ASSISTANT ENGINEER (D1), AJMER VIDYUT VITRAN NIGAM LIMITED & ANR.

v.

RAHAMATULLAH KHAN ALIAS RAHAMJULLA

(Civil Appeal No. 1672 of 2020)

FEBRUARY 18, 2020

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Electricity Act, 2003: s. 56(2) – Disconnection of supply in default of payment – Term 'first due' in s.56(2) – Meaning of – Commencement limitation period of two years, when – Held: 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 – Period of limitation of two years would commence from the date on which the electricity charges became "first due" u/s. 56(2) – 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 – Furthermore, s. 56(2) does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period u/s. 56(2) in the case of a mistake or bona fide error – However, licensee company cannot take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand – As per s. 17(1)(c) of the Limitation Act in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time – On facts, licensee company discovered the mistake of billing under wrong tariff Code on 18.03.2014 and raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011 – Limitation period of two years u/s. 56(2) had by then already expired – Period of limitation would commence from the date of discovery of the mistake – 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 u/s. 56(2) – Limitation Act, 1963 – s. 17(1)(c).

A **Disposing of the appeals, the Court**

HELD: 1.1 Section 56 of the Electricity Act, 2003 provides for disconnection of supply in the case of default in payment of electricity charges. The obligation of a consumer to pay electricity charges arises after the bill is issued by the licensee company.
B **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. [Para 6.2, 6.3][938 E-H]**

1.3 The proviso to Section 56(1) carves out an exception
C **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. 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**
D **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. [Paras 6.4 and 6.5][938-**
E **H; 939 A-C]**

Chandavarkar Sita Ratna Rao v. Ashalata S. Guram. **(1986) 4 SCC 447 : [1986] 3 SCR 866 – referred to.**

1.4 The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued
F **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. [Para 6.6][939 F-H]**

1.5 Sub-section (1) of Section 56 confers a statutory right
G **to the licensee company to 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. The period of limitation of two years would commence from the date on which the**

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electricity charges became "first due" under sub-section (2) of Section 56. 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). 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. Section 56(2) does 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 however, does not empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. As per Section 17(1)(c) of the Limitation Act, 1963 in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. [Para 7.3, 7.4, 8, 9][941 D-H; 942 A-B; 942 D-F]

Mahabir Kishore and Ors. v. State of Madhya Pradesh **(1989) 4 SCC 1 : [1989] 3 SCR 596 – referred to.**

2. In the instant 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. 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

A **recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act. [Para 9][942 B-C; 943 B-D]**

Tata Powers v. Reliance Energy, **(2008) 10 SCC 321 : [2008] 10 SCR 293;** *State of Andhra Pradesh v. National Thermal Power Corporation Ltd.* **(2002) 5 SCC**
B **203 : [2002] 3 SCR 278;** *Swastic Industries v. Maharashtra State Electricity Board* **(1997) 9 SCC 465 : [1997] 1 SCR 532 – referred to.**

Case Law Reference

C **[2008] 10 SCR 293**	**referred to**	**Para 1**
[2002] 3 SCR 278	**referred to**	**Para 6.1**
[1986] 3 SCR 866	**referred to**	**Para 6.5**
[1997] 1 SCR 532	**referred to**	**Para 7.2**
D **[1989] 3 SCR 596**	**referred to**	**Para 9**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1672 of 2020.

From the Judgment and Order dated 28.05.2018 of the National Consumer Disputes Redressal Commission at New Delhi in Revision
E Petition No. 2739 of 2017.

With

Civil Appeal No. 1673 of 2020.

Devashish Bharuka, Adv. (Amicus Curiae).

F Puneet Jain, Ms. Christi Jain, Harsh Jain, Harshit Khanduja, Pankaj Sharma, Abhinav Deshwal, Ms. Pratibha Jain, Ravi Bharuka, Ms. Sarvshree, Justine George, Advs. for the appearing parties.

The Judgment of the Court was delivered by

G **INDU MALHOTRA, J.**

Delay condoned. Leave granted.

a) The issues which have arisen for consideration in the present Civil Appeal are : –

b) What is the meaning to be ascribed to the term "first due"
H in Section 56(2) of the Electricity Act, 2003?

c) In the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become "first due"?

d) Whether recourse to disconnection of electricity supply may be taken by the licensee company after the lapse of two years in case of a mistake?

1. The factual matrix in which the aforesaid issues have arisen for our consideration is : –

1.1 In the present case, for the period July, 2009 to September, 2011, the Respondent along with other consumers were billed by the licensee company (the Appellant herein) under Tariff Code 4400 @Rs.1.65 per unit.

1.2 During the course of a regular audit being conducted by the Internal Audit Party, it was discovered that in 52 cases, including that of the Respondent, the bills were raised under the wrong Tariff Code 4400, instead of Tariff Code 9400, under which the prescribed tariff rate was Rs.2.10p. per unit.

1.3 On 18.03.2014, the licensee company issued a show cause notice to various consumers, including the Respondent, raising an additional demand for consumption of electricity for the past period from July, 2009 to September, 2011. It was mentioned in the notice that the amount was payable in view of the internal audit conducted by the department.

1.4 On 25.05.2015, the licensee company raised a bill demanding payment of Rs.29,604/- from the Respondent under Tariff Code 9400 for the period July, 2009 to September, 2011.

1.5 Aggrieved by the said demand, the Respondent filed a Consumer Complaint before the District Consumer Forum, Ajmer.

The District Forum *vide* Order dated 21.06.2016, allowed the Consumer Complaint, and held that the additional demand was time-barred.

1.6 Thereafter, the State Commission *vide* Order dated 30.05.2017, allowed the Appeal of the licensee company,

A and set aside the Order dated 21.06.2016 passed by the District Forum.

1.7 In the Revision Petition filed by the Respondent before the National Consumer Disputes Redressal Commission, the Order passed by the State Commission was set aside. The B National Commission held that the additional demand was barred by limitation under Section 56(2) of the Electricity Act, 2003 ("the Act").

1.8 The licensee company has filed the present Civil Appeals before this Court to challenge the final judgment dated C 28.05.2018 passed by the National Commission.

1.9 This Court *vide* Order dated 05.03.2019 appointed Mr. Devashish Bharuka as *Amicus Curiae* to assist this Court on the issues raised for determination.

It was further directed that the Appellant – D Corporation would not be entitled to recover the additional demand from the Respondent in this case, and only the questions of law would be determined.

2. We have heard the learned Counsel on behalf of the Appellant – Corporation and the learned *Amicus Curiae*.

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3. Mr. Puneet Jain represented the licensee company, and submitted that the power to disconnect electricity supply under Section 56(1) of the Act may be exercised by the licensee company when a consumer neglects to pay the electricity charges, or any other sums due and payable by him. The neglect F to pay the "sum due" by a consumer, necessarily requires that there should be a "demand" of the sum due from the consumer, which he is required to pay within the period stipulated. If the demand is not paid within the stipulated time, then the power of disconnection under Section 56(1) may be resorted to.

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3.1 It was furthersubmitted that when a bill or demand is raised, which is disputed by the consumer, he may raise the dispute before the Authorities as provided by Section 42(5) or 42(6) of the Act, or avail such other remedies as may be available in law, such as a suit for declaration and injunction; consumer dispute before the consumer fora; H arbitration if provided by the governing agreement.

3.2 Section 56(1) of the Act confers the power of disconnection of electricity supply for default of payment upon a licensee, and provides the conditions when such a power may be invoked, the procedure and manner of the exercise of such power, the period for which such power can remain effective, and the circumstances under which such a power cannot be exercised.

3.3 Sub-section (2) of Section 56 bars the remedy of disconnection of supply for default of payment, if the consumer deposits the amount demanded under protest, or if the demand has been raised two years after the sum became "first due", *albeit* the same had been continuously shown to be recoverable as arrears of charges.

3.4 The word "due" has been used under Section 56(1) as well as under Section 56(2). The term "due" refers to the amount for which the demand is raised by way of a bill. The term "first due" would therefore imply when the demand is raised for the first time. The bill raised by the licensee company would be the starting point for the exercise of power under sub-section (1) of Section 56.

3.5 The starting point of limitation would be from the date when the bill is raised by the licensee company. The bar of limitation is applicable only on the exercise of power of disconnection. As per sub-section (2) of Section 56, the bar of limitation would be two years from the date when the first bill is raised.

3.6 It was further submitted that in case of a mistake, the starting point of limitation should be the date when the mistake is discovered.

In the present case, during a regular internal audit conducted on 18.03.2014, it was discovered that a mistake had occurred in 52 cases, including that of the Respondent, as the bills were raised under the wrong Tariff Code. The Appellant–Corporation raised additional demands on 25.05.2015, i.e., within two years from the discovery of the mistake.

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4. The learned *Amicus Curiae* submitted that Section 56(1) of the Act empowers the licensee to disconnect the electricity supply if the consumer neglects to pay his dues. The disconnection would take place only after the consumer has consumed the electricity, and the bill has been generated. If the consumer neglects to pay the bill served on him within the stipulated period, the licensee can resort to coercive modes of recovery provided in the Act.

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4.1 The words "first due" used in the first part of sub-section (2) of Section 56 is used in the context of the sum quantified by the licensee in the bill; while the second part of sub-section (2) of Section 56 indicates the date when the first bill for the supply of electricity was raised by the licensee under the applicable State Electricity Supply Code.

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4.2 By treating the words "first due" to mean the date of detection of mistake, would dilute the mandate of the two year limitation period provided by Section 56(2), since a mistake may be detected at any point of time. Furthermore, the words "recoverable as arrears of charges" would be rendered completely otiose and nugatory.

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4.3 The period of limitation under Section 56(2) cannot be extended by raising a supplementary bill. The "sum due" raised in the original bill, and not paid by the consumer, must be continuously shown as arrears of charges in subsequent bills, for it to become recoverable by taking recourse to the coercive mode of disconnection of electricity supply.

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4.4 If after the expiry of two years of the original demand, any genuine or *bona fide* mistake is detected by the licensee in the original bill, it would be entitled to raise a supplementary bill. The licensee company would be entitled to resort to other modes of recovery, but not by disconnection of supply under sub-section (1) of Section 56 of the 2003 Act.

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6. Findings andAnalysis

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The Electricity Act, 2003 is a consumer-friendly statute.[1] The Statement of Objects and Reasons to the Act notes that

[1] *Tata Powers v. Reliance Energy,* (2008) 10 SCC 321.

over a period of time, the performance of State Electricity Boards had deteriorated on account of various factors, and the need was felt to frame a self-contained comprehensive legislation, which led to the enactment of the Electricity Act, 2003.

6.1 Electricity has been held to be "goods" by a Constitution Bench in *State of Andhra Pradesh* v. *National Thermal Power Corporation Ltd.*[2] Under the Sale of Goods Act, 1930 a purchaser of goods is liable to pay for it at the time of purchase or consumption. The quantum and time of payment may be ascertained *post facto* either by way of an agreement or the relevant statute.

In the case of electricity, the charges are ascertained and recovered as per the tariff notified by the State Electricity Board, or under an electricity supply agreement between the parties read with the tariff under Section 62(1)(d), and the Electricity Supply Code framed under Section 50.

6.2 The present Civil Appeal pertains to the interpretation of Section 56 of the Act which reads as follows : –

*"**Section 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

[2] (2002) 5 SCC 203.

A *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 *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.*

C *(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."*

D (emphasis supplied)

E 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.

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6.3 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.

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6.4 The proviso to Section 56(1) carves out an exception by providing that the disconnection will not be effected if the

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consumer either deposits the amount "under protest", or deposits the average charges paid during the preceding six months.

6.5 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.

The effect of a non obstante clause was explained by this Court in *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram*.[3] 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)

6.6. 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.

[3] (1986) 4 SCC 447.

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7. The next issue is as to whether the period of limitation of two years provided by Section 56(2) of the Act, would be applicable to an additional or supplementary demand.

7.1 Prior to the coming into force of the Electricity Act, 2003, the Indian Electricity Act, 1910 governed the law pertaining to the use and supply of electricity in India. Section 24 of the Indian Electricity Act, 1910 read as follows :–

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*"**24. Discontinuance of supply to consumer neglecting to pay charge.***

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(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.

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(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:

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Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."

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The Standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok Sabha, opined that Section 56 of the 2003 Act is based on Section 24 of the 1910 Act.

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The Standing Committee further opined that a restriction has been added for recovery of arrears pertaining to the period prior to two years from consumers, unless the arrears have been continuously shown in the bills. Justifying the addition of this restriction, the Ministry of Power submitted that : –

> *"It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings."*

7.2 In *Swastic Industries* v. *Maharashtra State Electricity Board*,[4] this Court while interpreting Section 24 of the Indian Electricity Act, 1910 held that : –

> *"5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it."*
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> (emphasis supplied)

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

7.4 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. 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).

[4] (1997) 9 SCC 465.

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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.

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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.

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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.

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Section 56(2) does 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 however, does not 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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As per Section 17(1)(c) of the Limitation Act, 1963 in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

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In *Mahabir Kishore and Ors.* v. *State of Madhya Pradesh*,[5] this Court held that :–

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"Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the

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[5] (1989) 4 SCC 1.

invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law."

(emphasis supplied)

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.

10. We extend our appreciation to Mr. Devashish Bharuka, Advocate who has very ably assisted this Court as *Amicus Curiae*.

The present Civil Appeals are accordingly disposed of in the aforesaid terms.

All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.

Nidhi Jain Appeals disposed of.