
(2006) 03 MP CK 0043

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3422 of 1995

Jeewan Kumar Jain and Another

APPELLANT

Vs

M.P. Electricity Board and Another

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Electricity Act, 1910 — Section 15, 26, 26(1), 26(6)

Citation : (2006) 03 MP CK 0043

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : V.S. Shrotri and A.P. Shrotri, for the Appellant; M.L. Jaiswal and Manoj Kushwaha, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—This writ petition has been preferred by the petitioners for quashment or the additional bills/ Supplementary bills (Ex.P.2, P.5, P.6, P.7, P.21, P.22) and compensation of Rs. 3 lacs has been prayed.

2. It is averred in the petition that petitioner is manufacturer of Vulcanized Rubber products and has taken electricity connection from MPEB. MPEB authorities used to visit the industry at various occasions and check the meter and the seal. On 19.1.1993 it was found that meter seal was okay. TTB (Test Terminal Block, was okay. Meter was found working on "Y" phase on the reverse side. Keversal working of the meter was not attributable to the petitioner. It was found on installing the meter that main meter was 27% slow. An additional bill amounting to Rs. 38,239/- for the period February, 1992 to February, 1993 was raised. Asstt. Engineer (Vigilance) again checked the meter on 25.6.93. Meter box seal was found okay, body seal was okay. Meter was running reverse on "Y" phase. The connected load at the premises was assessed to 132.7 HP as against the sanctioned load of 100 HP. Additional bill of Rs. 90,048/- was raised which was protested by the petitioner. On protest the bill was revised to Rs. 18,642/-. Petitioner paid the said amount. On 30.8.94 the premises was again checked by

Asstt. Engineer (NSC) of city Division (East) and Asstt. Engineer (STM) of city Division (East), bhopal. Meter box seal was found okay. TTB (Test terminal block) seal was found okay. They alleged the stoppage of "Y" phase and improper working of phases "R" and "B". Load was found to be 113 HP. Check meter was provided for about 11 days. The authorities calculated the consumption on pro-rata basis of 9000 units per month and bill of Rs. 30,491/- was raised. The defect was not the creation of the petitioner nor it could be attributed to him, the running of a particular phase on the reverse side was the defect of the meter falling within the parameter u/s 26 of the Indian Electricity Act. Matter was, thus, required to be referred to the Electrical Inspector u/s 26(6) of the Indian Electricity Act. No demand could be raised before decision by the Electrical Inspector. After one year, bill (Ex.P.1) for a sum of Rs. 8,17,004/- was raised. It was illegal demand. Details were not given. Prayer was made to reconsider the matter. On 19.1.95 on inspection the meter was found okay as per report (Ex.P.14). On 25.8.93 meter was found to be okay, however, additional demand was raised. After raising the demand of Rs. 8,17,004/- supply was disconnected. Later on, on 13.10.95 the respondents reduced the demand from Rs. 8,17,004/- to Rs. 1,99,203/- as per letter and bill [Ex.P.22(1) to P.22(4)]. Petitioner has assailed the aforesaid demand by way of incorporating the amendment on the aforesaid grounds. Petitioner made the payment under the protest. There was no reason to believe that consumer (sic) contravening any of the provisions of the Electricity Act. The Board has added one condition 31(g) for High Tension Consumers which the petitioner is not which provides only Co the High Tension Consumers who. dishonestly abstracts, uses, consumes or maliciously causes any energy to be wasted or diverted. No such ground was available against the petitioner. board is liable to compensate the petitioner as his rubber compound worth Rs. 2 lacs has become scorched and wasted. Reliance has also been placed on decision of this Court reported in 1981 MPLJ 41.

3. In the return filed by the respondents it is contended that there are various ways and means to interpolate the meter. in the event of reversal 2/3rd of the supply is not recorded. It was a case of an act done by the petitioner or he would have got it done through some agency. Therefore, check meter was installed in parallel to the main meter, it was found that 27% of the consumption was less. Meter was then set right. On 25.8.93 re-check was made and it was found to have been working reversed and the connected load was found to be 132.7 HP as against the contracted load of 100 HP. Consumer had no right to enhance load, hence, was liable to pay penal charges. Therefore, the Board made a demand of Rs. 90,046/- as per calculation reports (R.2 and R.3). Reverse running of "Y" phase was not due to defect in meter. It is submitted that it is the consumer who had after the same being reset interfered with the meter and made it reversed because it was the consumer who were to be benefited resulting in 2/3rd supply being not recorded. On third checking "Y" phase found having stopped and "R" & "B" phase were not properly working phases were not properly working. Petitioner had again interfered with the meter and effected the working of all the

phases. It was not due to the defect in meter. Again load was found enhanced as 113 HP instead of the contracted load of 100 HP, thus, petitioner became liable to pay penal charges. Mechanically it was not possible to reverse the meter. Section 26 of the Indian Electricity Act has no such application in the facts of the case nor Electrical Inspector has jurisdiction to decide it.

4. It is further contended that it is evident from the report dated 19.1.93, 25.6.93, 30.8.94 and 20.3.95 that the seals were broken and tempering was done, consequently it cannot be said that bills which were raised on the basis of recording done in the meter reflected the actual consumption made by the petitioner. On 25.8.93 meter box seal was found broken, terminal box cover was found broken, cutout not sealed and meter was again found reversed on "Y" phase as tempering was done and malpractice was committed. Petitioner has tempered with the meter and interpolated with the supply. Demand was substantially reduced duly considering the representation of the petitioner. Due to less recording the bills were revised. The aforesaid demand does not include the subject matter beyond 30.8.94, which shall be assessed on the basis of the report dated 20.3.95. No loss has been suffered. Section 15 of the Indian Electricity Act has no . application.

5. Shri V.S. Shrotri, learned Sr. Adv. with Shri A.P. Shrotri, Adv. for petitioner, has submitted that as meter seal was found to be okay, there was no tempering if meter was found reversed or any phase was working in reverse order or not properly working it was the defect of the meter which was not attributable to the consumer, thus, dispute ought to have been referred to Electrical Inspector without adjudication of the dispute under Sub-section 6 of Section 26 of the Indian Electricity Act, it was not permissible to raise the demand, hence, the recovery of Rs. 1,99,203/- be quashed. Reliance has also been placed on the decision of the Apex Court in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, and decision of the Apex Court in Bombay Electric Supply and Transport Undertaking Vs. Laffans (India) Pvt. Ltd. and Another, . It is further submitted that once additional bills raised which were paid, hence, further demand could not have been raised.

6. Shri M.L. Jaiswal, learned Sr. Adv. with Shri Manoj Kushwaha, Adv. appearing on behalf of respondents, has submitted that it is a case where supply line was tempered with. Meter was also tempered with, hence, it is not a dispute to be referred to the Electrical Inspector u/s 26(6) of the Indian Electricity Act, hence, demand raised is proper. It was permissible to raise the demand on average consumption before the checking as per the period covered in the checking, thus, demand raised is proper. No case for interference in this writ petition is made out.

7. The main question for consideration is whether Section 26(6) of the Indian Electricity Act is attracted in the facts & circumstances of the Instant case. It is the duty of the Electricity Board to supply correct meter. There is liberty to inspect and test and in case any difference or dispute arises as to whether any meter referred to in Sub-section (1) of Section 26 of the Indian Electricity Act is

or is not correct, the matter shall be decided upon the application of either party, by an Electrical inspector. In case meter ceased to be correct, inspector shall estimate the amount of energy. Sub-section (6) of Section 26 of the Indian Electricity Act is quoted below :

26(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.

8. The aforesaid Sub-section (6) of Section 26 of the Indian Electricity Act is attracted only when meter is not correct. It is not applicable where consumer has committed fraud and has illegally consumed the supply preventing or avoiding its recording or has resorted to or to devise by which he has consumed the electricity without being recorded. Tempering with the meter or manipulating the supply line or breaking the body and the seal of the meter resulting in non registering or the amount of energy supplied to the consumer or the electrical quantity contained in the supply are not covered u/s 26(6) of the Indian Electricity Act. In case meter has not registered the supply on being non functional it virtually means "no meter". Where the meter is running slow or fast, it will be possible for the Electrical Inspector to estimate the amount of energy supplied to the consumer by determining the extent or percentage of error in recording the supply, whether plus or minus or where the meter was completely non functional or burnt Sub-section (6) of Section 26 has no application.

9. Coming to the facts & circumstances of the instant case in the report dated 19.1.93 wiring of the meter was found to be wrong. Meter was found reversed on middle phase. Inspection report dated 25.6.93 indicates that TTB (Test terminal block) covered was found broken, cutout seal was not found sealed, meter was found reversed on "Y" phase. There was necessity of connection to be corrected. Check meter was necessary to be installed. It is clear from the aforesaid report that TTB (Test terminal block) was tempered with, it was broken and cutout seal was also found broken. Load of 132.7 HP was found connected instead of 100 HP. No iota of the doubt from the aforesaid report that meter and supply line were clearly tempered with. Meter box seal was found broken. Terminal box cover was found broken, cutout seal was not found sealed, meter was found reversed. It was clearly a case of tempering done in order to prevent the recording of the consumption actually made by the consumer. Apart from that enhanced load was

found on two occasions. Thus, Section 26(6) of the Indian Electricity Act has no application. Meter could not have been found reversed without tempering being done, thus, it was not a dispute which could be settled by the Electrical inspector with respect to the running of the meter, whether it was slow or fast, thus, modified demand of Rs. 1,99,203/- cannot be said to be illegal in any manner. I find no hesitation to reject the submission of learned Sr. counsel for the petitioner that Section 26(6) of the Indian Electricity Act was attracted to the facts of the case.

10. Coming to the submission that in particular month the bills were raised on the basis of difference which were paid; it was clearly permissible to make the assessment and raise the demand considering the consumption on the last previous months; even the check meter was provided as one phase was running reversed according to 27% less, thus, supplementary demand which was raised was proper. It was (sic) a case of unauthorized load also which was found to be connected. Thus, revised billing was permissible to be made. As apparent from communications (R.7 & R.8) which have been placed on record, it is clear that supplementary demand which was raised was on proper consideration and within the zone of the period from the date of checking, thus, I find that no case for interference is made out in this writ petition.

11. Petitioners' counsel has relied upon the decision of the Apex Court in *M.P.E.B. and Ors. v. Smt. Basntibai's* case (supra), where the meter was burnt, it was brought to the notice of the MPEB, no meter was installed inspite of depositing the sum, even in the aforesaid case the Apex Court has held that it is for the Inspector to determine whether the meter is correct or not in case of fraud committed by the consumer in tempering with the meter and manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy, supply to the consumer of the electrical quantity contained in the supply, such dispute does not fall within the purview of Sub-section (6) of Section 26 of the Indian Electricity Act. The aforesaid decision has been affirmed by the Apex Court in *Bombay Electricity supply & Transport Undertaking v. Laffans (India) (P) Ltd. and Anr.* (supra). Thus, on facts the aforesaid decisions render no assistance to the petitioner's case, on the contrary counter the submission on facts of the case.

12. Resultantly, writ petition being devoid of merit, is hereby dismissed. No costs.