
(1997) 03 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13349 of 1990

K. Sajjan Singh

APPELLANT

Vs

The Andhra Pradesh State Electricity Board and others

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35A
Electricity (Supply) Act, 1948 — Section 26, 70
Electricity Act, 1910 — Section 26, 26(6)

Citation : AIR 1997 AP 279

Hon'ble Judges : S. Parvatha Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : K. G. Kannabiran, for the Appellant; J. Siddaiah for A.P.S.E.B., for the Respondent

Judgement

S. Parvatha Rao, J.—The petitioner has approached this Court questioning the bill dated 5-9-1990 issued by the 2nd respondent in respect of his S.C.No.C1-586 for premises bearing house No. ! 1-3-926/ 5 at Mallepally in Hyderabad for the period 10/81 to 7/90 for Rs. 32,808.35 Ps. on the ground that :

"the readings were recorded erratic consumption and the meter was stuck up and replaced on 1-3-1990. Hence, based on the new meter consumption average bill issued @ 356 units p.m. from 10/81 to 7/90 . . "

He submits that in the said bill it was incorrectly stated that the meter was stuck up; he states that it was never stuck up and that the old meter was replaced on 1-3-1990 without notice of defect. He relies on the report of the Additional Assistant Engineer dated 28-8-1990 on the reverse of which the meter readings from 1 / 81 to 8/90 were given. He states that the per month slab amount was changed from Rs.95/- to Rs.80/- in 1985, then to Rs. 140/- in 1988 and to Rs. 160/- in 1990 and that he was paying the same regularly.

2. The petitioner further submits that no prior notice or opportunity was given to him. He also submits that the energy consumed during the period 10/81 to 7/90

cannot be calculated on the basis of the average monthly consumption recorded by the new meter installed on 1-3-1990. He further submits that he reconstructed the premises in question, which was completed only in the month, of February, 1990, and thereafter opened a small hotel in the said premises in the name and style of Seethal Bhavan and that the energy" consumption of the said hotel could not have formed the basis for the earlier period extending to nine years.

3. Though the writ petition was admitted on 17-9-1990 and the petitioner obtained interim direction on the same day in W.P. M.P.No. 17186 of 1990 staying disconnection of the supply of electrical energy to the petitioner"s premises, the respondents had not filed any counter affidavit till 16-1-1997. Even the counter affidavit filed on 16-1-1997 is of the Deputy Manager of the Legal Cell. Subsequently, the Assistant Accounts Officer 2nd respondent, gave counter affidavit dated 16-2-1997. Respondents 3 to 5 were im-pleaded pursuant to the directions of this Court dated 4-3-1997. Thereafter, the Divisional Engineer i.e., the 4th respondent, gave a counter affidavit dated 17-3-1997.

4. In the counter affidavit dated 25-11-1996 (filed on 16-1-1997) of the Deputy Manager, Legal Cell, it is stated as follows :

"It is respectfully submitted that the bill issued for on..5-9-1990 for Rs. 32,808.35 Ps. was not arbitrary as stated by the petitioner, but it was issued after correct assessment based on the consumption recorded by the new meter installed on 1-3-90. The old meter during the period in question was noticed to be defective and not indicating the correct consumption that has been utilised by the petitioner. No penalty was levied as stated by the petitioner. The bill issued later was only on the assessed consumption arrived at based on the actual consumption recorded by the new meter from 1-3-90 to 20-8-90. The new meter was installed on 1-3-90 with reading zero ... Issue of bill itself is a notice and is payable within 30 days from the date of the bill.

XXX XXX XXX XXX XXX XXX ... The average of the same meter reading was adopted for assessing the consumption already availed by the consumer from 10/81 to 7/90, for which the consumer is protesting.

Billing the consumption charges on the., average units of the new meter installed is not" illegal, as the consumption pattern of the same consumer in the premises will be generally same. The consumer has enjoyed the electricity for all the years with the defective meter by paying less than the actual consumption. The issue of bill itself is a "notice. The consumer will have 30 days time to pay the bill. Issue of bill is considered not illegal or arbitrary as stated by the petitioner, as the bill was prepared for the electricity utilised by the petitioner only".

5. What was stated by the Deputy Manager, Legal Cell, was reiterated by the Assistant Accounts Officer (2nd respondent) in his counter affidavit dated 16-2-1997. In addition it was accepted that the energy supplied to house No. 11-3-926/5 was being used for commercial purpose i.e., for hotel from 1990.

6. In the counter affidavit dated 17-3-1997 of the Divisional Engineer (4th respondent), it is stated that originally the supply of energy under the Service Connection in question was used for a tailor-shop in the said premises, which came under Category-11 i.e., non-domestic use; later on a tea shop was opened in the said premises and then subsequently a restaurant under the name and style of Seethal Restaurant was set up in the said premises with effect from 2/90; and that the use of energy for tea shop and restaurant also came under Category-II and that, therefore, the tariff for the energy consumed remained the same. It is further stated by the Divisional Engineer as follows :

"I submit that with regard to the contention, to the para 7 of the petition the AAO issued. the" demand notice mistakenly for a sum of Rs. 32,808.35 Ps. towards the adjustment bill of cc charges from 10/8 to 7/90. It is further submitted that there was a change of meter on 1-3-1990 as the meter was stuck up. There after the bill was issued on average consumption of the new meter consumption recorded from 1-3-1990 to 20-8-1990. The average consumption works out to 356 units per month. The same consumption was fixed from 10/81 to 7/90 and bill was issued accordingly to Rs. 32,808.35 Ps. after deducting the amount paid by the consumer during the above period. As a matter of fact the consumer is liable to pay the back billing amount for only the defective period.

It is respectfully submitted that the above mentioned bill was issued mistakenly by the A A O from 10/ 81 to 7/90. It is also submitted that the meter was working properly up to 9/89 and it was replaced on 1-3-1990 due to stuck up. Hence the respondents intended to issue revised bill for the period up to 7/90 against the previous bill as per the consumption recorded in the new meter. It is further submitted that the consumer approached the authorities to issue the proper bill for the meter defective period. After careful consideration the bill is to be revised for confining only to defective period instead of Rs. 32,808.35 Ps. Hence, we may be permitted to issue fresh bill for the defective period and with permission of the Hon"ble High Court the demand notice issued for Rs. 32,808.35 pi. dated 28-8-1990 may be withdrawn".

Thus, in the counter affidavit of the 4th respondent, it is now admitted that the impugned demand for Rs. 32,808.35 ps. for the period "10/81 to 9/90 in the bill dated 5-9-1990 was mistaken, and that the respondents now intend to issue revised bill for what is described as meter defective period. But, this depends on whether the old meter was in fact "stuck up" and, if so. when it was stuck up, and whether the respondents could issue a fresh bill for the so called meter stuck up period and in what manner and on what basis.

7. The 4th respondent stated in his counter affidavit that the old meter was found to be working properly upto 9/89 and that it was replaced on 1-3-1990 "due to stuck up"; but he has not stated the basis for his statement that the meter was found to be working properly upto 9/89. In spite of opportunity being given, the relevant records relating to inspection of the old meter were not produced before the Court. The petitioner disputes that the old meter was stuck

up and he relies on letter No. 103/90 dated 28-8-1990 of the Additional Assistant Engineer addressed to the Assistant Accounts Officer. He filed a xerox copy of the said letter along with the writ petition. On the reverse side of that letter, monthly readings of the meter taken during the year 1981 and the periodical readings taken during the years 1982 to 1990 were noted. This letter is not disputed by the respondents and, in fact, it was referred to in the impugned bill dated 5-9-1990. But the records relating to this letter have not been placed before us. The 2nd respondent states in his counter affidavit that "the bill was prepared based on the periodical readings furnished by the Assistant Engineer, Vijaya nagar Colony vide letter No. 103/90 dated 28-8-1990". He further states that "the contention of the petitioner that the meter was not sluek up, as per the letter of the Additional Assistant Engineer is not correct," and that "the Additional Assistant Engineer sent meter change slip along with the letter wherein it was stated as meter stuck up." But no record evidencing this has been placed before us inspite of several opportunities given to the respondents.

8. The learned Standing Counsel for the Board, Mr. J. Siddiah, relies on Condition 22.3.3 of the Terms and Conditions of Supply of Electrical Energy by the Andhra Pradesh State Electricity Board ("the Conditions" for short) dealing with the procedure for arriving at consumption when the meter was defective and in particular 22.3.3, which read as follows at the relevant time :

"22.3.3. : Procedure for arriving at consumption when the meter is defective :--

Where supply to the consumer has been given without a meter or where the meter fixed is found defective or to have ceased to function and no pilferage of energy or malpractice is suspected, the quantity of electricity supplied during the period when meter was not installed or the meter installed was defective, shall be assessed as mentioned hereunder:

22.3.3.1 :-- The quantity of electricity supplied during the period in which the meter ceased to function or became defective, shall be determined by taking average of the electricity supplied during the preceding three months preceding the month in which the said meter ceased to function.....

22.3.3.2 :-- If the conditions in regard to use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any consecutive three months during the preceding 12 months when the conditions of working were not different.

22.3.3.3.:-- Where it is not possible to select a set of three months as indicated in sub-clause 22.3.3.1 or 22.3.3.2 hereof or if meter is not at all installed quantity of electricity supply shall be assessed by the Assistant Divisional Engineer/Divisional Engineer of the area on the basis of connected, load and hours of usage of electricity by the consumers. However, in the case of industrial consumers due regard shall be given to the production figures and conditions of working the period under question.

22.3.3.4. :-- In case consumer does not agree with the assessment made by the Assistant Divisional Engineer/ Divisional Engineer the matter be referred to Superintending Engineer whose decision shall be final and binding on the consumer."

In the present case, as rightly contended by Mr, J. Siddiah, neither Condition 22.3.3.1 nor Condition 22.3.3.2 are attracted, if at all, Condition 22.3.3.3. only can be attracted. But, in the present case, there was no assessment made by the Assistant Divisional Engineer/ Divisional Engineer of the area. There was only the letter of the Assistant Additional Engineer dated 28-8-1990 and the impugned bill dated 5-9-1990 issued by the 2nd respondent i.e., the Assistant Accounts Officer. Therefore, the impugned bill cannot stand viewed from any angle.

9. The 4th respondent wants permission to issue fresh bill for the so called "defective period". It is not for this Court to grant or not to grant such permission. The respondents will have to take a decision on their own in accordance with law. But, we have to note that the petitioner has disputed that the old meter was stuck up and that it was replaced because of that. Condition 22.3.3 referred to by us earlier proceeds on the premise that the meter admittedly is defective. Section 26 of the Indian Electricity Act, 1910 ("the 1910 Act" for short) deals-with meters. The Board is bound by that Section as it is not excepted from the application to the Board by the proviso to Section 26 of the Electricity (Supply) Act, 1948 ("the 1948 Act" for short). Sub-sections (1) and (6) of Section 26 of the 1910 Act are relevant. They are as follows:

"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.

XXX XXX XXX XXX XXX XXX (6) Where any difference or dispute arises as to whether any meter referred to in subsection (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."

In the present case, there is no agreement to the contrary as regards ascertainment of the energy supplied to a consumer -- at the relevant time it was, and even now it is, by means of a correct meter. This is reiterated in Condition 22.2.1 of the Conditions which is as follows:

"22.2.1 :-- The electricity supplied to a consumer shall be ascertained by means of correct meter which shall be hired by the. Board and the Board shall keep the meter correct."

Thus, the Board has taken upon itself the obligation to keep the meter correct. Condition 22.2.2 further provides as follows:

"22.2.2.:-- Once in every year the H.T. meters shall be recalibrated and standardised if so desired by either the consumer or the Board by means of standard instrument by the Board in the presence of the consumer or, his representative provided however, that the Board may conduct test check of meters (H.T. as well as L.T.) at intervals of six months or such other period as the Board may consider it necessary."

Thus for the purpose of keeping the meter correct, the Board has made a provision for the test check of meters at intervals of six month or at shorter intervals if it is considered necessary -- in view of the use of the words "may consider it necessary" in Condition 22.2.2. "such other period" could only mean a period shorter than six months. Another reason why the period for test checking meters must be not more than six months is that under sub-section (6) of Section 26 of the 1910 Act, the period for which the inspector shall estimate the amount of energy supplied to the consumer when the meter is not correct shall be "such time, not exceeding six months, as the meter shall not, in the opinion of such inspector, have been correct". The Board cannot provide for a larger period than six months because that would be directly in conflict with sub-section (6) of Section 26 of the 1910 Act and. Section 70 of the 1948 Act does not protect the Conditions in view of the fact that they do not form part of the provisions of the 1948 Act, "but have been issued with the aid of the provisions of that Act as laid down by the Supreme Court in Bihar State Electricity Board and others Vs. Parmeshwar Kumar Agarwala, etc. etc., . Sub-section (6) of Section 26 of the 1910 Act provides that the difference or dispute as to whether any meter is or is not Correct shall be decided by a Electrical Inspector upon the application of the either party. This proceeds on the basis that whenever the Board notices that a meter is not correct, the concerned consumer should be asked whether he disputes the same or not; if he does not dispute, the Board may proceed to follow the procedure under Condition 22.3.3; but if "the consumer disputes, the defective meter cannot be removed straightway and the dispute shall have to be referred to .the Electrical Inspector under sub-section (6) of Section 26 of the 1910 Act.

10. In the present case, we find that the respondents have replaced the defective meter in March, 1990 itself. It does not appear that any notice of the meter

being stuck up was given to the petitioner. No record has been placed before us to establish that the petitioner accepted that the meter was stuck up. On the other hand the petitioner contends that prior to Feb. 1990 the premises in question were under reconstruction for some tie, which may be the reason why much energy was not consumed. We do not wish to dilate on this because even though the writ petition was admitted on 17-9-1990 and stay of disconnection was granted pending writ petition on the same day, no counter affidavits have been filed by the respondents till Jan.1997. The respondents are also not in a position to trace the records relating to this case.

11. Before we close this writ petition, we have to observe that the officials of the Board" as expected to come out with the true and correct facts when they give affidavits, in this Court as other wise they would be answerable and they could even be cross-examined if it is discovered that they have made false or incorrect statements in the counter affidavits, and this Court can, in appropriate cases, initiate proceedings for contempt. We find that the Officers of the Board figuring as respondents in various writ petitions coming up before this court are not caring to respond promptly to the Rule nisi issued by this Court and they are not filing counters promptly-- even after six or seven years they had to be exhorted to file counter-affidavits. WE find ourselves requiring them to be present in court with the records because in spite of several opportunities being given to them they are not furnishing the relevant records to the learned Standing Counsel appearing for the Board for production before the Court. We had to go even to the extent of requiring the Secretary of the Board to be present in Court: to which he responded and sought the assistance of the learned Advocate General and undertook to see that counter affidavits were promptly filed and the records were duly produced in the writ petitions in which the Board and its officials figure as parties, Though that happened nearly two months ago, even to this day we find that in a number of writ petitions the learned Standing Counsel find themselves in an unenviable and thankless position of requesting time and again for more time for filing counter-affidavits; and even after the counter-affidavits are filed, for filing better counter-affidavits and for producing the relevant records. Unless this situation is corrected and steps are taken to see that at least in matters pending in this Court counter-affidavits are promptly filed and full and relevant records are produced, we will be constrained to take drastic steps and see that they have the desired effect. We may add that this is not a stray case where the respondents finally came out stating that a wrong bill was issued. For instance, in Writ Petition No. 15730 of 1994, which we disposed of on 18-3-1997 also with exemplary costs of Rs. 1,000/-, the respondents admitted that mistakes were committed in issuing revised bills.

12. In the result, this writ petition has to be allowed with exemplary costs. The respondents shall pay Rs. 1,000/- (Rupees one thousand only) to the petitioner towards exemplary costs. The exemplary costs and the costs of this writ petition shall be paid to the petitioner by the Board by way of adjustment towards future bills within six months from today. It is open to the Board to recover the costs

and exemplary costs from the Officer who had issued the impugned bill dated 5-9-1990.

13. Office is directed to send a copy of this judgment to the Chairman of the A.P. State Electricity Board.

14. Petition allowed.