

**STATE ELECTRICITY REGULATORY COMMISSION
SCO NO.220-221, SECTOR 34-A, CHANDIGARH.**

Petition No.58 of 2015

Date of Order: 20.01.2016

Present: Smt. Romila Dubey, Chairperson
Shri Gurinder Jit Singh, Member.

In the matter of: Petition under Section 142 of the Electricity Act, 2003 read with Regulation 9 of the PSERC (Conduct of Business) Regulations, 2005, for taking necessary action against the respondents who have issued impugned demands from the petitioner in violation of the Electricity Act, 2003, Supply Code, Conditions of Supply, Commercial Circular 28/96, Sales Manual Instructions and Order passed by the Commission in various cases and further for consequential relief of setting aside the impugned demand raised by the respondents.

AND

In the matter of: G.D. International Pvt. Ltd., C-56, Focal Point (Extn.), Jalandhar, through its Director Shri Gaman Monga.

.....Petitioner

Versus

1. Punjab State Power Corporation Limited (PSPCL) through its Chairman-cum-Managing Director, The Mall, Patiala.
2. Assistant Executive Engineer, Commercial Unit No.1, East Commercial Division, PSPCL, Jalandhar.

.....Respondents.

Order

1.0 The petition has been filed by G.D. International Pvt. Ltd., Focal Point, Jalandhar, through its Director Shri Gaman Monga under section 142 of the Electricity Act, 2003 read with Regulation 9 of the PSERC (Conduct of Business) Regulations, 2005, for taking necessary action against the respondents for raising demand in violation of the Act, Supply Code, Conditions of Supply, Commercial Circular 28/96, Sales Manual Instructions and Orders passed by the Commission. The petitioner submitted as under:

1.1 The petitioner is having a electricity connection bearing Account No.J61-LS01-00137 with sanctioned load of 350 kW for Induction furnace and 149.360 kW for general load thus making a total load of 499.360 kW.

1.2 The petitioner is regularly paying all the charges as demanded by the respondents for consumption of electricity and no amount whatsoever is due towards the petitioner.

1.3 The respondents issued a supplementary bill dated 28.03.2013 and asked the petitioner to pay ₹ 6,67,190/- on account of M.M.C. for the period from 05/99 to 07/2001 & 08/2001 to 10/2001. It was mentioned that the petitioner applied for extension of load from 48.746 kW to 499.340 kW and out of this total load, 350 kW is for induction furnace load, whereas transformer of 500 kVA was installed for induction furnace. It was further mentioned that as per Sales Regulation No.14.1.2.2, ACD/SCC and MMC were required to be charged on the basis of capacity of transformer and less amount was charged on account of MMC.

- 1.4 The petitioner was asked (vide supplementary bill dated 28.03.2013) to deposit ₹6,67,190/- within a period of 15 days. The 15 days notice period was to end on 12.04.2013, but without waiting for 15 days, the respondents added this amount of ₹6,67,190/- in the general bill dated 03.04.2013 issued for monthly consumption of electricity and asked the petitioner to pay the above said amount up to 15.04.2013.
- 1.5 The petitioner served a legal notice through its counsel on the respondents requesting them to withdraw the impugned demand. Despite the legal notice received by the respondents, the respondents asked the petitioner to deposit the disputed amount along with the bill for the current month. Accordingly, the petitioner wrote a letter dated 12.04.2013 and requested the respondents to get the disputed amount deposited in six installments under protest. The respondents allowed the same and the petitioner deposited the impugned demand raised by the respondents in monthly installments just to avoid disconnection of its electricity connection.
- 1.6 The supplementary bill and demand issued to the petitioner was totally wrong and illegal and was in violation of the provisions of the Electricity Act, 2003, regulations framed by the Commission, Commercial Circulars and tariff issued by the respondents. By issuing the above said demand, the respondents became liable for action under section 142 of the Electricity Act, 2003, on the following grounds:
- (i) The demand was raised after a gap of more than 12 years and the petitioner was forced to deposit the said demand under the threat of disconnection of its electricity supply.

- (ii) The demand raised by the respondents is in violation of the provisions of the Supply Code, 2007 framed by the Commission and Electricity Sales Instructions Manual 2011 approved by the Commission and also in violation of section 56(2) of the Electricity Act, 2003.
- (iii) Under Section 56(2) of the Act, no sum due from any consumer 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 arrears of charges for electricity supplied. Thus the recoveries raised against the petitioner after more than 12 years is not in accordance with law and is illegal.
- (iv) The Commission while deciding petition No.37 of 2012 vide Order dated 01.08.2012: held that recoveries raised against the petitioners after more than two years are not in accordance with law and are illegal.
- (v) The respondents demanded ₹ 6,67,190/- on account of MMC for the period from 05/99 to 07/2001 & 08/2001 to 10/2001 from the petitioner. During this period, the CC No. 28/96 and Sales Regulation No. 82.7.2 were applicable and it was nowhere mentioned that the petitioner was required to pay any MMC on the basis of capacity of transformer. It is further submitted that the PSEB has issued demand notice dated 11.11.1997 and in that notice it was specifically mentioned that the load has been sanctioned with transformer of 500 kVA capacity for induction furnace and 200 kVA for General Load.

(vi) As per clause 4.3.1 of the Sales Regulations issued in the year 1999, the size of the transformer was required to be decided with maximum cushion capacity of 20% of the Contract Demand. The sanctioned load of the petitioner was 350 kW for induction furnace load and the Contract Demand comes to 400 kVA. After adding 20% cushion capacity as per clause 4.3.1, the capacity of T/F comes to 480 kVA & after rounding off with 20% cushion, the nearest standard size comes to 500 kVA. The petitioner was bound to install transformer of 500 kVA capacity and it was nowhere mentioned that the petitioner would be charged MMC on the basis of this capacity. As such, the impugned demand is totally wrong and illegal. The MMC was required to be charged as per induction load which was only 350 kW plus General industrial load totaling 499.340 kW instead of charging the induction load 500 kVA/440 kW.

1.7 The petitioner deposited the amount under the threat of disconnection of its electricity connection and is entitled to get the refund of the same with interest. The petitioner earlier filed petition No.36 of 2015 before the Commission and the same was withdrawn by the counsel for the petitioner with liberty to avail all other remedies available on 17.06.2015. The Order dated 17.06.2015 is reproduced as under:

“The petition was taken up for admission. The Counsel for the petitioners submitted to withdraw the petition with liberty to avail all other remedies available to the petitioners under the law. The petition is allowed to be withdrawn accordingly.”

- 1.8 As per section 142 of the Electricity Act, 2003, only the Commission has power to decide a complaint and take necessary action. As such, the petitioner can not approach any other authority for redressal of its grievances. The petitioner made the following prayers:
- a) Action may kindly be taken against the respondents and other erring officials of respondent No.1 under Section 142 of the Electricity Act, 2003, who have raised impugned demand from the petitioner in violation of the Electricity Act, 2003, Supply Code, Conditions of Supply, Commercial Circular 28/96, Sales Manual Instructions and Order passed by the Commission in various cases, in the interest of justice.
 - b) As a consequential relief, the impugned demand raised by the respondents from the petitioner may kindly be set aside & the respondents may kindly be directed to refund the amount deposited by the petitioner, with interest, in the interest of justice.
- 2.0 During hearing on 23.09.2015, the Commission decided not to admit this petition at that stage and decided to again take up the matter for admission on 14.10.2015. During hearing on 14.10.2015, the petitioner was to argue the case on maintainability of the petition before the Commission but the petitioner sought further time for the same. The Commission vide Order dated 14.10.2015 fixed the petition for further hearing on 03.11.2015 (which was postponed to 05.11.2015) as a last opportunity to argue the case on maintainability of the petition.
- 3.0 After hearing the counsel for the petitioner at length during hearing on 05.11.2015, the Commission decided to admit the petition. The

Commission vide Order dated 06.11.2015 directed PSPCL to reply by 17.11.2015 with copy to the petitioner, who may file rejoinder by 20.11.2015 and serve the copy of the same to PSPCL directly. The petition was fixed for further hearing on 24.11.2015.

4.0 PSPCL vide Memo No.5085 dated 01.12.2015 requested to grant time of two weeks for filing reply. The Commission vide Order dated 02.12.2015 directed PSPCL to file reply by 11.12.2015 with copy to the petitioner. The petition was fixed for hearing on 15.12.2015.

5.0 PSPCL failed to file reply by 11.12.2015 as directed vide Order dated 02.12.2015 and requested to grant two weeks time for filing reply vide Memo No.5255 dated 15.12.2015. The Commission vide Order dated 18.12.2015 directed PSPCL to file reply by 21.12.2015 and fixed the petition for hearing on 22.12.2015.

6.0 PSPCL vide Chief Engineer/ARR & TR Memo No.5271/TR-5/727 dated 18.12.2015 (received on 22.12.2015) filed reply and submitted as under:

6.1 The petitioner has not approached the Commission with clean hands and intentionally and deliberately concealed the material facts from the Commission, while filing the present petition. The petitioner was charged less billing made during the period of 05/1999 to 10/2001. As such, the demand is legal and as per Sales Regulation Instructions 14.1.2.2 which provides that :

“Where an induction furnace is fed from distribution transformer having standard voltage rating i.e. 11000/415 Volts along with other motive/general load from that very transformer, the connected load shall be the sum of the

rating of furnace and motive/other loads or the capacity of the feeding transformer, whichever is higher”.

- 6.2 As per 93.2 of Electricity Supply Instructions Manual the demand is not time barred. The relevant clause is reproduced as under:

“Under Section 56(2) of the Act, no sum due from any consumer 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 arrears of charges for electricity supplied.”

PSPCL shall not cut-off supply in such cases, if the amount is debited after two years from the date when it became first due.

- 6.3 The petition filed by the petitioner is not filed by the authorized person. Sh.Gaman Monga, is not legally authorized to file the present petition. No document has been placed on the record showing that Sh. Gaman Monga is legally authorized to file the present petition. The present petition is not properly verified nor supported by an affidavit, as required under the law.
- 6.4 The Commission is having no jurisdiction to try and entertain the present petition, as the present petition does not fall under the provisions of Section 142 of the Electricity Act, 2003. The demand raised by the respondents was as per Sales Regulation instruction No.14.1.2.2, which was prevalent at that time.
- 6.5 The consumer has not gone through the complaint handling procedure before filing the present petition, as per instruction No. 25 of Electricity Supply Code and Related Matter

Regulations, 2007. As such, section 142 of Electricity Act, 2003, is not applicable in instant case.

- 6.5 The petition filed by the petitioner is hopelessly time barred and is not legally maintainable, as the earlier petition bearing No. 36 of 2015 filed by the petitioner, before the Commission was withdrawn by him at his own.
- 6.5 The petitioner has already made the payment of the outstanding amount of ₹6,67,190/-, as demanded by the respondent, vide notice No./Memo No. 456 dated 28.03.2013 along with supplementary bill dated 28.03.2013, which was later on included in the regular bill dated 03.04.2013 and the petitioner made the payment of first installment, before the last date i.e. 15.04.2013. The petitioner submitted the request application to the respondent No. 2, to permit him to make the payment of the outstanding amount in installments, which was duly considered and the petitioner was permitted to make the payment of the outstanding amount in six equal monthly installments, which were duly paid by the petitioner.
- 6.6 The petitioner made the full and final payment in the month of October, 2013. As such, the present petition after the lapse of 2-1/2 years approximately is not maintainable. The petitioner was charged for less billing made during the disputed period of 05/1999 to 10/2001, as per the instruction i.e. Sale Regulation Instruction 14.1.2.2.
- 6.7 The respondents are making the demand of the aforesaid amount, under the statutory provisions of law and it is obligatory on the part of the respondents to make the recovery of the outstanding amount due towards the consumers, of the bill amounts, outstanding amounts etc. in

public interest and save the State Exchequer from any sort of financial loss.

- 6.8 The petitioner was charged for less billing made as pointed out by internal audit department of PSPCL. Regulation 35.2 of Supply Code, 2007 which states that: “Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Regulation 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.” is not applicable as it was omitted to be proper billing at the 1st instance. It is worthwhile to mention here that, the billing was made, as per section 93 of Electricity Supply Instruction Manual.
- 6.9 The amount is as per sales regulation instruction No.14.1.2.2. The H.T. Transformer capacity is to be taken as load for induction furnace. The petitioner was allowed 500 kVA T/F but the consumer was wrongly billed for 350 kW instead of induction T/F capacity of 500 kVA for induction load.
- 7.0 During hearing on 22.12.2015 the petitioner sought time to file its response to the reply filed by PSPCL. The Commission vide Order dated 23.12.2015 directed the petitioner to file its response by 04.01.2016 with copy to PSPCL. The petition was fixed for final arguments of the parties on 06.01.2016, which was postponed to 13.01.2016.
- 8.0 The petitioner filed rejoinder dated 12.01.2016 (received on 13.01.2016) to the reply of PSPCL and submitted as under:

- 8.1 The resolution authorizing Sh. Gaman Monga was attached with the petition.
- 8.2 It is totally denied that sales regulation instruction No.14.1.2.2 has any applicability in the present case. The petitioner is not supposed to go through the complaint handling procedure because as per section 142 of the Electricity Act, 2003, only this Commission is competent to decide the present complaint.
- 8.3 There is no limitation prescribed for approaching the Commission under section 142 of the Electricity Act, 2003. There is no doubt that the earlier petition No. 36 of 2015 was withdrawn but under section 142 of the Electricity Act, 2003 only the Commission is competent to decide the present petition.
- 8.4 PSPCL could not disconnect the connection of the petitioner but it threatened the petitioner about disconnection of the electricity connection. As such, the petitioner deposited the impugned demand under protest.
- 8.5 The impugned demand is in violation of clause 35.2 of the Supply Code and also clause 93.2 of the ESIM.
- 8.6 The impugned demand is in violation of section 56(2) of the Electricity Act, 2003. It is totally denied that there was any less billing.
- 8.7 The respondents demanded ₹6,67,190/- on account of M.M.C. for the period from 05/1999 to 07/2001 & 08/2001 to 10/2001 from the petitioner. During this period the CC No. 28/96 and Sale Regulation No. 82.7.2 were applicable and it was nowhere mentioned that the petitioner was required to pay any MMC on the basis of capacity of transformer.

- 8.8 For cushion capacity, the petitioner could not be penalized and no MMC could be charged on the basis of cushion capacity of the transformer
- 9.0 After hearing the parties at length during hearing on 13.01.2016, the Commission vide Order dated 15.01.2016 closed the hearing of the case and parties were directed to file the written submissions, if any, by 15.01.2016. The Order was reserved.
- 10.0 The counsel for the respondents filed written arguments on 15.1.2016 and submitted as under:
- 10.1 The petitioner had approached the Commission on the same facts claiming the same relief against the same party which petition was withdrawn by the petitioner with liberty to approach the correct concerned authority.
- 10.2 As per Section 94 of the Electricity Act, 2003, the Code of Civil Procedure, 1908 will apply to all proceedings before the Commission. Since the petitioner had earlier withdrawn the petition praying for the same relief as prayed for in the present petition, this petition would be debarred under Order 23 Rule 1 of the Code of Civil Procedure from raising the same prayer as before, before the Commission. Order 23 Rule 1 of the Code of Civil Procedure is reproduced herein below:

“ORDER XXIII-WITHDRAWAL AND ADJUSTMENT OF SUITS

1. *Withdrawal of suit or abandonment of part of claim – (1)*
At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.'

10.3 The petitioner has not adhered to the complaint handling procedure prescribed under Regulation 25 of the Supply Code Regulations. As per the Regulations, the complaint is to be first attended to by the Officer/ Functionary in charge of the notified office. Further, in case the complainant is not satisfied with the response or there is no response, the complainant will have the right to approach the Appropriate Dispute Settlement Committee. It is only thereafter that the complainant may approach the Commission. It is pertinent to mention here that the earlier petition filed by the petitioner was also withdrawn with liberty to approach the appropriate authority. However, instead of approaching the concerned appropriate authority, the petitioner has approached the Commission again on the same issue. Thus, despite being given the chance to approach the appropriate authority, the petitioner has again in violation of the Regulations, approached the Commission directly.

10.4 The petitioner was charged less as per the bills raised during the period from May, 1999 to October, 2001. As such, the demand is legal, as per the Sales Regulation Instructions no. 14.1.2.2 which is reproduced below:

"14.1.2.2 Where an induction furnace is fed from distribution transformer having standard voltage rating i.e. 11000/415 Volts along with other motive/general load from that very transformer the connected load shall be the sum of the rating

furnace and motive other loads or the capacity of the feeding transformer whichever is higher.”

- 10.5 In the present matter, the sanctioned load of the petitioner was 350 kW for induction furnace load and the contract demand comes to 400 kVA and after adding 20% cushion capacity as per Regulation 4.3.1, the capacity comes to 480 kVA. As per Sales Regulation 4.3.1, the capacity of the transformer calculated after adding 20% cushion should be rounded off to nearest standard size. The nearest standard size comes to 500 kVA capacity. Since the MMC needs to be charged on the connected load as per Instruction 14.1.2.2 mentioned above in case of an induction furnace, the connected load is the sum of the rating furnace and motive other loads or the capacity of the feeding transformer, whichever is higher. Therefore, in this case, the capacity of the feeding transformer being higher i.e. 500 kVA, it is on this figure that the MMC was to be calculated.
- 10.6 It is a settled law that the period of limitation of two years as provided under section 56(2) of the Electricity Act, 2003 starts to run only when the amount first becomes due and an amount becomes due at first only when a bill is raised in demand of that amount. Various judgments were quoted wherein it has categorically been held by the Hon'ble High Courts/Tribunals that question as to when the electricity charges become first due is no longer res integra and that the limitation under Section 56(2) of the Act begins to run only when a bill is raised with respect to the recovery of the claim amount.

10.7 In the present petition, even though the amount demanded by the Respondent pertains to the years 1999 to 2001 but the demand was raised only on 28th March, 2013, which was later on included in the regular bill dated 03rd April, 2013. Thus, the period of limitation of 2 years under Section 56(2) began to run only from 28th March, 2013. Thus the demand is not barred by limitation under Section 56(2).

11.0 Findings and Order of the Commission

The Commission has gone through the submissions and arguments made by both the parties. The dispute in this case is relating to demand raised by PSPCL on account of revision of MMC charges for the period 5/1999 to 10/2001 as Sales regulations instructions prevalent at that point of time through a supplementary bill dated 28.03.2013 i.e after almost 12 years. The petitioner contested this demand on two counts, firstly that the demand is time barred as per section 56 of the Electricity Act, 2003 and secondly that it is not as per Sales Regulations instructions prevalent at that time.

During hearing, the counsel for the petitioner raised the issue that the demand has become time barred due to limitation period of two years prescribed in section 56(2) of the Act and regulation 35.2 of the Supply Code, 2007. The issue of limitation period of two years in view of section 56 of the Act has already been settled by various courts and also by Hon'ble APTEL but we would revisit the issue for bringing clarity to all stakeholders on the applicability of section 56 of the Act, regulation 35.2 of the Supply Code, 2007 & regulation 32.2 of the Supply Code, 2014 in this regard.

Sections 56 of the Electricity Act, 2003 reads as under:

“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.”

Regulation 35.2 of PSERC (Supply Code & Related Matters) Regulations, 2007 reads as under:

“35.2 Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Regulation 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.”

Regulation 32.2 of PSERC (Supply Code & Related Matters) Regulations, 2014 reads as under:

“32.2 Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under Regulation 32.1 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 arrears of charges for electricity supplied & the distribution licensee shall not disconnect supply of electricity in such cases.”

From the above, it is evident that aforesaid provisions of section 56(2) of the Act and Supply Code regulations are identical and interpretation of section 56 of the Act shall be enough to settle the issue.

The heading of Section 56 is ‘Disconnection of supply in default of payment’ and subsection (1) empowers the licensee or the generating company to recover dues of electricity by using a tool of disconnection after serving a notice for not less than fifteen clear days. This procedure is without prejudice to the right of licensee or the generating company to recover such charge or sum due by the legal process of filing a suit as per law. The consumer can save himself such consequences of default

by making the payment as prescribed in (a) and (b) to the proviso to 56(1). It does not prescribe any limitation period for recovery of dues. However, this coercive method of recovery of dues by disconnection as per sub section (2) shall not be available after a period of two years from the date **when such sum became first due** unless it has been shown continuously as recoverable in the bills.

The most important term to settle the issue regarding limitation of two years is the interpretation of the words 'when such sum became first due' as contained in sub-section (2) of section 56 of the Act. It has been held in judgments of the various Hon'ble High Courts & also Hon'ble APTEL that sum would become first due for payment only after a bill or demand is raised by the licensee and sent to the consumer for making the payment. The Hon'ble APTEL in its judgment dated 14.11.2006 in Appeal No.202 & 203 of 2006 held that:

“The basic question for determination is what is the meaning of the words ‘first due’ occurring in section 56(2) of the Electricity Act 2003; Regulation 39(1) of the Regulations, 2004 and condition No.49 of the Terms and Conditions for supply of Electricity, 2004. In case the words ‘first due’ is construed as meaning consumption, it would imply that the electricity charges would become due and payable, the moment electricity is consumed. In that case failure to pay charges will entail consequences leading to disconnection of electricity to consumers even though the consumer will only know the units consumed by him and will not know the exact amount payable by him as per the approved tariff as the actual computation depends upon different parameters such as peaking/ non-peaking rates; HT/LT rates etc. The responsibility to determine the amount payable by the consumer is that of the

licensee. The consumer cannot be expected to discharge the duties of the distributor or the supplier of electricity. Moreover, it will create an anomalous situation as it would be difficult to determine the last date by which the payment is to be made by the consumer and in case last date is not known, it will be difficult to levy surcharge for delayed payment. Besides there will be problem in issuing notice for disconnection for failure to pay the charges on consumption. It appears to us that it could never be the intention of the legislature to equate the words 'first due' with consumption. The consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee for consumption of electricity by the consumer in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge.-----

*In our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but **the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running.*****[Emphasis Supplied]**

The same question of law has also been answered in a judgment dated 11.10.2007 in L.P.A No. 329 of 2007 by Hon'ble High Court of

Jharkhand. The relevant paras of the judgment are reproduced as under:

“Para 8: After going through the impugned judgment, the decision of the Delhi High Court, i.e. AIR 1987 Delhi 219 and after hearing the parties, we are of the view that when the consumer consumes electrical energy, he becomes liable to pay the charges for such consumption but, thereafter, when the Board raises bills as per the tariff, making specific demand from the consumer for payment of the amount for consumption of electrical energy then only the amount becomes “first due” for payment of such consumption of electrical energy.

*Para 9: In view of the above findings, **we further hold that the period of two years as mentioned in Section 56(2) of the Electricity Act, 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of electrical energy.”[Emphasis Supplied]***

Since PSPCL raised the demand under section 56(1) for the first time through demand notice dated 28.03.2013 so the limitation period of two years under section 56(2) of the Act shall start from 28.03.2013. PSPCL also included this sum as arrears in the regular bill dated 03.04.2014. **Thus the demand raised by PSPCL through supplementary bill dated 28.03.2013 is not time barred as per section 56 of the Act.**

The petitioner also claimed that the respondents have violated the Orders of the Commission in petition no. 41 of 2012 wherein according to the petitioner, the Commission has held that recoveries raised after more than two years are not in accordance with section 56(2) of the Act. The facts of case in petition no. 41 of 2012 was that PSPCL

allowed the petitioner a rebate at the rate of 7.5% in the bills for a period from August 2006 to December, 2009 but issued notice dated 18.06.2012 for recovery of rebate already allowed in the bills upto 12/2009. Since the recovery was 'not shown continuously as recoverable as arrears of charges for electricity supplied' in any of the bills from 12/2009 upto 18.06.2012 i.e. that is for a period of 2-1/2 years, as such the Commission had correctly held that it was not recoverable under the provisions of Section 56(2) of the Electricity Act, 2003. Moreover recovery was held as illegal on the main ground that the same was allowed by this Commission upto 31.03.2010 and was withdrawn only from 01.04.2010. **Thus the respondents have not violated any Order of the Commission in this case which warrants action under section 142 of the Electricity Act, 2003 and thus this prayer of the petitioner is also dismissed.**

Whereas challenge of the demand on the grounds that it is not as per the instructions prevailing at that time is concerned, it is held that the dispute regarding charging of correct rates of MMC is purely a billing dispute and to settle such consumer grievances, the Commission has approved and notified 'Consumer Complaint Handling Procedure'. The relevant clause of CCHP reads as under:

"4. Dispute Settlement Committees

*(1) Complaints relating to the supply of electricity by licensee (PSPCL) involving pecuniary disputes arising due to wrong billing, application of wrong tariff or difference of service connection charges/general charges or security against consumption, metering and or CT/PT errors, levy of voltage surcharge, **billing of supplementary amount or***

any other charges except those arising on matters pertaining to open access granted under the Electricity Act, 2003 and Sections 126, 127, 135 to 140, 142, 143, 146, 152 and 161 of the Act will be disposed of by the following Dispute Settlement Committees-----“[Emphasis Supplied]

Also under section 42(5) and (6) read with section 181 of the Electricity Act, 2003, the Commission has also framed PSERC (Forum & Ombudsman) Regulations, 2005 for redressal of grievances of consumers relating to such billing dispute. The petitioner made the payment in six installments and the last installment was made in the month of October, 2013. The petitioner was at liberty to approach the appropriate authority for redressal of his grievances. It was precisely due to above mentioned reasons that the petitioner withdrew his early petition no. 36 of 2015 before the Commission with liberty to avail other remedies.

In view of the above, the Commission is not inclined to go into the merits of the demand raised by the respondents on account of revision of MMC charges being a billing dispute. The petitioner may approach appropriate authority as per law.

The petition is disposed of accordingly.

Sd/-

(Gurinder Jit Singh)
Member

Sd/-

(Romila Dubey)
Chairperson

Chandigarh
Dated: 20.01.2016