of consumers whose sale is found dropped more than 30% as compared to the sale in F.Y. 2018-2019. A check was done in the premises of consumer and it was noticed that the meter installed at the consumer's site is of 5/5/A which is connected to 100/5/A/CTs and multiplying factor which was supposed to be 20 was wrongly punched as one. On the basis of spot inspection report and after making the due

calculations, bill was issued for Rs.7,35,010/- on 26.06.2022.

**3.** Consumer being aggrieved by the issuance of the said recovery bill approached CGRF by filing Case No. 071 of 2022. The electricity company filed reply in the said proceeding. On 15.11.2022 impugned order came to be passed by CGRF wherein it was directed to issue revised bill considering 793 units for the months of November-2020 after adjusting payments made by the consumer.

**4.** Learned counsel for the electricity company submits that the issue involved before the CGRF was as to whether it was open for the electricity company to issue bill for the differential amount on the basis of incorrect application of multiplying factor. It is submitted that at no point of time consumer has raised any issue with regard to the correctness of the recording of the consumption in the meter. It is submitted that CGRF has misconstrued the Judgment of the Hon'ble Supreme Court in the case of ***Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Ors*** [1]. According to him, in view of the judgment of the Hon'ble Supreme Court, it is open for the electricity company to correct the electricity bill where a wrong bill is issued for bonafide mistake and that non application of the correct multiplying factor is a bonafide mistake and therefore allowed to be corrected.

**5.** Learned counsel for the consumer has supported the impugned

1 2021 SCC OnLine SC 870

order by contending that the CGRF has taken into consideration the fact that during 2020 it was a period of lockdown owing to Covid-19 pandemic situation and that the bill has been issued on an average of prior meter readings. It is submitted that since the bill was issued with multiplier of one, the consumer did not raise any objection with regard to the consumption of 51,700 shown in the month of November-2020 but now with application of 20 multiplier, huge bill is raised. It is argued that there is difference in the meter number mentioned in two different reports which according to him is sufficient to demonstrate that the possibility of meter being faulty is not ruled out.

**6.** In order to appreciate the rival contentions it is just and necessary to see as to the nature of dispute raised by the consumer before the CGRF. Impugned order indicates that the issue was raised by the consumer as to how the consumer can be penalised and inconvenienced for incorrect calculation of multiplying factor (for short "MF") by electricity company and can be made liable to pay such amount lumpsum immediately. It is also sought to be contended that as per the unit calculation report by the electricity company 51,000 units were consumed and bill for December-2020 and as to how such reading can be accepted when there was a state of lockdown and partial lockdown throughout year 2020 and the hotels were running less than 50% capacity. These amongst

other contentions were raised to challenge the bill.

**7.** It would be relevant to take note of the findings recorded by CGRF which reads thus:

> *"5. Observations :*
>
> *a) The applicant, Hotel Blue Diamond is consumer of respondent since 28.03.1998 with connected lood as 24,50 KW.*
>
> *b) The applicant has opted for Solar Rooftop net metering connection in year 2020, Respondent had sanctioned 18.5 KW Solar Rooftop net metering connection in the month of June 2020. The said connection was released in month of November 2020. The bill for replaced meter was generated in month of December 2020.*
>
> *c) Respondent during the month of May 2022 noticed that consumption recorded by new meter is much less due to application of wrong Multiplying Factor as I instead of 20. Respondent had issued supplementary bill of Rs. 7,35,010/- to applicant in the month of June 2022 applying correct MF*
>
> *d) Applicant has submitted grievance regarding exorbitant bill. During the hearing applicant has accepted bonafide mistake of respondent regarding application of wrong MF for period of November 2020 to May 2022. Applicant has only objected exorbitant reading for month of November 2020.*
>
> *e) Applicant has submitted circular of Natural Disaster Management Authority, Palghar, dated 8.10.2020, regarding restrictions during COVID 19 lockdown, stating that Hotel can work on 50% occupancy from morning 8.00 hrs. to 22.00 hrs. since 05.10.2020. There are 18 rooms in the Hotel and applicant has submitted occupancy report since April 2020 to December 2020. During April 2020 to June 2020, there was strict lockdown, zero occupancy. July 20, August 20, September 20, October 20 and November 20, the occupancy was 18%, 24%, 23%, 48% and 42% respectively. Occupancy was low during July 2020 to December 2020 due to partial lockdown on account of COVID 19.*
>
> *f) As per inspection report of respondent dated 03.11.2022 connected load in hotel is AC 1 ton (1400 W) C 19 Nos., LED (2W) C 10 Nos., Fan (50W) X 18 Nos., TV (100 W) X 19 Nos., LED (20 W) X 43 Nos., Computer (200W) X 1 No., LED (5W) X 20 Nos. The total connected load is 30.58 KW.*
>
> *g) The meter is tested on 17.10.2022 by respondent and meter is found OK.*
>
> *h) From CPL of consumer it is observed that average monthly consumption of October 2019 to September 2020 is 1895 units per month and monthly average consumption of January 2021 to July*

> *2022 is 1586 units per month. Considering connected load, consumption of previous and lockdown scenario, it is highly impossible for consumption of 51700 units in one month for the consumer. The meter has recorded absurd reading for month of November 2020. Monthly average consumption from January 2021 to July 2022 is 1586 units per month, considering 50% occupancy due to COVID 19 restrictions, the estimated consumption for November-2020 should be 793 units."*

**8.** CGRF then has taken into consideration the Judgment of the Hon'ble Supreme Court in the case of ***Prem Cottex (supra)*** and has held that the electricity company can recover electricity bill for bonafide mistake and it is further held that the mistake in this case is not bonafide and therefore the judgment has no application thereto. With this discussion the grievance Case No. 071 of 2022 was partially allowed. Electricity company was directed to revise supplementary bill issued in June -2022 considering 793 units for the month of November- 2020 after adjusting the payment made by the consumer and the interest was also directed be waived.

**9.** At this stage, it would be relevant to take note of the Judgment of a three Judge Bench of Hon'ble Supreme Court in the case of ***K.C.Ninan Vs. Kerala State Electricity Board and Others[2],*** after taking into consideration judgment in case of ***Prem Cottex (Supra)*** and ***Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and Anr. Vs. Rahamatullah Khan*** has passed judgment and it would be fruitful to refer to the relevant paragraph Nos. 122 to 136 thereof which read thus:

2 2023 SCC OnLine SC 663

"122. Section 56 falls under Part VI which is titled "Distribution of Electricity". Section 56 provides for disconnection of electrical supply in case there is a default in payment of electricity charges.

123. The power to disconnect is a drastic step which can be resorted to only when there is a neglect on the part of the consumer to pay the electricity charges or dues owed to the licensee or a generating company, as the case may be. Section 56(1) provides that 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 a generating company, the licensee or generating company may after giving a written notice of fifteen days, disconnect the supply of electricity, until such charges, including the expenses incurred are paid. The power to disconnect electricity is conditioned on the fulfilment of the conditions stipulated. The cutting off or disconnection is without prejudice to the rights of the distribution licensee to recover such charge or other sums by other permissible modes of recovery. The proviso to Section 56(1) carves out an exception by providing that electricity supply will not be cut off if the consumer, "under protest", either deposits the amount claimed or deposits the average charges paid during the preceding six months.

124. The statutory right of the licensee or the generating company to disconnect the supply of electricity is subject to the period of limitation of two years provided by Section 56(2). Section 56(2) provides that 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 a 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 electricity. The limitation of two years is limited to recovery of sums under Section 56. This is evident by the use of the expression, "under this section".

125. The first issue pertains to the simultaneous exercise of statutory and civil remedies by the licensing authority to recover electricity arrears. The liability to pay electricity charges is a statutory liability and Section 56 provides the consequences when a consumer neglects to pay any charge for electricity or any sum other than a charge for electricity due from him. Section 56(1) provides that the power of the licensee to disconnect electrical supply when a consumer is in default of payment is "without prejudice to his rights to recover such charge or other sum by suit". This means that the licensee can exercise both its statutory remedy to disconnect as well as a civil remedy to institute a suit for recovery against the consumer since the licensee will not necessarily obtain the amount due from the consumer by disconnecting the supply. In its decision

in Bihar SEB v. Iceberg Industries Ltd., this Court has held that the power to disconnect supply under Section 56 is a special power given to the supplier in addition to the normal mode of recovery by instituting a suit. The power to disconnect the supply of electricity as a consequence of the non-payment of dues and as a method to recover dues is supplemental to the right of the licensee to institute a suit or other proceedings for the recovery of dues on account of electrical charges.

126. Section 56(1) of the 2003 Act is pari materia to Section 24 of the 1910 Act. Section 24 of the 1910 Act empowered the Electricity Board to issue a demand and to discontinue supply to consumers who neglected to pay charges, without prejudice to the right to recover such charges or other sums by way of a suit. The import of Section 24 was considered by this Court in Isha Marbles (supra), where it was observed that the action of cutting off electricity supply after service of the notice as prescribed under Section 24 was in addition to the general remedy of filing a suit for recovery.

127. In Swastic Industries v. Maharashtra State Electricity Board, this Court held that the right to discontinue supply of energy under Section 24 was not taken away by Section 60A of the 1948 Act, which provided an option to the Electricity Board to file a suit within the period of limitation stipulated there. This Court observed 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. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24** to make demand for payment of the charges and on neglecting to pay the same they have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges. **The intendment appears to be that the obligations are mutual…."**
>
> (emphasis supplied)

128. Hence, 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.

129. The second issue pertains to the implication of the period of two years provided in Section 56(2) on the civil remedies of Utilities to recover electricity dues. Section 56(2), which begins with a non obstante clause, provides a limitation of two years for

recovery of dues by the licensee through the means of disconnecting electrical supply. It puts a restriction on the right of the licensee to recover any sum due from a consumer under Section 56 after a period of two years from the date when such sum became first due. If this provision is invoked against a consumer after two years, the action will be permissible when the sum, which was first due, has been shown continuously as recoverable as arrears of charges for electricity supplied. Under Section 56, the liability to pay arises on the consumption of electricity and the obligation to pay arises when a bill is issued by the licensee for the first time. Accordingly, the period of limitation of two years starts only after issuance of the bill.

130. Before we deal with the implication of Section 56(2) on the civil remedies available to a licensee, it is important to clarify that when the liability incurred by a consumer is prior to the period when the 2003 Act came into force, then the bar of limitation under Section 56(2) is not applicable. In Kusumam Hotels Pvt Ltd v. Kerala State Electricity Board, this Court has held that Section 56(2) applies after the 2003 Act came into force and the bar of limitation under Section 56(2) would not apply to a liability incurred by the consumer prior to the enforcement of the Act. In terms of Section 6 of the General Clauses Act 1897, the liability incurred under the previous enactment would continue and the claim of the licensee to recover electricity would be governed by the regulatory framework which was in existence prior to the enforcement of the 2003 Act.

131. In its report dated 19 December 2002, the Standing Committee of Energy opined that the restriction for recovery of arrears under Section 56 was considered necessary to protect the consumer from arbitrary billings. In other words, the enactment of Section 56(2) was to address the mischief of arbitrary billings. Hence, Section 56(2) was incorporated to ensure that a licensee does not abuse its special power of disconnection of electrical supply. Section 56(2) ensures that a licensee does not have the liberty to arbitrarily impose a bill after a long period and then recover such a huge amount through the drastic step of disconnection of electrical supply.

132. In Rahamatullah Khan (supra), a two judge Bench of this Court dealt with the applicability of the period of limitation provided by Section 56(2) on an additional or supplementary demand raised by the licensee. A consumer was billed under a particular tariff but after an audit, it was discovered that a different tariff code should have been applied. An additional bill was subsequently raised in 2014 for the period from July 2009 to September 2011. Section 56(2) was interpreted not to preclude the licensee from raising a supplementary demand after the expiry of the period of limitation under Section 56(2) in the case of a mistake or a bonafide error. However, it did not

empower the licensee to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand. This Court held that the bar of limitation of two years does not preclude the licensee from resorting to other modes of recovery of electricity arrears. The court observed:

> "7.4 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
>
> **7.5 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).
>
> 8. 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.**
>
> 9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18-3-2014 for the period July 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18-3-2014. The limitation period of two years under Section 56(2) had by then already expired.
>
> **9.1. 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."**

**(emphasis supplied)**

**133.** The exposition of law by this Court in Rahamatullah Khan (supra) was considered by a coordinate bench in Prem Cortex (supra). A consumer was served with a short assessment notice and the Court had to consider whether short billing and the subsequent raising of an additional demand would tantamount to a deficiency of service. This Court observed that the bar contemplated in Section 56 operates on two distinct rights of the licensee, namely, the right to recover and the right to disconnect. This Court observed that under the law of limitation, the remedy and not the right is extinguished. The bar with reference to the remedy of disconnection was held to be an exception to the law of limitation. This Court further considered the impact of Section 56(1) on Section 56(2) and observed:

> "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.
>
> ....
>
> 23. 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 Subsection (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 pay** any charge for electricity or any sum other than a charge for electricity due from him".
>
> 24. Sub-section (2) uses the words "no sum due from any consumer **under 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."**

(emphasis supplied)

**134.** The period of limitation under Section 56(2) is relatable to the sum due under Section 56. The sum due under Section 56 relates to the sum due on account of the negligence of a person to pay for electricity. Section 56(2) provides that such sum due would not be recoverable after the period of two years from when such sum became first due. The means of recovery provided under Section 56 relate to the remedy of disconnection of electric supply. The right to recover still subsists.

**135.** We may also briefly deal with the objection of the auction purchasers that the conditions of supply cannot be used to resurrect time barred debts. Counsel placed reliance on VT Kallianikutty (supra), where it was held that a time barred debt cannot be recovered by taking recourse to the provisions of the Kerala Revenue Recovery Act. This decision is not helpful to the auction purchasers in the present batch of cases. In that case, a three-judge Bench of this Court while dealing with agricultural loans extended by the Kerala Finance Corporation, held that since the Kerala Revenue Recovery Act does not create a new right, a person could not claim the recovery of amounts which are not legally recoverable. In reaching its decision, this Court, however, reasoned that the statute of limitation bars the remedy by way of a suit beyond a certain time period, without touching the right to recover the loan. The right remains untouched and it can be exercised in any other suitable manner provided.

**136.** We therefore, reject the submission of the auction purchasers that the recovery of outstanding electricity arrears either by instituting a civil suit against the erstwhile consumer or from a subsequent transferee in exercise of statutory power under the relevant conditions of supply is barred on the ground of limitation under Section 56(2) of the 2003 Act. Accordingly, while the bar of limitation under Section 56(2) restricts the remedy of disconnection under Section 56, the licensee is entitled to recover electricity arrears through civil remedies or in exercise of its statutory power under the conditions of supply."

**10.** It is thus clear from this judgment, that it is open for the electricity company to issue a revised bill if it is found that the previous bill issued is under bonafide mistake. In the instant case, revised bill has been issued

with specific contention that multiplying factor 1 instead of 20 was applied. There is no dispute made by the consumer with regard to this fact. If it is so, it does not stand to any reason or justification to hold that this is not bonafide mistake of the electricity company, as observed by CGRF. In view of the judgment of the Hon'ble Supreme Court in the case of **K. C. Ninan *(supra)*,** the electricity company is within its right to issue revised bill once such bonafide mistake is found out.

**11.** It is pertinent to note that the electricity bill was issued to the consumer for consumption of November-2020 in December-2020. Admittedly, for two years there is no challenge raised with regard to the consumption of electricity recorded by the meter installed in the premises of consumer. It seems that only because after application of multiplier of 20, the amount payable by the consumer to the electricity company has increased, a dispute is sought to be made in this regard. There is undisputed fact that the electricity meter as well as CT were tested and found in proper condition for their installation. It is also candidly observed in the impugned order that meter tested on 17.10.2022 was found OK. This coupled with the fact that prior to installation also meter was checked and found suitable for installation. Unless, finding is recorded that meter is faulty, the recording made therein cannot be challenged. It is not sufficient for CGRF to say that the recording for consumption for month of

November 2020 is absurd. It does not therefore stand to any reason that there was any mistake in recording the meter readings is now sought to be contended on behalf of the consumer. Moreover, the consumer ought to have taken specific plea of meter being faulty and led evidence to substantiate the same. In this case, neither specific plea is raised in this regard nor the same is proved. Unless, a positive finding is recorded that meter in question is faulty, no order of average consumption could have been passed by CGRF. Merely, because some discrepancy could be pointed out in two reports, it cannot be held that meter installed on the premises of consumer is faulty. CGRF, therefore, clearly erred in directing bill for consumption on November 2020 to be taken on average of other month's consumption.

**12.** Having regard to the above discussion, this Court finds no reason or justification to uphold the impugned order passed by CGRF. It is held that the electricity company is within its right to issue revised bill after finding that the bill was not charged on the basis of proper multiplying factor and to recover the same in accordance with law.

**13.** The impugned order, therefore, is set aside. However, owing to the fact that the huge amount is required to be paid by the consumer to the electricity company, the amount raised in the bill in question be paid in three equal installments spread over to the period of six months, from date

of this order.

**14.** Writ Petition stands allowed in the above terms.

**( R. M. JOSHI, J.)**

SONALI SATISH KILAJE
Digitally signed by SONALI SATISH KILAJE
Date: 2024.08.21 18:18:20 +0700