

(1999) 06 AP CK 0005
In the Andhra Pradesh High Court
Case No : WA No. 743 of 1999

Chief Engineer, Electricity, APSEB, Hyderabad and others	APPELLANT
Vs	
Srinivasa Modern Rice Mill, Ramagiri Village, Nalgonda	RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 26(6)

Citation : AIR 2000 AP 12 : (1999) 4 ALD 224 : (1999) 4 ALT 279

Hon'ble Judges : M.S. Liberhan, C.J;Goda Raghuram, J;C.V.N. Sastri, J

Bench : Full Bench

Advocate : Mr. J.Siddaiah, SC for APSEB, for the Appellant; Mr. K. Ramakrishna Reddy, for B. Mahender Reddy, for the Respondent

Judgement

M.S. Liberhan, C.J.—On inspection of the writ petitioner's rice mill by the officials of the appellant-Board, the meter was found to be not working in two phases and slow forward in the 3rd phase. On spot testing by the Assistant Divisional Engineer the average error was found as -81.44% and that CT Secondary Wire was cut and damaged. In view of the skeleton of a rat being found in the meter box, the damage to the meter was suspected on that account. Consequent on the above, the concerned Superintending Engineer estimated the back billing at Rs.40,594.75 and issued a show-cause notice calling upon the writ petitioner to file his objections, if any, Objections were filed. By his order dated 10-12-1997 the S.E. passed final orders back billing the writ petitioner towards unrecorded consumption, in an amount of Rs.23,363.10 ps. Aggrieved thereby an appeal dated 27-1-1998 was preferred before the appellate authority. By the orders dated 28-11-1998 the appeal was rejected confirming the order dated 10-12-1997.

2. Assailing these orders Writ Petition No.3398 of 1999 has been filed. All the grounds raised in the writ petition were to the effect that the assessment of the unrecorded energy consumption by the proceedings of the Board officials

impugned in the writ petition, was contrary to the provisions of Terms and Conditions of Supply Agreement, Invalidation of the primary and appellate proceedings was sought. Neither a ground, that the meter being defective was in dispute or that the assessment by the Board officials made under the agreement terms was inconsistent with the provisions of Section 26(6) of the Indian Electricity Act, 1910, (for short "the Act") was pleaded.

3. By the judgment under appeal, however, the impugned orders were quashed and the appellants were directed to refer the matter to the concerned Electrical Inspector. This decision was rendered after referring to the judgment of the Supreme Court in *Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai*, , on the view that the Electrical Inspector would go into the factum of the dispute regarding the meter and on the basis of his finding further steps be taken in terms of the Terms and Conditions of Supply.

4. When the matter came up for hearing before the Division Bench on 16-6-1999, the appellant raised a contention that when there was a specific agreement between the parties contrary to the provisions of Section 26(6) of the Act, it is those terms of agreement which would prevail and not the provisions of Section 26(6) of the Act which ordain referral of a dispute regarding defective nature of meter to the Electrical Inspector. It was also contended that this view is supported by a Division Bench judgment of this Court in WA No.1118 of 1994, dated 18-4-1996. As prima facie, it was felt that the view of the Division Bench may require reconsideration in the light of the judgments of the Supreme Court and the language of Section 26(6) of the Act, the matter was referred for consideration by a Full Bench.

5. It is seen from the pleadings in the writ petition that factual and legal foundations do not exist for adjudicating the question whether the provisions of Section 26(6) of the Act are subject to a contract to the contrary and whether such a clause in Section 26(6) would also govern the provisions of Section 26(6) of the Act. The entire gamut of pleadings in the writ petition do not disclose any dispute with regard to the defective nature of the meter and the only grievance that is urged is with regard to the regularity of the assessment proceedings qua the Terms and Conditions of Supply Agreement. In this state of pleadings the questions of law regarding interpretation of the provisions of Section 26 of the Act do not fall for consideration.

6. Since the material facts are not disputed, the writ appeal could, therefore, be disposed of on merits in order to bring the litigation to an end.

7. The facts are not in dispute either before the authorities or before us. The officers of the Board tested the meter and found it defective, the meter was not working properly - it was not working in two phases and was slow forward in the 3rd phase. On spot testing the average error was found as -81.44%. In accordance with the conditions of the agreement vide conditions 22.3.3.1 to 22.3.3.4, which provide methodology for calculating and assessing the liability

of the consumer, the unrecorded energy consumption was assessed. This assessment is an assessment of fact which cannot be disputed in a proceedings under Article 226 of the Constitution. This assessment has also been confirmed by the appellate authority by an elaborate and reasoned order. Consequent on the above assessment and its confirmation in appeal, the liability of the writ petitioner was determined at Rs.23,363.10 ps., for the period from May, 1997 to 15-7-1997 i.e., during the period the meter was defective. In the circumstances, the assessment proceedings were not liable to be assailed in a proceedings under Article 226 of the Constitution.

8. Learned single Judge came to the conclusion that in view of Section 26(6) of the Act assessment should be made only by an Electrical Inspector. In our view, on the facts pleaded or urged, no case is made out warranting application of provisions of Section 26(6) of the Act, as there is no dispute with regard to the meter. In view of the fact that there is no dispute regarding function of the meter, but only in respect of mode of calculation, no interference is warranted under Article 226 of the Constitution. The order of the learned single Judge is accordingly set aside. The appeal is accepted. The order of the appellate authority dated 28-11-1998 is confirmed.

9. The appeal is accordingly allowed. No order as to costs.