
(2000) 10 AHC CK 0073
In the Allahabad High Court
Case No : C.M.W.P. No. 22726 of 1996

Dinesh Kumar Nigam

APPELLANT

Vs

Kanpur Electric Supply Administration and others

RESPONDENT

Date of Decision : 11-10-2000

Acts Referred:

Electricity Act, 1910 — Section 26, 36, 36(6), 39, 39(1)

Citation : (2000) 4 AWC 3265 : (2000) 3 UPLBEC 2525

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Vishnu Behari Tewari, for the Appellant; Sudhir Agarwal, S.C. Srivastava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—Three fold prayers have been made by the petitioner in this writ petition :

(i) to command respondent No. 2, the Electrical Inspector to decide the dispute raised by him through application dated 14.5.1996 within a stipulated time.

(ii) to command the respondents not to encash Cheque No. 142886 dated 20.7.1996 of Rs. 50.000 and Cheque No. 142887 dated 15.8.1996 of Rs. 28,295.54P.

(iii) to command the respondents to refund the amount realised through Cheque No. 142883 dated 23.3.1996. Cheque No. 142884 dated 30.4.1996 and Cheque No. 142885, dated 20.5.1996.

The submissions :

2. At the very outset, Sri Sudhir Agrawal, learned counsel appearing on behalf of the respondents, raised a preliminary objection in regard to maintainability of this writ petition stating that two months after the detection of the theft of the electrical energy by the petitioner, he moved the Electrical Inspector, (who is not

an employee of the U.P.S.E.B. as described in the writ petition rather an employee of the State Government appointed u/s 36 of the Indian Electricity Act) for finding fault with the meter which in view of the ratio decidendi laid down by the Apex Court in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, , is not entertainable by respondent No. 2.

3. To this preliminary objection. Sri Vishnu Behari Tewari, learned counsel for the petitioner replied that the petitioner correctly moved the Electrical Inspector in view of the decision of the Apex Court in Ram Chander Prasad Sharma Vs. State of Bihar and Another, , holding that mere allegation about tampering of meter will not be sufficient to attract the Ingredients of theft nor in fact such a case has been pleaded by the respondents or any criminal case filed besides the ratio relied upon is not applicable in the facts and circumstances of the instant case. On merits in regard to the remaining prayers, he further proceeded to submit that since the respondents had coerced the petitioner to execute the cheques in question the petitioner is entitled to the reliefs claimed for.

4. Sri Agrawal, in reply contended that the judgment in Ram Chandra Prasad Sharma was against the substantial conviction in the criminal case which had arisen in the State of Bihar and not in our State of U. P. where u/s 39(1)(b) and sub-section (2) of the Act, there is a presumption that in such an event, the consumer will be presumed to have committed theft of energy. He further contended that non-filing of, any substantial criminal case for theft is not vital and that the allegation of coercion, etc., are all false which is apparent from the fact that out of five cheques issued by the petitioner, three were encashed without any protest by the petitioner.

Our findings :

5. Paragraph 9 of the writ petition reads thus :

"9. That in reaction after receiving the genuine application of petitioner, respondent No. 3 along with his team came in the premises of petitioner and checked meter No. R.E. 320140 and found reading at 008389. At the time of checking, petitioner has shown the bills and application which are Annexure-1 to Annexure-7 to this petition to the team but entire team has insulted the petitioner and after terrorising the petitioner, team has taken five cheques of Rs. 1,18,295.54 as provisional revenue. These cheques were of Corporation Bank, Kanpur and numbers of these five cheques are 142883 to 142887. The cheques were of post dated. The details of these cheques are given below :

Cheque No.

Amount

Date of cheque

142883

20.000.00

23.3.1996

142884

10.000.00

30.4.1996

142885

10.000.00

20.5.1996

142886

50.000.00

20.7.1996

142887

28295.54

15.8.1996"

5.1. Paragraph 8 of the counter-affidavit reads thus :

"8. That in reply to the contents of Para 9 of the petition, it is submitted that considering the nature of work and the load as available on the petitioner's premises as consumption recorded in meter was suspected and consequently a Raid team made surprise checking on 23.3.1996 when it was found that the body seal of the meter was broken showing that the petitioner was indulged in the theft of energy. The checking report dated 23.3.1996 was prepared in the presence of the petitioner, who signed the said report and without raising any protest in order to close the matter paid the amount of assessment in accordance with Regulation by means of five cheques which included four post-dated cheques. Out of the said five cheques, three cheques have got encashed while the cheque dated 20.7.1996 and 15.8.1996 for Rs. 50,000 and Rs. 28,295.54 paise respectively have been dishonoured. A copy of the checking report is filed as Annexure-CA1 to this affidavit."

5.2 Paragraph 9 of the petitioner's rejoinder reads thus :

"9. That the contents of paragraph No. 8 of the counter-affidavit are wrong and denied. Meter No. R.E. 320140 was installed on 22.6.1994 and on 20.3.1995 a Bill related to meter No. R.E. 320140 was prepared but the respondents declared the said meter defective and supplementary Bill of Rs. 12.910 was prepared on 20.3.1995. The said supplementary Bill was paid and after that a second bill of meter No. R.E. 320140 was given. In both Bills, a remark "Pro. Bill subjected to new check meter consumption Revised" remark was written and this remark was written by the officer of the respondent. It is also pertinent to mention here that

when the defective meter No. R.E. 320140 was not replaced, then the petitioner requested to the officer of respondents but the request of the petitioner went to deaf-ear then on 14.3.1996, the petitioner submitted a written representation and requested for reinstallation of a new meter and to give regular Bills after recording units from meter. On this representation, respondents have not installed the new meter rather on 23.3.1996 all of sudden, the respondents along with Parvartan Dal raided the premises of the petitioner. The petitioner showed the Bills which were paid by him and the application dated 14.3.1996 in which the officers of Electricity Department had accepted that meter No. R.E. 320140 is defective. There is no justification for transfer of defective meter and, therefore the respondents falsely implicated the petitioner for breaking of seal of meter and in punishment, provisional assessment of Rs. 1,18,295.34 was assessed and after putting the petitioner in threat. 5 cheques from the petitioner were obtained out of which initially 3 cheques were encashed by the respondents and rest of 2 cheques were not produced in Bank by the respondents. It is further submitted that the police Pravartan Dal of K.E.S.A. has not charged any offence of electricity theft upon the petitioner on 23.3.1996. The allegations of the respondents that at the time of checking the petitioner was involved in electricity theft, is illegal. After checking, the police Pravartan Dal has taken 5 cheques from the petitioner forcibly with the allegation that the petitioner has broken the seal of the meter. However, in reply the contents of paragraph 9 of the writ petition are reiterated."

6. Section 26 of the Electricity Act reads thus :

"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 licence 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.

(2) Where the consumer so 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.

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may, after giving him seven days" notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention have access to and be 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) ; and, except where the

meter is so hired as aforesaid, all reasonable expenses of, and incidental to such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer ; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an (Electrical Inspector), and the decision of such Inspector shall be final :

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee or disconnect the same from any such electric supply-line. (but he may by giving not less than fortyeight hours" notice in writing to the licensee require the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the period of the notice.

(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 of quantity :

Provided that before either a licensee or a consumer applied 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.

(7) in addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of subsection (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply :

Provided that the meter. Indicator or apparatus shall not. In the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1) :

Provided also that where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct ; and the provisions of sub-

sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1),

Explanation.--A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus."

6.1. Section 39 of the Electricity Act as amended by our State reads thus :

"39. Theft of energy.--(1) Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than five hundred rupees but which may extend to five thousand rupees, or with both ; and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of the energy by the consumer, it shall be presumed, until the contrary is proved that such abstraction, consumption or use of energy has been dishonestly caused by such consumer.

(2) If any person, having been convicted of an offence punishable under sub-section (1), is again guilty of an offence punishable under that sub-section, he shall be punishable with imprisonment for the second or subsequent offence for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine."

7. It is useful to reproduce the ratio laid down by the Apex Court in *M.P.E.B. v. Smt. Basantibai* (supra) interpreting Section 26 of the Act :

"9. It is evident from the provisions of this Section that a dispute as to whether any meter referred to in sub-section (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. 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. It is only the dispute as to whether the meter is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

10. In the instant case, it appears from the report of the Assistant Engineer of the State Electricity Board that one phase of the meter was not working at all, so there is undoubtedly a dispute as to whether the meter in question is a correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. It is also evident from the said provision that till the decision is made no supplementary bill can be prepared by the Board estimating the energy supplied to the consumer, as the Board is not empowered to do so by the said Act. It is pertinent to refer in this connection to the observations made in the case of *Gadag Betgiri, Municipal Borough, Badag v. Electrical Inspector, Govt. Electrical Inspectorate, Govt. of Mysore* AIR 1962 Mys 209 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."

"In my opinion, the legislative intent underlying Section 26(6) of the Act is similar. 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 No. 2 in this case was a correct meter as it undoubtedly was and as it has been admitted to be the fact that respondent No. 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."

8. Apparently the seal of the meter has been found broken. It is not the case of the petitioner that he informed the Electrical authorities about the breaking of the seal of the meter. The respondents alleged detection of theft of power by the petitioner. We do not attach much importance to the submission of Mr. Tiwari that no criminal case having been filed, therefore, we should reject the case set-up by the U.P.S.E.B. In paragraph 8 of its counter.

9. Accordingly, the petitioner is not entitled to the grant of relief No. (i) from this Court.

10. The question as to whether in fact any undue influence or coercion was exercised by the Electrical Authorities on the petitioner is a question of fact which cannot be appropriately adjudicated in this summary proceeding under Article 226 of the Constitution of India. Thus, the petitioner is also not entitled to grant of relief Nos. (i) and (iii).

11. For the reasons aforementioned, this writ petition is dismissed, but without any cost.