

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 625 of 2019

Decided on: 24.06.2026

Himachal Pradesh State Electricity
Board Limited and others

.....petitioners

Versus

M/s Ultra Tech Cement Limited

.....Respondent

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹

For the petitioners: Ms. Sunita Sharma, Senior Advocate
with Mr. Saurav Upadhyay, Advocate.

For the Respondent: Mr. Rahul Mahajan, Advocate.

Jyotsna Rewal Dua, Judge

Himachal Pradesh State Electricity Board Limited feels aggrieved against the order dated 14.11.2018 passed by the Consumers Grievances Redressal Forum, HPSEBL, allowing the complaint preferred by the respondent. The Forum held the petitioners debarred from claiming the amount in question from the respondent. The demand notice issued by the petitioners- HPSEBL on 16.02.2018 claiming an alleged outstanding liability of ₹47,48,513/- for the period December, 2005 to June, 2008 on account of less charging, was quashed and set-aside.

¹Whether reporters of print and electronic media may be allowed to see the order? Yes.

2. The case:-

2(i). A cement plant was being run by M/s Jai Prakash Associates Limited at Village Baga, P.O. Kandhar, Tehsil Arki, District Solan, H.P. with split unit for grinding of clinker in the name of M/s Japee Himachal Cement Grinding & Blending Plant at Village Pandyana Tikkri, Tehsil Nalagarh, District Solan. Under a scheme of merger in terms of Sections 391 to 394 of the Companies Act Jai Prakash Associates Limited & J.P. Cement Corporation Limited, both Public Limited Companies merged into Ultra Tech Cement Limited-respondent. The scheme of merger provided for transfer and vesting of business of Jai Prakash Associates Limited & J.P. Cement Corporation Limited as a going concern with Ultra Tech Cement Limited under an order passed by National Company Law Tribunal, Allahabad on 02.03.2017. All assets, liabilities and business of the first two companies were taken over and stood vested in the respondent company.

2.(ii). No dues certificate/no objection certificate against electricity charges upto March, 2017 was issued by the petitioners- HPSEBL in favour of the transferor companies. As per the aforesaid no objection certificate, no electricity bill charges were pending against the transferor companies till 31.03.2017.

2.(iii). Petitioners- HPSEBL on 16.02.2018 issued a notice to the transferee/ respondent company conveying that Record of Appropriations & Obligations (RAO) Audit Party had pointed out less charging of sum of ₹47,48,513/- from the transferor companies during the period December, 2005 to June, 2008. The aforesaid amount was due and outstanding from transferor companies, therefore, transferee company i.e. the respondent is liable to pay the amount. The respondent company was directed to deposit the amount.

2(iv). In the aforesaid background, feeling aggrieved against the demand notice dated 16.02.2018 issued by the petitioners to the respondent, a complaint was preferred by the respondent before the Consumers Grievances Redressal Forum. The complaint was allowed by the Forum on 14.11.2018 as under:-

“The respondent-Board has relied that the above amount has been raised as the complainant has less paid during the period 12/2005 to 06/2008. This amount has been calculated by the RAO Audit Party as per the provision of law and the Audit Party is competent to assess the amount which is due for recovery. There is no need to issue the notice under Section 126 of the Electricity Act, 2003. The complainant is liable to deposit this amount as calculated by the Audit Party and the notice has been rightly served to the complainant for the payment of ₹47,48,513/-.

The Forum observed that:-

- I. When there was misuse of Electricity why the notice under Section 126 of Electricity Act, 2003 was not served to the complainant is not understood.
- II. How the bill was raised for maximum demand if the complainant has used power between 125.9 KVA to 230 KVA against the sanctioned load of 42.86 KW.
- III. Raising the demand for less power used continuously for almost three years is not understood.

The Forum order that since the respondent-Board has not issued any notice under Section 126 of Electricity Act, 2003 nor any final assessment was made so the amount as raised cannot be charged at this belated stage. This demand is also debarred as per Section 56(2) of Electricity Act, 2003. The Notice HPSEB/JSD/A-1/2017-18-924-25 dated 16.02.2018 is quashed and set aside.

The case is decided in favour of complainant and against the respondent- Board.”

HPSEBL feels aggrieved against allowing of respondent's complaint by the Consumer Forum under order dated 14.11.2018, hence, this writ petition.

3. Heard learned counsel for the parties and considered the case file.

4. The Consumer Forum has held the petitioners to be debarred from claiming the amount from the respondent on the ground that petitioners-Board had not issued any notice under Section 126 of the Electricity Act, 2003. Final assessment was also not made with regard to the amount alleged to be outstanding against the respondent.

Therefore, petitioner- Board was not allowed to charge the amount in question at belated stage. The demand was also held to be barred by Section 56(2) of the Electricity Act, 2003.

The respondent is stated to have deposited about 1/3rd of claimed amount with the petitioners- HPSEBL pursuant to the interim directions issued by the Forum.

4(i). Section 56 of the Electricity Act,2003 that was one of the basis for quashing the demand notice 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.”

4(ii). At this stage, it would be appropriate to refer to ***K.C. Ninan versus Kerala State Electricity Board and others***² wherein placing reliance upon several precedents in timeline including ***Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another versus Rahamatullah Khan aalias Rahamjulla***³ & ***Prem Cottex versus Uttar Haryana Bijli Vitran Nigam Limited and others***.⁴ Hon’ble Apex Court elaborated implication of Section 56(2) on recovery of electricity dues by the electric utilities as under:-

122. Section 56 falls under Part VI which is titled “Distribution of Electricity”. Section 56 provides for disconnection of electrical supply in case there is a default in payment of electricity charges.

123. The power to disconnect is a drastic step which can be resorted to only when there is a neglect on the part of the consumer to pay the electricity charges or dues owed to the licensee or a generating

²(2023)14 SCC 431

³(2020) 4 SCC 650

⁴(2021)20 SCC 200

company, as the case may be. Section 56(1) 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 a generating company, the licensee or generating company may after giving a written notice of fifteen days, disconnect the supply of electricity, until such charges, including the expenses incurred are paid. The power to disconnect electricity is conditioned on the fulfillment of the conditions stipulated. The cutting off or disconnection is without prejudice to the rights of the distribution licensee to recover such charge or other sums by other permissible modes of recovery. The proviso to Section 56(1) carves out an exception by providing that electricity supply will not be cut off if the consumer, “under protest”, either deposits the amount claimed or deposits the average charges paid during the preceding six months.

124. The statutory right of the licensee or the generating company to disconnect the supply of electricity is subject to the period of limitation of two years provided by Section 56(2). Section 56(2) provides that 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 a 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 and the licensee shall not cut off the supply of electricity. The limitation of two years is limited to recovery of sums under Section 56. This is evident by the use of the expression, “under this section”.

125. The first issue pertains to the simultaneous exercise of statutory and civil remedies by the licensing authority to recover electricity arrears. **The liability to pay electricity charges is a statutory liability and Section 56 provides the consequences when a consumer neglects to pay any charge for electricity or any sum other than a charge for electricity due from him.**

Section 56(1) provides that the power of the licensee to disconnect electrical supply when a consumer is in default of payment is “without prejudice to his rights to recover such charge or other sum by suit”. This means that the licensee can exercise both its statutory remedy to disconnect as well as a civil remedy to institute a suit for recovery against the consumer since the licensee will not necessarily obtain the amount due from the consumer by disconnecting the supply. In its decision in **Bihar SEB v. Iceberg Industries Ltd.**⁵ this Court has held that the power to disconnect supply under Section 56 is a special power given to the supplier in addition to the normal mode of recovery by instituting a suit. The power to disconnect the supply of electricity as a consequence of the non-payment of dues and as a method to recover dues is supplemental to the right of the licensee to institute a suit or other proceedings for the recovery of dues on account of electrical charges.”

Hon’ble Apex Court held that power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery. Section 56(2) which begins with a non obstante clause, provides a limitation of two years for recovery of dues by the licensee through the means of disconnecting electric supply. It puts a restriction on the right of the licensee to recover any sum due from a consumer under Section 56 after a period of two years from the date when such sum

⁵(2020) 20 SCC 745

became first due. Under Section 56, the liability to pay arises on the consumption of electricity and the obligation to pay arises when a bill is issued by the licensee for the first time. Accordingly, the period of limitation of two years starts only after issuance of the bill. The bar contemplated in Section 56 operates on two distinct rights of the licensee, namely, the right to recover and the right to disconnect. Under the law of limitation, the remedy and not the right is extinguished. 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.

4(iii). Apart from above, Hon'ble Apex Court also deliberated over the implication of an auction-sale of premises on "as-is-where-is" basis and held as under:-

"142. Reliance placed by the auction purchasers on **Raghu Nath Gupta⁶ and Kenneth Builders and Developers⁷** to contend that "as is where is" is a feature of physical property, limited to

⁶(2012)8 SCC 197

⁷(2016) 13 SCC 561

encumbrances or charges running with land, is misconceived. In both the cases relied upon by the auction purchasers, the judgments were rendered on the peculiar facts at hand. In Raghunath Gupta this Court was dealing with the availability of basic facilities like parking, lights, roads, water and sewerage, but the application of the doctrine of “as is where is” was not limited to only physical features of the property. Further, in Kenneth Builders and Developers based on the facts, this Court opined that a sale on “as is where is” could not be interpreted to mean that the auction purchaser would be responsible to take permission for the initial commencement of construction itself, which was the obligation of the DDA. The observation of this Court that “this primarily pertains to physical issues at site” was limited to specific clauses in the Development Agreement.

143. Thus, the implication of the expression “as is where is” or “as is what is basis” or “as is where is, whatever there is and without recourse basis” is not limited to the physical condition of the property, but extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affect the property, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility to procure permission in respect of the property offered for sale or any liability for the payment of dues, like water/service charges, electricity dues for power connection and taxes of the local authorities, among others.

146. To conclude, all prospective auction purchasers are put on notice of the liability to pay the pending dues when an appropriate “as is where is” clause is incorporated in the auction sale agreement. It is for the intending auction purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to purchase. In a public auction sale, auction purchasers have the opportunity to inspect the premises and ascertain

the facilities available, including whether electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues.

147. In terms of the legal doctrine of caveat emptor, it becomes the duty of the buyer to exercise due diligence. A seller is not under an obligation to disclose patent defects of which a buyer has actual or constructive notice in terms of Section 3 of the Transfer of Property act, 1882. However, in terms of Section 55(1)(a), in the absence of a contract to the contrary, the seller is under an obligation to disclose material defects in the property or in the seller's title thereto of which he is aware and which a buyer could not with ordinary care discover for himself.

148. While examining the effect of an "as is where is" clause, the facts and circumstances of each case individually, along with the terminology of the clauses governing the auction sales must be taken into consideration, to arrive at an equitable decision."

4(iv). In the instant case, apart from limitation of two years prescribed under Section 56(2) of the Act having lapsed and thereby denying the right to disconnect respondent's electricity supply to the petitioners Board for purpose of recovery of the amount, there is one more factor that needs to be noticed. The petitioners- HPSEBL had admittedly issued no objection certificate to the transferor companies conveying that no electricity bill charged was

pending against them uptill 31.03.2017. The transferor companies merged with respondent company on 02.03.2017. In this sequence of events, the demand notice issued by the petitioners to the respondent on 16.02.2018 even otherwise cannot be held to be justified. Petitioners having already issued no objection certificate to the transferor companies, the respondent could not be held liable to pay an amount for which it was not in default. The demand notice dated 16.02.2018 related to the period December, 2005 to June, 2008. After issuing no objection certificate to the transferor companies to the effect that “with reference to your office letter no. JAL/JHCGBU 2017/3999 dated 16.06.2017 as per the record of this office No Electricity bill charges pending against A/C no. JPLS-1 till 31.03.2017”, the amount allegedly charged less from the transferor companies for about one month in the year 2010 could not have been claimed from the respondent transferee company. Section 56(2) of the Electricity Act certainly got attracted and the respondent Board was debarred from claiming this amount from the respondent company.

Significantly, the petitioners-Board had also issued a communication to the transferor company M/s J.P.

Cement Blending Unit on 18.07.2007 alleging that it had unauthorizedly used electricity in the premises; Load of 225KW with 250 KVA contract demand had been sanctioned in its favour on 21.07.2005 but during inspection of the premises of transferor company on 16.07.2007, additional unauthorized load of 17.054 KW was found connected in addition to the sanctioned load. The transferor company was directed under this office communication to clarify as to why the provisions of Section 126 of the Electricity Act should not be invoked against it for unauthorized use of electricity. The transferor company in its reply on 24.07.2007 stated that at no point of time it exceeded the contract demand and in future also, the contract demand shall not be exceeded. It is the specific case set up by the respondent that no further communication whatsoever was received on the subject matter from the petitioners; That matter was closed as there had been no unauthorized use of electricity on part of transferor company. The contention of the respondent has to be presumed to be correct as it was followed by issuance of No Objection Certificate by the petitioners in favour of transferor company on 16.06.2017. Therefore, the petitioners' assertion in the rejoinder that respondent was indulged in unauthorized use of electricity by drawing

power far in excess of its sanctioned load, cannot be accepted at this stage. Admittedly, no recourse to Section 126 of the Act was even taken by the petitioners at the relevant time.

5. In view of above, I find no infirmity with the impugned order passed by the Consumers Grievances Redressal Forum, HPSEBL. Hence, this petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

June 24, 2026
yogesh

Jyotsna Rewal Dua
Judge