
(2003) 07 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 181 of 2001

Daljit Kaur Jaggi

APPELLANT

Vs

Mumbai Suburban Electricity Supply Ltd. and Others

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Electricity Act, 1910 — Section 26(6)

Citation : (2003) 4 ALLMR 529 : (2004) 1 BomCR 745

Hon'ble Judges : R.M.S. Khadeparkar, J

Bench : Single Bench

Advocate : R.D. Dhanuka, instructed by A.R. Dhanuka, for the Appellant; Satish Kamat, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Perused the records.

2. The petitioner challenges the impugned order dated 16th June, 2000 passed by the Appellate Authority u/s 36(2) of the Indian Electricity Act, 1910, hereinafter called as "the said Act", and the order dated 18th February, 1999 passed by the Electrical Inspector on a complaint made by the petitioner regarding the electricity bill dated 16th January, 1998 in relation to the month of December, 1997 issued to the petitioner.

3. The petitioner is the owner of the shop premises at Andheri, Mumbai. The petitioner had allowed the said shop premises to be utilised by M/s. Sai Prerna Food Beverages Pvt. Ltd., on leave and licence basis under an agreement entered into in the month of November, 1995. Initially, the premises were provided with the single phase electric supply which was subsequently converted into three phase connection in March, 1996. Monthly bills were issued in relation to the electricity consumption for the shop premises and they were being paid by the petitioner. In January, 1998, the bill dated 16th of the said month came to be

issued to the petitioner in relation to the month of December, 1997 to the tune of Rs. 3,77,728.83 ps. being the bill for consumption of the power supply for the period of December, 1996, February, 1997, April, 1997, June 1997, August 1997 and October, 1997 along with December, 1997. On 10th April, 1998, pursuant to the representation made by the petitioner, the Maharashtra Grahak Panchayat a non-Governmental Organization, requested the respondent No. 1 to intervene in the matter and to do the needful. In April, 1998, the old meter was replaced by another meter. In July, 1998, the petitioner approached the respondent No. 1 and brought it to its notice that the second meter was also not correctly disclosing the consumption of electricity supply to the shop premises and requested for inspection of the meter by the Electrical Inspector. On 7th August, 1998, respondent No. 1 addressed a letter to respondent No. 2 forwarding the complaint of the petitioner regarding incorrect reading of the consumption of the electricity. After hearing the petitioner, the Electrical Inspector ordered installation of testing meter for the shop premises of the petitioner for a period of two months further directing to take reading every week. The testing meter was installed on 20th October, 1998 and after considering all the report, respondent No. 2 by order dated 18th February, 1989 directed for removal of the disputed meter and ordered further that in respect of the bills issued from 12th March, 1998 onwards till the date of removal of the disputed meter should be given reduction to the extent of 5.5%, besides the exemption from payment of meter rent for the said period. On 6th March, 2000, the petitioner filed an appeal u/s 36(2) of the said Act before the Appellate Authority which came to be disposed of by the impugned order.

4. The impugned orders and the bills for the month of December, 1997 are sought to be challenged firstly on the ground that the petitioner was being issued regular bills for the period prior to December, 1997 based on the meter reading and, therefore, there was no occasion for the respondents to claim any arrears in relation to any period or part thereof prior to December, 1997 by issuing bill dated 16th January, 1997. Secondly, on the ground that the claim regarding arrears can, at the most, be for a period of six months prior to the date of issuance of the bill and not beyond the said period in view of section 26(6) of the said Act. The reliance is sought to be placed on a decision in the matter of *Bharat Barrel and Drum Mfg. Co. Pvt. Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, and of the learned Single Judge of Karnataka High Court in the matter of *M/s. Sri Krishnarajendra Mills Ltd., Mysore Vs. The Chairman, Karnataka Electricity Board, Bangalore* and another, .

5. The action of issuance of the said bill and the orders passed by the authorities are sought to be justified by the respondents on the basis that, consequent to the installation of new meter after providing three phase connection in 1996, the authorities inadvertently did not take the meter reading from the said new meter for the purpose of calculation of charges payable in relation to the electricity consumed at the shop premises of the petitioner and the said fact was realized in December, 1997. Consequently, the meter reading in the new meter was noted

and after deducting the units for which the petitioner was already charged and had already paid the charges for the period from 24th January, 1996 to 10th December, 1997 from the total number of units disclosed to have been consumed in terms of the reading in the new meter, the bill in question was issued on 16th January, 1997.

6. As regards the first ground of challenge, an attention is sought to be drawn on behalf of the petitioner to the copies of the bills issued to the petitioner in the months October and November, 1997 and in the months of April, June and August, 1996 while contending that the bills were issued based on the meter reading. On the other hand, it is the contention of the respondents that the bills for the period prior to December, 1997 and after the installation of three-phase meter, were issued on the basis of average reading of 1938 units per month with specific intimation to the consumer that "meter could not be read - reading developed". A statement to that effect is to be found in the affidavit-in-reply filed on behalf of the respondents. The petitioner in her affidavit-in-rejoinder, while disputing the contentions made on behalf of the respondents, has, however, clearly admitted the fact that "there was no meter reading done for about 18 months by respondent No. 1". Even perusal of the copies of the bills made available by the learned Advocate for the petitioner in the course of hearing of the matter disclose that even in the month of April, 1996, immediately after the installation of new meter consequent to three-phase connection being provided for, the bills were issued solely on the average consumption charges i.e. assumed consumption at the rate of 1938 units per month. In the bill issued on 18th May, 1996 for April, 1996, though the meter reading of Meter No. 8123024 was disclosed as 22 units, the specific column giving details about the charges clearly disclosed that the bill was issued on the basis of average charges at the rate of Rs. 9,783/-. The bill issued in the month of June, 1998 was for 1938 units with a specific mention "meter could not be read". The same story is in relation to the bill issued in the month of August, 1996. Even in the bill of October, 1997, the units charged were 1938 and it continued to have noting "meter could not be read-reading developed". At this stage, it is to be noted that it is the case of the respondents that in December, 1997, the respondents realised that the petitioner was not charged for the actual consumption of the electricity supply based on the meter reading but on the basis of average units. This is indeed apparent from the bill issued for the month of November, 1997 itself. The said bill was issued on 20th December, 1997 and it reveals the consumption of 969 units and accordingly the claim was made for Rs. 4,789.83 ps. whereas all throughout in the preceding months the average units of 1938 per month were charged and the charges demanded were Rs. 8822.46 ps. per month. Admittedly, there was no reaction against the bill for the month of November, 1997 which was definitely favourable to the petitioner being almost half of the bill which was received by the petitioner all throughout for the previous 17 months.

7. Perusal of the records, as referred above, apparently discloses that for the period of nearly 17 months prior to December, 1997, the petitioner was charged

with fixed quantum of units, i.e. 1938 units per month, without referring to the meter reading. There is a clear admission on the part of the petitioner in the affidavit-in-rejoinder filed today that indeed for 18 months, there was no meter reading done by the respondents. Statement to the effect is to be found in paragraph 5 of the affidavit-in-rejoinder, in reply to the contents of paragraph 6 of the affidavit-in-reply. Being so, the contention now sought to be canvassed that the bills for 18 months prior to December, 1997 were issued, based on meter reading, is not only devoid of any substance but is contrary to the materials on record and also contrary to the admission by the petitioner in the affidavit-in-rejoinder. Certainly the petitioner has not come to the Court with clear hands. On one hand, the petitioner wants to allege that the respondents had charged on the basis of the meter reading for 18 months whilst the records produced by the petitioner herself and the statement on her behalf in the rejoinder discloses totally the different story. Apart from considering the conduct of the petitioner in this regard, even on merits, there is absolutely no substance in the first ground of challenge.

8. As regards the second ground of challenge, section 26(6) of the said Act provides that where any difference or dispute arises as to whether any meter referred to in sub-section (1) of section 26 of the said Act is or is not correct, the matter shall be decided upon application of either party by an Electrical Inspector and whether the meter is, in the opinion of such Inspector, ceased to be correct, such Inspector shall estimate the amount of average supply to the consumer or 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 the said sub-section, he shall give to the other party not less than 7 days notice of his intention so to do. In the case in hand, admittedly, on receipt of the bill dated 16th January, 1998, there was no reaction by the petitioner in terms of section 26(6) of the said Act. The grievance regarding mal-functioning of the meter appears to have been made some times in April, 1997 pursuant to which the meter, which was originally provided to the petitioner, was replaced by new meter and as there was further complaint to the new meter also regarding the same, the second meter was also replaced by the third meter after taking help of testing meter being utilised to find out the defects in the second meter. However, the fact remains that on receipt of the bill dated 16th January, 1997, there was no complaint made by the petitioner regarding the defect in the meter reading based on which reading the said bill was issued nor was it the case of the petitioner that the meter reading disclosed in the bill dated 16th January, 1997 was recorded from a meter which disclosed defective meter reading or which was mal-functioning. All such contentions are sought to be raised for the first time in the course of hearing of the petitioner.

9. It was throughout the case of the petitioner that the bills issued to the

petitioner for the period prior to December, 1997 were based on the meter reading and, therefore, there could not be any arrears in relation to the period prior to December, 1997 and, therefore, there was no occasion for the respondents to issue bills based on the meter reading found in December, 1997 or January, 1998, after giving credit to the amount paid in relation to the bills issued for the earlier months. Being so, there was absolutely no case made out u/s 26(6) of the said Act.

10. Question of restricting the liability of the consumer for a period of six months can arise only when there is a complaint regarding the meter being not correctly disclosing the consumption of electricity or such other defects in the meter. Such a grievance has to be made to the Electrical Inspector after issuing 7 days' notice in advance as is required under the provisions of sub-section (6) of section 26 of the said Act and if the Inspector holds that the meter was defective or there was mistake in ascertaining the units of electricity consumed by the consumer on account of any defect in the meter, certainly in that case, the Inspector has to estimate the amount on the average basis the electricity supplied to the consumer for a period for six months prior to the date on which the Inspector came to inspect the defect in the meter. The consumer can be asked to pay charges for those six months accordingly. That is not the case in the matter in hand. It is not the case of the respondents that the bill was issued on 16th January, 1997 was issued on the basis of reading from defective meter supplied to the petitioner. On the contrary, it is their specific case that the bill was issued based on the meter reading found in the meter supplied to the petitioner and while issuing the bill, due credit was given to the whatever amount that was already paid by the petitioner in relation to the earlier bills for the said period. It is clearly a matter of arrears of dues from the petitioner pertaining to the units consumed by the petitioner based on the meter reading which is not disputed by the petitioner on receipt of the said bill. Being so, the question of applicability of section 26(6) of the said Act to restrict the claim for six months does not arise at all.

11. Karnataka High Court in M/s. Sri Krishnarajendra Mills Ltd.'s case (supra) was dealing with the matter involving the controversy arising from a letter dated 29th June, 1979 received by the said company from the Executive Engineer (Electrical), City Area, Mysore pertaining to the visit of one Assistant Executive Engineer, K.E.B. to the Mills of the company on 9th December, 1977 around 7.00 p.m. where he found on a test check that H.T. meters of installation were not recording the consumption of energy at all and the said fact had been informed to the Executive Engineer (Electrical) K.E.B., City Area Division, Mysore. It was brought to the notice of the company that the fact of non-recording of the consumption by the said meter was revealed only after the Engineer broke open the seals and opened the door of the cubicle. After considering the rival contentions, it was held that the demand raised by K.E.B. was based on back billing for a period of 18 months even though the law permitted back billing only for a period of six months in case of a situation arising out of non functioning of

the meter. It was noted that it was the case of K.E.B. that the meter was not recording as disclosed during the test check carried out on 9th December, 1977. In those facts and circumstances, it was observed that :-

"But the question is whether during the course of six months anterior to 9-12-1977, whether the meter was not recording at all. If the meter was not recording during these six months, other things being equal, it would be justifiable to proceed to raise a bill based on the assumption that during the said period there was no recording at all and, therefore, on account of non-availability of the reading, the only possible method is to resort to what may be called as duster demand asset of consumption of energy in accordance with the procedure prescribed under the Act." After these observations and considering the facts of the case in particular, it was held that :-

"I find from the statistics provided in the document furnished before me that during every month prior to December 1977, the meter has recorded the reading reflecting the actual consumption of energy and entries have been made by the meter reader regularly every month which would dispel the contention that the meter was disfunctional for a period of 18 months or for a period of six months prior to 9-12-1977 which is the date of alleged test checking. When the meter had not recorded at all for a period of six months, it may be possible to presume that a fair assessment would be the adoption of the average consumption of energy. But in the absence of such a situation, I do not think the circumstances warrant reliance on the basis of absence of recording by the meter during the months in respect of which the demand has been raised by the respondents."

The decision of the Karnataka High Court therefore clearly reveals that in a case where the meter is found non-functional when the person visits the place for test check thereof, bearing in mind the provisions of law u/s 26 of the said Act, in those circumstances, the licensee can claim the amount on the basis of average consumption of energy and that too to the extent of six months prior to the date of test check. That is not the case in the matter in hand. It is nobody's case that on 16th January, 1998 when the bill in question demanding arrears for 18 months was issued to the petitioner, there was any default in the meter or that the meter was not functional or that there was any failure on the part of the meter reader in taking note of correct meter reading. Undisputedly, no complaint was filed by the petitioner u/s 26 of the said Act pursuant to the receipt of the bill dated 16th January, 1998. Complaint regarding mal-functioning or non-functional of the meter was made for the first time in April, 1998 consequent to which the respondents had taken action and had changed the meter.

12. The Division Bench of this Court in *Bharat Barrel v. Drum Mfg. Co. Ltd.*'s case (supra) while dealing with the provisions of law contained u/s 26 of the said Act, has held that section 26 lays down 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. The Division Bench has ruled that "section 26(6) lays down that the entries in the register of meter shall, in the absence of fraud,

be conclusive proof of such amount of quantity except to the extent provided therein. The exception is attracted where there is a dispute between the licensee and the consumer as to whether any meter referred to in sub-section (1) is or is not correct". Apparently, the law on the point of conclusive proof regarding the quantity of the electricity consumed by the consumer having been well explained and settled by the decision of the Division Bench and even the exception referred to in sub-section (6) of section 26 of the said Act being specified to the cases where there is a dispute regarding the correctness or functioning of the meter, once the record reveals that the bill forwarded to the consumer regarding electricity supplied consumption charges was not disputed on account of mal-functioning or incorrectness of the meter, the question of invoking powers u/s 26 or restricting the liability of the consumer to pay the consumption charges only to the extent of six months from the date of issuance of the bill never arose. The Division Bench in the said *Bharat Barrel's* case has further held that "it is significant to note that section 26(6) refers to a dispute as to the present state of the meter. What is required to be decided by the Electrical Inspector is, whether the meter is or is not correct, that is, on the date when the dispute arises and not whether it was or was not correct. In other words, the dispute which can be adjudicated upon by the Electrical Inspector can be made by the party or licensee about the meter being not functioning or of incorrectness of the meter and not as to whether, in the past, the meter was mal-functioning or was not correctly disclosing the electricity consumption. The scope of adjudication of a dispute by the Electrical Inspector u/s 26(6) of the said Act, being clearly laid down by a Division Bench, there is hardly any substance in the grievance of the petitioner. The Division Bench, while arriving at the above decision, has also observed that :-

"Whether the meter was defective on the date when it was checked could be categorically determined by the Electrical Inspector but the period anterior to that date during which it was not correct could at best be only estimated by him. The legislature, in its wisdom evidently, did not deem it advisable to vest the Electrical Inspector with the power of estimating the amount of the energy supplied by the licensee to the consumer for a period of more than six months. Where the licensee supplied electrical energy and the consumer received such supply on the footing that the charges would be paid as per the quantity of electrical energy recorded by the meter and entered in the register of meter, the legislature thought it fit that the parties should be bound by such entries."

It is thus clear that the jurisdiction of the Electrical Inspector u/s 26(6) of the said Act relates to the adjudication of a dispute pertaining to mal-functioning of the meter when the said fact is brought to his notice and not relating to the issue as to whether in the past the meter was functioning properly or mal-functioning. At the same time, he has been given powers to estimate the amount of energy which might have been supplied to the licensee for a period not exceeding six months prior to the date on which the meter was said to be noticed to be not functioning or not recording the consumption of supply.

13. As stated above, the grievance of the petitioner being against the claim of arrears and it was a specific case of the respondents that the bills for 18 months were issued to the petitioner on the basis of average consumption charges at 1938 units per month without taking note of the actual consumption disclosed from the meter which was provided to the petitioner and the meter reading having been noted for the first time in December, 1997 subsequent to its installation in 1996 and as it disclosed the consumption over and above the average monthly units of 1938, it was the difference in the amount which was due pursuant to such calculation which was demanded under the Bill dated 16th January, 1998, there was no case for dispute u/s 26 of the said Act, and for the same reason, restrictions imposed upon the respondents to claim consumption for six months prior to the date of the complaint regarding mal-functioning of the meter based on average consumption charges are not applicable in the case in hand.

14. Undoubtedly, the meter was found to be defective in April, 1998. Pursuant thereto, the respondents had changed the meter and even thereafter, in view of the complaint by the petitioner, a test meter was provided and further necessary action was taken. However, the change in the meter in April, 1998, as already observed, was pursuant to the complaint in the said month and applying the law laid down in Bharat Barrel's case relied upon by the petitioner, it is apparent that the defect in the meter which was pointed out in the month of April, 1998 cannot lead to a conclusion that the meter was mal-functioning in December, 1997, more particularly in the absence of any complaint by the petitioner regarding any such mal-functioning of the said meter on receipt of the Bill dated 16th January, 1998, as well as the bill for the month of November, 1997.

15. In the circumstances, therefore, the contention that the bills prior to 16th January, 1998 were issued based on the meter reading, is clearly devoid of any substance. Records apparently disclose to the contrary and there is no substance in any of the grievances sought to be made by the petitioner. The decisions sought to be relied upon rather than assisting the petitioner justify the action taken by the respondents. Materials on record clearly reveals that the petitioner having consumed units for which the Bill dated 16th January, 1998 was issued, there is no case for interference in the impugned order. Infact, by the impugned order the petitioner has been granted installment facility to pay the said arrears. In the circumstances, the petition fails and is dismissed. The rule is discharged with costs.

16. The learned Advocate for the petitioner prays for stay of this order. There is absolutely no case for grant of any stay as such. Even as regards to the payment under the Bill dated 16th January, 1998, the facility has already been granted to the petitioner to pay the arrears in installment and, therefore, there is absolutely no necessity to grant the relief of stay of this order. Prayer for stay is accordingly rejected.