

(2012) 11 CHH CK 0027
In the Chhattisgarh High Court
Case No : Writ Petition C. No. 6602 of 2008

Varun Steel and Another

APPELLANT

Vs

The Chhattisgarh State Power Distribution Company Ltd and
Another

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 42, 42(5), 42(6), 5, 56(2)

Citation : (2012) 11 CHH CK 0027

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Ravish Chandra Agrawal with Mr. V.K. Munshi Mr. Sourabh Sharma
Mr. Aditya Sharma and Mr. Jatin Josh, for the Appellant; Sunil Otwani Advocate
for the respondents, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Satish K. Agnihotri, J.—By this petition, the petitioner seeks a direction to the respondents not to give any and/or further effect to impugned memo dated 23.10.2008 (Annexure P/1), the impugned revised bill dated nil for the period from 16.05.2005 to 30.09.2008 (Annexure P/2) and the impugned notice of disconnection dated 10.11.2008 (Annexure P/3) and/or to forbid them from disconnecting the supply of electricity to the petitioner. The facts, in brief, as projected by the petitioners, are that the petitioner No. 1 is a partnership firm duly registered under the Partnership Act, 1932 having its principal office and Factory/Rolling Mill at Bhanpuri Industrial Area, Raipur. The petitioner firm is engaged in manufacture of CTD Bars, M.S. Plates and square by using M.S. Miss Roll as other raw material. After the factory was fully commissioned by the petitioner No. 1, the firm applied for supply of electrical energy/power to their Factor/Rolling Mill as the High Tension consumer, to the respondent No. 1. A formal agreement was entered into between the parties on 02.04.2005 in Form C-9. The supply of electric commenced from 17.05.2005 through the meter

installed in the factory and continued up to the month of October, 2006. All regular monthly energy bills raised by the respondent No. 1 during the period from 17.05.2005 to 30.10.2006 were paid on time without any demur or protest. As per the petitioners, there was change in the partners of the firm time to time as some old partners retired and new partners joined the firm.

Further, as per the petitioners, in neither of the monthly bills raised during the relevant period, no details with regard to the capacity of the meter installed at the premises of petitioner No. 1 had been mentioned. On the contrary, in all such bills, contract demand had been mentioned at 300.00 KVA and supply voltage was mentioned as 33 KV. All of a sudden, when the petitioners received the impugned memo dated 23.10.2008 (Annexure P/1) accompanied by the revised bill (Annexure P/2) from the respondent No. 2 raising a fresh demand of a huge amount of Rs. 69,09,657/- on the pretext that due to alleged oversight, the multiplying factor derived from evaluation of consumption and M.D. of the petitioners, written as 50 was not properly calculated. As per actual meter P.T. ratio constant i.e. 11 KV/110 Volts, it ought to have been 150.

2. Shri Ravish Chandra Agrawal, learned Senior Counsel appearing with Shri V.K. Munshi, Shri Sourabh Sharma, Shri Aditya Sharma and Shri Jatin Joshi, learned Advocates for the petitioners, would submit that a suitable reply to the above notice and revised bills, was sent to the respondents on 04.11.2008 (Annexure P/10). Without considering the same in its true perspective, the respondent authorities have further issued a notice of disconnection on 10.11.2008 (Annexure P/3). The same was also replied to by the petitioners on 13.11.2008 (Annexure P/11). Shri Agrawal would further submit that instead of considering the said reply filed by the petitioners, the respondent authorities filed a caveat before the District Court, Raipur, which shows the intention of the respondents that they are inclined to realize the excess amount raised in the revised bills.

3. Shri Agrawal would next contend that in the instant case, the doctrine of promissory estoppel and change of position, as developed by the Supreme Court, would be applicable in the facts of the present case. Once the electricity bills were raised and the petitioner firm has manufactured and thereafter sold its product at a particular rate, after taking various factors into consideration like price of raw material, energy, labour, taxes etc., now at a later stage, raising electricity bills at a higher rate would cause undue hardship to the petitioner firm. If the respondents are allowed to recover the excess amount, the same cannot be recovered by the petitioner firm from the purchasers of the finished goods, manufactured by it, at any cost. Thus, it would suffer huge financial loss. Further, if there was any mistake in raising of the bills, may be in calculation etc. the same was on account of the fault of the respondents, and not on the part of the petitioners. Thus, the petitioners cannot be forced to pay the same. Further, the respondents, in their return have nowhere specifically denied the averments of the petitioners and have only filed preliminary submission. Thus, the impugned notice of disconnection and the revised excess bills raised by the

respondents, deserve to be set aside. In support of his contention, Shri Agrawal would rely on *Scottish Equitable Plo v. Derby*¹, *Lipkin Gorman (A Firm) v. Karpnale Ltd*², *Avon County Council v. Howlett*³, *Jai Charan Lal Anal v. The State of U.P. & Others*⁴, *Awadh Behari Pandey v. State of Madhya Pradesh & Others*⁵, *The Executive Engineer & Another v. M/s. Sri Seetaram Rice Mill*⁶.

4. On the other hand, Shri Otvani, learned counsel appearing for the respondents would submit that according to section 42(5) of the Electricity Act of 2003 (for short "the Act") which came into force w.e.f. 26.05.2003, there is a provision that every distribution licensee shall within 6 months from the date of appointment date or date of grant of license, whichever is earlier, establish a forum for Redressal of grievances of the consumer in accordance with the guidelines as may be specified by the State Commission. It is further submitted that according to section 42(6) of the Act, any consumer who is aggrieved by non-redressal of his grievances under sub section 5 of section 42, may make a representation to an authority known as Ombudsman. Section 82 of the Act deals with the constitution of State Electricity Regulatory Commission (for short "the Commission"). In the State of Chhattisgarh, the said Commission has come into force in the year 2004. Regulation 4(d) of the said Commission provides that if there is any dispute pertaining to Electricity bill, the same would be adjudicated upon by the forum for Redressal of consumers' grievances. Thus, this petition may be dismissed in limine on the ground that the petitioner has bypassed the alternative efficacious remedy available to the petitioners. Shri Otvani would further submit that when the agreement was executed between the parties, the power of attorney holder was Mr. Kanhaiyalal Atlani. The present petition has been filed by Mohit Jindal i.e. the petitioner No. 2. who was never the party in execution of the agreement. At no point of time any communication was made with the petitioner No. 2 by the respondents. Clause 31 of the agreement provides that the consumer shall not without the previous consent in writing of the respondents, assign, transfer or part with the benefit of this agreement either wholly or partially in favour of any persons. The petitioner herein with some oblique purpose, has never intimated the answering respondents and even has not made any averment in the petition as to why this was not done. Clause 32 of the agreement further provides that in case, the consumer fails to comply with the terms and conditions of the agreement, the respondents may after giving 7 days notice in writing, discontinue the supply of energy to the consumer. It is crystal clear that the terms and conditions of the agreement has been violated by the petitioners. Shri Otvani would next submit that due to inadvertent mistake the Potential Transfer Ratio (for short, the PTR") of energy meter was shown as 33 KV/110 V instead of 11KV/110V, because of which the overall multiplying factor calculation came to 50 whereas it ought to have been 150. In the commissioning report dated 17.05.2005, it had been mentioned by the concerning officer that the PTR would be 33KV/110V (Annexure R/1). The petitioners were fully aware of the mistake but since it was beneficial for them, they allowed the respondents to raise the bills at a lower rate. The petitioners

had also not cooperated as and when spot inspection was done by the officials of the respondents. When the spot inspection was done on 18.10.2008, the representatives of the petitioners denied putting signature on the said report. It was well within the knowledge of the petitioners that the applied PTR was not correct and when it was deducted on 10.10.2008, the petitioner took a somersault and moved an application on 10.11.2008 (Annexure R/6) for enhancement of contract demand from 300 KVA to 500 KVA.. The petitioner himself has violated the various clauses of agreement executed between the parties on 02.04.2005. Thus, the contention of the petitioner that the present case would be covered by principles of Promissory Estoppel is erroneous.

5. Shri Otwani would further submit that nowhere the petitioners have substantiated their averment that a specific finished product manufactured in their Unit was sold at a specific price after taking into consideration various factors, as aforesaid. No document has been produced in this regard. Thus, mere self same statement cannot be accepted and it cannot be held that if the respondents recover the excess amount, which could be billed earlier due to inadvertent mistake of the respondents, the petitioners would suffer any loss. For invoking doctrine of promissory estoppel, clear sound and positive foundation must be laid in the petition itself by the party invoking the doctrine. The respondent had at no point of time assured to the petitioners that the multiplying factor would be 50 instead of 150. A conjoint reading of section 56(2) and 19.6 of the supply code, makes crystal clear that the licensee has the right to recover from the consumer arrears of charges which have come out either by audit report or otherwise. Para 9.16 of the supply code, which permits the distributor to recover previous charges from the consumer, has also not been challenged by the petitioners. Further contention of the petitioner that the arrears cannot be recovered for a period of more than two years from the date of demand, does not hold water. If the consumer has utilized the energy, he becomes liable to pay the charges. In support of his contentions, Shri Otwani would rely on *State of Arunachal Pradesh v. Nezone Law House, Assam*⁷, *Maharashtra State Electricity Distribution Co. Ltd. v. Lloyds Steel Industries Ltd.* ⁸ and *M/s. Bhagya Nidhi Exports Ltd. & Another v. C.G. State Power Distribution Company Ltd. & Others*⁹

6. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. The contention of learned counsel for the petitioner that on account of principle of change of position, excess amount is not recoverable as the price of the finished product was calculated after having considered the electricity charges as then it was and at this juncture, it would not be possible to recover the excess amount of the electricity charges, from the consumers who have received the finished goods at a particular price, is noticed to be rejected.

8. The principle of change of position is well recognized in *Lipkin Gorman (A Firm)*², which has been referred with approval by the Supreme Court of India, in the cases, relied on by the petitioner. However, the fact of change of position, in

the instant case, had to be established by producing relevant documents or facts in respect of fixation of rate the and further, if possible, who were the purchasers/ buyers as the finished goods are not sold normally directly to the retailers or the end users who are not identifiable, but to the wholesalers and distributors. Without establishing all the facts to invoke the benefit of change of position, this Court cannot decide the issue involved in the present case. The petition involves disputed question of facts.

9. The Chhattisgarh State Electricity Regulatory Commission (Redressal of grievances of consumers and establishment of forum of forum and Electricity Ombudsman) Regulations 2004 (for short, "the Regulations, 2004") was framed by the Chhattisgarh State Electricity Regulatory Commission, in exercise of the powers under clauses (a) and (c) of sub section (2) of section 1891 read with sub section (54), (6) and (7) of Section 42 of the Electricity Act, 2003 (36 of 2003), with a sole purpose for redressal of consumer grievances including establishment of forums for redressal of grievances of consumers, for the appointment of Ombudsman by the Commission and the procedure to be followed for settlement of grievances by Ombudsman and for matters incidental and ancillary thereto.

10. Section 4(d) of the Regulations, 2004 provides for consideration of the disputes, which reads as under: "4(d) "complaint" means any representation in writing made by a complainant regarding any of the following.

- (i) Interruption in power supply;
- (ii) Voltage related complaints;
- (iii) Load shedding/scheduled outage;
- (iv) Meter related complaints;
- (v) Electricity bill related complaints;
- (vi) Disconnection and reconnection of power supply;
- (vii) Delay in new connection;
- (viii) Other complaints like damage to consumers equipment / network / premises, or request for reduction / enhancement in load / demand, or non-payment of interest on security deposit, or recovery of excessive charges for any services, or actions of vigilance squad."

11. Section 82 of the Act provides for constitution of State Commission to deal with the disputes in respect of supply of electricity as also the disputes with regard to the bills raised.

12. In State of Arunanchal Pradesh⁷, the Supreme Court, while considering the issue of Promissory Estoppel, and also the change of position, observed as under:

17. In order to invoke the doctrine of promissory estoppel clear, sound and

positive foundation must be laid in the position itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must forever be present in the mind of the Court.

13. In Maharashtra State Electricity Distribution Co. Ltd⁸, the Supreme Court observed as under:

7. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy u/s 42(5) of the Act and according to subsection (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed The Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as "2003 Regulations") and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in the cases of Suresh Jindal vs. BSES Rajdhani Power Ltd. & Others reported in 132 (2006) DLT 339 (DB) and Dheeraj Singh vs. BSES Yamuna Power Ltd. and we approve of these decisions. It has been held in these decisions that the Forum and Ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Section 42(5) and 42(6) for redressal of grievances of individual consumers. Hence, whenever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of section 42 of the Act.

14. In The Executive Engineer & Another⁶, the Supreme Court observed that the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy. This jurisdiction, the High Court would exercise with some circumspection in exceptional cases, particularly where the cases involve a pure question of law or vires of an Act are challenged.

15. In the case on hand, the petitioners seek quashing of the impugned memo

dated 23.10.2008 (Annexure P/1), the revised bills (Annexure P/2) and the notice of disconnection dated 10.11.2008 (Annexure P/3), on the ground that on account of change of position, this writ petition is maintainable. This is also the contention of the petitioners that principles of estoppel would be applicable as once the bill has been raised and it was paid by the petitioners, the subsequent revised bills with enhanced amount cannot be raised. The petitioners have further not produced any material in support of its contention that the issue of promissory estoppel would be applicable as the same cannot be applied, contrary to the statutory provisions of law. To establish promissory estoppel, the petitioners have to establish cogent and sound foundation which has not been done in the instant case, by producing substantive materials. The petitioners were consuming the electricity, as submitted by learned counsel for the respondents, for which proper bills could not be raised earlier.

16. As a sequel, the writ petition is dismissed as not maintainable, reserving liberty to the petitioners to approach the appropriate statutory forum, as the petition involves disputed question of facts and the same can be settled by the forum, created under the Regulations, as aforesaid. There shall be no order as to costs.