

Swastic Industries

Vs

Maharashtra State Electricity Board

SLP (C) No. 765 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

24.01.1997

ORDER

1. The petitioner is canvassing the correctness of the decision of the National Consumers' Disputes Redressal Commission, New Delhi, made on 30-8-1996 in Appeal No. 520 of 1995 (Maharashtra SEB v. Swastik Industries, ((1996) 3 CPJ 71 (NC))).

2. The admitted position is that the respondent-Electricity Board had issued a supplementary bill to the petitioner on 5-2-1993 demanding payment of Rs. 3,17,659. The petitioner objected to the bill by his letter dated 16-2-1993. However, when a letter was issued for payment of the said amount, the petitioner paid it under protest and filed the complaint before the State Consumers' Disputes Redressal Commission. The Commission by order dated 24-5-1995 allowed the complaint and held that the claim was barred by limitation of 3 years. Feeling aggrieved, the Electricity Board filed an appeal. The National Commission relying upon the judgment of a Division Bench of the Bombay High Court in *Bharat Barrel & Drum Manufacturing Co. (P) Ltd. v. Municipal Corpn. of Greater Bombay* (AIR 1978 Bom 369) has held that there is no limitation for making the demand by way of supplementary bill. Section 24 of the Electricity Act, 1910 gives power to the Board to issue such demand and to discontinue the supply to a consumer who neglects to pay the charges. It is contended by the learned counsel for the petitioner that Section 60-A of the Electricity (Supply) Act, 1948 prescribes a limitation of 3 years for the Board to institute any suit, after its constitution, for recovery of the arrears. Thereby the limitation of 3 years is required to be observed. The Board in negation of Section 60-A of the Electricity (Supply) Act cannot be permitted to exercise the power under Section 24 of the Indian Electricity Act, 1910. We find no force in the contention.

3. Section 60-A of the Electricity (Supply) Act, 1948 envisages the enlargement of the period of limitation in certain circumstances, i.e., intervening period of the constitution of the Board, and the right of the State to recover the amounts due to the State for consumption of electricity delegating the power to the Board. In that behalf, clauses (i) and (ii) therein operate as under :

"(i) where it has been constituted before the commencement of the Electricity (Supply) Amendment Act, 1966 (3 of 1966) within three years of such commencement; and

(ii) where it has been constituted after such commencement, within three years of its constitution."

4. This is an enabling provision to recover the amounts due by way of suit, despite the fact that Section 24 of the Indian Electricity Act clearly empowers the Board to demand and collect any

charge from the consumer and collect the same towards the electrical energy supplied by the Board in the following terms :

"Where any person neglects to pay the charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer."

5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same they have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligations are mutual. The Board would supply electrical energy and the consumer is under corresponding duty to pay the sum due towards the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglected to pay the bill for the additional sum, was right in disconnecting the supply without recourse to filing of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference.

6. The special leave petition is accordingly dismissed.