M/S Prem Cottex vs Uttar Haryana Bijli Vitran Nigam ... on 5 October, 2021

Author: V. Ramasubramanian

Bench: V. Ramasubramanian, Hemant Gupta

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7235 OF 2009

M/S PREM COTTEX ... Appellant

Versus

UTTAR HARYANA BIJLI VITRAN NIGAM LTD.
& ORS. ... Respondents

JUDGMENT

V. Ramasubramanian, J.

1. Challenging an Order of the National Consumer Disputes Redressal Commission (for short "National Commission"), dismissing their consumer complaint on the ground that there was no deficiency in service on the part of the licensee (electricity distribution company), the consumer of electricity has come up with the above statutory appeal.

2. We have heard Sh. K.C. Mittal, learned counsel for the appellant and Mr. Arun Bhardwaj, learned Additional Advocate General for the State of Haryana, appearing for the respondents.

3. The appellant is carrying on the business of manufacturing cotton yarn in Panipat, Haryana. The appellant is having a L.S. connection, which got extended from 404.517 KW to 765 KW with C.D 449 KVA to 850 KVA, on 3.08.2006.

4. After 3 years of the grant of extension, the appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption "short assessment notice", claiming that though the

multiply factor (MF) is 10, it was wrongly recorded in the bills for the period from 3.08.2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs.1,35,06,585/☐ The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow.

5. Aggrieved by the said notice, the appellant gave a representation on 22.09.2009 and then filed a consumer complaint before the National Commission, contending inter alia that the demand made by the respondents is the outcome of a glaring mistake and gross negligence on their part and that under Section 56 of the Electricity Act, 2003 (for short "the Act"), no amount due from a customer is recoverable after a period of two years from the date on which it became first due.

6. By an Order dated 1.10.2009, the National Commission dismissed the complaint on the ground that it is a case of "escaped assessment" and not a case of "deficiency in service". Aggrieved by the said Order, the appellant is before us.

7. While ordering notice in the above appeal on 13.11.2009, this Court granted interim stay of the impugned order. However, on an application filed on behalf of the respondents for vacating the interim order, this Court modified the stay Order on 19.08.2014 directing the appellant to pay to the first respondent herein, 50% of the demand amount within six weeks with a condition that in case the appellant succeeded, the said amount shall be refunded with interest @ 9% p.a. Accordingly, the appellant has paid a sum of Rs.54,03,293/☐ on 24.09.2014. The appellant claims to have already paid a sum of Rs.13,50,000/☐on 9.10.2009 itself and this amount, together with the amount deposited on 24.09.2014 pursuant to the interim order of this Court, constituted 50% of the amount as demanded in short assessment notice dated 11.09.2009.

8. The sheet anchor of the case of the appellant is Section 56(2) of the Act and the exposition of law made by this Court in the decision in Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam limited and Anr. vs. Rahamatullah Khan alias Rahamjulla1.

9. Before we proceed to consider the statutory provision and the decision of this Court relied upon by the appellant, it is relevant to take note of the fact that the appellant never disputed the correctness of the claim of the respondents that the multiply factor (MF) to be applied was 10, but it was wrongly applied as 5. The only grievance raised by the 1 (2020) 4 SCC 650 appellant both in their representation and in their consumer complaint was that they cannot be made to suffer on account of the negligence on the part of the respondents and that on the basis of the bill already raised, they have charged their customers and that it may not be possible for them to go back to their customers with an additional demand now. In addition, the bar under Section 56 was also pleaded.

10. Section 56 of the Electricity Act, 2003 reads as under:☐"56. Disconnection of supply in default of payment. ☐(1) 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 the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and

without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

> Provided that the supply of electricity shall not be cut off if such person deposits, under protest, ☐
>
> (a) an amount equal to the sum claimed from him, or
>
> (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.
>
> (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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

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.

12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)". This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. vs. State of Madhya Pradesh2.

13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of 2 (1989) 4 SCC 1 the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the

disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).

14. But a careful reading of Section 56(2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If Sub-section (2) of Section 56 is dissected into two parts it will read as follows:-

(i) 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; and

(ii) the licensee shall not cut off the supply of electricity.

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 sub-section (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 Sub□section (1) of Section 56 on Sub□section (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 to 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 Sub□section (1) on Sub□section (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. Sub□section (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. 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.

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 Sub-section (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 Sub-section (2).

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.

27. Therefore, we are of the view that the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed. However, since the appellant has already paid 50% of the demand amount pursuant to an interim order passed by this Court on 19.08.2014, we give eight weeks time to the appellant to make payment of the balance amount. There shall be no order as to costs.

.....J. (Hemant Gupta) .....J. (V. Ramasubramanian) NEW DELHI OCTOBER 05, 2021