

(2001) 07 PAT CK 0067

In the Patna High Court

Case No : Letters Patent Appeal No. 1568 of 2000

Bihar State Electricity Board and Another

APPELLANT

Vs

Shree Plywoods (Pvt.) Ltd. and Others

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0067

Final Decision : Allowed

Judgement

1. The import of word "meter" in Section 26(6) of the Indian Electricity Act, 1910 (in short "the Act") arises for consideration in this Letters Patent Appeal.

2. Shree Plywoods (Pvt.) Ltd., respondent No. 1 herein, is a company engaged in the manufacture of plywood products at Industrial Area, Fatuha and for the purpose of manufacturing it purchases electricity from the Bihar State Electricity Board (in short "the Board") at contract load of 120 KVA, falling under High Tension (HT) category. On 24-8-2000 a team of Engineers of the Board inspected the meter installed in the factory premises of the respondent. The team found that a phase "B" of the meter current was showing .03A (A for ampere). Being of the view that it was a doubtful case further inspection was postponed. On 25-8-2000 the team visited the premises again. This time it found the current in the concerned phase missing. CT Box seal was opened to see the condition inside. It was noticed that CT load wire Joint had melted resulting in recording of 1/3 less consumption. Due to power interruption further testing could not be carried out, which was finally done on 30-9-2000. Meanwhile, on 1-9-2000 the Executive Engineer, Electric Supply Circle, Patna, issued supplementary bill for the month of August, 2000 multiplying the consumption recorded in the meter by 3/2 i.e. 150%, Thus recorded consumption of 21960 was increased to 32941. Similar increase was effected in the reading with respect to KVA and KWh. The respondent moved this Court in CWJC No. 9615 of 2000 challenging the validity of the said bill on the ground, inter alia, that recording of less consumption was on account of defect in the meter and the appropriate authority to decide any

dispute arising out of defective meter and assess the amount of energy supplied to the consumer is Electrical inspector u/s 26(6) of the Act. The plea found favour with the learned single Judge. He held that the dispute falls within the ambit of Section 26(6) of the Act which the Electrical Inspector alone is empowered to decide. In case the Electrical Inspector comes to the finding that the meter is faulty and did not record actual consumption of the energy he will estimate the amount of energy consumed and fix the amount payable by the consumer. The learned single Judge accordingly quashed the impugned bill dated 1-9-2000. The learned Judge relied on a decision of the Supreme Court in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, .

3. The Board has come up in appeal against the judgment.

4. Appearing for the appellants Shri Mihir Kumar Jha submitted that there is no pleading by the respondent that the meter was defective and in the absence of foundational facts in that regard the learned single Judge committed error in applying the provisions of Section 26(6). Counsel submitted that the ratio of the decision in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, is applicable in cases of defective meters. The instant case is one of meter not correctly recording consumption on account of melting of wire joint resulting in "nil" current in one of the three phases. The case, therefore, does not fall within the ambit of Section 26(2) of the Act and the Electrical Inspector has thus no jurisdiction to enter upon the dispute. On behalf of the respondent Shri Ramesh Kumar Agrawal submitted that where the consumption of energy is not accurately recorded in the meter, the meter cannot be said to be "correct" within the meaning of Section 26(6) of the Act. Counsel submitted that on facts also the demand was not justified.

5. It will be appropriate at this stage to refer to the relevant provisions. Section 26(1) of the Act provides that the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter. Sub-section (2) lays down that where the consumer enters into an agreement for the hire of a meter, the licensee shall keep the meter correct and in default of his doing so, the consumer shall for so long as the default continues, cease to be liable to pay for the hire of the meter. Under Sub-section (4) the licensee or any person duly authorised by the licensee has a right of access to the matter, at any reasonable time and after information to the consumer, and at liberty to inspect and test and for that purpose, if he thinks fit take off and remove any meter referred to in Sub-section (1). Sub-section (6) provides that where a difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct, the matter shall be decided upon application of either party by an Electrical Inspector. He may then assess the amount of energy supplied or the electrical quantity therein and thus determine the liability of the consumer.

6. Counsel for the respondent submitted that the words used in Sub-section (6) of Section 26 are whether any meter is or is not "correct". The word "correct"

should not be understood in the sense of "defect". Thus, not only in cases of dispute as to whether the meter is defective or not but in all cases of dispute as to the "correctness" of the meter the Electrical Inspector has jurisdiction to decide the dispute. We do not find any substance in the argument of the counsel for the respondents. In our opinion, word "correct" is not a term of art, it has to be given a literal meaning. The dictionary meanings of the word are "made right or straight; free from faults: true". In context, thus, word correct has to be understood as "defect-free" or "not defective".

7. The precise question for consideration is whether the word "meter" in Section 26(6) of the Act refers to only the instrument in which the consumption of energy is recorded or shown or it includes wires and accessories used in aid of recording of the consumption. Where on account of any fault in the wires or accessories the consumption of energy is not correctly recorded in the meter, can the meter as such be said to be defective or incorrect within the meaning of Section 26(6) of the Act. It seems appropriate here to notice the findings of the inspection team in course of the inspection on 24-8-2000 and 25-8-2000. The relevant part of the Inspection report dated 24-8-2000 is as under :

"Meter has not been tested because B phase current was showing .03A, hence it is doubtful case. Pending (illegible) for supervision of higher officers."

The relevant part of the report dated 25-8-2000 is under :

"During inspection on 24-8-2000, current in meter B Phase was not found and condition was retained. All seals done were found intact. Again checked and found B Phase current missing. CT Box seal (LT illegible) were open to see the condition inside and noticed that CT load wire joint has melted causing current in B Phase cord thus recording 1/3 less consumption.

8. It would thus appear that it was because of the melting of wire, called CT Box wire Joint, that the current was not passing in the particular phase viz. phase B as a result of which the consumption of energy was not being correctly recorded in the meter. Recording of consumption may not be accurate for various reasons, such as defect in the meter or defective wiring or tampering, It may also be, as in this case, due to melting or burning of the wire. In the case of Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, the Supreme Court on facts found that the meter was not correct i.e. defective and accordingly held that the Electrical Inspector was the competent authority to decide the dispute u/s 26(6) of the Act.

9. Counsel for the appellant submitted that the Madhya Pradesh High Court in M.P. Electricity Board, Jabalpur and Another Vs. Chhaganlal, has taken the same view as being taken by this Court which was approved by the Supreme Court in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, . The Madhya Pradesh High Court in the aforesaid case observed :

"Where an electric meter is not registering correct consumption of energy not

because there is any defect in the meter but because the wiring is defective Section 26(6) will not be attracted and the meter not being defective the question of arbitration by Electrical inspector will not also arise."

In coming to this conclusion the Madhya Pradesh High Court relied on a decision of the Mysore High Court in Gadag Betgiri, Municipal Borough, Gadag v. Electrical Inspector, Govt. Electrical Inspectorate. Govt. of Mysore AIR 1962 Mys 209 the relevant observations wherein were as follows :

"What the Inspector may decide under Sub-section (6) is whether or not the readings obtainable from the meter are accurate and whether the meter is faulty or mechanically defective, producing erroneous readings. That is the limited adjudication which in my opinion, an Inspector or other authority functioning under Sub-section (6) may make under its provisions.

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The only question into which the Inspector or other authority functioning under that sub-section might investigate is, whether the meter is a false meter capable of improper use or whether it registers correctly and accurately the quantity of electrical energy passing through it. If in that sense, the meter installed by respondent 2 in this case was a correct meter as it undoubtedly was and as it has been admitted to be, the fact that respondent 2, even if what the petitioner states is true, so manipulated the supply lines that more energy than what was consumed by the petitioner was allowed to pass through the meter would not render the meter which was otherwise correct an incorrect meter."

The Supreme Court quoted the above observations of the Madhya Pradesh and Mysore High Courts and approved them as laying down the correct law. The Supreme Court also noticed the contrary view which the Madhya Pradesh High Court took in Abdul Razak v. M. P. Electricity Board, 1982 MPLJ (Notes) (37) p. 22 as under :

"About the fittings on the meter and tampering them in such a manner that the reading of the energy would not be correct, such a dispute in view of the language of Section 26(6) read with Rule 3 of Schedule VI of the Electricity Act squarely falls within the jurisdiction of the Electrical Inspector,

but disapproved it stating :

"We are, however, unable to accept this contrary view as it is obvious from the provisions of Section 26, Sub-section (6) of the said Act that dispute whether a meter is correct or faulty would come under the said provisions and not the dispute regarding tampering of meter."

10. The decisions of the Madhya Pradesh and Mysore High Courts which are in accord with the view that we are taking having got the approval of the Supreme Court there is little room for doubt that where the incorrect recording of consumption of energy in the meter is on account of fault in the wiring it cannot

be said to be a case of defective meter. The meter can be said to be defective if it suffers from any mechanical defect as a result of which the consumption of energy is not correctly recorded. It is only in such cases that the Electrical Inspector has Jurisdiction. Sub-section (6), in terms, refers to "meter". The power of the Electrical Inspector thereunder cannot be extended to defects in other appliances, fittings, which may be part of installation. The present case being one of melting of wire resulting in loss of current in one of the phases and thus incorrect recording of consumption of energy, in our opinion, does not fall within the purview of Section 26(6). The learned single Judge, therefore, was not correct in quashing the bill on that ground and directing the dispute to be referred to the Electrical Inspector for adjudication. As the learned single Judge has not gone into the merit of the case and the petitioner may have a case to argue on merit, we are of the opinion that the writ petition should be heard again.

11. In the result, the impugned order of the learned single Judge dated 29-9-2000 is set aside and the appeal is allowed. The Registry is directed to list C.W.J.C. No. 9615 of 2000 for admission before the appropriate Bench. There will be no order as to costs.