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In the Delhi High Court

Case No : RFA(OS) 8 of 2016

Punjab National Bank APPELLANT

Vs

Bses Rajdhani Power Ltd. RESPONDENT

Date of Decision : 02-09-2016

Acts Referred:

Electricity Act, 2003 — Section 56(2)
Limitation Act, 1963 — Section 17

Citation : (2016) 159 DRJ 429

Hon'ble Judges : Pradeep Nandrajog and Pratibha Rani, JJ.

Bench : Division Bench

Advocate : Mr. Yashraj Singh Deora with Ms. Asmita Singh and Ms. Prayadarshinee Singh, Advocates, for the Appellant; Mr. Sandeep Sethi, Senior Advocate instructed by Ms. Anjali Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—At a building at 7, Bhikaji Cama Place, New Delhi, owned by the appellant bank electricity was being supplied by the erstwhile Delhi Vidyut Board through a 11 KW High Tension Electric Supply system. To record the electricity consumed a H.T. Metering Cubicle was erected at the basement. An Electro Mechanical Meter was installed to measure the energy consumed.

2. With the privatisation of distribution of electricity in the Union Territory of Delhi, Delhi Vidyut Board was unbundled and amongst others BSES Rajdhani Power Ltd. was incorporated for distribution of electricity in the area of its jurisdiction, which included Bhikaji Cama Place, New Delhi. In July, 2002 BSES Rajdhani Power Ltd. took over the service of distribution of electricity in the area of its jurisdiction from the erstwhile Delhi Vidyut Board on as is where is basis. By that time Delhi Electricity Regulatory Commission (Performance Standards-Metering & Billing) Regulations, 2002 had come into force. Punjab National Bank was categorized as a ''Key Consumer'' under the said Regulations. The electricity consumed by it at its building at 7, Bhikaji Cama Place, New Delhi was measured

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on the basis of the Current Transformer and Potential Transformer Ratio.

3. On April 23, 2003, BSES Rajdhani Power Ltd. replaced the Electro Mechanical Meter installed at the premises in question with an electronic meter. The report Ex.PW-1/A dated April 23, 2003 was drawn up which records that the Current Transformer Ratio (CTR) was 150/5A.

4. While conducting repair work in the metering cubicle at the premises in question on April 19, 2006 it was discovered by the workmen of BSES Rajdhani Ltd. that the CTR was in fact 300/5A and had been incorrectly recorded as 150/5A on April 23, 2003. As a result of this mistake, the multiplier factor had been incorrectly calculated as 3000 instead of 6000 and as a consequence thereof BSES Rajdhani Ltd. had been raising bills for only 50% of the actual consumption of electricity. This was recorded in report Ex. DW-1/4 dated April 20, 2006 and Ex. DW-1/5 dated April 21, 2006.

5. As a consequence, on April 22, 2006 a supplementary bill Ex. DW-1/6 for Rs. 2,70,52,200.87 (Rupees Two Crore Seventy Lacs Fifty Two Thousand Two Hundred and Eighty Seven paise) for the period July 2002 to March 2006 was sent by the BSES Rajdhani Ltd. to the bank and needless to state the multiplier factor was taken at 6000. This bill was disputed by the bank vide letter Ex.PW-1/6 dated April 27, 2006. Thereafter, at the request of the bank, a third party test of the CTR was conducted on May 05, 2006 and as per report Ex. DW-1/7 it was confirmed that the CTR was 300/5A and not 150/5A, meaning thereby, the report affirmed the stand of BSES Rajdhani Power Ltd.

6. The bank filed a suit for injunction challenging the demand as per bill Ex.DW-1/6, pleading that the BSES Rajdhani Ltd. was estopped from demanding extra payment since the metering cubicle, containing the meter and the CTPT chamber, while installed on the plaintiff bank''s premises was always under the control of the BSES Rajdhani Ltd. and it had recorded the CTR as 150/5A on April 23, 2003 and thus, any mistake in the billing was the responsibility of the BSES Rajdhani Ltd. The bank further pleaded that under Section 56(2) of the Electricity Act of the Electricity Act, 2003 no sum due from a consumer could be recovered after a period of 2 years from the date when such sum first became due. It was further pleaded that as per Regulation 19 of the Delhi Electricity Regulatory Commission (Performance Standards-Metering & Billing) Regulations, 2002, it is the responsibility of the distributor of electricity to check the meter as well as the CT ratio every year. The bank further pleaded that in any case as per regulation 31(i) of the 2002 Regulations, BSES Rajdhani Ltd. was not entitled to levy any charge on account of violations of provisions of the Tariff Schedule prior to the date of the last reading/inspection and in no case not beyond 6 months from the date of the current reading/inspection.

7. BSES Rajdhani Ltd. pleaded that the CTR had been incorrectly recorded on April 23, 2003 on account of a bona-fide mistake since the technicians replacing the Electro Mechanical Meter with the electronic meter were neither qualified nor

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required to test the CTR and had merely copied the CTR mentioned in the name plate of the metering cubicle. That no actual testing of the CTR had taken place and the CTPT chamber had never been opened. It was pleaded that it tested the CTR for the first time on April 20, 2006 and subsequently on April 21, 2006. That reports prepared on April 20, 2006 and April 21, 2006 mentioned that the CTR had been wrongly recorded as 150/5A and was in fact 300/5A. Thus, no estoppel operated against it. As per BSES Rajdhani Ltd. it was pleaded that it is settled law that the electricity charges first become due only after a bill is issued with regards to those charges. Hence, Section 56(2) of the Electricity Act, 2003 did not bar the supplementary bill issued in the year 2006.

8. Based on the pleadings 5 issues were settled as under:-

"1. Whether the correct multiplication factor known as CTPT ratio for measuring the consumption of electricity in raising the supplementary bill dated 22.4.2006 has been applied? OPP &OPD

2. Whether the demand of the defendant is barred by the provisions of Section 56(2) of Electricity Act, 2003? OPP.

3. Whether the defendant is estopped from raising the supplementary bill in view of the reports dated 23.3.2003 and 21.4.2006? OPP.

4 Whether the plaintiff is entitled to injunction? OPP.

5. Relief."

9. Suffice it to state that parties were not at variance on any factual aspect of the matter and from the pleadings it is apparent that the attack by the bank was on legal grounds.

10. The learned Single Judge decided issues No.1, 2 and 3 together. The learned Single Judge has noted that it was not the case of the bank that as a matter of fact the CTR was 150/5A and not 300/5A. The learned Single Judge has noted that it was the case of the bank that it should not be held liable for the mistake of BSES Rajdhani Ltd. in recording the CTR as 150/5A on April 23, 2003. The learned Single Judge noted that even the third party inspection carried out at the request of the bank had recorded the CTR as 300/5A and no counter evidence proving that the CTR was 150/5A and not 300/5A had been adduced by the plaintiff, a finding which was not even required to be rendered because there is no serious challenge by the bank that the CTR was actually 150/5A and not 300/5A.

11. With respect to sub Section (2) of Section 56 of the Electricity Act 2003, the learned Single Judge held that its domain was to prescribe a period and prohibit recovery of any sum thereafter. The learned Single Judge has held that as per the sub-Section, the bill had to be raised towards dues within two years of the amount becoming due.

12. Thereafter the learned Single Judge has held that as per Section 17 of the

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Limitation Act, 1963, a mistake is said to be discovered when it is actually discovered or when with reasonable diligence it ought to have been discovered. According to the learned Single Judge since Regulation 19 of the 2002 Regulations required BSES Rajdhani Ltd. to check the CTR every year, it was deemed to have discovered the incorrect recording of the CTR one year after the electronic meter was installed by it at the premises. The learned Single Judge has held that since the electronic meter was installed on April 23, 2003, the date of discovery of the mistake would be deemed to be April 23, 2004. Noting that the supplementary bill was raised on April 22, 2006, which was the last date of the second year commencing April 23, 2004, the deemed date of discovery, the supplementary bill was raised within the 2 year''s period specified under sub Section (2) of Section 56 of the Electricity Act, 2003.

13. The learned Single Judge has also held that as per Section 12(1) of the Limitation Act, 1963, the day from which the limitation period has to be calculated is to be excluded and therefore, the two year period actually ended on April 23, 2006. Moreover, as per the learned Single Judge according to Regulation 12 of the 2002 Regulations, the actual bill for consumption has to be raised one month after the billing calendar month and a 15 days period is provided for the consumer to make payment to the supplier of electricity. As per the learned Single Judge, this 45 days period was to be excluded while calculating the two year period under Section 56(2) of the Electricity Act, 2003 and therefore the supplementary bill could be raised by May 22, 2006 or May 23, 2006.

14. The learned Single Judge, while answering the question of the period for which the supplementary bill could be raised, has relied on Article 113 of the Schedule to the Limitation Act, 1963 to hold that since a suit for recovery of money claimed on the ground of mistake have to be filed within three years of the discovery of the mistake, BSES Rajdhani Ltd. was entitled to file a suit in respect of dues arising three years prior to April 23, 2004; the date from which the mistake in recording the CTR was deemed to have been discovered. In view of this finding, the learned Single Judge held that BSES Rajdhani Ltd. was entitled to claim dues for the period between July 2002 and March 2006. The learned Single Judge concluded with the opinion that since Section 56(2) of the Electricity Act, 2003 provided for recovery of sums due within two years, it containing a non-obstante clause and in any case was a later statute, it would supersede Regulation 31(i) of the 2002 Regulations, which provided for recovery of dues within 6 months of the current reading/inspection.

15. Reflecting upon the view taken by the learned Single Judge we note Regulation 19 and 31(i) of the Delhi Electricity Regulatory Commission (Performance Standards-Metering & Billing) Regulations, 2002. They read as under:-

"19. Testing of meters

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(i) The licensee shall conduct periodical inspection/testing and calibration of the meters as per Rule 57 of Electricity Rules, in the following manner:

(a) Periodicity of meter tests

The licensee shall observe following time schedule for regular meter testing:

Category

Interval of testing

NDMC, MES, Railways

6 months

Bulk supply meters (HT)

1 year

LT meters (11kW-100 kW)

3 years

LT meters (upto11 kW)

6 years.

Wherever applicable, CT and PT shall also be tested along with meters.

(b) When the meter is found to be fast beyond limits specified in Rule 57 (1) of the Electricity Rules, the licensee/consumer, as the case may be, shall replace/ rectify the defective meter within 30 days of testing. The licensee shall adjust/ refund the excess amount collected on account of the said defect, based on percentage error, for a period not more than 6 months from the date of test and charge the cost of replacement/repair of the meter in the next bill sent to the consumer.

(c) When the meter is found to be slow beyond permissible limits, as specified in Rule 57 (1) of the Electricity Rules and the consumer does not dispute the accuracy of the test, the licensee/consumer, as the case may be, shall replace/ rectify the defective meter within 30 days of testing. The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a period of not more than 6 months prior to date of test with due regard being paid to conditions of Delhi Electricity Regulatory Commission To be published in Part IV of Extraordinary Gazette of Govt. of NCT of Delhi 12 working, occupancy etc. of the premises during this period and up to the date on which defective meter is replaced/rectified.

(d) If the consumer or his representative refuses to sign the test report and pay due billing charges, the defective meter shall not be replaced/rectified and the licensee shall approach the designated electrical inspector, who shall test the correctness of the meter and give results within one month. The decision of the

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Inspector shall be final and binding on the licensee as well as the consumer.

(ii) The licensee shall keep record of all such meter tests and submit to the Commission exception report every six months."

x x x x

"31. Procedure for levy of charges other than normal tariff for violation of provision(s) of Tariff Schedule

(i) The licensee shall not be entitled to levy any charge on account of violation of provision(s) of Tariff Schedule prior to the date of last reading/inspection and in no case beyond past six months from the date of the current reading/inspection."

16. Section 56 of the Electricity Act, 2003 reads as under:-

"56. (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"

17. Clause (i) of Regulation 31 of the Regulations, 2002 cover the field of entitlement to levy any charge on account of violation of provisions of the tariff schedule and prescribes that the same cannot be beyond six months. In other words it covers the field if there is a violation of the provisions of the tariff schedule. Sub-Section (2) of Section 56 of the Electricity Act, 2003 covers an

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entirely different field. The field covered is the recovery of the dues, and this would be not on account of violation of provisions of the tariff schedule, and prescribes a limit of two years within which the recovery of the sum due has to be made and the starting point to compute two years would be when the sum first became due. Thus, the conclusion arrived at by the learned Single Judge, though on a different reasoning is correct. Even as per the reasoning of the learned Single Judge, Electricity Act, 2003 being a subsequent legislation would in any case over rides the Regulations of 2002 and more particularly on account of the non-obstante clause of sub-Section (2) of Section 56 of the Electricity Act, 2003. We agree.

18. The learned Single Judge has held that Regulation 19 of the Regulations, 2002 was irrelevant, a view which is technically incorrect, but we find that as a matter of fact the learned Single Judge has tacitly relied upon the Regulation in question with reference to Section 17 of the Limitation Act, 1963 and Article 113 in the Schedule to the Limitation Act, 1963. As per Section 17 cause of action accrues when a mistake is discovered or with reasonable diligence can be discovered. From said date limitation would run and the period prescribed would be as per Article 113 of the Schedule to the Limitation Act, 1963. As per Regulation 19 it is the duty of the licencee company supplying electricity to periodically inspect meters and for bulk supply meters (H.T.) the duty casts is to inspect the meters every year. The learned Single Judge, as noted above, has held that the electronic meter being installed in April 23, 2003 the discovery of the mistake of CTR being noted mistakenly as 150/5A whereas it was 300/5A could have been with reasonable diligence noted on April 23, 2004 i.e. one year after the meter was installed. The view taken by the learned Single Judge suffers from no legal infirmity and we concur with the same. Commencing from April 23, 2004 as the date when the mistake could be detected with due diligence the supplementary bills could be raised for a period of two years preceding said dates and period of limitation to recover the dues would concededly be three years. Before the period of limitation could expire the bank filed the suit for injunction and on May 29, 2006 obtained an interim order that upon the condition of paying Rs. 50,00,000/- (Rupees Fifty Lacs only) to BSES Rajdhani Power Ltd. there would be a stay of disconnection. The injunction continued till when the suit was dismissed.

19. The appeal is dismissed and we note that pursuant to the interim order dated February 05, 2016 the bank has deposited Rs. 1,15,00,000/- (Rupees One Crore Fifteen Lacs only) with BSES Rajdhani Power Ltd. Needless to state the bank would be entitled to adjustment of said amounts and would be liable to pay the balance as per the bill Ex.DW-1/6.

20. Parties shall bear their own costs in the appeal.

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21. Dismissed as infructuous.

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