

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1309 OF 2022

(Against the Order dated 03/06/2022 in Appeal No. 539/2021 of the State Commission Rajasthan)

1. STATE BANK OF INDIA

.....Petitioner(s)

Versus

1. JAIPUR VIDYUT VITRAN NIGAM LIMITED

.....Respondent(s)

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE PETITIONER :

FOR THE PETITIONER : MR. RAJIV SAGAR, ADVOCATE (VC)

FOR THE RESPONDENT :

FOR RESPONDENT : MR. SARTHAK ARORA, ADVOCATE

Dated : 21 November 2024

ORDER

1. This Revision Petition has been filed under Section 58(1)(b) of the Consumer Protection Act, 2019 (the "Act") against Order dated 03.06.2022, passed by the State Consumer Disputes Redressal Commission, Rajasthan ('State Commission') in FA No. 539 of 2021. In the impugned order dated 03.06.2022, the State Commission allowed the Appeal and set aside order dated 25.08.2021 passed by the District Consumer Disputes Redressal Forum, Sawai Madhopur ('hereinafter District Forum') in CC No. 370/2019.
2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.
3. Brief facts of the case, as per the complaint, are that SBI, the Complainant, having connection No. 170/0232 is a consumer of electricity supplied by the OP. OP-2 issued a legal notice No.1849, dated 29.08.2019, demanding Rs. 5,81,893/- to be paid for electricity dues owed for May 2013 to September 2013 and from November 2013 and July 2015. This demand was consistently reflected in the bills issued to the Bank. It is the case of the Complainant that under Section 56(2) of the Indian Electricity Act, arrears for electricity dues were recoverable only within two years from the date of billing. The OP, however, continued to display this demand in subsequent bills. The Bank contended that the complaint was liable to be accepted and sought compensation for the deficiency in service on the part of OP.
4. In its written version before District Forum, the OP contended that the bank's electricity meter was defective during the period from November 2013 to July 2015. Due to this defect, and after duly considering the months from May 2013 to September 2013, OP had raised demand based on a substitutive calculation method, averaging the usage over this period. Thus Rs. 5,81,893/- was demanded from the bank. The OP requested dismissal of the present complaint.

5. The learned District Forum vide Order dated 25.08.2021, allowed the complaint with the following finding:

“7. We have heard the counsel for the parties and given our thoughtful consideration to the submissions as well as the documents available on record. The OP has issued a bill for Rs.588991 in October 2019. The OP states that the bill is in respect of November 2013, May 2013-September 2013 and till July 2015 being the arrears of electricity due from May 2013 till September 2013 which are duly recoverable as well as payable. It is also evident that this amount has been added in the bill and accordingly a bill has been issued to the complainant which includes the audited amount for the year 2013 reflected to be due and payable. The complainant's submission on section 56(2) of the Indian Electricity Act has been examined in detail where after it is found that amount found the amount has been added and thus sought to be recovered on the basis of audit of year 2013, accordingly showing arrear of year 2013 bill of Rs. 581893 has been issued in months of October 2013 which could not have been added after expiry of 2 years period in the year 2019 as the same contravenes section 56(2) of Indian Electricity Act. The complainant's case is accepted because it is a consumer of electricity thus comes in the category of complainant. Post examination of entire records and documents available the present complaint is fit case to be accepted.

ORDER

Accordingly: The complaint is accepted against the OP, the notice dated 1849 dated 29/08/2019 for Rs.5,81,893 issued by OP to the complaint which was issued in October 2019 reflecting arrears of bill for the year 2013 on the basis of audit observation is quashed with direction to issue a fresh bill to the complaint. OP is also directed to pay compensation of Rs. 3000/- and Rs.3000/- as legal costs to the complainant. The Op will adjust the directed amounts in forthcoming bills of electricity. Order be complied within 2 weeks.”

6. Being aggrieved by the aforesaid order, OP filed First Appeal No. 539 of 2021. The State Commission vide Order dated 03.06.2022 allowed the Appeal and set aside the Order passed by the District Forum, with the following observations: -

“11. We have examined the record of the consumer court. It reveals that the matter was taken on 10th August 2021 when affidavits were directed to be filed on 25/8/2021 and thereafter on 25/8/2021 it is noted that the arguments of both the parties have been heard and decision has been taken by passing the order. Further examination of the record reveals that no oral arguments of any of the parties were heard as is apparent from document dated photo copy 2004 clause 49, office order 2996/2.2.2015 office of the Forum Jaipur which has been presented. It is revealed that the consume Court has not followed the legal and judicial principles by not granting opportunity to the parties therefore the order of the consumer court is liable to be declared illegal.

12. As we have discussed that the appellant has challenged the order of the consumer court but the respondent has not appeared despite notice and has remained absent and also after hearing

the counsel for the appellant this court upon the appreciation of the law laid down by honourable Supreme Court in terms of two decisions as noted above holds that the order of the consumer court cannot be sustained. Under the circumstances the decision of the Consumer Court dated 25th August 2021 is set aside.

13. The resultantly, the appeal is accepted and the order of the consumer Court dated 25th August 2021 is set aside by accepting the appeal. Parties to bear their own cost.”

7. Dissatisfied by the Order of the State Commission, Complainant

filed the present Revision Petition before this Commission with the following prayer:

A. The Impugned Judgment and Order dated 03.06.2022 passed by State Commission, Jaipur be quashed and set-aside;

B. Restore the order dated 25.08.2021 passed by the Consumer Court, Distt. Sawai Madhopur, Rajasthan in Compliant Case No. 370/2019;

C. Pass further orders as the nature and circumstances of the case may require;”

8. The learned counsel for the Complainant reiterated the facts initially outlined in the complaint, emphasizing that the bills issued by the OP were time-barred and that no amount was due from the bank. He contended that the bill raised in August 2019 came after a significant lapse of time, and no demand or claim for this amount had been previously raised or communicated to the Complainant for many years. He referred to Section 56(2) of the Indian Electricity Act, 2003, and prayed for the setting aside of the impugned order.

9. The learned Counsel for OP argued that on 29.08.2019 a demand notice for Rs. 5,81,893/- was raised as the Complainant's meter was defective from November 2013 to July 2015, during which period, bills were issued based on the average units consumed. In continuation of this demand notice, the OP had issued a letter dated 19.09.2019. Relying on *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Ltd & Anr. v. Rahamatullah Khan Alias Rahamjulla*, (2020) 4 SCC 650, and *M/s. Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Limited & Ors.*, (Civil Appeal No. 7235 of 2009), he argued that the electricity charges from November 2013 to July 2015 had become “first due” on 29.08.2019, when the notice was issued, and were subsequently added to the Complainant's electricity bill. Therefore, the two-year limitation period under Section 56(2) of the Indian Electricity Act, 2003, would commence from 29.08.2019, making the OP's recovery of dues from the Complainant timely and not barred by limitation. Additionally, citing *U.P. Power Corporation Ltd. & Ors. v. Anis Ahmed*, (2013) 8 SCC 491, he argued that the complainant did not qualify as a “consumer” under the Consumer Protection Act and was thus not entitled to approach the Consumer Fora. He prayed for upholding the State Commission's order and for dismissal of the complaint.

10. I have examined the pleadings and material placed on record, including orders of both fora, and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

11. As regards the allegation of deficiency in service or unfair trade practice, the primary onus to proof lies upon the complainant. The complainant relied upon Section 56 of the Indian Electricity Act, 2003 and claimed that the electricity bill demanded by the OP was barred by limitation. Per contra, it is the argument of the OP is that the present case was one of a demand made at a later stage which could not be raised earlier as the complainant's meter was defective. The complainant's contention revolves around the argument that the demand was barred by limitation. It is a settled position in law that mere raising an additional demand based on undisputed consumption and the payment of which, in any case, was otherwise due, will not amount to a "deficiency of service". Moreover Section 56(1) - which provides for coercive actions such as disconnection, would come into play only on the neglect of the consumer and not on the negligence of the power distributor. In **M/S Prem Cottex v Uttar Haryana Bijli Vitran Nigam Ltd & Ors** (LL 2021 SC 541), decided on 05.10.2021 Hon'ble Supreme Court has held that:

“26. The matter can be examined from another angle as well. Sub section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person “neglects to pay any charge for electricity”. The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Subsection (2) of Section 56 has a non obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Subsection (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect.”

12. The Hon'ble Apex Court in Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam limited and Anr. v. Rahamatullah Khan alias Rahamjulla, (2020) 4 SCALE 36, decided on 18.02.2020, has held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and, therefore, electricity charges would become “first due” only after the bill is issued, even though the liability would have arisen on consumption.

13. In the present case, the bill demanding for payment of undisputed consumption was first raised on 29.08.2019. Thus, prior to that there was no question of application of Section. 56 of the said Act or of limitation. Drawing from the aforesaid judgments it is also clear that the limitation period of for the payment of the bills began from 29.08.2019 and continued for two years therefrom. Thus, the present case is not one of deficiency of service on the part of the power company but the bill was for recovery of a "pending assessment" which, on due assessment by OP, was consequently demanded from the complainant.

14. Based on the discussion above, I do not find any merit in the Revision Petition and, therefore, the Revision Petition No. 1309 of 2022 is dismissed and the Complaint Case No. 370 of 2021 is also

dismissed.

15. There shall be no order as to costs and all pending Applications, if any, also stand disposed of accordingly.

AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER