

(2022) 12 CAL CK 0013
In the Calcutta High Court
Case No : W.P.A. No. 24719 Of 2022

Cesc Limited

APPELLANT

Vs

Ombudsman And Another

RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Electricity Act, 2003 — Section 42(6), 56, 56(1), 56(3)

Citation : (2022) 12 CAL CK 0013

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Om Narayan Rai, Debanjan Mukherji, Indranil Halder

Final Decision : Dismissed

Judgement

1. The Distribution Licensee (CESC Limited) has preferred the instant writ petition, challenging an order of the Ombudsman. The respondent no.2 had outstanding dues in respect of an electricity meter at premises no. 27A, Hossain Shah Road, Kolkata. As a result, the CESC Limited disconnected the said supply for non-payment of outstanding dues on February 6, 2018.
2. The respondent no.2, upon applying soon thereafter for a new electricity connection at a different premises in the area at 27A/H/2, Hossain Shah Road, was given a new electricity connection by the CESC Limited on March 19, 2018. The respondent no. 2 regularly cleared all electricity bills for such connection.
3. Subsequently, on March 2, 2021, the CESC Limited sent a letter to respondent no.2, asking the respondent no.2 to clear his pending dues in respect of the previous disconnected supply.
4. Upon the respondent no.2 not making such payment, the CESC Limited issued a notice of disconnection of the second connection, appended with the electricity bill for the month of April, 2021.
5. Respondent no.2 made a representation on May 3, 2021 against the said

disconnection notice and bill before the concerned Grievance Redressal Officer (GRO), seeking rectification of the electricity bill.

6. Due to pendency of the matter before the GRO, the respondent no.2 filed a writ petition bearing W.P.A. No.11126 of 2021, seeking an order restraining the CESC Limited/petitioner from disconnecting the supply of electricity of the respondent no.2 at the new premises.

7. On July 20, 2021, the writ petition was disposed of with a direction on the GRO to dispose of the representation of respondent no.2 within a fortnight from the dated of receipt of a copy of the order.

8. The GRO, vide order dated August 16, 2021, directed the respondent no.2 to clear the outstanding dues of the petitioner/CESC Limited by six monthly instalments in order to continue with the existing supply, restraining the CESC Limited from disconnecting supply to the respondent no.2 in the meantime.

9. The respondent no.2 challenged the said order of the GRO by filing Representation No. C-47SB/2021 before the Ombudsman, West Bengal (respondent no.1) appointed under Section 42(6) of the Electricity Act, 2003 (for short, "the 2003 Act").

10. The Ombudsman passed a Draft Settlement Order (DSO), upon hearing the parties, on June 9, 2022. The CESC Limited raised an objection to it by a written submission on July 12, 2022, seeking modification of the said DSO.

11. However, the Ombudsman passed final order on September 15, 2022, inter alia, observing that the CESC Limited was not entitled to raise the demand for arrears of its dues as the claim was barred by limitation under Section 56(2) of the 2003 Act.

12. Challenging the said order, the CESC Limited has preferred the instant writ petition.

13. Learned Counsel appearing for the CESC Limited argues that Section 56(1) of the 2003 Act envisages three modes of recovery of outstanding dues – a money suit for recovery of the amount, disconnection of the supply and discontinuance of the supply until the outstanding dues, with expenses incurred by the Licensee in cutting-off and reconnecting the supply, are paid.

14. It is argued that Section 56(2) of the 2003 Act is not applicable in the present case. It is submitted that the second mode contemplated in sub-section (2) of Section 56 was already resorted to on February 06, 2018, by disconnecting the previous supply.

15. However, in view of such disconnection, no further bills could be raised in respect thereof and there was no further scope of showing the outstanding sum continuously in the electricity bills for the said disconnected meter as recoverable as arrear of charges for electricity supplied.

16. Learned counsel for the petitioner/CESC Limited alleges that when the new connection was given at Premises No.27A/H/2 on March 19, 2018, the respondent no.2 suppressed about the previous outstanding dues standing in his name in respect of Premises No.27A. Hence, the said outstanding was not detected, since the premises number shown for the new connection was different and could not be traced to the previous defaulting meter.

17. Hence, it is submitted that it was not possible for the CESC Limited to claim the outstanding amounts at the time of giving the new connection. However, immediately upon detection, the claim of arrears was made on March 2, 2021 and, upon non-payment, a disconnection notice was given.

18. Learned counsel appearing for the CESC Limited argues that the dues under Section 56(2) were in respect of Premises No.27A, whereas "the supply" now sought to be disconnected for non-recovery of the outstanding, as contemplated in Section 56(2), is with regard to a different premises. Hence, it is argued that the bar stipulated in sub-section (2) is not attracted.

19. Learned counsel for the CESC places reliance on Clause 13.9 of Regulation 46, that is, the West Bengal Electricity Regulatory Commission (Standards of Performance of Licensees Relating to Consumer Services) Regulations, 2010. It is submitted that for getting a new connection for supply of electricity, an intending consumer is required to pay all outstanding dues in respect of any other service connection held in his/her name located in the area of supply of the same Licensee and shall also be responsible for payment of outstanding charges if it is established that he/she had a nexus with the previous consumer or has/had benefited from non-payment of the aforesaid outstanding dues by the previous consumer.

20. It is submitted that the respondent no.2, in the present case, falls within the purview of the said Clause inasmuch as the area of supply of the new premises was the same as the old premises, in respect of which there were outstanding dues in the name of the respondent no.2 himself.

21. That apart, the nexus between the two consumers is obvious because they are the one and the same, that is, respondent no.2.

22. Learned counsel next places reliance on Clause 4.5 of Regulation 55, being the WBERC (Electricity Supply Code) Regulations, 2013. Clause 4.5.1 thereof provides that the licensee may disconnect the supply of electricity to a consumer if the latter makes any incorrect or wrong declaration for obtaining new connection or any matter related to supply of electricity. It is submitted that Annexure-A to Regulation 46 pertains to the format for an application of inspection of an intending consumer's premises and preparation as well as supply of an estimate of the deposits for the purpose of getting new electricity supply at such premises.

23. There is a specific clause in the said format which mandates the intending

consumer to declare that there is no other service connection/line, live or disconnected, given/was given by the Licensee in the name of the intending consumer in the premises for which the new service given is being applied for.

24. There is another clause immediately thereafter in the said format, which requires the intending consumer to declare that he has service connection in his name in the premises where electricity is supplied by the Licensee and there is no outstanding due in respect of that service connection.

25. It is submitted that the respondent no.2 suppressed about the outstanding dues regarding his previous connection at a premises in the same area of supply, for which, the CESC Limited could not ascertain at the inception, while giving new connection to the respondent no.2, the said outstanding dues.

26. It is contended that in the event a strict interpretation is lent to the Regulations, the entire purpose of the Regulations will become otiose.

27. Learned counsel for the petitioner cites the judgment of Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and another Vs. Sri Seetaram Rice Mill, reported at (2012) 2 SCC 108, for the proposition that the Rule of Purposive Construction ought to be applied for giving a meaningful interpretation to Section 56 of the 2003 Act and the relevant Regulations.

28. Learned counsel next cites Swedish Match AB and another Vs. Securities & Exchange Board of India and another, reported at (2004) 11 SCC 641, in support of the proposition that the Regulations being regulatory in nature, the intent and object sought to be achieved thereby must be firmly complied with and do not deserve strict construction.

29. Learned counsel for the petitioner then cites Paschimanchal Vidyut Vitran Nigam Limited and others Vs. DVS Steels and Alloys Private Limited and others, reported at (2009) 1 SCC 210 and argues that when the purchaser of a premises approaches the Distributor seeking a fresh electricity connection to its premises for supply of electricity, the Distributor can stipulate the terms subject to which it would supply electricity. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them. It was further held that a stipulation that outstanding dues for electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premise, cannot be termed as unreasonable or arbitrary.

30. The next judgment cited by the petitioner is a co-ordinate bench judgment in Rashi Metals Pvt. Ltd. Vs. West Bengal State Electricity Board and others, reported at (2007) 1 CHN 210. In the said Judgment, the learned Single Judge considered that if the consequence of an action is that the debt incurred by one entrepreneur, if not paid by him, is to be paid by the society at large it can never be in the interest of the society to allow this kind of a situation to prevail.

31. Learned counsel next cites M/s Phool Chand BajrangLal and another Vs. Income Tax Officer and another, reported at (1993) 4 SCC 77. It was held by the Supreme Court therein that the argument that the question regarding truthfulness of transactions can only be examined during the assessment proceedings and not at any stage subsequent thereto is too broad and general. The purpose and intent of the provisions were looked into in the said case.

32. Learned counsel next cites Central Airmen Selection Board and another Vs. Surender Kumar Das, reported at (2003) 1 SCC 152. There, the Supreme Court did not apply the principle of Promissory Estoppel, which is based on equitable principles. It was held that a person who has himself misled the authority by making a fake statement cannot invoke the said principle if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled.

33. Learned counsel appearing for the respondent no.2/consumer argues that for the applicability of Clause 13.9, referred to by the CESC Limited, the connection has to be 'new'. Hence, it is argued that the present claim made by the Licensee after the second supply became three years old cannot be a fit case for attracting the same.

34. It is argued that Section 56(2) is applicable in its full rigour, since the CESC Limited did not show continuously, for three long years after giving the second supply, that the impugned claim was due from the consumer.

35. It is argued that there is no question of suppression of any material fact by the respondent no.2 while applying for the new connection and the Form annexed as Annexure-A to Notification 46 was dulyfilled up as required.

36. Learned counsel for the respondent no.2 seeks to rely on a photocopy of a purported joint inspection report which indicates that the old and new premises-in-question were several meters apart and, as such, are different premises.

37. Learned counsel places reliance on the definition of "intending consumer"and argues that the respondent no.2 was an existing consumer, as opposed to an "intending" consumer, after three years of user of the new electricity connection, when the outstanding amount was first claimedby the Distributor in respect of the second connection.

38. Learned counsel for the respondent no.2 places reliance on the definition of 'Intending Consumer', as provided in Clause 2.1(xv) of Regulation 46 of 2010 to show that the said expression means a person who has applied to a Licensee to obtain supply of electricity and shall remain as such of that Licensee till he is supplied with electricity against such application or his application is rejected lawfully. It is submitted that when the claim was made, the petitioner did not fall within the category of the term 'Intending Consumer' but was already an existing consumer. Hence, Clause 13.9, which categorically mentions an intending consumer, is not attracted to the facts of the present case at all.

39. Heard learned counsel for the parties.

40. The present adjudication hinges upon the applicability of Section 56 of the Electricity Act, 2003, which is quoted below:

"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."

41. It is clearly seen that sub-section (2) refers to "no sum due from any consumer under this section", thereby referring to the sum mentioned in sub-section (1) thereof. The 'sum' mentioned in sub-section (1) of Section 56 has been qualified to be any charge of electricity or any sum other than a charge for electricity due from him to a Licensee. Sub-section (1) stipulates that, after giving notice of at least 15 clear days in writing to such person, the Licensee may 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 and may discontinue the supply until such charge or other sum together with cutting off and reconnection expenses are paid. Such action can be taken when any person neglects to pay any such amount. These remedies are over and above recovery of the money by filing a suit.

42. The bar envisaged in sub-section (2) of Section 56, thus, refers to a sum recoverable under sub-section (1) and stipulates that 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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of electricity.

43. It is noteworthy to mention that Section 56 envisages recovery of outstanding dues on the one hand and cutting off electricity or discontinuance of the same on the other as separate and independent remedies.

44. The conjunction "and" in sub-section (2) separates the bar as to recovery of charges from cutting off supply of electricity as a consequence.

45. In the present case, the previous defaulting meter was disconnected within time, that is, on February 06, 2018.

46. However, after the second supply at Premises no.27A/H/2, Hossain Shah Road was given on March 19, 2018, the Licensee did not show the outstanding dues with regard to the previous connection in the name of the respondent no.2as recoverable,continuously or otherwise, at any point of time till the arrears were first claimed on March 02, 2021.

47. The argument, that since the previous connection had been severed, the recoverable arrears could not be shown continuously,is specious but not acceptable.The Licensee cannot merrily apply double standards by saying that so far as the recovery is concerned, the same pertained to a previous connection but the disconnection will be effected with regard to the new connection. The outstanding falling duebeing the common cause of action for both remediesin Section 56(2), the disconnection and the recovery had to be in respect of the same premises.

48. In the present case, however, while giving the new supply on March 19, 2018 and till three years thereafter, no claim of arrears was made by the petitioner.

49. If the Licensee seeks to invoke Section 56(2) of the 2003 Act to cut off the supply of electricity at the second premises, the arrear recoverable has to be related to the same.Alternatively, the Licensee ought to havecontinuously shown the outstanding amount as due in the bills raisedfor the second connection at the new premises in order to escape the rigour of sub-section (2). Having not done so, there is no conceivable reason why the Licensee should be exempted from the operation of Section 56(2) of the 2003 Act inasmuch as the same stipulates a two-year limitation.

50. Insofar as the Clause 13.9 of Regulation 46 of 2010 is concerned, the language of the same is as follows:

"13.9. For getting new connection for supply of electricity from a licensee an intending consumer shall be required to pay all outstanding dues to the licensee

in respect of any other service connection held in his/her name located in the area of supply of the same licensee and he/she shall also be responsible for payment of outstanding charges calculated in a prorated manner, if it is established that he/she has/had a nexus with the previous consumer(s) including the purchaser/the new lessee/the new tenant of a property or a portion thereof in respect of which there are charges and/or who has/had benefited from non-payment of the aforesaid outstanding dues by the previous consumer(s) to the licensee.”

51. In order to attract the said provision, “an intending consumer” is liable to pay the outstanding dues as envisaged in the said Regulation.

52. As rightly argued by learned counsel for the respondent no.2, Regulation 2.1(xv) clearly defines ‘intending consumer’ to mean a person who has applied to a licensee to obtain supply of electricity and shall remain as such of that licensee till he is supplied with electricity against such application or his application is rejected lawfully.

53. In the present case, the respondent no.2 applied for electricity in respect of a different premises that is 27A/H/2, Hossain Shah Road, and was given such new connection on March 19, 2018 itself.

54. However, at that juncture, the CESC Limited did not levy such outstanding charge on the respondent no.2.

55. Moreover, the recovery of such outstanding dues was not shown in any of the bills for the new connection for three years, which is beyond the two-year limitation period prescribed in Section 56(2) of the 2003 Act. Moreover, at the juncture when the agreement was entered into with regard to the second electricity connection, no terms and conditions of such contract indicated that the respondent no.2 would be liable to pay a further amount as outstanding dues for a different meter.

56. As such, the principle laid down in *Surender Kumar Das* (supra) is not applicable to the instant case. In the said judgment, Promissory Estoppel was not invoked in a case where a person had himself misled the authority by making a fake statement, which misrepresentation misled the authority into taking a decision which on discovery of the same was sought to be cancelled. In the facts of the said case, although the petitioner therein was not eligible for selection as a candidate, he had stated that he possessed the +2 qualification which made him eligible for appointment after grant of relaxation in the matter of age.

57. The format given in Annexure-A to Regulation 46 contemplates, inter alia, a declaration that there is no other service connection/line, live or disconnected, given/was given in the premises for which the new service connection was being applied for.

58. The previous disconnection took place in respect of a different premises, that is, 27A, whereas the second connection was given at Premises No.27A/H/2.

Nothing has been pleaded or proved by the CESC Limited to establish that the two were the same or renumbered premises. Even without looking into the purported joint inspection report cited by the respondent no.2 during arguments, in the absence of any such case of identity of the two premises having been pleaded or proved by the CESC Limited, we cannot construe that the premises were same, as required under the said Clause of the Format.

59. The next Clause therein provides that the intending consumer is to declare that he has service connection in his name at the premises where electricity is supplied by the Licensee and there is no outstanding due in respect of that service connection. The premises where the electricity was supplied is different from the previous premises, where disconnection was effected in respect of a different meter. Hence, the service connection was not in the same premises but in a different premises that is 27A/H/2. Moreover, the Clause uses the present tense and, therefore, could not be referred back in any manner to the dues of the previous premises.

60. Clause 4.5.2 of Regulation No.55 takes into account an explanation being sought from a consumer before disconnection is effected under Clause 4.5.1, that is, if the consumer makes any incorrect or wrong declaration for obtaining the new connection. Here, no such misinformation was given by the respondent no.2/consumer, nor was any such ground cited in the impugned disconnection notice.

61. None of the said Clauses, as such, is attracted in the present case since after three years, the second connection did not remain a "new connection", nor was any notice in writing given to the consumer stating the reasons for the proposed disconnection and calling upon the consumer to give an explanation in that regard. Without following such process, the CESC Limited cannot now improve its case at the stage of arguments of the writ petition to the effect that the disconnection was effected on the ground of misrepresentation/suppression. The actual notice of disconnection in the present case was issued merely on the allegation of outstanding dues for a previous connection.

62. Inasmuch as Clause 3.4.2 of Regulation 55 is concerned, the licensee is eligible to recover from a new and subsequent consumer(s) the dues of the previous and defaulting consumer in respect of the same premises only if a nexus between the previous and defaulting consumer and the new consumer is proved.

63. Even though, in the present case, the respondent no.2 himself is the previous as well as the subsequent consumer, the default was not in respect of the same premises, nor was the second connection 'new' when the claim was made in 2021. Hence, none of the said provisions are applicable in the present case.

64. Next considering the Sri Seetaram Rice Mill's case (supra), it is seen that the Supreme Court laid down the ratio that the Courts strongly lean against any

construction which tends to reduce a statute to a futility or defeats the plain intention of the legislature. In such context, Purposive interpretation was mandated to be adopted. In the present case, however, Section 56 of the 2003 Act, read with the relevant Clauses, that is, Clause 13.9 of Regulation 46 and the relevant Clauses of Regulation 55, can fully be given effect to even if literally construed. There does not arise any occasion for the statute being reduced to a futility or the plain intention of the legislature being defeated. Hence, there is no necessity to apply the Purposive Rule of interpretation instead of the Literal Rule.

65. In the case of Swedish Match AB (*supra*), regulations were held to be regulatory in nature and the intent and object sought to be achieved were required to be firmly complied with. The Regulations, it was held, did not deserve strict construction in the facts of the said case.

66. However, the intent sought to be achieved by the parent statute (the 2003 Act) as well as the governing Regulations in the instant case are not defeated or hindered in any manner by giving the Literal interpretation to the Sections and Regulations.

67. Inasmuch as Paschimanchal Vidyut Vitran Nigam Limited (*supra*) is concerned, the same equates the supply of electricity by a distributor to a consumer to a sale of goods. It has been held that when the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. If the rules are silent, the licensee can stipulate such terms and conditions as it deems fit to regulate its transactions and dealings.

68. However, a rider was given to the effect that so long as such Rules and Regulations or terms and conditions are not arbitrary and unreasonable, Courts will not interfere with them. In Paragraph No.13 of the said Judgment, the Supreme Court observed that the dues in regard to electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to the premises.

69. In the present case, apart from the premises being different, the impugned claim was made about three years after the new electricity supply was given to the respondent no.2. As such, it was no longer a 'fresh' connection, nor given in respect of the same premises. The Regulations are not silent and are self-explanatory, leaving no scope for further interpretation. Hence, the ratio laid down in Paschimanchal Vidyut Vitran Nigam Limited (*supra*) cannot be applied to the present case.

70. In Rashi Metals Pvt. Ltd (*supra*), the learned Single Judge had made the observations relied on by the petitioner for the purpose of fixation of tariff, which is a policy matter, and not recovery of dues. Hence, the same ratio cannot be blindly imported to the present case.

71. In *M/s Phool Chand Bajrang Lal* (supra), also cited by the petitioner, the purpose and intent of the relevant provisions were looked into and the argument, that truthfulness or falsehood of transactions can only be examined during the original assessment proceedings and not at any subsequent stage, was upheld.

72. However, as discussed above, the respondent no.2 here did not resort to any instance of untruth or falsehood in taking the new connection. Rather, the CESC Limited ought to have brought necessary amendments to their system, modalities and procedure, which would prevent defaulting consumers, applying in the same name but for a new connection in a different premises, from escaping the recovery net. If such a system was in place, the CESC Limited would have been able to claim the outstanding arrears at the juncture when the new supply was given.

73. In fact, the previous disconnection took place on February 06, 2018 and on March 19, 2018, that is, only about a month and a half thereafter, the new connection was given to the respondent no.2. Surprisingly, it escaped the notice of the CESC that there was a previous default in the name of the respondent no.2.

74. The claim for arrears regarding the previous disconnection having been made after three years, only on March 02, 2021, the same would, in any event, come within the purview of the bar of limitation stipulated in Section 56(2) of the 2003 Act.

75. There was ample scope for the CESC Limited, if they were diligent to the standard of a reasonable person, to have raised the claim within a period of two years from when it became outstanding upon non-payment by the respondent no.2 with regard to the previous connection. Having not done so, the rigours of Section 56(2) squarely apply in the present case. Any contrary interpretation would render the statutory limitation period nugatory and toothless and, as such, no absurdity can be attributed to the language of the legislature.

76. In such view of the matter, the claim of the CESC Limited for the outstanding amounts with regard to the previous premises is palpably time-barred and hence set aside. The consequential threat of disconnection is also not tenable in the eye of law, since both the remedies of recovery and disconnection are contemplated within the ambit of Section 56, hence set aside.

77. The Ombudsman was justified and acted within his jurisdiction in reversing the order of the GRO on the above logic.

78. Hence, W.P.A. No.24719 of 2022 is dismissed on contest, thereby upholding the Order dated September 15, 2022 passed by the Ombudsman in Representation No.C-47SB/2021, whereby the order of the GRO was set aside and the claim of the CESC Limited was held to be time-barred.

79. There will be no order as to costs.

80. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.