

(2009) 08 BOM CK 0087

In the Bombay High Court

Case No : Writ Petition No. 7015 of 2008

Rototex Polyester and Another

APPELLANT

Vs

Administrator, Administration of Dadra and Nagar Havli (U.T.)
Electricity Department, Silvassa and Others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Electricity Act, 1910 — Section 26
Electricity Act, 2003 — Section 24, 56, 56(2)

Citation : (2010) 4 BomCR 456 : (2011) 1 CivCC 546 : (2011) 1 RCR(Civil) 61 :
(2011) 1 RCR(Civil) 61

Hon'ble Judges : Ranjana Desai, J;A.A. Sayed, J

Bench : Division Bench

Advocate : A.M. Jakhadi, for the Appellant; Girish Kulkarni, instructed by S.S. Deshmukh, for Respondent No. 1, L.M. Acharya, for Respondents Nos. 2 to 5 and Purnima Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—Rule. The respondents waive service. By consent of the parties, taken up for final hearing and disposal forthwith.

2. Petitioner 1 is a proprietary concern, having its registered office at 6/8, Old Hanuman Lane, 1st Cross Lane, 1st floor, Room No. 19, Kalbadevi Road, Mumbai 400 002. Petitioner 2 is the proprietor of petitioner 1. Respondent 1 is the Administrator of Administration of Dadra & Nagar Havli (U.T.), Electricity Department, Silvassa. Respondent 1 is the appellate authority under the Electricity Act, 2003. Respondent 2 is the Executive Engineer of the Electricity Department, Dadra & Nagar Haveli (U.T.). Respondents 3 to 5 are the Deputy Engineers and Junior Engineer respectively of Respondent 1. Respondent 6 is the Union of India.

3. Petitioner 1 is in the business, inter alia, of manufacturing and supplying of various types of polyesters and yarns. Petitioner 1 has various types of

machineries and equipments in the factory premises. By demand notice dated 3/10/2007, respondent 2 informed the petitioners that the CT ratio of their metering installation was changed from 25/5 to 50/5 vide office report dated 11/7/2003. The demand notice further stated that in this report, it has been mentioned that the multiplication factor has changed from 500 to 1000 with effect from 11/7/2003. The demand notice further stated that by oversight, the department has issued bills for the period July, 2003 to July, 2007 with 500 as multiplication factor for reading of 1000 till July, 2007 and, hence, all the bills for this period are revised with 1000 as multiplication factor. The detailed statement of revised bill was enclosed to the demand notice. The total amount of revised bill was Rs. 2,60,17,001/-. The petitioners were requested to pay the bill amount of the revised bills for the period July, 2003 to July, 2007 within 15 days of receipt of the said demand notice.

4. By letter dated 12/11/2007, the petitioners gave reply to the said demand notice through their advocate. The petitioners received energy bill dated 11/1/2008. The said bill was inclusive of arrears of revised bill for the period from July, 2003 to July, 2007. The total amount of the said bills comes to Rs. 2,77,34,867.43. The said bill was issued by the office of respondent 2.

5. Being aggrieved by the said bill, the petitioners filed Writ Petition No. 4406 of 2008 challenging the said revised bill. On 9/6/2008, the Division Bench of this Court, (Bilal Nazki & S.S. Shinde, JJ.) disposed of the said writ petition observing that the bill issued by the respondents can be challenged by way of an appeal. Liberty was granted to the petitioners to file an appeal in accordance with law. It appears that pursuant to this order, the petitioners preferred an appeal being Electricity Appeal No. 11 of 2008 before respondent 1. By a reasoned order dated 12/9/2008, respondent 1 dismissed the said appeal. Hence, this writ petition.

6. We have heard, at some length, learned Counsel appearing for the petitioners and learned Counsel appearing for the respondents.

7. Learned Counsel for the petitioners urged that assuming that the said amount is due from the petitioners, the said amount first time became due in July, 2003, but the claim for July, 2003 to July, 2007 is raised only on 3/10/2007 and, therefore, u/s 56(2) of the Electricity Act, 2003, the claim raised by the respondents is time barred. He submitted that therefore the revised bill is liable to be quashed and set aside.

8. As against this, learned Counsel for the respondents drew our attention to the judgments of learned Single Judge of this Court in U.A. Thadani and Anr. v. B.E.S.T. Undertaking and Anr. 2000 102 Bom.L.R. 502 and in Brihanmumbai Municipal Corporation Vs. Yatish Sharma and Others, and submitted that the present case is squarely covered by the said judgments. He submitted that inasmuch as there is wrong billing due to clerical mistake, limitation period of two years does not apply to this case.

9. Section 56 of the Electricity Act, 2003 provides for disconnection of supply in

default of payment. We are concerned in this case with Section 56(2) and hence, it is necessary to quote it.

56. Disconnection of supply in default of payment

(1) xxx xxx xxx

(2) Notwithstanding anything contained in any other law for the time being enforce ,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 arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

10. Sub-section (2) of Section 56 provides for limitation of two years. It introduces the concept of the date when such sum becomes first due. In short, a sum which is due can be recovered within a period of two years from the date it became first due and not thereafter. The only sum which is left out of this is the sum which is shown continuously as recoverable as arrears of charges of electricity.

11. Section 26 of the Indian Electricity Act, 1910 deals with meters. Sub-section (6) thereof is material. It reads thus:

26. Meters:

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) Where any difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply ,during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this Sub-section, he shall give to the other party not less than seven days notice of his intention so to do.

12. In Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal

Corporation of Greater Bombay and Another, , a Division Bench of this Court was concerned with a situation where additional amounts for eleven years period were claimed from the consumer on the basis of failure to multiply the reading by 2 (two) and not on the basis of faulty meter. The question was whether the licensee had to restrict its claim to six months. The Division Bench observed that u/s 26 of the Indian Electricity Act, 1910 restriction as to six months does not seem to apply to a claim made by the licensee on the ground that there was a failure to multiply the reading by the changed multiplication factor.

13. In U.A. Thadanis case (supra), learned Single Judge of this Court was concerned with similar fact situation. Two bills were raised on the consumer demanding additional amounts because multiplying factor was wrongly charged. It was argued by the consumer on the basis of Sub-section (6) of Section 26 that the Electrical Inspector could determine the quantum of electricity consumed during the statutory period of six months and for the period anterior to it the reading registered in the disputed meter will have to be presumed to be correct. Relying on the judgment of this Court in Bharat Barrel, learned Single Judge held that the restriction as to six months period provided in Section 26 has no application to a demand made by the licensee or the Electricity Board for the unpaid amount for the electricity consumed if the consumer was under-billed due to clerical mistakes or human error or such like mistakes.

14. The principle which can be deduced from the above judgments is that in case the consumer is under-billed on account of clerical mistake such as the present case, where the multiplication factor had changed from 500 to 1000, but due to oversight, the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. Though Section 26(6) of the Indian Electricity Act, 1910 is not in pari materia with Section 56(2) of the Electricity Act, 2003, in our opinion, the present case would be governed by the above principle and, hence, the challenge raised by the petitioners must fail.

15. The question raised in this petition can be examined from yet another angle keeping Section 56(2) of the Electricity Act, 2003 with which we are concerned here in the forefront.

16. In Yatish Sharmas case tariff was changed from GP1 to GP2. Between 19/1/2000 and 27/5/2000, the readings of the electronic meter were not taken. A supplementary bill was raised by the petitioner Corporation therein on the basis of the average monthly consumption. By the supplementary bill, a demand of Rs. 78,187.17 was raised on the consumer and debited to the amount of the bill for the month of April, 2004. The consumer raised a grievance before the Consumer Grievance Redressal Forum. The matter ultimately reached the Ombudsman. He held that the supplementary bill was raised after a period of four years from the date when it became first due and, hence, the amount was not recoverable u/s 56(2) of the Electricity Act, 2003. The Ombudsmans order was challenged in this Court.

17. The issue which arose before learned Single Judge was what interpretation should be placed on the words when such sum becomes first due. The question was whether the Ombudsmans view that since the arrears for consumption became due immediately upon the usage of energy, the supplementary bill raised in August, 2004 for the disputed period between January, 2000 to May, 2000 was barred u/s 56(2).

18. While dealing with this submission, learned Single Judge referred to Delhi High Courts judgment in H.D. Shourie Vs. Municipal Corporation of Delhi and Another, , where the Delhi High Court was considering the expression due appearing in Section 24 of the Electricity Act, 2003. The Delhi High Court observed that if the word due is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued, a notice of disconnection would be liable to be issued u/s 24, which could not have been the intention of the legislature. The Delhi High Court observed that the word due in this context would mean due and payable after a valid bill has been sent to the consumer. Learned Single Judge followed this view and set aside the Ombudsmans order which had taken a contrary view. We are in respectful agreement with learned Single Judge. In this case, the demand notice with revised bill dated 3/10/2007 was, according to the petitioners, served on them on 9/11/2007. Therefore, the revised bill amount first became due on 9/11/2007. Hence, Section 56(2) of the Electricity Act 2003 would not come in the way of the respondents from recovering the said amount under the revised bills. The impugned order dated 12/9/2008 warrants no interference.

19. The petition is dismissed.