

(2001) 10 BOM CK 0049
In the Bombay High Court
Case No : Writ Petition No. 220 of 2001

Brihanmumbai Municipal Corporation	APPELLANT
Vs	
Sapyah Trust and Sarkar Trust and Others	RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Electricity Act, 1910 — Section 26(6)

Citation : AIR 2002 Bom 315 : (2002) 2 ALLMR 163 : (2002) 3 BomCR 151 : (2002) 1 BOMLR 597 : (2003) 1 CivCC 506 : (2002) 3 CivCC 105 : (2002) 2 MhLj 558

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Advocate : P. Palkhiwala, instructed by Crawford Bayley and Co, for the Appellant; A.C. Tamhane, instructed by Tamhane and Co., for the Respondent

Judgement

H.L. Gokhale, J.—The petitioner is a statutory Authority constituted under the Bombay Municipal Corporation Act, 1888. Amongst its activities, it distributes and supplies electrical energy in the city of Mumbai through the Brihanmumbai Electric Supply and Transport Undertaking (B.E.S.T.) which is a "licensee" within the definition of the term under The Indian Electricity Act, 1910 ("the said Act", for short). Respondent No. 1 is one of the consumers of electrical energy. Respondent No. 3 is the Electrical Inspector, who has jurisdiction to decide the difference or dispute arising out of defective meters as specified u/s 26(6) of the said Act. Respondent No. 2 is the Minister of State for Energy of the appropriate Government, to whom an appeal is provided u/s 36(2) of the said Act from the decision of the Electrical Inspector.

2. The 1st respondent - Trust was having a meter bearing meter No. 790046 installed at its premises. It was a low capacity meter. At the request of the 1st respondent, that meter was replaced by high capacity meter bearing meter No. 930042. That was in the year 1995. Subsequently in December 1996, during the course of inspection, it was found that the said meter was not functioning and

had completely stopped working and registering any consumption of electricity. Thereafter the meter was replaced by electronic meter and a supplementary bill for the supply made on an average basis was served on the 1st respondent demanding an amount of Rs. 16,16,951.39 towards the consumption during the intervening period.

3. Respondent No. 1 lodged a Complaint on 22nd June, 1998 before the 3rd respondent with respect to this supplementary bill. The petitioner filed a reply on 14th July, 1998 and pointed out as to how the average was arrived at on the basis of consumption for a period of six months and that the claim was correct.

4. After hearing both the parties, the Electrical Inspector passed an order on 9th September, 1999. In that order, the Inspector accepted the submission of the petitioner that the meter was not recording the reading and had in fact stopped functioning. In fact he in terms stated that the dispute did not come u/s 26(6) of The Indian Electricity Act. The Electrical Inspector, however, took a view that he had a jurisdiction under Sections 24(1) and (2) of the said Act read with Schedule VI(3) thereof. The consequence of this order was that as against the average monthly consumption of 13718 units, the Inspector brought it down to 9800 units per month. This resulted into the amount in the supplementary bill of Rs. 16,16,951.39 being brought down to Rs. 11,36,000/-.

5. Being aggrieved by this decision, the petitioner filed an appeal to respondent No. 2-Minister of State for Energy and the learned Minister, after hearing both the parties, held that the decision given by the Electrical Inspector was accepted. By his order dated 25th July, 2000, the learned Minister directed the petitioner to take necessary action within a month.

6. Being aggrieved by both these decisions, this petition has been filed. The petition was admitted on 20th February, 2001 and while admitting it, an interim order was passed in terms of prayer Clause (b), as a result of which the effect and implementation of these two orders was stayed. It is material to record at this stage that respondent No. 1 had, in the meanwhile, paid the amount of Rs. 11.36.000/- to the petitioner.

7. The principal submission of Mr. Palkhiwala, learned Counsel appearing for the petitioner, is that both these orders are ex facie unjustified. He submits that the jurisdiction of the Electrical Inspector is carved out u/s 26(6) of the said Act to deal with only the defective meters. He is a technical person and it is not a part of his jurisdiction to deal with a situation where a meter has stopped functioning or where a party considers the bill to be high one. Mr. Palkhiwala points out that both the orders infact accept the submissions of the petitioner in part and yet the impugned orders have been passed against the petitioner.

8. To understand the submissions of Mr. Palkhiwala, it is necessary to refer the relevant Sections. The relevant Sections of the said Act viz. Sections 24(1) and (2) and Section 26(1) and (6) are as follows :--

"24. Discontinuance of supply to consumer neglecting to pay charge. --[(1)] Where any person neglects to pay any charge for energy or any sum other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer. [(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."

"26. Meters.-- (1) In the absence of an agreement to the contrary, 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, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

[(6) Where any 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 the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct: but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity :

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this Sub-section, he shall give to the other party not less than seven days notice of his intention so to do.]"

9. Schedule VI(3) of the said Act reads as follows :--

"VI. Requisition for supply to owners or occupiers in vicinity. -- (3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier, or as to the position of the meter board or as to the improper use of energy, or to any alleged defect in any wires, fitting, works or apparatus, or as to the amount of the expenses incurred under the third proviso to Sub-clause (1), the matter shall be referred to an Electrical Inspector and decided by him."

10. Now, when we look into Section 26(6) of the said Act, it deals only with the situation where any difference or dispute arises as to whether any meter is or is not correct. It is this matter which is decided by an Electrical Inspector upon a reference by the party concerned. It is only in a situation of that type that where the meter in the opinion of the Inspector has ceased to be correct one that he has to estimate the amount of energy supplied to the consumer during the intervening period not exceeding six months. This provision excludes the case of a fraud or tampering with the meter and that has been specifically held by the Apex Court in the case of Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, . In Para 9 thereof, the Apex Court observed as follows :--

"If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of Sub-section (6) of Section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of Section 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud.

Thus, as held by the Apex Court, the jurisdiction of the Electrical Inspector u/s 26(6) is confined only to the type of dispute referred therein and not beyond.

11. Similarly when it comes to the case of a meter which has stopped functioning, the question came up before a Division Bench of this Court (Coram : M. B. Ghodeswar & B. N. Srikrishna. JJ.) in the case of Sapphire Machines Pvt. Ltd. v. Bombay Municipal Corpn. and anr. (Writ Petition Lodging No. 1925 of 1999 decided in an unreported judgment of 5th August, 1999.) That was also a case where the meter was not functioning and had stopped working. In Para 2 of that judgment, the Division Bench observed as follows :--

"A careful perusal shows that obligation to refer difference or dispute as to the correctness of the meter to the decision of an Electrical Inspector arises only if there is a difference or dispute about its correctness. In the case of the petitioner, the petitioner must have been aware that the meter was not functioning from December 1995. The Electrical Inspector must have also been aware of the fact that it was not functioning. In fact, there was no dispute between them that the meter was not functional. In these circumstances, in our view, Sub-section (6) of section 26 cannot come to the aid of the petitioners."

12. In the present case also, there is no dispute that the meter had stopped functioning. That being so, it was not a case of a meter being correct or not which could be covered u/s 26(6) of the said Act.

13. The Electrical Inspector came to the same conclusion and yet exercised the jurisdiction u/s 24(1) and (2) of the said Act. Now, Section 24(1) of the said Act records that the licensee has the authority to discontinue the power supply in case the consumer neglects to pay the electricity charges. That is to be done

after giving a notice of not less than seven clear days. Section 24(2) of the said Act states that where any difference or dispute which is to be determined by an Electrical Inspector is pending before him, then the licensee shall not exercise this power until the Inspector has given his decision. In the instant case, since the Electrical Inspector did not have the jurisdiction to decide the controversy arising out of the stopped meter and the consequent average bill prepared by the petitioner, there was no question of his passing an order on the basis of his supposed authority u/s 24(2) of the said Act. Again, if one refers to the provision in Schedule VI(3) of the said Act, it does not deal with a case of non-functioning meter. That being so, even reference to that provision is erroneous.

14 In the circumstances, both the above orders, one passed by the Electrical Inspector as well as other by the Minister, were without jurisdiction. Both these orders will, therefore, have to be quashed and set aside. Prayer (a) of this petition is to that effect and accordingly, Rule is made absolute in terms of this prayer Clause (a).

14-A. On an enquiry from the Court, Mr. Palkhiwala, learned Counsel appearing for the petitioner, pointed out that to deal with such complaints of the consumers, an authority has been set up by the petitioner to review such claims. Administrative orders are issued from time to time in this behalf and as of now, it is the administrative order dated 5th March, 1997 which provides for a Review Committee. He states that the 1st respondent may file a review application to this Committee. Clause-5 of this administrative order states as follows :--

"The initial claim amount in respect of the amendments arising out of stopped or defective meters, change of tariffs, tampering of meters, theft of energy may be reviewed in case the claim amount is disputed by the consumers/parties.

The administrative order states that the Review Committee is to meet once in a fortnight, The Committee functions at two levels depending upon the amounts involved and rules with respect to the functioning of this Committee are laid down in this administrative order. Mr. Palkhiwala however, states that as per Condition No. 18(b) of the conditions of the document titled "Conditions and Miscellaneous Charges for The Supply Of Electric Energy", any such complainant has to pay the entire amount under this bill under protest while lodging the complaints. This Clause 18(b) reads as follows :--

"Any complaint with regard to the accuracy of the bills shall be made in writing to the Undertaking and the amounts of such bills shall be paid under protest. The amounts of the bills paid under protest will be regarded as advances to the credit of the consumer's account until such time as the bills in dispute have been fully settled."

This document is executed by every consumer who applies for power-supply and meter and it binds him.

15. Mr. Tamhane, learned Counsel appearing for respondent No. 1, however,

points out that the Electrical Inspector himself had reduced the amount to Rs. 11,36,000/-, and that amount has been paid by respondent No. 1 to the petitioner. He, therefore, submits that in the facts of the present case, respondent No. 1 ought not to be called upon to deposit the balance of amount for processing this review application. Mr. Palkhiwala, on instructions, leaves it to the Court to pass appropriate orders.

16. In the circumstances, although the impugned orders are set aside, respondent No. 1 will be at liberty to file a review application to the Review Committee without depositing any further amount. Respondent No. 1 may file it at the earliest. Mr. Tamhane states that it will be filed within two weeks, and Mr. Palkhiwala states that on receiving such an application, the same will be heard and decided within a period of about eight weeks. Respondent No. 1 will cooperate for the early disposal of the review. Needless to state that as of now the supply is not disconnected, nor will it be disconnected in the event the decision of the Review Committee is adverse to respondent No. 1 for a period of two weeks after the decision is served on respondent No. 1.

17. Rule is made absolute in the above terms. However, there will be no order as to costs.

18. Parties to act on an authenticated copy of this judgment.