

**Before the Appellate Tribunal for Electricity
Appellate Jurisdiction**

Appeal Nos. 202 & 203 of 2006

Dated: 14th November, 2006.

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A. A. Khan, Technical Member**

IN THE MATTER OF:

Appeal No. 202

Ajmer Vidyut Vitran Nigam Limited,
Chittorgarh, Rajasthan.

Appellant

Versus

1. M/s Sisodia Marble & Granites Pvt. Ltd. & Ors,
F-101, 102 RIICO Industrial Area, Chittorgarh- 312 001..

2. Rajasthan Electricity Regulatory Commission,
Vidyut Bhawan, Jyoti Nagar, Jaipur, Rajasthan.

Respondents

Appeal No. 203

Ajmer Vidyut Vitran Nigam Limited,
Chittorgarh, Rajasthan.

Appellant

Versus

1. M/s Safe Polymers Pvt. Ltd. & Anr.,
64-65, Udyog Vihar, Sukher, Udaipur, Rajasthan.

2. Rajasthan Electricity Regulatory Commission,
Vidyut Bhawan, Jyoti Nagar, Jaipur, Rajasthan.

Respondents

Counsel for the appellant : Mr. Manu Mridul. Advocate
Mr. Anant Kumar Vatsya, Advocate

Counsel for the respondents : Mr. R.C. Sharma, Dy. Secy., RERC.
Mr. S.C. Saxena, Consultant.

Under Section 111 (2) of The Electricity Act, 2003 :

Judgement

Per Hon'ble Mr. A.A. Khan, Technical Member

1. The interpretation of the words 'first due' occurring in Section 56 (2) of the Electricity Act, 2003, is involved in these appeals. Therefore, both the appeals are being disposed of together by this judgement.

Appeal No. 202 of 2006 is treated as a leading case and the decision in this appeal shall also apply to appeal No. 203 of 2006.

FACTS OF THE CASE:

2. On 24.08.2000, the first respondent being consumer of the appellant was provided with an electrical connection for 150 KVA with a connected load of 298 HP. In accordance with the terms of Regulation No. 9 of the Rajasthan Electricity Regulatory Commission (Distribution Licensee's Standards or performance) Regulations, 2003 (for brevity called as 'Regulations, 2003') the meter provided to the customer is required to be periodically checked/inspected and tested. In case of the meters of HT consumers with a contract demand of up to 500 KVA, the inspection/checking and testing is required to be done at least once in an year.
3. The respondent's meter was previously subjected to inspection on 19.07.2001 and 10.09.2002 and on both these occasions it was recording the consumption flawlessly.

4. On 03.03.2003 when the meter was checked by the appellant in situ using ACCUCHECK, it was found to be defective as the meter was recording less than the actual consumption. The aforesaid testing is stated to have been carried out in the presence of the first respondent and a joint inspection report was duly signed by the respondent. On 05.03.2003, the appellant replaced the defective meter by a new meter. The defective meter along with the joint inspection report was sent to the commercial department of the appellant for the defect analysis and assessment and computation of charges as per the applicable rule and procedure.
5. While the matter was pending with the Commercial Department of the appellant, during the audit process it was detected that a sum of Rs. 4,28,034/- worked out on the basis of the inspection report has not been debited to the account of the first respondent. As a consequence, on 19.04.2005, the appellant raised a demand notice for the sum of Rs. 4, 28,034/- and was advised to file their objections, if any, within 15 days or else the aforesaid amount shall be debited to their account. The first respondent did not agree with the additional demand and asked for details of the charges which was provided to them by the appellant by a communication dated 10.05.2005.
6. By a letter dated 02.06.2005, the first respondent furnished its own calculation to the appellant stating that the demand should be limited to Rs. 1,65,312/- and expressed its readiness to pay it in three equal installments. The appellant did not agree with it and debited a sum of Rs. 4, 28,034/- in the regular electricity bill No. 308 dated 08.08.2005. The first respondent, however, did not make the payment of the demand of arrears. Thereafter, the appellant served an electricity disconnection notice dated 28.02.2005 upon the first respondent.
7. Objections against the demand of the appellant were raised by the first

respondent before the Electrical Inspector under Regulation No. 39 (1) of the Rajasthan Electricity Regulatory Commission (Electric Supply Code & Connected Matters) Regulations, 2004 and under condition No. 49 of the Terms and Conditions for Supply of Electricity- 2004 read with Section 56 (2) of Electricity Act 2003. The appellant filed their reply and raised preliminary objection with regard to the jurisdiction of the electrical Inspector in the matter.

8. The Electrical Inspector after hearing both the parties set aside the demand raised by the appellant on the ground of it being raised beyond the limitation period as provided under Section 56 (2) of Electricity Act 2003 read with Regulation 39 (1) of the Regulations, 2004 and Condition No. 49 of the Terms and Conditions of Supply of Electricity, 2004 and declared the disconnection notice dated 22.08.2005 issued by the appellant as invalid and quashed the same.
9. Aggrieved by the aforesaid order of the electrical inspector, the appellant preferred a petition No. 90 of 2006 before the Regulatory Commission. The Commission in its order dated 20.06.2006 held that the matter did not fall within the jurisdiction of the electrical Inspector and quashed the demand raised by the appellant on the ground that the same has been raised beyond a period of two years as provided by Section 56 (2) of Electricity Act 2003 read with Regulation 39 (1) of the Code and Condition No. 49 of Terms and Condition of Supply of Electricity Regulations - 2004.

Discussion & Analysis:

10. We observe that the impugned order is based on the provisions of Section 56 (2) of Electricity Act 2003; Regulation 39 (1) of the Regulations, 2004 and Condition No. 49 of the Terms and Conditions of Supply of Electricity, 2004. The Section 56 (2) of the electricity Act 2003 reads as under:

“56(2): Notwithstanding anything contained in any other law for the time being in force, no sum due from any customer, under this Section shall be recoverable after the period of two years from the date when 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 electricity”.

11. The Regulation 39 (1) of the Regulations, 2004 specifies as mentioned below:

“39(1) No sum due from any consumer on account of charges for electricity OR any other sum other than a charge for electricity, shall be recoverable after a period of two years from the date when such sum became first due, unless such sum has been shown continuously as arrears and the licensee shall not cut off supply of electricity”.

12. Also the provision of Condition No. 49 of the Terms and Conditions of Supply of Electricity 2004 stipulates as under:

“49. Recovery of old dues:

No sum due from any consumer on account of charges for electricity or any sum other than a charge for electricity shall be recoverable after a period of two years from the date when such sum became first due, unless such sum has been shown continuously as arrears and the Nigam shall not cut off supply of electricity”.

13. From the above, it may be seen that the aforesaid provisions of the Electricity Act 2003, the Regulations of 2004 and the Terms and Conditions for supply of Electricity, 2004 are identical and the case hinges on the interpretation of Section 56 (2) of Electricity Act- 2003.

14. We have heard the learned counsel for the parties. The basic question for determination is what is the meaning of the words 'first due' occurring in Section 56(2) of the Electricity Act 2003; Regulation 39(1) of the Regulations, 2004 and condition No. 49 of the Terms and Conditions for supply of Electricity, 2004. In case the words 'first due' is construed as meaning consumption, it would imply that the electricity charges would become due and payable, the moment electricity is consumed. In that case failure to pay charges will entail consequences leading to disconnection of electricity to consumers even though the consumer will only know the units consumed by him and will not know the exact amount payable by him as per the approved tariff as the actual computation depends upon different parameters such as peaking/non-peaking rates; HT/LT rates etc. The responsibility to determine the amount payable by the consumer is that of the licensee. The consumer cannot be expected to discharge the duties of the distributor or the supplier of electricity. Moreover, it will create an anomalous situation as it would be difficult to determine the last date by which the payment is to be made by the consumer and in case last date is not known, it will be difficult to levy surcharge for delayed payment. Besides there will be problem in issuing notice for disconnection for failure to pay the charges on consumption. It appears to us that it could never be the intention of the legislature to equate the words 'first due' with consumption. The consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee for consumption of electricity by the consumer in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge.
15. It is to be noted that a meter records the consumption of energy uninterruptedly on a continuous basis by the consumer and for such consumption the liability for payment of corresponding amount of charges by the consumer is continuously created but will not be due for payment

unless the amount is raised through bill or a demand notice.

16. In H.D. Shourie vs. Municipal Corporation of Delhi, AIR 1987 Delhi 219, the Delhi High Court has ruled that electricity charges become first due after the bill is sent to the consumer and not earlier thereto. In this regard the High Court held as under:

“A bill for consumption of electricity can be sent even three years after the electricity has been consumed. The electricity charges become due after the bill is sent and not earlier. This being so, the proviso to S. 455 of Act (66 of 1957) will apply only when the bill has been sent and the remedy available with the licensee for filing a suit to recover the said amount would come to an end after three years elapse after the electricity charges have become due and payable. To put it differently, the provisions of S. 455 would come into play after the submission of the bill for electricity charges and not earlier”.

The judgement further holds that,

“The amount of charges would become due and payable only with the submission of the bill and not earlier. It is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word “due” in S. 24 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 S. 24. This certainly could not have been the intention of the Legislature. Section 24 gives a right to the licensee to issue not less than 7 days’ notice if charges due to it are not paid. The word “due” in this context must mean due and payable after a valid bill has been sent to the consumer. It cannot mean 7 days notice after consumption

of the electricity and without submission of the bill. Even though the liability to pay may arise when the electricity is consumed by the consumer, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised. Till after the issue and receipt of the bill the authority has no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent”.

The same judgement further provides that the arrear of charges in case of a defective meter can not be more than six months irrespective of period of defect in the meter. It reads thus;

“The maximum period for which a bill can be raised in respect of a defective meter under S. 26 (6) is six months and no more. Therefore, even if a meter has been defective for, say, a period of five years, the revised charges can be for a period not exceeding six months. The reason for this is obvious. It is the duty and obligation of the licensee to maintain and check the meter. If there is a default committed in this behalf by the licensee and the defective meter is not replaced, then it is obvious that the consumer should not be unduly penalized at a later point of time and a large bill raised. The provision for a bill not to exceed six months would possibly ensure better checking and maintenance by the licensee”.

17. Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. In the instant case, the meter was tested on 03.03.2003 and it was allegedly found that the meter was recording energy consumption less than

the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003. The revised notice of demand was raised for a sum of Rs. 4, 28,034/- on 19.03.2005. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected, the amount become payable only on 19.03.2005, the day when the notice of demand was raised. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired.

18. Though we have held that the amount due from the appellant is not barred by limitation and is recoverable, yet at the same time, we regretfully recognize that it was a serious lapse on the part of the licensee for having sent a demand notice only on 19.04.2005 to the consumer after more than 2 years of declaring the meter faulty. Notwithstanding the fact that the demand is not barred by limitations, the fact of considerable delay in raising the demand was against the commercial principles. The licensee ought to have realized that when such large sums of money are allowed to remain unrecovered from the consumers for long periods of time, it not only affects the investment opportunities but also erodes the value of the principal on account of inflation. The action of the licensee is not in public interest. It woefully demonstrates the lack of commercial sense.
19. We would also like to mention that after the appellant furnished the details of the charges of Rs. 4,28,034/- claimed from the first respondent on 10.05.2005, the latter submitted its own calculation, based on arrears for three months, to the appellant stating that the demand should be of Rs. 1,65,312/- and expressed its willingness to pay the amount in three equal installments. Thus, the dispute was not with regard to the liability to liquidate the arrears by the first respondent but it was concerning the quantum of the liability of the appellant.

20. It appears the appellant did not accept the offer dated 10.05.2005 made by the first respondent and proceeded to take further actions to recover the amount of Rs. 4,28,034/- in that the said amount was debited in the regular electricity bill No. 308 dated 08.08.2005 and consequent upon its non-payment took coercive action of issuing notice for disconnection etc. Under the circumstances, the offer made by the first respondent is no longer alive and can not be legally enforced
21. In view of the fact that demand raised by the appellant against the first respondent is not barred by limitation, we allow the appeal and set aside the impugned order dated 20.06.2006, passed by the Rajasthan Electricity Regulatory Commission in petition No. RERC/90/2006, and remit the matter to the Commission for adjudication of the matter in the light of this Judgment and in accordance with law.

Appeal No. 203 of 2006.

22. On the basis of the decision rendered in Appeal No. 202 of 2006 and the meaning ascribed to the words 'first due' occurring in Section 56 (2) of the electricity Act, 2003, we allow the appeal and set aside the impugned order, dated June 21, 2006, passed by the Rajasthan Electricity Regulatory Commission in Petition No. RERC/91/06, and remit the matter to the Commission for adjudication of the matter, in the light of the judgement rendered in Appeal No. 202 of 2006, and in accordance with law.

Dated: 14th November, 2006.

(A. A. Khan)
Member (Technical)

(Justice Anil Dev Singh)
Chairperson