2020 INSC 371

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7649-7651 of 2019

BIHAR STATE ELECTRICITY BOARD ETC. ...APPELLANT(S)

VERSUS

M/S ICEBERG INDUSTRIES LTD. AND OTHERS ETC. ...RESPONDENT(S)

J U D G M E N T

ANIRUDDHA BOSE, J.

These appeals are directed against a judgment of a Division Bench of the Patna High Court affirming in substance the decision of the learned Single Judge in disposing of three writ petitions in disputes arising out of obligation of the first respondent to pay certain sum categorised as Annual Minimum Guarantee (AMG) and certain other charges to the Bihar State Electricity Board. The appellant was the Board. The complaint of the first respondent,

Iceberg Industries Ltd. (the company) over disconnection of their supply which they argued to be illegal was sustained by the Single Judge and it was also held by the First Court that the said company was not liable to pay AMG and certain other charges as per Board's computation. The judgment of the Division Bench was delivered on 7th February 2013. The company had entered into an agreement for supply of electricity with the appellant Board for contract demand of 1,000 KVA on 16th April 2004. This was for supply of high-tension electricity connection for setting up of a brewery. Supply to the company was energised on 06.05.2005. The dispute involved in the three writ petitions giving rise to these appeals originated from a bill for Rs. 27,11,814/- dated 17th April 2006. This was raised by the appellant towards AMG and was payable by 06.05.2006. The company did not make payment thereof within the prescribed date. Three disconnection notices, dated 15th May, and 26th May and 29th June 2006 on account of default in payment of AMG as also energy charges were issued by the Board. The company on 29th July 2006 made a representation

for liquidating their dues on account of AMG in ten monthly instalments citing certain business related difficulties. Part payment of the dues to the extent of Rs. 14,71,952/- was made. Next disconnection notice under Section 56 of the Electricity Act, 2003 (the Act) was sent to the company dated 23rd August 2006 for a sum of Rs. 33,38,572/- for non-payment of AMG as also on account of Delayed Payment Surcharge (DPS). Another bill was raised on 1st September 2006, the due date for which was 20th September 2006. The bill amount was Rs. 37,00,923/- and the bill heads were AMG, DPS as also energy charges. Supply to the company, however, was disconnected on 6th September 2006. There is some doubt as to whether such disconnection took place on 6th September or 8th September, but this variation is of little significance so far these appeals are concerned.

2. The factual background of the three petitions would appear from the recordal made in the following passages of the judgment under appeal:

"Subsequently a fresh bill was raised on 1.9.2006 which included arrears of AMG and DPS under the bill dated 17.4.2006 also for a total of Rs.37,00,923/- along with current charges. The due date for payment was 20.9.2006. The Board disconnected supply on 6.9.2006 pursuant to the notice for disconnection dated 23.8.2006. The Board thereafter acted on the representation dated 26.8.2006 and granted facility of instalments. An agreement was signed between the parties on 11.4.2007 for payment of AMG and DPS in instalments. The connection was restored 7 months later on 16.4.2007. It is not in dispute that payments under the bill dated 17.4.2006 has then been made as agreed.

A fresh bill was thereafter raised by the Board on 4.5.2007 for Rs.70,23,149/- as the minimum guarantee charge/base charge for the disconnected period of 1.11.2006 to 30.4.2007, along with AMG charge for the financial year 2006-07 (which also included charges for the disconnected periods of August, September, October 2006) of Rs.18,02,582/-. The total bills thus raised was for Rs.88,389,528/-. A fresh disconnection notice for non-payment of the same was issued on 22.5.2007. The industry moved the Forum under the Act. By order dated 12.2.2008 the Forum held the industry liable to pay minimum charges up to November 2006. The minimum charges from December 2006 to April 2007 were held to be bad. The Industry, to the extent it was

aggrieved by the order, questioned it in CWJC 4637 of 2008. The latter part of the order was not challenged by the Board.

On 19.3.2008, a fresh disconnection notice was served for non-payment of Rs.1.33 Crores inclusive of AMG and DPS for the period December 2006 to April 2007 disallowed by the Forum. The Board also refused to accept current consumption charges. Based on a demand contrary to the order of the Forum, the Board disconnected electric supply for the second time on 2.4.2008.

After it had disobeyed the order dated 12.2.2008 of the Forum CWJC 7314 of 2008 was filed by the Board on 5.5.2008 questioning the same. The writ petition did not disclose that the Board had already disobeyed the order and disconnected supply without raising fresh revised bills. No prayer for interim stay of the order of the Forum was made in the Writ Petition.

Pursuant to an interim deposit of 35 Lacs directed on 15.5.2008 in CWJC 4637 of 2008, electric supply was restored on 24.5.2008. A fresh bill was again raised on 22.5.2009 for Rs.1.47 Crores along with notice for disconnection. It included AMG and DPS for the period disallowed by the Forum. It also included AMG and DPS charges for the subsequent disconnection from 2.4.2008 to 23.5.08. The industry

> challenged the same again before the Forum. The demand was stayed by the Forum on 12.6.2009. Without challenging the order of the Forum, the Board in complete disregard refused to accept even current payments, showed arrears of Rs.1.82 crores and disconnected supply of the Industry again on 7.8.2009. CWJC 9742 of 2009 was preferred against the same by the Industry. Rs.80 Lacs was deposited pursuant to the order of the Court, and electric supply was restored on 1.12.2009. The industry therefore also questioned AMG and DPS charge for the disconnection period from 7.8.2009 to 30.11.2009. Further payment of Rs.40 Lacs has been made pursuant to interim directions in the present Appeals."

3. The Single Judge found the act of disconnection without considering the request for instalments was unwarranted. It was held that such default on the part of the company did not constitute "neglect to pay" as contemplated in Section 56 of the 2003 Act. The fresh bill, which was raised on 1st September 2006 showed the due date of payment to be 20th September 2006. Disconnection was however made on 6th September 2006 on the basis of earlier notice of 23rd August 2006. This was held to be unjustified. The demands

raised thereafter contrary to the order of the Forum constituted under Section 42(5) of the Act was also held to be illegal by the Single Judge.

4. The Appeal Bench, inter, alia, found:-

> "The bill dated 19.3.2008 which included the AMG and DPS for the period 1.11.2006 to 3.4.2007 contrary to the order of the Forum being illegal, the Industry was under no obligation to pay the same. The subsequent disconnection on 2.4.2008 automatically becomes illegal. Surprisingly, the officials of the Board persisted in defying the order of the Forum in the bill dated 22.5 2009 by again including AMG and DPS for the period of disconnection disallowed by the Forum and reiterating the subsequent illegal bill also for the period of illegal disconnection from 2.4.2008 to 23.5.2008. The petitioner challenged this bill before the Forum again which stayed disconnection on 12.6.2009. The authoritarianism of the Board persisted in flagrant disobedience and supply again disconnected on 7.8.2009 leading to institution of CWJC 9742 of 2009. The supply was restored on 1.12.2009 upon payment of Rs.80 Lacs under orders of the Court. The disconnection from 7.8.2009 to 30.11.2009, needs no further discussion to be held illegal. We are constrained to observe that this second occasion when the officials

of the Board acted in gross defiance of the orders of the statutory authority is indicated of dangerous executive thinking. We expect the officials of the Board to understand their folly and act prudently, take action against the officers concerned so that in future such administrative adventurism is not attempted.

In fairness to the Board, we must deal with CWJC 7314 of 2008 filed by it against the order of the Forum. It does not appear from the impugned Judgement that any substantive challenge was laid out to it except that the Board did not agree with the same. Even before us no substantive challenge has been laid out why the order of the Forum was wrong. The only ground urged before us was that the order of the Forum was contrary to the agreement signed between the parties for an H.T. connection. It was the foremost duty of the Board to either comply the order of the Forum and then challenge it or alternately challenge the order immediately and seek stay of the order. Its conduct has been found grossly wanting on both aspects. An evasive and purposefully vague statement was made in paragraph 9 of disconnection. No details of the date was stated or that it had already disobeyed the order before filing the Writ petition. If the Board was seeking the protection of the law against the statutory quasi-judicial order, it had to first respect the law. A person falling foul of the law cannot seek the shelter of the law to perpetuate disobedience. The writ petition filed by the

> Board was therefore fit to be dismissed on this ground also.
>
> The case of (Southco) (supra) relied upon by the Board has no application to the present case. The words "revenue focus" was used in context of unauthorised use of electricity. Similarly Kesoram Industries (supra) related to construction of a taxing statute. Likewise Raymond (supra) and Green Industries (supra) did not relate to the obligation for payment of Minimum Guarantee Charges for the period of illegal disconnection by the Board.
>
> Affirming the reasoning and findings of the Writ Court, we hold that the initial disconnection itself being illegal, the Board does not have the authority to charge any AMG and DPS not only for that period but also for each and every subsequent period of illegal disconnection also, because it failed to revise the bills. The directions given by the Writ Court in the penultimate paragraph of the judgment calls for no interference."

5. Before us three issues emerge, which we need to address. The first one is whether the company could have invoked the Redressal Forum's jurisdiction over the dispute pertaining to AMG and DPS including the question of disconnection in terms of Section 56 of the Act. The second issue is as to whether, after receiving a

representation seeking instalment payment, supply to consumer could be disconnected without dealing with such representation. The third issue is as to whether AMG was payable by the company for the entire period during which supply to the consumer remain disconnected.

6. The company's request for grant of instalments to liquidate their dues was ultimately accepted by the Board and to that effect an agreement was executed between Company and the Board for liquidation of the outstanding dues of Rs. 37,09,027/- in ten instalments. This agreement is dated 11th April 2007. A copy of this agreement has been made Annexure R11 to the counter-affidavit of the Company. On payment of the first instalment, supply line of the company was energised on 16th April, 2007. Another bill dated 04.05.2007 was sent to the company for Minimum Monthly Base charges for the period between 1st December 2006 and 30th April 2007, AMG charges for the year 2006-2007 and total amount demanded under this bill was for Rs. 88,389,528/-. The next notice under Section 56 of the Act was issued on 22.05.2007 as the

company did not make payment of the bill dated 4th May, 2007. The Company thereafter approached the Consumer Grievances Redressal Forum questioning legality of the notice dated 4th May 2007. Their application was registered as Case no. 108 of 2007 and initially the demand was stayed by the Forum. In the final order dated 12th February 2008, the Forum gave its finding in the following terms:-

1. The disconnection of the electric line of the Petitioner on 08.09.2006 is being held "legal"

2. The date of disconnection of "08.09.2006" has been found as notice for determination of the agreement.

3. The Petitioner/consumer is liable for payment of Energy Bill of AMG Charge for September' 2006 & October' 2006 and monthly Minimum Base Charge of November' 2006 i.e. for three months from the month of disconnection of the line.

4. As per Board's Notification no-477 dated 29.10.2002 and letter No. 793 dated 22.10.2013-both issued in the signature of Secretary, Bihar State Electricity Board, Patna; the reconnection done on 16.04.2007 by accepting of amount of 1st instalment with disconnection & Reconnection Charge has been decided as clear violation of the Board's directives, as the electric line of the Petitioner remained disconnected from 08.09.2006 to 15.04.2007 i.e. more than six months period.

5. Any request made by the Petitioner for availing/providing electric power should have been treated, as the case of New Applicant and reconnection done is found as improper.

6. The charging of Monthly Minimum Base charge from December' 2006 to March'2007 is decided as illegal and liable for withdrawal, as the connection was given in the Month of April' 2007.

7. If the Petitioner is found fit to avail the benefit of exemption, necessary suitable and appropriate action may be taken to allow the benefit of exemption from payment of Monthly Minimum Base Charge as per Industrial Policy Resolution' 2006.

7. Supply to the Company was disconnected again on 2nd April 2008. Both the appellant and the respondent company had assailed the order of the forum invoking the Constitutional Writ jurisdiction of the Patna High Court. The company's writ petition, registered as CWJC 4637 of 2008 challenged that part of the order in which disconnection of electricity on 8th September 2006 was held to be legal. The Board's writ petition was registered as CWJC 7314 of 2018. In this writ petition, the Board questioned the jurisdiction of the Redressal Forum to adjudicate the dispute on the ground that the company was not using the electricity for their own use. They

also wanted invalidation of the Forum's order by which the energy bill dated 4th May 2007 was quashed.

In the first writ petition filed by the company (CWJC 4637 of 2008), by an interim order, the High Court had directed deposit of sum of Rs.35 lacs for the purpose of reenergising supply and this amount, we are apprised, was deposited by them. The supply line was also restored on 24.5.2008. But between 2nd April 2008 and 24th May 2008, the company's electricity stood disconnected. Thereafter, demands were made on different dates under several heads including arrears, DPS and a fresh notice of disconnection under Section 56 of the 2003 Act was issued on 22nd May 2009. The company again approached the Forum against a bill dated 5th June 2009 for a sum of Rs.1,63,15,452/-. The Forum had stayed the demand and passed an order restraining the Board from disconnecting supply of the respondent no.1. But on 7th August, 2009, again supply to the company was disconnected, which prompted filing of the third writ petition by the company, which was registered as CWJC 9742 of 2009. An interim order was issued

in that writ petition requiring them to deposit a sum of Rs.40 lacs within a week after which the power supply was to be restored to be followed by further deposit of a sum of Rs.40 lacs by 6th November 2009. This interim order was passed on 15th October 2009. The said sum was deposited and supply was restored. Ultimately, the learned Single Judge disposed of all the three writ petitions by a common judgment and order passed on 29.4.2010 with the following directions and observations: -

> "(1) The Board would have to delete from the demands being made as against the petitioner amounts in relation to the period of disconnections, because, as shown above, each disconnection was illegal, wrongful and the petitioner cannot be made to pay for the period of such wrongful disconnections.
>
> (2) The bills and the liability of the petitioner would have to be re-caste from the very initial period, deleting charges aforesaid, giving due credit to payment made in between & then final amount has to be worked out.
>
> (3) The final amount being worked out for which the period of one month is granted to the Board, the Board would serve the bill

giving the full details in respect thereof, deleting the charges as indicated above.

(4) As this Court has found that the amounts as claimed were incorrectly claimed, then the bills being revised would not contain delayed payment charges for balance due in view of Division Bench judgment of this Court in the case of M/s Gaya Roller Flour Mills Private Ltd. Vs. Bihar State Electricity Board since reported in 1995(2) PLJR 715.

(5) Petitioner by one of the interlocutory applications has prayed that he is entitled to exemption under the Industrial Policy 2006 of the Government. That dispute is pending before the Industries Development Commissioner. The petitioner would have liberty to pursue the matter before that authority."

8. We shall first address the question as to whether the Forum under Section 42(5) of the 2003 Act had the jurisdiction to entertain and determine the company's application. We must point out here that before the Appeal Bench the counsel for the Board had acknowledged Forum's jurisdiction to adjudicate the dispute raised before it. This appears from the recordal of submission of the

counsel for the Board before the Appeal Bench as it appears in the judgment under appeal:-

> "…….Before us, Counsel for the Board fairly acknowledged that the Forum had jurisdiction to adjudicate the dispute……"

9. But even if we proceed on the basis that concession on law made before a judicial forum against whose decision we are hearing these appeals would not bind a party to such concession, we do not find anything in law which barred the Redressal Forum from adjudicating the dispute. Section 42(5) of the 2003 Act lays down:

> **"42. Duties of distribution licensees and open access.-** (1) xxx xxx
> (2) xxx xxx xxx
> (3) xxx xxx xxx
> (4) xxx xxx xxx
> (5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission."

10. The term 'consumer' has been defined in Section 2(15) of the 2003 Act in the following terms:-

> "2(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;"

11. The respondent company fits this description. A case was sought to be made out that since the company was a high-tension commercial consumer, they could not apply to the Forum. On this count, definition of consumer as specified in clause 2 (1) (g) of the Consumer Grievance Redressal Forum and Electricity Ombudsmen Regulation, 2006 was sought to be relied upon. This clause specifies:-

> 2 (1) (g):- 'Consumer' means any person who is supplied with electricity for his own use by a licensee and includes any person whose premises are connected for the purpose of receiving electricity with the works of a licensee or a person whose

> electricity supply is disconnected by a licensee or the person who has applied for connection for receiving electricity from a licensee, as the case may be.

But we do not find any reason to denude the company of its locus to approach the forum. The object of use of electricity may be to produce items for sale, but use or consumption of electricity by them was for their own factory.

12. Next comes the question as to whether it was permissible on the part of the Board to disconnect the supply of the company in spite of the order of stay granted by the Forum. We have reproduced the passage from the judgment of the Division Bench dealing with that aspect of the controversy. We accept the finding of the Division Bench on that count. Board could not have had ignored the directive of a statutory forum and imported their own perception of what was legal to proceed against a consumer.

13. The third point urged before us relates to the issue as to whether the company was required to pay AMG charges or not during the period their supply stood stalled by disconnection. The

Forum referred to Circular No. 477 dated 29.10.2002 (General Terms and Conditions of Supply) while accepting the consumers stand that the Board could not do so. In the order of the Forum dated 12th February 2008 paragraphs 6(B) and 6(B)(iii) of that circular have been quoted as:

> "If the line of a consumer is disconnected for default in payment of dues of the Board and the same remains disconnected for a period of 3 months, the date of disconnection of line shall be deemed to be the date of notice for termination of agreement and the agreement shall be deemed to have ceased and determined after a period of three months, calculated from the month of disconnection. The Consumer shall be liable to pay minimum energy/charge/demand charges; as per tariff provisions for this period of 3 months."
>
> "If, after termination of agreement, the consumer comes forward with a request to provides to his premises, he will be treated as a new applicant, but he shall clear all dues against the erstwhile connections."

14. The AMG charges quantified in the bills raised subsequent to the one dated 17th April 2006 did not take into account the period

during which supply to the consumer had remained disconnected. On behalf of the Board, on the other hand reliance was placed on clauses 9(a) and (b) of the Supply Agreement dated 16th April 2004 to contend that the circular No. 477 could not have had been made applicable within the first three years from the date of commencement of the supply of energy. These two clauses read:-

> "9(a)The consumer shall not be at liberty to determine this agreement before the expiration of three years from the date of commencement of the supply of energy. The consumer may determine this agreement with effect from any date after the said period on giving to be Board not less than twelve calendar months' previous notice in writing in that behalf and upon the expiration of the period of such notice this agreement shall cease and determine without prejudice to any right which may then have accrued to the Board hereunder provided always that the consumer may at any time with the previous consent of the Board transfer and assign this agreement to any other person and upon subscription of such transfer, this agreement shall be binding on the transferee and Board and taken effect in all respects as if the transferee had originally been a party hereto in place of the consumer who shall

henceforth be discharged from all liabilities under or in respect thereof.

(b) In case the consumer's supply is disconnected by the Board in exercise of its powers under this agreement and/or law and the consumer does not apply for reconnection in accordance with law within the reminder period of the compulsorily availing of supply as stated above or the period of notice whichever be longer, he will be deemed to have given a notice on the date of the disconnection in terms of aforesaid clause 9(a) for the determination of the agreement and on expiration of the abovesaid reminder period of compulsorily availing of supply or the period of notice whichever is longer, this agreement shall cease and determine in the same way as above."

15. The Redressal Forum in its order of 12th February 2008 (in case no. 108/2007) has construed the said Circular partly in favour of the company in the following manner:-

"Thus, it is very clear that after three months of the month of disconnection, i.e. after termination of the agreement, the consumer requested to the concerned authorities of the Board to allow him 20 equal instalments of the AMG bill for 2005-2006 and monthly energy bill for August 2006, but the concerned

authorities of the Board has executed the agreement of instalments with disconnection & reconnection on 11.04.2007 in violation of this important Circular of the Board and the line was reconnected on 16.04.2007 after acceptance of payment of Rs.9,27,257.00 (1st instalment) and disconnection & Reconnection charge of Rs.2,000=00 vide money receipt no – 444920 & 444921 respectively of dated 12.04.2007; whereas the petitioner/consumer would have been treated as new applicant.

This letter of ESE/Patna further states that on reconnection, the consumer were served the regular energy bill and the AMG bill during the period of this connection i.e. from 11/2006 to 4/2007 worth Rs.70,23,149.00.

The Forum finds that, during the issue of energy bill for the month of 4/2007, the bill issuing authority i.e. ESE (Consumer & Revenues)/Patna Electrical Circle has issued MMC bill including the period of 01.11.2006 to 30.04.2007 – for six months for Rs.70,36,946=00 by mentioning the rebate Amount of Rs.13797=00, if paid before 16.05.2007.

On examination of the copy of his issued energy bill, the Forum finds; that this energy bill-mentioned as bill for the month of 4/2007 – is wrongly prepared and levied as after termination of agreement, as per Circular of Board the consumer/petitioner is only liable for payment of AMG/MMC charge for three months from the

> months of disconnection i.e. AMG charge for the month of Sept' 2006 and Oct.2006 and Monthly Minimum Base Charge for the month of November 2006 only, hence charging/levying of Monthly Minimum Base charge for the period December 2006 to March 2007 is wholly illegal and incorrect.
>
> The Forum also detects that Electricity Duty of 6% of Rs.3,47,684=00 on the total amount of Monthly Minimum base charge of Rs.57,94,740=00 have been wrongly levied, where as the Electricity Duty @ 6% is to be chargeable only on the energy charge of the units as recorded and calculated as per reading shown in the installed Meter.
>
> Even though the amount of DC&RC Charge for Rs.2000=00 has already been deposited by the consumer on 12.04.2007, this amount of Rs.2000=00 is again shown as charged in the instant bill for the month of 4/2007, issued on 04.05.2007, with due date of the date 16.06.2007, which makes this bill as incorrect."

16. We thus find that the statutory Forum has come to a finding in dealing with certain circular issued by the Board. We do not think we ought to interfere at this stage with such finding so far the same related to applicability and interpretation of the said circular.

17. As regards the provisions of clauses 9 (a) and (b) of the agreement, the first provision curb the right of a consumer to determine the agreement unless certain conditions are fulfilled. The circular relied upon by the Forum however has wider application and its applicability has not been disputed by the Board. Contention of the Board is that the Forum did not adhere to clause 6 (B) (i) of the circular, which according to the Board, constituted partial modification of general terms and conditions of supply. We do not accept this argument, particularly in the factual perspective of these appeals. The Board had agreed to instalments for clearing the dues and restored the supply. On that basis, an independent arrangement came into existence vis-a-vis the company's terms of supply in the given case.

18. The only point which now remains to be dealt with is as to whether the representation of the company after issue of notice of disconnection could absolve them from rigours of Section 56 of the 2003 Act which relates to disconnection of supply, on the ground that such representation demonstrated there was no negligence on

the part of the consumer to pay any charge of electricity. Section 56 of the Act provides:-

> "56 Disconnection of supply in default of payment- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled 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:
> Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-
>
> (a) an amount equal to the sum claimed from him, or

> (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,
>
> whichever is less, pending disposal of any dispute between him and the licensee.
>
> (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such 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 the electricity."

19. Under the aforesaid provision, disconnection of supply is special power given to the supplier in addition to the normal mode of recovery by instituting a suit. Both the Single Judge and the Appellate Bench of the High Court have held that the respondent company did not neglect to pay their dues, for which reason the supplier could have effected the harsher mode by disconnection supply. The Single Judge referred to two authorities, **Corporation of the City of Nagpur** Vs. **Nagpur Electric Light and Power**

Company Limited – (AIR 1958 Bom. 498) and **Amalgamated Commercial Traders** Vs. **A.C.K. Krishnaswami** – (1995)(XXV) CC 454 in which it has been held that in the event there is bona fide dispute between the parties on the quantum of dues, non-payment of such sum would not amount to negligence to pay. The first authority relates to Section 24(1) of the Indian Electricity Act, 1910 having provision similar to that of Section 56 of the 2003 Act. The second case related to initiation of winding-up proceeding under the Companies Act, 1956. The other authority referred to was the case of **Laxmikant Revchand Bhojwani and another** Vs. **Pratapsing Mohansingh Pardeshi** – (1995) 6 SCC 576. In this case, one of the issues involved was default in payment of dues on account of rent, for which eviction could be asked for. The court found that the rent in that case was sought to be paid through money order within the specified period. It was held that it was not a case default to pay simpliciter and hence the rigours of the default provision leading to eviction under the applicable rent law stood diluted.

20. So far as the subject controversy is concerned, there is no dispute on obligation of the respondent company to pay the AMG charges, at least so far as first bill is concerned. Its representation for instalment was in the nature of a mercy plea. Going by that factor alone, we might not have had accepted the finding of the High Court that the consumer did not neglect to pay so as to warrant the disconnection provision contained in Section 56 of the Act. But in respect of respondent company, eventually instalment was granted subsequent to the period of disconnection. Once that plea for instalment payment was accepted and agreement was entered into for clearing the dues, it demonstrated willingness to pay on the part of the company of the dues in a manner acceptable to the appellant Board. Such plea of the company was accepted after keeping the matter pending for a long time. In such circumstances, in our opinion the High Court was right in giving its finding that the act of disconnection on 8th September 2006 was arbitrary. Because of these reasons we do not want to disturb the finding of the Courts below.

21. The appeals filed by the Board are accordingly dismissed. The judgment of the Division Bench of the Patna High Court is sustained. All connected applications stand disposed of. There shall be no order as to costs.

……J.
(DEEPAK GUPTA)

……J.
(ANIRUDDHA BOSE)

New Delhi;
April 27, 2020