

M/S. Swastic Industries vs Maharashtra State Electricity Board on 24 January, 1997

Equivalent citations: AIR 1997 SUPREME COURT 1101, 1997 (9) SCC 465, 1997 AIR SCW 1118, (1997) 2 JT 328 (SC), 1997 (1) COM LJ 353 SC, 1997 (1) SCALE 622, (1997) 1 SCR 532 (SC), (1997) 1 COM LJ 353, 1997 (2) JT 328, 1997 (1) SCR 532, (1997) 2 MAD LW 813, (1997) 1 SCJ 363, (1997) 25 CORLA 1, (1997) 2 SUPREME 439, (1997) 1 SCALE 622, (1997) 4 LANDLR 148, (1997) 1 CURCC 386, (1997) 1 LJR 409, (1997) 2 ICC 706, (1997) 2 RECCIVR 680

Bench: K. Ramaswamy, G.T. Nanavati

PETITIONER:
M/S. SWASTIC INDUSTRIES

Vs.

RESPONDENT:
MAHARASHTRA STATE ELECTRICITY BOARD

DATE OF JUDGMENT: 24/01/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R The petitioner is canvassing the correctness of the decision of the National Consumers' Disputes Redressal Commission, New Delhi, made on August 30, 1966 in Appeal NO. 520/95.

The admitted position is that the respondent- Electricity Board had issued a supplementary bill to the petitioner on February 5, 1993 demanding payment of Rs. 3,17,659/-. The petitioner objected to the bill by his letter dated February 16, 1993, However, when letter was issued for payment of the said amount, the petitioner paid it under protest and filed the complaint paid it under protest and filed the complaint before the State Consumers Disputes Redressal Commission. The Commission

by order dated May 24, 1995 allowed the complaint and held that the claim was barred by limitation of 3 years. Feeling aggrieved, the Electricity Board filed an appeal. The National Commission relying upon the judgment of a Division Bench of the Bombay High Court in M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay & Anr. (Air 1978 Bom. 369) has held that there is no limitation for making the demand by way of supplementary bill. Section 24 of the Indian Electricity Act, 1910 gives power to the Board to issue such demand and to discontinue the supply to a consumer who neglects to pay the charges. It is contended by the learned counsel for the petitioner that Section 60-A of the Electricity (supply) Act, 1948 prescribes a limitation of 3 years for the Board to institute any suit, after its constitution, for recovery of the arrears. Thereby the limitation of 3 years is required to be observed. The Board in negation of Section 60A of Supply Act cannot be permitted to exercise the power under Section 24 of the Electricity Act, 1910. We find no force in the contention.

Section 60-A of the Electricity (Supply) Act, 1948 envisages the enlargement of the period of limitation of certain circumstances, i.e., intervening period of the constitution of the Board, and the right of the State to recover the amount due to the State for consumption of electricity delegating to power to the Board. In that behalf, clauses (i) and (ii) therein operate as under :

"(i) where it has been constituted before the commencement of the Electricity (Supply) Amendment Act, 1966 (3 of 1966) within three years of such commencement; and

(ii) where it has been constituted after such commencement, within three years of its constitution."

This is an enabling provision by way of suit. Despite the fact that Section 24 of the Indian Electricity Act clearly empowers the Board to demand and collect any charge from the Consumer and collect the same towards the electrical energy supplied by the Board in the following terms:

"Where any person neglect 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 of 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 charge other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but longer."

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 obligation are actual. The board would supply electrical energy and the consumer is under corresponding duty to pay the sum due toward the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglect to pay the bill for additional sum, was right in disconnecting the supply without recourse to filling of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. Therefore may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference.

The Special Leave Petition is accordingly dismissed.