
(2007) 02 CAL CK 0058
In the Calcutta High Court
Case No : Writ Petition No. 516 of 2005

Mahesh Oil Mill and Another	Vs	APPELLANT
State of West Bengal and Another		RESPONDENT

Date of Decision : 19-02-2007

Acts Referred:

Electricity Act, 2003 — Section 56, 56(1), 56(2)

Citation : AIR 2007 Cal 203 : (2007) 3 CHN 787

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The petitioners are questioning the demand made by CESC, the second respondent, by issuing bill for the month of September 2004. By that CESC called upon the first petitioner to pay the unrealised arrears of February, March, April, May, September, and October 1993. In the bill it gave notice to the first petitioner that if the demand amount was not paid within the due date, then supply of electricity would be cut off. The first petitioner was called upon to pay the amount by November 1st, 2004. Since in spite of objection raised by the petitioners CESC insisted on payment of the demanded amount, they took out the present writ petition dated March 3rd, 2005.

2. Bills raised by CESC from July 8th, 1989 to January 21st, 1993 were disputed by the petitioners. Failing to get relief from CESC, they took out a writ petition before this Court. That was registered as C.O. 2208 (W) of 1992. By an order dated November 17th, 1992 that writ petition was disposed of referring the disputes between the parties to an arbitrator. During pendency of the proceedings before the arbitrator bills for the months mentioned in the bill for September 2004 were raised by CESC, and the petitioners paid those bills. The referred disputes were settled by the parties amicably. The arbitrator finally made his award dated December 19th, 2001.

The award is set out hereinbelow:

All the disputes and differences between the parties with regard to billing by C.E.S.C. Limited on the consumption of electricity by the claimant, Mahesh Oil Mill, 128, Hazra Road, Kolkata 700 026 for the period July 8, 1989 to January 21, 1993 are agreed to be settled and are hereby finally settled as follows:

On reassessment of consumption of electricity on terms mutual and on adjustment of Rs. 6,55,566.24 (Rupees six lacs fifty five thousand five hundred sixty six and paise twenty four only) being the amount in deposit in suspense account with C.E.S.C. Limited to the credit of the claimant, Mahesh Oil Mill as also the existing Security deposit of the claimant, a sum of Rs. 5,966.80 (Rupees five thousand nine hundred and sixty six and paise eighty only) is refundable by C.E.S.C. Limited to the claimant, Mahesh Oil Mill and the said amount will be adjusted against subsequent bills.

The Claimant, Mahesh Oil Mill will now make a fresh Security deposit of Rs. 25,460.00 (Rupees twenty five thousand four hundred and sixty only) with the C.E.S.C. Limited on a fresh demand being formally made by C.E.S.C. Limited., in this regard.

I, make and publish this award as per settlement between the parties this 19th day of December, 2001.

3. Long after the award made by the arbitrator was published, CESC raised the bill for September 2004 calling upon the petitioners to make payment as noted before. Case of the petitioners is that once they paid the bills raised for the months in question, there was no scope for CESC to raise a bill for those months twice over. Their further case is that for mistake, if any, committed by CESC while putting the figure of the suspense account before the arbitrator, it was not empowered and entitled to call upon them to pay for the same period twice. Their counsel submits that in any case the amount demanded by the bill in question having never been shown continuously as recoverable arrears, CESC was not empowered to issue notice u/s 56 of the Electricity Act, 2003 threatening disconnection of supply in case of non-payment of the demanded amount.

4. Counsel for CESC has said that the amounts paid by the petitioners for the months mentioned in the bill for September 2004 had wrongly been included in the suspense account maintained for the period in dispute before the arbitrator. His submission is that because of such mistake committed by CESC, before the arbitrator, for the disputed period, CESC had actually showed and claimed a lesser amount. His contention is that since the amounts paid by the petitioners for the months mentioned in the September 2004 bill had been wrongly adjusted towards charges payable by the petitioners for the period in dispute that was the subject matter of arbitration, they are liable to pay for the months in question once again.

5. His contention is that provisions in Section 56(2) of the Electricity Act, 2003 have no manner of application, since the amount claimed in the bill for September 2004, having been duly paid at the relevant points of time, was not an amount due and recoverable. He says that his client demanded the amount for making appropriate adjustment regarding which it had inadvertently committed a mistake. Regarding the proposition that one is not entitled to take advantage of a mere mistake, he relies on the decisions in Chandigarh Administration and Others Vs. Naurang Singh and Others, , E.S.P. Rajaram and Ors. v. Union of India and Ors. (2001) 2 SCC 186 : AIR 2001 SC 581 and Kali Shankar Barman and Ors. v. Illara of W.B. and Ors. (2003) 4 CHN 165.

6. The question is whether CESC was empowered to issue notice u/s 56 of the Electricity Act, 2003 threatening to cut of supply of electricity to the petitioners on their failure to pay the amount demanded by the bill for September 2004. In terms of the provisions in Section 56(1) CESC possessed the power to disconnect supply to the petitioners in default of payment. Provisions in Section 56(2) said, "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."

7. It is really confusing when counsel for CESC says that his client did not demand payment of the amount as one due and recoverable from the petitioners. In the bill in question CESC demanded payment of the amount on account of unrealised arrears for the months in question. Therefore, it is apparent that CESC demand the amount as sum due and recoverable from the petitioners as arrear of charges for electricity supplied during the months in question. There can be no doubt, in the face of the clear provisions in Section 56(2) , that CESC was simply not empowered and entitled to issue the notice threatening to cut off supply of electricity on failure to pay the amount, from 1993 till raising the bill for September 2004 the amount in question had never been shown in any bill or in any other document, sent and served on the petitioners, as an amount recoverable from them as arrear of charges for electricity supplied.

8. It is not a case where the petitioners are seeking advantage of any mistake committed by CESC. It is very difficult to give a conclusive finding regarding the case of CESC that it had actually committed a mistake while disclosing the figure of the suspense account before the arbitrator. The disputes were settled by it before the arbitrator. The award was made long ago. There is nothing to show that the mistake was detected by CESC immediately after the award was made. It is a highly disputed question of fact whether it committed any mistake in the matter of maintenance of the suspense account.

9. The admitted fact is that for the period for which it demanded payment from the petitioners, payments had been duly made by the petitioners. If because of

its own mistake it received a lesser amount in terms of the award (because of wrong inclusion of subsequent payments in the accounts submitted before the arbitrator), in my opinion, it was not empowered to raise such a bill as was raised in September 2004 calling upon the petitioners to pay for the same period twice over. I therefore hold that for non-payment of the amount demanded by the impugned bill CESC was not entitled to cut off supply of electricity to the petitioners.

10. For these reasons, I set aside the impugned bill (for the month September 2004) and declare that for non-payment of the amount demanded thereby for the months in question, CESC was not and is not entitled to cut off supply of electricity to the petitioners. The writ petition is allowed to this extent. There shall be no order for costs in it. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.