2024 INSC 829

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1095 OF 2013

THE MADHYA PRADESH MADHYA KSHETRA VIDYUT VITRAN COMPANY LIMITED & ORS. ... APPELLANTS

VS.

BAPUNA ALCOBREW PRIVATE LIMITED & ANR. ... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

THE CHALLENGE

1. The final judgment and order dated 13th October, 2011[1] of the High Court of Madhya Pradesh[2], allowing the writ appeal[3] presented by the first respondent, is under assail in the present appeal by special leave.

[1] impugned judgment, hereafter
[2] High Court, hereafter
[3] Writ Appeal No. 550/2009

BRIEF RESUME OF FACTS

2. The factual matrix of the case, insofar as is relevant for the purpose of deciding the present appeal, is noted hereinbelow:

I. The first appellant is the state electricity distribution utility for the State of Madhya Pradesh, while the second and the third appellants are its officers. The first respondent is a company registered under the Companies Act, 1956. It is engaged in the business of manufacturing rectified spirit, extra neutral alcohol and bottling of Indian made foreign liquor. The second respondent is the Madhya Pradesh Pollution Control Board, which had asked the first respondent to submit a proposal with respect to its plans for a bio-gas electricity generation unit. The first respondent did not pursue any communication with the second respondent thereafter and, thus, no relief has been sought in this appeal against the latter.

II. The appellants and the first respondent entered into an agreement dated 18th November, 1991, for supply of electrical energy to the first respondent's unit at Gwalior, with the first respondent guaranteeing a minimum consumption that would yield an annual revenue of Rs. 34,747/- (Rupees thirty four thousand seven hundred and forty seven rupees only).

III. Thereafter, supplementary agreements were executed between the appellants and the first respondent, increasing the consumption of electrical energy. *Vide* agreement dated 17th November, 1992, the quantum was initially increased from 136 kVA to 169 kVA and *vide*

agreement dated 30th March, 1995, there was a further increase to 305 kVA.

IV. The first respondent sought permission from the appellants to install and run an 807 kVA biogas turbo generating set[4] for captive use. On 30th May, 1996, the second appellant granted permission to the first respondent on the condition that the TG set does not run parallel with the appellants' supply system, and that the TG set would be used only as a stand-by measure upon the failure of the appellants to supply power. Most importantly, in what would give birth to the dispute, the first respondent was bound to a monthly minimum consumption of units, with 35% load factor in case of no power cut, and 39% load factor in cases of power cut.

V. A third supplementary agreement was executed by and between the appellants and the first respondent on 01st June, 1996, which provided for supply of an additional 560 kVA to the first respondent thereby increasing the total contract demand to 1170 kVA.

VI. Alleging that the first respondent was running the TG set as a parallel source of power notwithstanding the supply of power provided by the first appellant, a notice dated 28th March, 2000[5] was served by the appellants upon the first respondent cancelling the permission accorded to the first respondent to run the TG set.

VII. Challenging the cancellation notice, the first respondent knocked the doors of the High Court by invoking its writ jurisdiction. On the

[4] TG set, hereafter
[5] cancellation notice, hereafter

writ petition[6], the High Court passed an interim order dated 04th May, 2000 staying operation of the cancellation notice, subject to the condition, *inter alia*, that the first respondent would deposit the 'minimum guarantee charges' payable as against the load of 807 kVA to be assessed by the appellants.

VIII. Consequently, the appellants issued a show cause notice[7] dated 14th July, 2000 to the first respondent quantifying its liability in a sum of Rs 70,50,000/- (Rupees seventy lakh fifty thousand only). The first show cause notice provided a time of fifteen (15) days to the first respondent to submit a representation with respect to the notice.

IX. The first respondent promptly challenged the first show cause notice by filing a miscellaneous petition[8] in the first writ petition. The High Court, *vide* order dated 14th February, 2001, disposed of the miscellaneous petition by holding the first respondent liable to pay the 'minimum guarantee charges', irrespective of whether the corresponding amount of electricity had been consumed or not.

X. On 21st October, 2006, the first respondent withdrew the first writ petition, seeking to represent the matter before the appellants themselves on account of a change in the policy of the State Government, which no longer required a party to seek permission to install a T.G. set.

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[6] W.P. No. 677/2000; first writ petition, hereafter
[7] first show cause notice, hereafter
[8] M(W)P No. 230 of 2000; miscellaneous petition, hereafter

XI. After a long interlude of two years, new life was breathed into the dispute by the appellants *vide* issuance of a show cause notice dated 07th January, 2009[9] through Rs 70,50,000/- (Rupees seventy lakh fifty thousand only) was once again quantified as the first respondent's liability for not having utilised the minimum guaranteed consumption for the period between June 1996 and May 2000. The second show cause notice provided a time of thirty (30) days to the first respondent to submit a representation in regard thereto, failing which demand would be raised without further communication.

XII. Thereafter, demand was raised in the form of an energy bill dated 04th March, 2009, wherein the pre-existing liability of Rs 70,50,478/- (Rupees seventy lakhs fifty thousand four hundred and seventy eight only) was mentioned as "Other Chars. (sic, charges)".

XIII. Subsequently, the appellants issued a demand-cum-disconnection notice dated 18th March, 2009[10] threatening that if the amount of Rs 70,50,478/- (Rupees seventy lakhs fifty thousand four hundred and seventy eight only) was not paid within 15 days, the supply would be disconnected without prior notice.

XIV. Aggrieved by the issuance of the second show cause notice, the first respondent invoked the jurisdiction of the High Court yet again *vide* a writ petition[11], seeking quashing of the second show cause notice.

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[9] second show cause notice, hereafter
[10] disconnection notice, hereafter
[11] Writ Petition No. 1382/2009; second writ petition, hereafter

XV. A learned Single Judge of the High Court, *vide* interim order dated 06th April, 2009, stayed operation of the second show cause notice, conditional upon the first respondent furnishing a bank guarantee of the equivalent amount. It is a matter of record that bank guarantee was furnished by the first respondent on 20th April, 2009.

XVI. The learned Single Judge of the High Court, *vide* order dated 16th July, 2009[12], partly allowed the writ petition. His Lordship held that the first respondent was obligated to consume the monthly minimum units on the load factor since it had agreed to the terms and conditions laid down in the letter dated 30th May, 1996. However, the retrospective application of the enhanced contract demand[13] was struck down and the appellants were directed to re-calculate the demand, with the enhanced demand being applicable only from 14th October, 1996.

XVII. Consequently, *vide* communication dated 13th November, 2009, the appellants informed the first respondent that a revised demand of Rs 56,81,977.58P (Rupees fifty six lakh eighty one thousand nine hundred seventy seven and fifty eight paise only) had been raised, which would be recovered against the bank guarantee furnished by the first respondent. On 16th November, 2009, the appellants promptly encashed the bank guarantee and issued a cheque refunding the excess amount. Against such encashment, the first

[12] writ court's 's order, hereafter
[13] 560 kVA enhanced to 1170 kVA w.e.f. 14th October, 1996

respondent had initiated proceedings for contempt by filing a petition[14] on 18th November, 2009.

XVIII. Also, aggrieved by the writ court's order, the first respondent carried the same to the Division Bench of the High Court by presenting the relevant intra-court appeal. It is the judgment and order of disposal of such appeal that has given rise to the present civil appeal.

IMPUGNED JUDGMENT

3. As noted at the beginning, the Division Bench allowed the writ appeal. The second show cause notice was quashed upon application of section 56(2) of the Electricity Act, 2003[15].

3.1 On the question of whether the first respondent was liable to pay the charges for minimum guaranteed consumption, the High Court relied upon the decision in ***Raymond Limited v. State of M.P.***[16] to observe that the first appellant was within its right to demand minimum guarantee charges but there also existed a corresponding duty upon such appellant to supply electrical energy to such an extent, fulfilment of which duty had not been proved in the present case.

3.2 The High Court then embarked upon the issue of limitation, i.e., whether the appellants could recover dues for the period between June, 1996 and May, 2000, *vide* the second show cause notice. The question before the High Court was whether the liability which accrued to the first respondent

[14] Contempt Petition No. 559/2009
[15] 2003 Act, hereafter
[16] (2001) 1 SCC 534

under the Electricity (Supply) Act, 1948[17], i.e., when the first show cause notice was issued, could be enforced after coming into effect of the 2003 Act, i.e., when the second show cause notice was issued. The pivotal difference between the two legislations is that while the former did not prescribe a limitation period for the recovery of dues, the 2003 Act specifically prescribed such a period in the form of section 56(2), providing as follows:

> **Section 56. Disconnection of supply in default of payment –**
> (1) ***
> (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.

3.3 The High Court observed that since the 2003 Act had not been enforced retrospectively, the liability would continue to accrue to the first respondent well after the 2003 Act came into force. However, this liability, w.e.f. 10th June, 2003 could not have been enforced beyond a period of two (2) years, keeping in mind section 56(2) read with section 174 of the 2003 Act.

3.4 Consequently, the High Court observed that the first respondent's writ petition having been disposed on 21st June, 2006, a period of two (2) years therefrom would be 09th June, 2008 whereas the appellants had only issued the second show cause notice on 07th January, 2009, which was evidently beyond the period of limitation.

[17] 1948 Act, hereafter

3.5 In the result, the Division Bench reversed the judgment and order dated 16th July, 2009 passed by the writ court and quashed the second show cause notice issued by the appellants.

CONTENTIONS OF THE PARTIES

4. Ms. Liz Mathew, learned senior counsel for the appellants, in assailing the impugned judgment, advanced the following submissions:

A. The Division Bench erred in interpreting section 174 of the 2003 Act to extend the applicability of such Act and its limitation clause to the existing proceedings.

B. The Division Bench erred in applying section 174 of the 2003 Act to the present case since this was not a case of inconsistency with any other law, rather, it concerned the liabilities incurred under the 1910 Act in view of section 185(5) of the 2003 Act.

C. ***K.C. Ninan v. Kerala SEB***[18] was relied on to argue that section 56(2) of the 2003 Act would not apply to a liability which was incurred prior to the enforcement of the 2003 Act.

D. The High Court erred in not appreciating the purport of section 185 of the 2003 Act which saved the application of section 6 of the General Clauses Act, 1897[19].

5. Mr. Jayant Mehta, learned senior counsel for the first respondent, while supporting the impugned judgment submitted as under:

[18] 2023 SCC OnLine SC 663
[19] 1897 Act, hereafter

A. The first and the second show cause notices were not 'demands' but merely notices for the purposes of quantification and raising of demand in the future.

B. There was nothing which prevented the appellants from raising a demand during the pendency of the first writ petition since the High Court had not passed any order of stay.

C. Assuming that the 2003 Act had no application to dues arising during a period of time prior to its enforcement w.e.f. 10th June, 2003 and even though section 24 of the Indian Electricity Act, 1910[20] did not prescribe a period of limitation, the process of recovery of dues, if any, had to be initiated within the period for institution of a suit, i.e., three (3) years from the date of the appellant's awareness of the sum due, and, at any rate, must be initiated within a reasonable period, which cannot be nine (9) years.

D. Allowing the appellants to raise a demand nine (9) years later would lead to injustice and arbitrariness, more so when in the absence of any demand the question of the first respondent neglecting to pay charges did not arise.

E. Encashment of bank guarantee by the appellants immediately after the revised demand was raised on the first respondent without giving any opportunity to the first respondent to pursue legal remedies, in the circumstances, must be held to be arbitrary.

[20] 1910 Act, hereafter

ISSUES

6. Not too many issues arise for decision on the facts of the present appeal. The task before us is limited to determining whether section 56(2) of the 2003 Act has any application to a demand raised by the appellants on the first respondent for recovery of sums payable under the 1910 Act and, hence, the impugned judgment is sustainable on this score; if not, whether the demand, if it be treated as one under the 1910 Act, is sustainable having regard to the long delay.

ANALYSIS

7. We have heard learned senior counsel for the parties and perused the impugned judgment as well as the other materials on record.

8. An analysis of the enactments governing the dispute would be of profit.

9. The 1910 Act came into force w.e.f. 01st January, 1911, with the objective of amending the law relating to supply and use of electrical energy. The 1948 Act, however, was enacted with the purpose of facilitating the establishment of regional co-ordination in the development of electricity, or as the long title of the said Act states, *"to provide for the rationalisation of the production and supply of electricity, and generally for taking measures conducive to electrical development"*. Thus, both these enactments had their own spheres of application, and existed concurrently. However, w.e.f. 10th June, 2003, the 2003 Act came into force to *"consolidate the laws relating to generation, transmission, distribution,*

trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto[21]*"*. The 2003 Act, by virtue of section 185(1), repealed*, inter alia*, the 1910 Act and the 1948 Act. The 1948 Act, since it related primarily to the statutory powers of the central electricity authority, state electricity authorities and generating companies, would be of minimal relevance while deciding the present dispute.

10. We shall first answer the issue of applicability of section 56(2) of the 2003 Act raised by the appellants, which was the turning point of the decision of the Division Bench, i.e., whether the limitation period of two (2) years prescribed by section 56(2) of the 2003 Act bars the appellants from raising demand for the period between June 1996 and May 2000. Though the Division Bench answered this question in the affirmative, in light of two subsequent contrary decisions rendered by this Court precisely on the point, this finding is rendered indefensible and would necessarily have to be set aside.

11. In ***Kusumam Hotels (P) Ltd. v. Kerala SEB***[22], this Court, while examining the issue of retrospective discontinuance of tariff concessions

[21] Long title of 2003 Act
[22] (2008) 13 SCC 213

for the tourism industry, held that the liability accruing to the licensee being statutory in nature would continue to survive even after the enforcement of the 2003 Act in the following terms:

> "43. Whereas the bills are issued only in respect of the dues arising in terms of the law as was applicable prior to the coming into force of the 2003 Act, sub-section (2) of Section 56 shall apply after the said Act came into force. The Board could have even framed a tariff in terms of the provisions appended to Section 61 of the Act. The appellants incurred liability to pay the bill. The liability to pay electricity charges is a statutory liability. The Act provides for its consequences. Unless therefore, the 2003 Act specifically introduced the bar of limitation as regards the liability of the consumer incurred prior to coming into force of the said Act; in our opinion, having regard to Section 6 of the General Clauses Act, the liability continues. (emphasis supplied)

12. This decision has been affirmed by a decision of three (3) Judges in ***K.C. Ninan*** (supra) and is the sheet-anchor of the argument of Ms Mathew. There, this Court affirmed the principle that liabilities which arose prior to the 2003 Act coming into force would escape the limitation period prescribed by section 56(2) of the 2003 Act:

> "130. Before we deal with the implication of Section 56(2) on the civil remedies available to a licensee, it is important to clarify that when the liability incurred by a consumer is prior to the period when the 2003 Act came into force, then the bar of limitation under Section 56(2) is not applicable. In Kusumam Hotels Pvt Ltd. v. Kerala State Electricity Board, this Court has held that Section 56(2) applies after the 2003 Act came into force and the bar of limitation under Section 56(2) would not apply to a liability incurred by the consumer prior to the enforcement of the Act. In terms of Section 6 of the General Clauses Act, 1897, the liability incurred under the previous enactment would continue and the claim of the licensee to recover electricity would be governed by the regulatory framework which was in existence prior to the enforcement of the 2003 Act.
>
> 134. The period of limitation under Section 56(2) is relatable to the sum due under Section 56. The sum due under Section 56 relates to the sum due on account of the negligence of a person to pay for electricity. Section 56(2) provides that such sum due would not be recoverable after the period of two years from when

such sum became first due. The means of recovery provided under Section 56 relate to the remedy of disconnection of electric supply. The right to recover still subsists."

(emphasis supplied)

13. As settled by this Court, section 185(5) of the 2003 Act read with section 6 of the 1897 Act would lead to the inescapable conclusion that the limitation period of two (2) years prescribed for recovery of dues under section 56 of the 2003 Act would apply to liabilities arising under the 2003 Act, and not prior to the enforcement thereof. Thus, we hold that the Division Bench manifestly erred in holding that the liability incurred by the first respondent prior to the enforcement of the 2003 Act would still be barred by the provisions of section 56(2) thereof.

14. The first question is, thus, answered against the appellants.

15. We now endeavour to examine, whether the demand raised by the appellants ought to fail on the ground of delay and/or whether the amount due is still recoverable in the manner ordained by section 24 of the 1910 Act. Imperative for us to complete this exercise of analysing the legal position is to read the section itself. To the extent relevant, it reads:

> **24. Discontinuance of supply to consumer neglecting to pay charge.**
> (1) Where any person neglects to pay any 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 charger or other sum, together with ally expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.
> (2) ***

16. Section 24 in clear terms authorised a licensee to disconnect supply of energy to any person, if he neglected to pay any charge for energy or sum, other than a charge for energy, due from him. The condition precedent for such disconnection was issuance of a clear seven days' prior notice. This, in our opinion, is an *in terrorem* measure which is apart from the right of the licensee to recover the sum due by instituting a suit. Noticeably, section 24 did not refer to any period of limitation as in section 56(2) of the 2003 Act. If the licensee were to opt for institution of a suit, it cannot be contended with any degree of conviction that since section 24 does not prescribe a period of limitation or does not refer to the Limitation Act, 1963[23], a suit can be instituted at any time as per the convenience of the licensee. Electrical energy is a saleable commodity or goods, which we find usually to be sold on credit. That is, the licensee first supplies the energy and a bill is raised by the licensee specifying the date by which the charges are to be paid, whereafter it is the liability of the consumer to pay it. On neglect to pay, the consequences in section 24(1) are attracted. Having regard to such state of affairs, a suit for recovery of the price of electrical energy supplied, or sold, by the licensee and consumed by the consumer would be governed by Article 15 of the 1963 Act, reading as follows:

Part II – Suits relating to Contracts

Description of suit	Period of Limitation	Time from which period begins to run
15. For the price of goods sold and delivered to be paid for after the expiry of	Three years	When the period of credit expires.

[23] 1963 Act

a fixed period of credit.

17. The position in law would have been otherwise, if section 24(1) itself had prescribed a period of limitation different from the one in Article 15 (supra). Since section 24 does not prescribe any period of limitation than that prescribed by the 1963 Act, as is done by the new avatar thereof in the 2003 Act, limitation would set in immediately upon the consumer's neglect to pay the amount mentioned in the bill raised by the licensee. This Court, in ***Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan***[24], followed by ***Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.***[25], has held that a consumer can be said to have neglected to pay any sum due to the licensee only after a demand is raised by the licensee and if no demand is raised by the licensee, the question of a consumer neglecting to pay any sum due to the licensee does not and cannot arise. Thus, a licensee acquires the right of action to institute a suit immediately after the consumer neglects to pay the amount mentioned in the bill raised by it.

18. There could be situations like the one in ***Rahamatullah Khan*** (supra) where the licensee might have committed a mistake. In such a case, the period of limitation would begin only from the point of discovery of the mistake and not earlier; and, such a case could be covered by section 17 of 1963 Act.

19. It cannot be overemphasized that section 17 of the 1963 Act is meant to save suits from being dismissed as time-barred, which could not be filed

[24] (2020) 4 SCC 650
[25] (2021) 20 SCC 200

due to *bona fide* mistakes or errors. If a suitor alleges that the suit could not be instituted by him within the prescribed period of limitation because of some mistake, which came to be discovered beyond the period prescribed for institution of a suit, it is open to such suitor to claim exemption from limitation in terms of Order VII Rule 6 of the Code of Civil Procedure, 1908 and such exemption can be granted in an appropriate case. However, if a suitor alleges to have discovered a mistake later but it is proved on evidence being led that exercise of reasonable diligence could have resulted in the mistake being discovered on an earlier date, limitation would begin to count from that earlier date; and, in case, the count from the said earlier date takes the date of institution of the suit beyond the prescribed period of limitation, the bar of limitation would get attracted. Mistake is, thus, not a circumstance which can be used as a shield to save negligence in all cases. Absence of due diligence or lack of *bona fides* would not clothe a suitor to take undue advantage of a beneficent provision like section 17; it is for the relevant court to separate the grain from the chaff.

20. The upshot of the aforesaid discussion is that although section 24 of the 1910 Act prescribes no period of limitation, it does allow the licensee to discontinue supply of energy upon a consumer neglecting to pay charges that are demanded by raising a bill, irrespective of the fact that a suit for recovery of unpaid charges would be barred if not instituted within three (3) years of the liability accruing. There appears to be no limitation as regards the period within which notice under section 24(1) has to be issued, evincing the intention of the licensee to disconnect supply for non-payment of claimed dues. However, if in case, despite the consumer not

paying the charges demanded and the notice thereunder is not issued within a reasonable period or at any time within which a suit for recovery could be instituted, whether the right of the licensee to claim the unpaid charges would lapse will have to be decided by the court before whom the *lis* is brought upon consideration of the defence that is raised and the explanation for the delay. We only say that it must depend on the facts of each particular case whether the demand by reason of mere delay should be interdicted or not.

21. Be that as it may, in this case, no suit was instituted within the period of limitation or beyond. We need not examine here whether the remedy by way of a suit for the appellants stood foreclosed, because of the contention of the first respondent that no demand had been raised and the show cause notices cannot be construed as demands. However, did issuance of the second show cause notice (on 07th January, 2009) afford a fresh cause of action for the first respondent to invoke the writ jurisdiction of the High Court and did it turn out to be fatal for the appellants? We shall endeavour to find an answer to this question by first reading the show cause notices issued by the appellants.

22. The operative portion of the first show cause notice (dated 14th July, 2000) is extracted hereinbelow:

> "On going through the past consumption, i.e. w.e.f. June 1996 to till date it is observed that units consumed by you are not up to the mark as units worked out on 35% or 39% load factor as and when applicable.
> It shows that you fails (sic, failed) to fulfil the condition no.5 of the said permission letter dt. 30.5.96 by not consuming units equivalent to units worked out on load factor as above. The consumption found is on The consumption found is on lower side

in various months. The liability accrued on this account comes to Rs. 70.50.lacs. Statement of liability is enclosed.
Therefore, please take this as Notice of Show Cause as to why not the supplementary demand towards less consumption, as per statement enclosed, be raised against your HT connection.
Your representation in this regard, may be please be submitted within 15 days from the date of receipt of this letter"

(emphasis supplied)

23. Thereafter, the second show cause notice was issued on 07th January, 2009, the operative portion whereof is extracted hereinbelow:

> "It shows that you fails (sic, failed) to fulfil the condition no.5 of the said permission letter dt. 30.5.96 by not consuming units equivalent to units worked out on load factor as above. The consumption found is on lower side in various months. The liability accrued on this account comes to Rs. 70.50.lacs. Statement of liability is enclosed.
> Therefore, please take this as Notice of Show Cause as to why not the supplementary demand towards less consumption, as per statement enclosed, be raised against your HT connection.
> You had earlier filed W.P. No. 677/2000 before Hon'ble High Court in connection with some other dispute relating to TG set permission. You had withdrawn aforesaid writ petition with liberty to represent the matter before the respondent (Board) and in case further grievances are left liberty to assail the same in accordance with law. Accordingly Hon'ble High Court had disposed off (sic, of) the same on 21.2.2006 with the aforesaid liberty to you.
> Your reply / representation, if any, in this regard, may be please be submitted within 30 days from the date of issue of this letter, failing which the demand shall be raised without any further communication."
>
> (emphasis supplied)

24. Ironing out the creases of when the amount first became due for the first respondent to pay, upon a demand being raised by the appellants, need not detain us for long having regard to certain admitted facts, to which we turn at this juncture. Perusal of two orders passed by the High Court, which intervened in course of the longstanding litigation between the parties, is essential. These orders passed on the first writ petition and an interlocutory

petition filed therein, seemingly innocuous, have a decisive influence in the present appeal.

25. The first of these is the interim order dated 04th May, 2000 of the High Court on the first writ petition, reading as follows:

> "Heard.
> Admit.
> Issue notice returnable at an early date.
> Requisite steps in this regard be taken within 3 days.
> The question in regard to the grant of interim relief will be considered after notices are served.
> In the meanwhile, considering the facts and circumstances as brought on record, it is directed that the operation of the impugned order dated 28.3.2000 a true copy of which has been filed as annexure P/1 to the writ petition shall remain stayed till the next date of listing subject to the following conditions:
> <u>The petitioner shall deposit the minimum guarantee charges payable as against the load of 807kVA which shall be assessed by the respondent Board and intimated to the petitioner within a week.</u>
> ***"

(emphasis supplied)

26. The position that emerges from the above extract is that the order dated 28th March, 2000 cancelling permission to run the T.G. set was stayed, subject to the first respondent depositing the minimum guarantee charges. It was open to the first respondent not to pay but that would have involved the risk of not operating the T.G. set. If, indeed, the first respondent was not interested in running the T.G. set, it could have withdrawn the writ petition then and there; or, it could have subjected such order to an appeal. The first respondent did not carry the order in appeal and, thus, the order attained finality.

27. That the first respondent was duly interested in the outcome of the first writ petition and to obtain an order for running the T.G. set is clear from what happened thereafter. The first show cause notice was issued

demanding Rs 70,50,478/- (Rupees seventy lakhs fifty thousand four hundred and seventy eight only). This was the trigger for the miscellaneous petition which the first respondent filed, subjecting the first show cause notice to challenge. Although the miscellaneous petition is not on record, the first respondent in its 'List of Dates' handed over to us at the time of hearing conceded that the *"Respondent Company challenged the First Show Cause Notice by way of M(W)P 230/2000 in WP 677/2000, which was disposed of vide Order dated 14 February 2001 ...".* While disposing of the miscellaneous petition in favour of the appellants and against the first respondent, the High Court *vide* its order dated 14th February, 2001 held as follows:

> "Earlier on 4.5.2000 this court has categorically ordered that petitioner shall pay the respondents minimum guarantee charge as per agreement with respondents. The petitioner is bound to pay the minimum guarantee amount whether electricity is consumed or not. This order is subject to modification if some rules for generating sets are framed by the respondents electricity board. The question of recovery of bill on T.G. set is not warranted unless the rules for recovery are produced.
> Petition is disposed of."
>
> (emphasis supplied)

28. This order too went unchallenged by the first respondent and was allowed to attain finality with the effect that the first show cause notice stood upheld by the High Court, though by an interim order.

29. There is, also, no record of the first respondent having made payment pursuant to the aforementioned orders, despite acceptance thereof (the orders) by conduct. In fact, it is an undisputed position as would appear from the aforesaid factual narrative that the first respondent did not obey the orders foisting liability on it for payment of the minimum guarantee charges; on the contrary, on 21st February, 2006, the first respondent

withdrew the first writ petition, with liberty to represent the matter before the respondents owing to some change in policy with regard to running of T.G. sets. In effect, despite the orders dated 04th May, 2000 and 14th February, 2001 staring at its face, the first respondent avoided a decision on the merits of the writ petition and effectively foreclosed its right to have the demand towards minimum guarantee charges nullified. As per the counter affidavit, which the appellants as respondents filed in the second writ petition, no representation was also filed by the first respondent for which leave was obtained as recorded in the order passed on 21st February, 2006. Thus, the orders having become final, leave no room for the first respondent to escape its statutory liability by arguing a bar of limitation, when the statute itself did not prescribe such a bar.

30. There cannot be any doubt that once an interim order is passed in a suit or a proceeding, the interim relief granted to the party seeking interim relief could either be confirmed or vacated at the time of final disposal of the suit or proceedings, as the case may be. If the disposal is by way of an order of dismissal, interim relief which is granted as an aid of or ancillary to the final relief cannot continue beyond termination of such suit or proceedings. This is the position of law flowing from the decision in ***State of Orissa v. Madan Gopal Rungta***[26].

31. However, if in a particular suit or proceeding, interim relief is sought in respect of a development subsequent to institution of the suit/proceedings, as in the present case (where the first show cause notice came into

[26]1951 SCC 1024

existence after the first writ petition was filed), and the challenge to such subsequent development is spurned, the party who has approached the court cannot be heard to say that the effect of spurning of the challenge would come to an end with the disposal of the suit/proceedings. The effect of the challenge being spurned would continue till such time it is reversed in appeal or reviewed in a manner known to law.

32. The situation in such a case, adversely affecting the party whose challenge has been spurned, cannot be sought to be overcome by contending that the suit or proceedings has/have not been dismissed on merits but was/were merely withdrawn. By seeking a withdrawal, the Court before whom the *lis* was brought is requested not to decide the *lis* and if the Court while granting the prayer for withdrawal does not grant leave for institution of a fresh suit on the same cause of action, or even if leave is granted and a fresh suit/proceeding is instituted, that would not have the effect of negating the order spurning challenge passed in the earlier suit/ proceedings. The same would remain operative till set aside or varied.

33. It was, therefore, incumbent upon the first respondent to challenge the order dated 14th February, 2001; and having failed to do so, it would not be of any merit for the first respondent to contend that until the disconnection notice had been issued on 18th March, 2009, the liability had not crystallised so as to render the first respondent liable to pay the same. The challenge to the first show cause notice having failed, as noticed above, the principle of issue estoppel operated as a bar for the first respondent to raise a challenge to the second show cause notice, which had been issued

for precisely the same due amount of Rs 70,50,478/- (Rupees seventy lakhs fifty thousand four hundred and seventy eight only).

34. We consider it apposite to refer to a three-Judge Bench decision of this Court in ***Hope Plantations Ltd. v. Taluk Land Board***[27], where the principle of issue estoppel was expounded thus:

> "26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."
>
> (emphasis supplied)

35. Another bench of three Judges of this Court in ***Bhanu Kumar Jain v. Archana Kumar***[28] had the occasion to survey several decisions of English courts and explained that there was a distinction between res judicata and issue estoppel in the following words:

> "30. Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties

[27] (1999) 5 SCC 590
[28] (2005) 1 SCC 787

whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. ***"

(emphasis supplied)

36. To recount, the order of the High Court dated 14th February, 2001, though interim in the sense that it disposed of an interlocutory application, was a conclusive determination of the issue raised by the first respondent itself and which went against it. The first and second show cause notices were similarly worded and identical in the demands that they raised on the first respondent. Challenge to the first show cause notice having failed and notwithstanding that the appellants did not require payment by threatening the first respondent with disconnection of supply, which the appellants were authorised as per section 24(1), the first respondent was certainly estopped from agitating the same issue of demand *vide* its second writ petition.

37. The issue of demand arising from the first respondent's failure to consume the monthly minimum units may have been decided *vide* the order dated 04th May, 2000 without assigning sufficient reasons or, for that matter, even wrongly. The learned Single Judge simply went by the terms of the contract between the parties without examining whether there was any substantial ground for the first respondent to urge that the jurisdictional fact for demanding payment of minimum guarantee charges did not exist and, hence, it was not liable to pay. Such order had also been reiterated by the subsequent order dated 14th February, 2001 of another learned Single Judge, again without due examination of what the case was on behalf of

the first respondent and without assignment of any reason. However, does anything turn on it? The answer is an emphatic 'NO'. As has been held in ***Hope Plantations*** (supra) and ***Bhanu Kumar Jain*** (supra), a point even if wrongly decided binds the party against whom it is decided and the same point cannot be urged in a subsequent suit or proceeding at the same level. The crux of the matter is that the issue of liability accruing to the first respondent for non-payment of minimum guarantee charges had been decided previously and such decision, not being subjected to any appeal, had attained finality in the eyes of law estopping the first respondent from reagitating the issue. In our considered opinion, the second writ petition at the instance of the first respondent was not maintainable and, accordingly, ought not to have been entertained at all.

38. However, since the appellants accepted the order of the learned Single Judge dated 16th July, 2009 and issued a fresh demand for a reduced amount and which has since been recovered by encashing the bank guarantee, we make no order for changing the position flowing from the said order.

CONCLUSION

39. The inevitable result, on conjoint reading of all the judicial orders on/in connection with the first writ petition together with the conduct of the first respondent, is that the orders dated 04th May, 2000 and 14th February, 2001, so to say, judicially crystallised the liability of the first respondent to pay the minimum guarantee charges and such orders having attained

finality, bound the first respondent; and no amount of argument by the first respondent, either on the point of delay in raising the demand or a merit-based review of the action of the appellants, in the second writ petition was open to persuade the High Court hold in its (first respondent) favour by allowing the intra-court appeal.

40. The impugned judgment and order of the High Court allowing the intra-court appeal being unsustainable in law has to be and is, accordingly, set aside with the result that the civil appeal stands allowed. Parties are, however, left to bear their own costs.

.....J
(DIPANKAR DATTA)

.....J
(PANKAJ MITHAL)

New Delhi;
4th November, 2024.