

(1986) 01 RAJ CK 0043
In the Rajasthan High Court
Case No : Civil Writ Petition No. 506 of 1976

Dalip Singh

APPELLANT

Vs

Rajasthan State Electricity Board, Jaipur and Others

RESPONDENT

Date of Decision : 07-01-1986

Acts Referred:

Electricity (Supply) (Amendment) Act, 1966 — Section 12

Electricity (Supply) Act, 1948 — Section 60A

Rajasthan Government Electrical Undertakings (Dues Recovery) Act, 1960 — Section 3, 4

Citation : AIR 1986 Raj 131 : (1986) 1 WLN 23

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : S.C. Mehta, for the Appellant; S. Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

P.C. Jain, J.—This petition is directed against Rajasthan State Electricity Board and its concerned officers wherein the petitioner has averred that he being the brother of late the Ruler of Jodhpur Maharaja Hanwant Singhji was entitled to the facilities of free supply of electricity and water under the letter of the Government of India No. E-4/P/49 dated March 24, 1949. The aforesaid facility was cancelled by the Government of Rajasthan by its letter No. F. 22 (36) GAB 67 dt. Sept. 8, 1967 from April 1, 1967, According to the petitioner after the cancellation of aforesaid facilities from April 1, 1967, the petitioner began paying electric charges regularly. The petitioner further averred that the Rajasthan State Electricity Board was constituted in the year 1957 and all the previous dues of Electricity Department of the State Government vested in the Board vide Section 60(1) of the Electricity (Supply) Act. 1948 (Central Act No. 54 of 1948) The respondent No. 4 (Assistant Engineer C. D. III Jodhpur has served a notice No. AEN Ced. III/REV. 76/D, 2144 dt. March 4, 1976, on the petitioner on March 5, 1976 (Anx.2) whereby the petitioner was called upon to deposit the alleged outstanding dues of electricity consumption up to 1962 amounting to Rs.

38,443.38p. and thereafter up to January 1976 Rs. 6857.23p. within fifteen days failing which the electricity supply would be disconnected without any further notice and the notice was sent u/s 24 of the Indian Electricity Act 1910 (Central Act No. IX of 1910). It was also stated in the notice that action will be taken to recover the outstanding dues under the Rajasthan Government Electrical Undertaking (Dues Recovery) Act 1960 (No. XXXIV of 1960) as arrears of land revenue. The said notice and the proposed action was challenged by the petitioner on number of grounds and it was prayed that the respondents be restrained from disconnecting the electric supply and from recovering the alleged dues mentioned in Anx. 2 as arrears of land revenue under the Rajasthan Government Electrical Undertaking (Dues Recovery) Act 1960 (No. XXXIV of 1960) (in short the Dues Recovery Act 1960) and it was also prayed that notice u/s 24(1) of the Electricity Act dt. March 4, 1976 be quashed A prayer was also made seeking declaration that the said Dues Recovery Act 1960 is ultra vires of the Constitution and be declared void.

2. Reply to the writ petition has been filed and rejoinder too has been filed by the petitioner. The petitioner's claim has been resisted by the Board. A preliminary objection has also been raised that the petition is not maintainable in view of the provisions contained in Article 363 of the Constitution. In order to avoid duplicity I am not referring to the details of the pleadings of the parties as the pleas and the contentions advanced before me would be dealt with.

3. I may mention here that after presentation of the writ petition stay order was passed by this Court in relation to certain meters. On March 26, 1976 this Court ordered that meters Nos. 15755, 15758, 18605, 18606, 18607, 18608, 18609, 18824, 186211, 18612, 15757, 15761, and 15756 shall not be disconnected. It was ordered on the basis that it is apparent from the list appended to the notice that there were no dues outstanding in respect of these meters. This order was confirmed after hearing both the parties on Aug. 30, 1976. On that day it was ordered that there is no stay order with regard to other meters so it is obviously open to the Board to disconnect the others for which no stay order is there.

4. I have heard Shri Sayarchand Mehta, learned counsel for the petitioner and Shri Sudesh Gupta, learned counsel for the respondents.

5. Mr. S. Gupta, the learned counsel for the respondents at the outset raised the preliminary objection that this Court has got no jurisdiction and the present writ petition is not maintainable as the writ petition raised a dispute of the nature which arises out of the covenant, and jurisdiction of all Courts including this Court and Supreme Court is barred under Article 363 of the Constitution and reliance was placed by Mr. Gupta on the decision of the Supreme Court in *Colonel his Highness Sawai Tej Singhji of Alwar Vs. Union of India (UOI) and Another*, . Mr. S.C. Mehta, learned counsel for the petitioner submitted that the writ petition is not only founded on the facility of free supply of electricity provided under the covenant but it is also founded on other grounds of challenge, so he submitted that his alternative ground may be taken into consideration and the ground of

the challenge based on the facility provided in the letter of the Government of India dated March 24, 1949 may be left out of consideration for the present. He urged that no action of recovery can be initiated against the petitioner in respect of the amounts alleged to be due in the notice Anx. 2 under the provisions of the Dues Recovery Act, 1960. He also submitted that the petitioner confines his writ petition so far as the action u/s 24 of the Electricity Act is concerned to those members in respect of which this Court has granted stay order to the petitioner and in respect of the other meters the petitioner gives up his case. But in respect of the other meters he urged that no amount can be realised from the petitioner as arrears of land revenue under the provisions of the Dues Recovery Act 1960, as under the provisions of the Dues Recovery Act, 1960 only those moneys can be recovered, the recovery of which is not barred by limitation. The amounts shown to be outstanding against those meters in respect of which there is no stay order are not recoverable as in respect of those claims the period of limitation has already expired. So these amounts cannot be considered as dues outstanding against the petitioner and as such action under the Dues Recovery Act 1960 is uncalled for.

6. Mr. Mehta urged that no legal action, therefore, can be taken against the petitioner for the recovery of those amounts under the Dues Recovery Act 1960. He pointed out that Section 9 of the Dues Recovery Act makes a provision for extension of period of limitation after the endorsement of the Dues Recovery Act 1960. Section 69A of the Electricity (Supply) Act 1948 provides period of limitation extended in certain cases. Mr. Mehta submitted that under the amended Section 60A the period of limitation provided is 3 years from the date of commencement of the Electricity Supply Amendment Act 1966. That period too has also expired in 1969. Thus the alleged claim in respect of the outstandings shown in Anx. 1 is barred by limitation and so the provisions of Section 6 of the Dues Recovery Act 1960 will not be attracted, and the petitioner cannot be proceeded against for the recovery of the aforesaid amount as arrears of land revenue under the Dues Recovery Act.

7. Mr. S. Gupta, on the other hand, submitted that when the energy charges have not been paid in respect of the connections as shown in the enclosure of Anx. 2 then such dues are payable by the petitioner presently to the Board being the successor of the Government Electrical undertakings. The provisions of the Dues Recovery Act 1960 not only provide for extension of the period of limitation but also provide for the expeditious recovery of certain sums due to the State Government or to the Rajasthan Electricity Board. In respect of recovery of such dues provisions of Section 6 can be resorted to for expeditious recovery. If after notice of demand is served and dues are not paid the (debtor) shall be deemed to be in default and under Sub-section (2) of Section 6 a certificate shall be forwarded to the Collector by the Prescribed Authority and on receipt of such certificate the Collector possesses the power to proceed to recover from the debtor the amount of the demand as if it were an arrear of land revenue. Mr. S. Gupta pointed out that the debtor has a right to challenge the liability by filing a

suit as contemplated u/s 5 of the Dues Recovery Act and if such a suit is not filed by the debtor then the notice of demand under Sub-section (2) of Section 5 shall be conclusive proof of the various dues, penalty and costs mentioned therein.

8. The rival contentions of the parties need anxious and deeper examination and consideration. The case relating to those meters against which no outstandings are there, presents no difficulty as there is no question of discontinuance of supply of electricity through those meters and in respect of which this Court has already confirmed the stay order and the petitioner is undoubtedly entitled to continuance of supply of electricity through those meters.

9. The main question that arises for consideration is as to whether the petitioner can be proceeded against for the recovery of the alleged outstanding amount under the provisions of the Dues Recovery Act, 1960, and this question is based primarily on the premise as to whether the alleged outstanding amounts are recoverable and are within tune and not barred by limitation. So far as the objection based on Article 363 is concerned, suffice it to say that it is open to the petitioner to set up an alternative case. The petitioner is entitled to say that even under the ordinary law no action for recovery of a time barred claim can be taken under the provisions of the Dues Recovery Act, 1960. In such a situation in my opinion, the consideration of Article 363 does not arise and this Court is only called upon to examine the question as to whether legal action be taken against the petitioner to recover the outstanding dues under Dues Recovery Act. So far as discontinuance of supply of electricity in respect of those meters for which stay order has not been passed is concerned suffice it to say that it is open to the Board to discontinue the supply as has already been observed by this Court while confirming the stay order so the question of restraining the Board from disconnecting the supply of electricity in respect of those meters does not arise. The only question with which I am concerned in this writ petition, therefore, is as to whether the alleged outstanding amount can be recovered from the petitioner under the provisions of the Dues Recovery Act, 1960. It may be mentioned that an action has been threatened against the petitioner, although no action has so far been initiated against the petitioner under the Dues Recovery Act. The notice Anx. 2 is a notice u/s 24 of the Electricity Act and it is in that notice, it has been mentioned that necessary legal action will be taken to recover the outstanding dues under the Dues Recovery Act.

10. For examining the question which I have to consider I may refer to the provisions of Dues Recovery Act 1960. The expression "dues" has been defined in Clause (b) of Section 2. It reads as under : --

"(b) "dues" means any sum payable to a Government electrical undertaking on account of-

(i) consumption of electrical energy supplied; or

(ii) any remuneration, rent or other charges for hire, inspection, test, installation, connection, repair, maintenance or removal of any electrical motor, electric

machinery, control gear, fittings, wires, or apparatus for lighting, heating, cooling or motive power or for any other purpose for which electricity can or may be used or any industrial or agricultural machinery operated by electricity; or

(iii) price of any such goods as aforesaid taken on loan but not returned.;"

And the expression "debtor" has also been defined in Clause (c) as under : --

"(c) "debtor" means a person by whom any dues are payable."

A perusal of these definitions would show that any sum payable to a Government Electrical Undertaking of the nature specified in the definition shall be considered to be dues and a person by whom such sum is payable is taken to be a debtor. In both the definitions the word which has been used is payable. If dues are payable by a person then he is a debtor and "dues" are any sum payable to a Government undertaking under nature specified in the definition of the expression "dues". u/s 3 it is provided that every bill for dues payable to a Government Electrical Undertaking by a debtor shall be in the prescribed form. Here again the words which have been used are "dues" payable to a Government Electrical Undertaking. It is not in controversy that by a regular suit, the alleged outstanding amount is not recoverable as the suit is barred by limitation. Section 9 of the Dues Recovery Act 1968 lays down that the period of limitation in respect of any suit by or on behalf of the Board for the recovery of any dues shall be six years from the time from which the period of limitation would begin to run, under the Limitation Act or under any other law for the time being in force against a like suit by a private person. Section 9 begins with the non obstante clause so provisions of the Limitation Act or the provisions of any other law for the time being in force would not" apply and provisions of Section 9 would apply. The provisions of Section 9, however, lays down that Article 149 of the First Schedule to the Act shall apply to suits filed by the Board in respect of the dues occurring before the date of the first constitution of the Board. Section 60A of the Electricity Act 1948 as amended by Section 12 of the Act No. XXX of 1966 provides that the Board may institute a suit for the recovery of the amount due to the State Government for and in connection with the consumption of the electricity, the right of recovery of which is vested in the Board and the limitation whereof has been expired before the constitution of the Board or even three years of the commencement of the Electricity Supply Amendment Act 1966 and where the Board has been constituted after such commencement within three years of its constitution under Clause (i) of Section 60A. The suit thus could be filed within three years from the date of the commencement of the Electricity Amendment Act, 1966 (Act No. XXX of 1966). So the extended period of limitation u/s 60A had expired in the year 1969. In this view the suit for the recovery of arrears had become barred by time. It is, therefore, to be seen as to whether such dues, the recovery of which has been barred by time, are recoverable under the provisions of Dues Recovery Act, 1960.

11. It would be relevant here to refer to the decision of the Supreme Court in

New Delhi Municipal Committee Vs. Kalu Ram and Another, In that case the respondent Kaluram was allotted one stall on the licence fee of Rs. 30/- payable per, month. Later on allottees applied to the Rent Controller for reducing the rent which were ultimately dismissed. In the mean time the arrears money of the allottees fell in arrears in paying the licence fee in respect of their stalls. The appellant took no steps to recover the dues till December 1968 when he demanded the entire rent in arrears from May 1950 to April 1957. The appellant then asked the Estate Officer u/s 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 to take steps to recover the amount in arrears u/s 7 of that Act and the Estate Officer made an order u/s 7 asking the respondent to pay the same overruling his objection that the claim was barred by limitation. His appeal failed. The order was then challenged by him by way of writ petition and one of the grounds of challenge was that Section 7 could not be resorted to for recovery of the same as the claim was time barred. The contention was allowed by the High Court and the matter was taken up in appeal by the Municipal Committee before the Supreme Court. The Supreme Court dismissed the appeal. Their Lordships of the Supreme Court placed reliance on a decision of the Privy Council in Abdullah Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 . It was observed that construing the expression "any money due¹ in Section 186 of the Indian Companies Act 1913 the Privy Council held that this meant money due and recoverable in a suit by the Company and the Privy Council further observed as under :--

"It is not questioned that a creditor whose suit is barred by limitation, if he has any other legal remedy permitting him to enforce his claim, would be free to avail of it. But the question in every such case is whether the particular statute permits such a course. Does Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 create a right to realise arrears of rent without any limitation of time? u/s 7, the Estate Officer may order any person who is in arrears of rent "payable" in respect of any public premises to pay the same within such time and in such instalments as he may specify in the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause why such order should not be made, and, if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is "payable". The word "payable" is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. "Payable" generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a

right to claim a debt otherwise time-barred."

Sub-section (1) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act is as under : --

"Where any person is in arrears of rent payable in respect of any public premises, the estate officer may by order, require that person to pay the same within such time and in such instalments as may be specified in the order."

And Sub-section (3) of that Section provided as under:--

"If any person refuses or fails to pay the arrears of rent or any instalments thereof payable under Sub-section (1) or the damages or any instalment thereof payable under Sub-section (2) within the time specified in the order relating thereto the estate officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue."

Their Lordships observed that from the terms of Section 6, it is apparent that it provides a summary procedure for the recovery of arrears of rent.

A contention was advanced on behalf of the appellant that since Section 7 did not put a time limit for taking steps under that section and as the limitation prescribed for a suit to recover the amount did not apply to a proceeding under this section the High Court was in error in upholding the respondents objection and it was contended that the "debt" remained due though barred by limitation. Their Lordships negated the aforesaid contention and observed as under : --

"It is a section which creates a special procedure for obtaining payment of moneys; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights. "We are clear that the word "payable" in Section 7, in the context in which it occurs, means "legally recoverable." Admittedly, a suit to recover the arrears instituted on the day the order u/s 7 was made would have been barred by limitation. The amount in question was, therefore, irrecoverable."

The observations of their Lordships of the Supreme Court have relevance to the present case and the ratio of that decision fully applies to the present case. Action under the Dues Recovery Act, 1960, can be taken only when any sum is payable. If the recovery of the energy charges is barred by law of limitation, then it cannot be said that such time barred amount is in any way payable. It is significant to note that for the recovery of the dues the Dues Recovery Act as well as the Electricity Supply Act make a specific provision for limitation. Had there been no such specific provision under the Act, the ordinary law of limitation would have been applicable. Only those dues can be recovered which are within limitation and only such dues which are within limitation can be said to be payable and in respect of such sums or dues which are payable summary procedure for recovery can be resorted to under the Dues Recovery Act. Provisions of Ss. 3 to 6 are provisions relating to expeditious recovery of the dues but those provisions can only be resorted to when the dues are otherwise

recoverable and not barred by limitation. If the dues are not recoverable and enforceable at law being barred by limitation then in my opinion the provisions of Ss. 3 to 6 cannot be resorted to. Reference may also be made to the Division Bench decision of the Punjab High Court in Custodian General of Evacuee Property in New Delhi v. Harnam Singh AIR 1957 Punj 58. Their Lordships were taking into consideration the provisions of Section 48 of the Administration of the Evacuee Property Act under which any sum due to the State Government or to the Custodian was recoverable as an arrear of land revenue. In para 6 their Lordships observed as under : --

"The expression "due" is defined by Webster to mean that which is owed; that which custom, statute or law requires to be paid and by Worcester that which anyone has a right to demand, claim or possess; that which can justly be required. A debt or other obligation is due when it is legally enforceable, i.e. when the creditor has a right to demand payment and to enforce collection.

The summary remedy provided by Section 48 for the recovery of sums due to the State Government or to the Custodian must, in my " opinion, be restricted to sums legally recoverable, i.e. sums which are admitted or proved to be due and cannot be extended to sums which are alleged or claimed to be due."

I, therefore, find force in the contention advanced by the learned counsel for the petitioner that no legal action can be taken against the petitioner for the recovery of the outstanding amount under the provisions of the Dues Recovery Act, 1960. In the view which I have taken it is not necessary to examine the vires of the provisions of the Dues Recovery Act, 1960.

12. The writ petition, therefore, deserves to be partly allowed as under : --

The Respondents are restrained from disconnecting the supply of electricity in respect of the following meters : --

Meters Nos. 15755, 15758, 18605, 13606, 13607, 18608. 18609, 18824, 18611, 18612, 15757, 15761 and 15756.

However, if the petitioner fails to make payment of electricity charges in respect of those meters it would be open to the respondent Board to take such action as is permissible under law.

13. So far as the other meters are concerned, the respondents are further restrained from proceeding to take any action of recovery under the provisions of the Rajasthan Government Electrical Undertakings (Dues Recovery) Act, 1960. The notice Anx. 2 dated March 4, 1976 is quashed in respect of the aforesaid meters for which stay order was passed by this Court.

14. The parties shall bear their own costs of the writ petition.