

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND

4<sup>th</sup> floor, Bhagirathi Complex, Karamtoli Road, Ranchi-834001

**Appeal No. EOJ/09/2015**

M/s Shah Hitech Auto Alcast Co. (P) Ltd. .... Appellant

Versus

JUVNL & Ors. .... Respondent

Present:

Electricity Ombudsman - Sri Ramesh Chandra Prasad

Counsel for the appellant - Sri Shankar Lal Agrawal

- Sri Abhijit Singh

Advocate for the respondent - Sri Rahul Kumar

- Sri Prabhat Singh

**ORDER**

(Passed on this 4<sup>th</sup> day of February, 2016)

**1. Background of the Case:**

The Appellant M/s Shah Hi-tech Alcast Company, a company registered under provision of Company's Act having its place of business at plot no.- C/23- 2B, 2<sup>nd</sup> phase, Industrial area Adityapur, P.O. & P.S. Adityapur Distt. Saraikela Kharsawan, has filed this Appeal through it's Director Sri. Dhandulal P.Shah, S/o Late Prem Chand Shah in pursuance of the order dated 06/09/2015 passed by the Hon'ble Jharkhand High Court in W.P.(C) No. 4445/2014.

By order dated 09.09.15 the Hon'ble High Court, was pleased to quash the order dated 18.7.2014 delivered in EOJ/06/13 and passed the following order:

**“Having heard the submissions, I have gone through the order of learned Ombudsman as well as the contents of memo of appeal,**

produced by the learned counsel for the petitioner for my perusal. At paragraph no. 26 of the memo of appeal, the petitioner has specifically stated that the demand for the period from 24.11.1998 to 09.06.2003 covered under the old Electricity Act, therefore, the same will be governed by the Limitation Act, 1963. From perusal of the impugned order, I find that the learned Ombudsman had noted one of the judgements of Hon'ble Gauhati High Court in AIR 2013 Gauhati 12 {W.P. ( C) No. 10444 of 2003, dated 28.08.2012}, which deals with the aforesaid contention. This shows that the petitioner has also argued that point before the Electricity Ombudsman, but in spite of that, the Electricity Ombudsman, Jharkhand has not decided the aforesaid issue.

Under the aforesaid circumstances, the impugned judgement cannot be sustained. Accordingly, I allow this writ application and quash the impugned judgement dated 18.07.2014.

However, I remit the case back to the file of learned Electricity Ombudsman, Jharkhand for deciding all the issues afresh after hearing both the parties on merit.”

## **2. Submission of the Appellant:**

**2.1** The learned Advocate submitted that the meter bearing serial No.5127 installed on 24/11/1998 in the premises of the appellant's factory was replaced by a new meter on 25/11/2005. At the time of replacement of the afore said meter, C.T. Ratio of the old meter was noticed as 400/5A and not 600/5A as recorded in the earlier Electronic Meter Installation Report prepared on 24/11/1998. As such the multiplying factor of the meter becomes 1(one) in place of 2/3 causing short billing of consumption by 1/3.He put emphasis that officer's of the licensee Board(now herein after Board may be referred to as JUVNL)were not diligent in examining the details of CT ratio whereas they were duty bound to make the identical inspection of the CT ratio but, for seven years no attempt was made by the

officers of the JUVNL to see the wrong committed on 24/11/1998. Moreover, the limitation U/s 112 of the Limitation Act is 3 years. Therefore, the bill is barred by limitation of 3 years up to 09.06.2003 when the new Electricity Act, 2003 came into force. Hence, from 10/06/2003 the limitation of two years is applicable and before 10.06.2003 the case is governed by the earlier Act i.e. Indian Electricity Act, 1910, in which no limitation has been prescribed.

**2.2** He further submitted that the bills should have been raised in the month of June, 2003 and if that was not done then the bill amount from 10.06.2003 is barred by limitation of 2 years and the recovery for the period 10.6.2003 to 07.08.2005 is barred by Limitation U/s 56(2) of the Electricity Act, 2003 whereas, the substantial period is covered under the Indian Electricity Act, 1910. Section 56(2) of the Electricity Act, 2003 has got no application for the period earlier to June, 2003. To substantiate the claim, he referred the case of Bata India Limited Versus the Bihar State Electricity Board, a Single Bench of Patna High Court in C.W.J.C. No. 1505 of 1981 by judgement dated 03.07.1985 has held at para- graph 5 of the judgement that perusal of Section 24 of the Indian Electricity Act, 1910 makes it quite clear that the electric supply line can be disconnected for non payment of any charge due from any person when the period prescribed U/s 14 of the Limitation Act expires. The charges ceased to be due and as such, the precondition for exercise of the privilege U/s 24 of the Indian Electricity Act, 1910 vanishes. It is true that as per the Tariff supplementary demands can be made but not beyond the period of limitation.

**2.3** He further submitted that the right of the Board/JUVNL to recover its dues from a consumer exercisable subject to the limitation mainly if the dues are in respect of period when the Board has been functioning under the 1910 Act. The period of limitation for recovery of such dues would be 3 years commencing from the date on which the dues would have become payable

by the consumer. In the instant case the payment became due on the next month just after one month when a bill of electricity is issued for the previous month and that limitation will apply from the date when the bill is issued in the next month. To substantiate he referred judgement reported in AIR2003 Gauhati 12 wherein the Hon'ble Gauhati High Court had held that where the dues covered by the bills dated 13.11.2003 for the period up to 07.08.1999 and therefore covered by the previous Electricity Act, 1910. The period of limitation for realization of dues payable to ASEB is 3 years and for the period of limitation of recovery of dues of ASEB will be 3 years and Section 112 of the Limitation Act will be applicable.

**2.4** The learned Advocate submitted that the Respondents have relied upon the phraseology used in Section 56(2) of the Electricity Act, which states as it when becomes first due. He explained the provisions of Article 137 of the Limitation Act, 1963 thereby trying to put emphasis that any other application in which no period of limitation is provided elsewhere in this Division- 3 years when the right to apply accrues. Here one thing is important the last words when the right to apply accrues the meter. Because it does not state when it became first due. Therefore, the phraseology used under Section 56(2) of the Electricity Act, 2003 is inapplicable. The interpretation given in another Act cannot be brought into another Act when the language of another Act is clear. Regarding the word became first due is being referred by the Respondents, then it is necessary to cite provisions of Article 137 which stipulates that when the right to apply accrues is mentioned ,the decisions cited by the Respondents is inapplicable. Therefore, the demand for the period 24.11.1998 to 09.06.2003 will be covered under the old Act, and hence the same will be governed by the Limitation Act, 1963. The aim and object of the limitation is to give a stop to the old litigation and if the limitation is not prescribed then it will give a chit

for long standing matters which may be brought to the notice of the courts after century.

### **3. Submission of the Respondent:**

**3.1** The learned Counsel for the respondent submitted that the meter of the petitioner was replaced on 24/11/1998 and C.T. ratio was recorded as 600/5A in place of 400/5A thereby multiplying factor of the meter was written as 2/3. Subsequently during replacement of the afore said meter on 25/11/2005, it was noticed by the team of officers of the Board that C.T. ratio of that meter was 400/5A in place of 600/5A and the correct multiplying factor should have been 1 (one) with effect from 24/11/1998. The said mistake is very apparent from the meter installation report, then further verification was made by an Inspection Committee constituted by the Elec. Superintending Engineer, Jamshedpur vide office order No. 35 dated 02/05/2006 which also confirmed the mistake of C.T.'s ratio. Based upon the report dated 25/11/2005 and the recommendation of the Committee dated 05/05/2006 a supplementary demand bill for Rs. 76,78,223.00 was raised and served to the petitioner vide letter No. 1780 dated 11/08/2006 for payment. The Appellant have not raised any dispute with regard to fault detected in the later stage which was a bonafide mistake on part of the Respondents.

**3.2** He further submitted that the Appellant is liable to pay the bill for the period prior to enactment of Electricity Act, 2003 also in view of the fact that provision of limitation Act, 1963 would be applicable in absence of any Provisions indicating limitation period in old Electricity Act. So, the period is three years for raising remand and the demand has been raised well within three years which is well supported by decision of different Courts.

**3.3** The learned counsel further made reference of the following decisions of the different Courts:

**3.3.1** Hon'ble Jharkhand High Court decision in the matter of Tata Steel Ltd. & Ors vs Jharkhand State Electricity Board reported in 2008 (1) JCR 580 Jhr has held that the bills which have never been raised earlier cannot be said as barred under limitation and therefore, principles of equity hardly finds any place in fiscal matters.

**3.3.2** In similar matter, the Hon'ble Delhi High Court in the matter of H.D.Shourie V. Municipal Corporation of Delhi reported in AIR 1987 Delhi 219 has been pleased to hold that since the amounts of impugned bills were never demanded earlier, the same cannot be said to be due at any earlier time.

**3.3.3** In the matter of M/s Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay & Anr reported in AIR 1978 Bombay 369 it has been held by their Lordships that the word "due" used in section 24 of the Indian Electricity Act, 1910 includes neglect to pay time barred claims. In the aforesaid judgement Hon'ble Bombay High Court has even held that that licensee has even the powers to recover the time barred claims.

**3.3.4** In the matter of K.J. Scaria V KSEB, the Hon'ble Kerala High Court has been pleased to hold that the amount become due only when it is demanded for the first time.

**3.3.5** In a matter of Brihanmumbai Municipal vs Yatish Sharma & Ors the Hon'ble Bombay High Court while relying upon the decision rendered in H.D.Shourie case has been pleased to hold that the a sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer.

**3.3.6** In Writ Petition No. 7015 of 2008 (M/s Rototex Polyester & Anr vs Administration of Dadar & Nagar Haveli (UT) Electricity Department),decided on 20.08.2009 the Hon'ble Bombay High Court has

been pleased to hold that realization of due amount shall also be applicable in a matter covered under Indian Electricity Act.

**3.4.** The learned counsel submitted that in the light of aforesaid averments and decision rendered by different courts, the Appellant is liable to pay the due amount and the amount prior to enactment of Electricity Act, 2003 cannot be said to be hit by law of limitation.

**4. Issue involved:**

**Whether the impugned bills raised for the period from 24.11.1998 to 09.06.2003 will be covered under the old Electricity Act and, therefore, the same will be governed by the Limitation Act, 1963?**

**5.** The Appellant seeks support to its view to judgement reported in AIR2003 Gauhati 12 wherein the Hon'ble Gauhati High Court had held that where the dues covered by the bills dated 13.11.2003 for the period up to 07.08.1999 bill was clearly time barred. The background narrated therein is that the bill in question pertains to the period up to 07.08.1999 and would, therefore be covered by the previous Electricity Act, 1910. The period of limitation for realization of dues payable to ASEB is 3 years. The period of limitation of recovery of dues of ASEB will be 3 years and Section 112 of the Limitation Act will be applicable. To realize dues from consumer, the period of 3 years should be counted from the date when the payment became due. In the instant case the payment became due on the next month just after one month when a bill of electricity is issued for the previous month and that limitation will apply from the date when the bill is issued in the next month.

The Appellant has referred provisions of Article 137 which stipulates that when the right to apply accrues is mentioned, the decisions cited by the Respondents is inapplicable. Therefore, the demand for the period 24.11.1998 to 09.06.2003 will be covered under the old Act i.e. Indian Electricity Act, 1910, and hence the same will be governed by the Limitation Act, 1963.

6. In the instant case the consumer is under-billed because officials of the licensee had not acted diligently resulting into less bill raised for the period 24.11.1998 to 09.06.2003 against actual consumption of energy. According to the Respondents the bill should have been raised on the basis of the multiplying factor 1 (one) instead of 2/3.

7. While dealing with the similar issue, the Hon'ble Delhi High Court in H.D. Shourie Vs. Municipal Corporation of Delhi, AIR 1987 Delhi 219, the expression "due" appearing in Section 56 of the Electricity Act, 2003 has been categorically dealt with. 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 under Section 56, 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.

8. It will not be out of place here to refer to the reported decisions in Tata Steel Ltd. Vs Jharkhand State Electricity Board (2008 KHC7794 AIR 2008 Jha99) and other Brihanmumbai Municipal Corporation Vs Yathish Sharma and others 92007 KHC3784:20079(3) KLTSN11 (Bom) where it was held as follows respectively:

**“The period of two years as mentioned in section 56(2) of the Electricity Act, 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of electrical energy.”**

**“Amount of charges would become due and payable only with the submission of the bill and not earlier. The word”due“in this context must mean due and payable after a valid bill has been sent to consumer. Till after the issue and receipt of the bill the respondents have no power**

or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent.”

**9. In Bharat Barrel & Drum Manufacturing Company Private Limited Vs The Municipal Corporation for Greater Bombay, AIR1978 Bom.369,**

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 under section 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.

**10.** It is evident that the amount became due when it was realized that the billing was done on an erroneous basis. In the instant case, even though the charges pertain to the period 12/1998 to 11/2005, the demand to the tune of Rs.76,78,233.00 was first raised vide letter No.1780 dated 11.08.006 wherein due date of payment was mentioned as 27.08.2006. The liability to pay energy charges is created on the day the electricity is consumed, the charge would become due only after a demand notice is served and the limitation period starts only from the date of demand notice. In the earlier Act, Indian Electricity Act 1910 (IX of 1910) there was no Limitation prescribed for raising demand but, Section 24(1) and 26(6) of the Indian Electricity Act, 1910 are not in “ pari material” with Section 56(1) and 56(2) of the Electricity Act, 2003. Therefore, it can only be construed that the revised bill amount first became due on 27.08.2006. The cause of action arose on the date the revised bill is issued and served to the consumer. Admittedly the Appellant had consumed energy for which bill was raised on the basis of wrong multiplying factor(2/3) where as it should have been 1(one). Hence, Section 56(2) of the Electricity Act 2003 would not come in the way of the

Respondents from recovering the aforesaid amount under the revised bills. Hence, contention of limitation cannot be accepted.

**11.** Heard both parties and also I have gone through the material on record and also oral as well as written submissions filed by the learned counsel for Appellant and Respondents.

**12.** In view of the overall facts and circumstances, in my opinion, ends of justice would be served if I hold that the Respondent is entitled to recovery of the impugned bill amount for the period 12/1998 to 11/2005 from the Appellant.

**13.** In the circumstances of the case, there shall be no order as to costs.

**14.** With the aforesaid observation and direction, the instant Appeal is disposed of as dismissed.

Let a copy of the order be served on to both the parties.

**Sd/-**

Electricity Ombudsman