



AIR 2023 GUJARAT 20  
GUJARAT HIGH COURT  
BIREN VAISHNAV , J.

Maulik Nanavati, for Nanavati and Co., for  
Petitioner; A. V. Nair, for Rajabahi J. Gogda, for  
Respondent.

R/Special Civil Application No. 579 of 2022,  
D/- 15 - 12 - 2022

**Dakshin Gujarat Vij Company Limited v. Indus  
Towers Limited.**

**Electricity Act (36 of 2003), S.81 -  
Gujarat Electricity Regulatory Commission  
(Electricity Supply Code and Related  
Matters) Regulation, Cl.6.84 - Recovery of  
electricity dues - Issuance of supplementary  
bill - Challenged on ground of bar of  
limitation - No sum due from any consumer  
shall be recovered after two years from  
date when such sum became first due -  
Only exception is that such sum has been  
shown continuously recoverable as arrears of  
charges of electricity - Company is barred by  
raising a Supplementary Bill for period of two  
years - Recovery period was of August 2012 to  
January, 2015 for which Supplementary Bill  
was raised in July 2020, beyond a period of  
two years when sum first became due - Order  
of recovery of dues passed beyond limitation  
period, liable to be set aside. Limitation Act  
(36 of 1963), S.17(1)(c) -**

**AIROnline 2020 SC 208; AIROnline 2021  
SC 848, Followed.  
(Paras5.1 5.4 6)**

<b>Cases Referred</b>	<b>Chronological Paras</b>
AIROnline 2021 SC 848 (Foll.)	3.1 , 5.3
AIROnline 2021 P and H 621	4.3
AIROnline 2020 SC 208 (Foll.)	3.1 , 5.2
AIR 1997 SC 1101	5.2
AIR 1990 SC 313	5.3
AIR 1987 SC 117	5.2

## **Judgement**

1. ORDER :-The Dakshin Gujarat Vij Co. Ltd., (hereinafter referred to as "the electricity company") has by way of this petition challenged the order dated 16.07.2021 passed by the Consumer Grievances Redressal Forum in complaint No. 172 of 2020-2021.

2. Facts in brief indicate as under:

2.1. The respondent Indus Towers Limited is a consumer of Energy. It obtained a LTMD tariff electricity connection for 15 kw being connection No. 13918 / 01337/ 5 on 28.05.2007. The respondent No.1, thereafter approached the electricity company for increasing the sanctioned load of 235 kw.

2.2. In October 2019, the internal audit of the petitioner company for the period from April 2017 to March 2018 revealed certain discrepancies with respect to billing of the respondent No.1 for the period of August 2012 to January 2015. According to the auditors, while the contracted and the sanctioned load for the period of August 2012 to January 2015 was 15 kw, the billing was wrongly done by considering the sanctioned load at 8 kw. Further, the energy charge applicable per unit was wrongly considered at Rs.4.35 instead of Rs.4.55. Accordingly, the Chikhli Division of the Electricity Company on 14.07.2020, issued a supplementary bill for an amount of Rs.83,436.88 ps/- to the respondent No.1 for the period from August 2012 to January 2015. The respondent No.1 on 17.03.2021 paid payment of 50% under protest and thereafter challenged the Supplementary Bill before the Consumer Grievance Redressal Forum, Surat, by filing the aforesaid complaint.

2.3. By the order under challenge, the Forum observed that the officers of the Electricity Company were negligent in performance of their duty and did not check the wrong billing. Considering Clause 6.84 of the Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulation which provides that no sum due from any consumer shall be recovered 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 arrears of charges of electricity, the Forum came to the conclusion that the Company is barred by raising a Supplementary Bill for a period of two years.

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3. Mr. Maulik Nanavati, learned advocate appearing for the Electricity Company would submit that the order of the Consumer Grievance Redressal Forum to the extent that it prohibits the distribution company from claiming any sum from a consumer older than two years in case of mistake or bona fide error is bad in law.

3.1. Mr. Nanavati, learned advocate, would submit that in reading clause 6.84 of the Regulations, the Forum erroneously interpreted the terms "First Due". Mr. Nanavati, learned advocate, in support of his submissions would rely on two decisions of the Hon'ble Supreme Court in the case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another v. Rahamatullah Khan alias Rahamjulla., reported in (2020) 4 SCC 650 : (AIR Online 2020 SC 208). He would also rely on a decision of the Hon'ble Supreme Court in the case of Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd and Ors., reported in 2021 SCC online SC 870 : (AIR Online 2021 SC 848), to submit that in a situation similar to the present case, in the case of Rahamatullah Khan (supra), where the consumers were billed by the licensee for the period of July 2009 to September 2011, the

Supreme Court interpreted the term "First Due" as appearing in sub-section (2) of S.56 of the Electricity Act, 2003. to mean that electricity charges would become "First Due" only after the bill is issued to the consumer. Even though the liability to pay may arise on the consumption of electricity. He would submit that the Supreme Court would interpret on the issue of whether the limitation of two years would be applicable to supplementary bill by holding that the limitation would only be restricted to the light of the licensee to disconnect electricity supply due to non payment of dues.

3.2. Mr. Nanavati, learned advocate, would also rely on a decision in the case of Prem Cottex (supra), wherein, a consumer was served with a short assessment notice for a period from 03.08.2006 to August 2009, wherein, the Supreme Court after considering the decision in the case of Rahamatullah (supra) categorically observed that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised and therefore, it would become "first due" only after the bill is issued. In light of these submissions Mr. Nanavati, learned counsel, would submit that the order of the Grievance Redressal Forum impugned herein deserves to be quashed and set aside.

4. Mr. A.V. Nair, learned advocate appearing for the respondent Indus Towers Limited would submit that the petition would be barred on the ground of it being not maintainable. He would further submit that it was not even the case of the company by producing the record of the internal audit that the exception that was made and the audit recovery was as a result of a mistake. He would submit that it is a settled legal position that the claim of an exception under the provisions needs to be pleaded and cannot be permitted to be raised at the time of the arguments.

4.1. Mr.Nair, learned counsel, would submit that by merely placing on record the Audit Recovery Note would not be a justification to claim an exception of mistake as enumerated under S.17 of the Limitation Act. He would submit that the order of the Forum is just and proper holding that the assessment was beyond the period of two years.

4.2. Mr. Nair, learned counsel, would submit that the decisions relied upon by the learned counsel for the petitioner categorically held that it is the exception under S.17 (1) (c) of the Limitation Act which would extend the limitation on the aspect of "First Due" which is not the case in the present circumstances. The discovery of mistake, would extend the period of limitation from the date of discovery. But in the case and the facts of the present assessment, it is a case where discovery of mistake was made at a later stage, and therefore, there would be no extension of limitation.

4.3. In support of his submission, Mr.Nair, learned counsel, would rely on a decision of the Punjab and Haryana High Court in the case of Uttar Haryana Bijli Vitran Nigam Ltd. and Ors. v. Permanent Lok Adalat for Public Utility Services and Ors., rendered in CWP 20125 of 2021, dated 26.10.2021 : AIROnline 2021 PandH 621. The learned advocate relied on paragraphs 19 to 23, which read as under:

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"19. If the petitioners were negligent in making such overhauling of the account of respondent No.2 after the change of the defective meter and its replacement by a new meter on 09.10.2012, it cannot contend that it's inaction or negligence was a "mistake" and seek to claim the benefit under Section 17(1)(C) of the Limitation Act.

20. A reading of the said judgment in Assistant Engineer (D1) (1supra) shows that an additional

demand was raised by the licensee company on 18.3.2014. The Supreme Court held that though the limitation period of two years under Section 56(2) of the Act had by then already expired, the said provision did not preclude the licensee company from raising an additional or supplementary demand after the expiry of limitation period under Section 56(2) of the Act in case of a mistake or a bona fide error. Reliance was placed on Section 17(1) (C) of the Limitation Act by the Supreme Court observing that in case of a mistake the limitation period begins to run from the date when the mistake is discovered for the first time. The Supreme Court then held that since the mistake was discovered in that case on 18.3.2014, the period of limitation would commence from the date of such discovery of mistake i.e. 18.3.2014 and the licensee company was, therefore, justified in taking steps to recover the arrears.

21. In the instant case, if one were to look at the written statement filed by the petitioners before respondent No.1, there is no mention about any 'mistake' having been committed by it's employees or such alleged mistake being discovered on a particular date which would make the demand raised by petitioners on respondent No.2 to be one within the period of limitation by applying Section 17(1) (C) of the Limitation Act.

22. If the petitioners wish to rely on an 'exception' to escape the bar of limitation, they must plead the said exception specifically before respondent No.1 by placing on record the factual basis for such plea. Without doing so, it is not open to the petitioners to seek to raise such a plea before this Court for the first time and seek to get the benefit of the decision in Assistant Engineer (D1) (1 supra).

23. I am also of the opinion that the negligence of the petitioners in overhauling the account of respondent No.2 after replacement

of the defective meter of respondent No.2 on 09.10.2012 cannot be projected by the petitioners as a case of mistake, and they cannot justify the recovery of the amounts demanded by them under the bill dated 10.5.2016 and notice dated 21.7.2016 from respondent No.2 on that basis."

5. Considering the submissions made by the learned counsels for the respective parties, what is evident from reading the order under challenge of the Grievance Redressal Forum is that the Forum in paras 8, 9, 10, 11 and 12 held as under:

"8. After releasing complainant connection of 15 KW on Dtd. 28.05.2007, billing is carried out from May-2007 to July-2012 regularly and suddenly billing carried out from August-2012 to December- 2014 with Contract Demand 8 KW. It is clear mistake on part of Respondent and no one has taken care even during regular inspection for loss of Revenue of the Company.

9. Even though Complainant billing done with less MD 8 KW against connection 15 KW and Energy Charge billed with less rate, it is continue for 28 months approximately. After that Complainant asked for LE 15 + 35KW and it was sanction by Respondent on May-19.

10. It is duty of the concern of Respondent to check and found the reason of less billing to the Complainant at that time. But no one has taken care from the Respondent site to recover less billing amount from the Complainant and only waited for Audit Report. This is total negligence on Respondent part to recover of the Company Revenue. So Forum has suggested to take Disciplinary Action against responsible person.

11. The provision in the Clause No. 6.84 of GERC Supply Code Notification No. 4/2015, which is reproduce here as under:-

6.84.No sum due from any consumer, on account of default in payment 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 as per Section 56 of the Act.

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12. As Respondent has issued supplementary bill to the Complainant on Dtd. 13.07.2020 for the less bill recovery period of Aug-12 billed in Sep-12 to Jan-15 billed in Feb-15 which is more than after two years. So Respondent is not eligible to recover the supplementary bill from the Complainant as per provision in the Clause No.6.84 of GERC Supply Code Notification No. 4/2015. Hence, Respondent has to cancel supplementary bill issued to the Complainant."

5.1. What is evident therefore is that interpreting Clause 6.84 of the Code, the Forum came to the conclusion that since the recovery period was of August 2012 to January, 2015 for which the Supplementary Bill was raised on 13.07.2020, it was beyond a period of two years when the sum first became due and therefore it was beyond limitation in accordance with Clause 6.84 of the Notification.

5.2. That was the case exactly before the Hon'ble Supreme Court in the case of Rahamatullah Khan (supra), in which case too, when the licensee was build for the period from 2009 to 2011, and when it was challenged on the ground of it being beyond limitation, the Hon'ble Supreme Court held as under:

"6.4 Section 56 provides for disconnection of supply in the case of default in payment of electricity charges. Sub-section (1) of Section 56 provides that 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 generating company, the licensee after giving 15 days' written notice,

may disconnect the supply of electricity, until such charges or other sums due, including the expenses incurred, are paid. However, the disconnection cannot continue after the amounts are paid.

6.5 The obligation of a consumer to pay electricity charges arises after the bill is issued by the licensee company. The bill sets out the time within which the charges are to be paid. If the consumer fails to pay the charges within the stipulated period, they get carried forward to the next bill as arrears.

6.6 The proviso to Section 56(1) carves out an exception by providing that the disconnection will not be effected if the consumer either deposits the amount "under protest", or deposits the average charges paid during the preceding six months.

6.7 Sub-section (2) of Section 56 by a non obstante clause provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, shall be recoverable under Section 56, after the expiry of two years from the date when the sum became "first due", unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied, nor would the licensee company disconnect the electricity supply of the consumer.

6.8 The effect of a non obstante clause was explained by this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (1986) 4 SCC 447 : (AIR 1987 SC 117). It was held that : - "69. A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect

over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment."

(Emphasis supplied)

6.9. The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid.

Electricity charges would become "first due" only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.

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7.4 Sub-section (1) of Section 56 confers a statutory right to the licensee company to

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disconnect the supply of electricity, if the consumer neglects to pay the electricity dues. This statutory right is subject to the period of limitation of two years provided by sub-section (2) of Section 56 of the Act.

7.5 The period of limitation of two years would commence from the date on which the electricity charges became "first due" under sub-section (2) of Section 56. (1997) 9 SCC 465 : (AIR 1997 SC 1101) This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period. If the licensee company were to be

allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became "first due", it would defeat the object of Section 56(2).

8. Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.

9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

9.1 Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

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9.3 In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section

(2) of Section 56 of the Act."

5.3. Even in the case of Prem Cottex (supra), the Supreme Court after considering Rahamatullah (supra) held as under:

"11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term "first due" in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.

12. On the first two issues, this Court 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 that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)". This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the

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expiry of the period of limitation in the case of a mistake or bona fide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore and Ors. v. State of Madhya Pradesh (1989) 4 SCC 1 : (AIR 1990 SC 313).

13. Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC

Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bona fide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).

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16. Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under sub-section (2) of section 56 of the Act".

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25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56.

Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from

any consumer under this Section", appearing in Subsection (2).

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. Sub-section (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 Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in Rahamatullah Khan and Section 56(2) will not go to the rescue of the appellant.

27. Therefore, we are of the view that the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed. However, since the appellant has already paid 50% of the demand amount pursuant to an interim order passed by this Court on 19.08.2014, we give eight weeks time to the appellant to make payment of the balance amount. There shall be no order as to costs."

5.4. In light of this, it is evident from what is enunciated by the Hon'ble Supreme Court is that the conclusion of the Forum that the distribution company cannot recover any amount otherwise due from and payable by a consumer on account of default in payment for a period of two years from the date when such sum became first due is contrary to the law declared by the Hon'ble



Supreme Court. What is evident is that here was a case where it was an escaped assessment and the bill was issued on 13.07.2020 when it first became due which was a mistake and the period of limitation would start running from the date on which the mistake is detected or could have been detected by exercise of due diligence.

6. For the aforesaid reasons, the order dated 16.07.2021 passed in Complaint No. 172 / 2020-2021 passed by the Consumer Grievances Redressal Forum is quashed and set aside. The petition is allowed, accordingly.

**Petition Allowed .**