(1996) 08 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

Maharashtra State Electricity Board APPELLANT

Vs

Swastik Industries RESPONDENT

Date of Decision : 30-08-1996

Acts Referred:

Citation : 1996 2 CPC 661 : 1996 3 CPJ 71 : 1996 3 CPR 182 : 1997 1 CLT 347

Hon'ble Judges : V.Balakrishna Eradi , S.S.Chadha , R.Thamarajakshi , S.P.Bagla J.

Final Decision : Appeal accepted

Judgement

1. THIS First Appeal No. 520 of 1995 is against the Order of the Maharashtra State Commission in complaint No. 317/93 dated 24.5.1995. The Maharashtra State Electricity Board is the appellant and M/s. Swastik Industries, Pune, is the respondent before us. The summary of the facts is as follows :

2. ON an inspection of electric meter of the respondent made by the appellant in January, 1985 it was found that K.W. and K.V.A.M.D. were faulty and K.W.H unit recording was also faulty. It was, therefore, decided by the appellant that the assessment of units consumed should be made on "average basis" for the period August, 1984 to December, 1984. However, till 5.2.1983 the appellant did not take any action on the inspection report of January, 1985. It was on 5.2.1993 that the appellant informed the respondent about this low recording of electricity consumption on his meter and enclosed a supplementary bill for Rs. 3,17,659/- for the period August, 1984 to December, 1984 indicating details of the average units required to be charged, what was actually charged and the difference thereof. The respondent, according to the appellant, requested for the payment of the said supplementary bill by installments which was allowed and they accordingly paid the amount due from them in 6 installments of Rs. 52,906/- each. Thereafter, the respondent filed a complaint before the Consumer Disputes Redressal Commission, Maharashtra, stating that they were made to make payment on the threat of disconnection of power supply to their factory, which, they, for obvious reasons, could ill-afford. The payment made by them was, in a

way, under coercion. They also stated that recovery of a due after a long period of 9 years is time barred and that the Electricity Board cannot take recourse to Section 24 of the Indian Electricity Act, 1910 and that too, in such a case as there was no negligence on the part of the respondent to pay the due charges in time. The Maharashtra State Commission after having heard the learned Counsel for the appellant and the respondent came to the conclusion that the appellant by giving a notice under Section 24 of the Indian Electricity Act and by threatening the customer cannot make its claim alive after such a long period and, therefore, the recovery made by the appellant from the respondents was illegal. They accordingly directed the Maharashtra State Electricity Board to pay back the amount of Rs. 3,17,659/- to the respondent within a period of 4 weeks from the date of the order with interest @ 18% per annum alongwith the costs of Rs. 5,000/-. It is against this order that the appellants are before us. The Maharashtra State Commission has noted that the appellants had brought to their notice a judgment of the Maharashtra High Court in regard to the interpretation of Section 24 of the Indian Electricity Act to assert that an old and time barred claim, under the Limitation Act, could be made alive by taking recourse to this section. However after noting that the judgment reported in AIR 1978 Bom. 369 was brought to their notice by the Counsel for the appellant, the State Commission did not discuss the implications of that judgment and its relevance in the present case.

We have perused the Order in the case of M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. v. The Municipal Corporation of Greater Bombay & Anr. reported in AIR 1978 Bom. 369 carefully. The question before the learned Judges of the Bombay High Court, in that case, was whether the word " due" used in Section 24 of the Indian Electricity Act, 1910, is to be interpreted in the narrower sense viz., as only restricted to the amounts within the period of limitation and which could be successfully claimed by a suit, or this word could be interpreted in a wider sense for recovering even such amounts as may have become time barred under the Limitation Act. The learned Judge, Desai, J. in a detailed and well reasoned order has discussed the various provisions of the Indian Electricity Act relevant for the interpretation of Section 24(1) of the said Act which deals with the discontinuance of power supply to a consumer neglecting to pay charge due from him and matters relating thereto. After a detailed discussion of the provisions of the Indian Electricity Act, the learned Judges held that the provision in Section 24 of the Act has to be properly appreciated in the context of the obligations cast and the restrictions placed on the licensee (Electricity Board) under Sections 22, 22-A, 22-B, 23 and 24 itself. In the light of these statutory provisions, they held, that "there is no warrant to read the word "due" in the narrower sense viz. as only restricted to amounts within the period of limitation or which could be successfully claimed by a suit. In other words, there is no logical basis shown for preferring the narrower construction to the ordinary construction i.e., the wider construction. The wider meaning would be more in accord with the scheme of the statutory provisions as also with commercial honesty" They further held that "the right to discontinue the supply of electricity is without prejudice to the licensee''s right to file a suit to recover the amounts, since by reason of disconnection of the supply the licensee will not necessarily obtain the amounts due from the consumer. It became necessary, therefore, to protect the license''s (read the appellants) right to recover such amounts by ordinary civil action and merely because in such an action the defendant to the suit i.e., the consumer may have the defence of limitation open to any portion of the claim would not warrant such considerations being applied to the license''s right of discontinuance of supply for non-payment of the amounts owed to the license. The provision contained in Section 24(1) which enables the licensee to discontinue electricity supply to a particular consumer is mainly by way of relieving the licensee of the obligation on him to be found contained in Section 22 viz., to make supply of electricity on application to all consumers within the area of supply".

3. WE have carefully gone through the judgment of the Bombay High Court as cited earlier. WE have also seen the complaint of the respondent before the Maharashtra State Commission in which they have urged the following two points : (i) The supplementary bill dated 5.2.1993 in question has been raised by the appellant after a considerable gap of over 8 years, and that too without entertaining any correspondence between this period, on their own. Here they have also stressed that due payments of the electricity bills for the period from August, 1984 to December, 1984 for which the supplementary bill is raised now were made as per bills received. On a perusal of the copies of the above bills, they assert that there was no remark, whatsoever, on the bill from which it could be stated that there had been a fault in the meter resulting in less accounting of the actual consumption of the units during the said period. They also stated that as the period of dispute is very old, they cannot co-relate the facts at this stage in the absence of all the connected records and hence they do not accept the average consumption basis for the period August, 1984 to December, 1984 and any claim of arrears on that account as shown in the supplementary bill; and (ii) That the claim made in February, 1993 relates to the period from August, 1984 to December, 1984 - after a gap of over 8 years and, therefore, is beyond the time limit under the Law of Limitation.

The question of limitation raised by the respondents has been very cogently and comprehensively dealt with in the judgment of the Bombay High Court cited earlier. We are fully in accord with the interpretation of Section 24 and the meaning of the word "due" given by the learned Judges of the Bombay High Court in that case. As for the contention that the respondent cannot, co-relate the facts at this stage in the absence of the connected records, we have to see the bonafides of the appellant in this regard. The fact that the meter of the respondent was checked in January, 1985 is not in dispute and the report made at that time is also on record showing a lower consumption than the average in respect of the factory of the respondents. It is true that the appellant woke up after a period of 9 years to discover this report and made their claim accordingly.

This, indeed, does not speak very well of the efficiency with which the appellants are functioning. However, the inefficiency of the functionaries of the appellants, deplorable though it is, cannot and should not be made a ground to cause a loss to a public utility concern. In any case, raising of a bill for the electricity consumed, howsoever belated, cannot be termed as a deficiency in service. We are, therefore, of the view that the Maharashtra State Commission, has erred in not considering the legal aspects of this case particularly after noting that the judgment of the Bombay High Court was brought to their notice and in allowing the complaint of the respondents only on the ground that such an old claim cannot be made alive by giving a notice or by threatening the consumer of disconnection of power supply. We, therefore, accept this appeal and set aside the order of the State Commission. We are informed that the appellants have paid back the money to the respondents in accordance with the direction of the Maharashtra State Commission alongwith interest and costs. If that is so, the respondents will return all the money paid to them by the appellants in this regard, within a period of 6 weeks from the date of receipt of this order. There is no order as to costs. Appeal accepted.