

(1976) 08 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2298 of 1975

Kamala Shanker Upadhyaya

APPELLANT

Vs

State Electricity Board, U.P. and Another

RESPONDENT

Date of Decision : 11-08-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 26, 5
Electricity Act, 1910 — Section 20, 20(1), 26(6), 37

Citation : AIR 1977 All 185

Hon'ble Judges : M.N. Shukla, J;Gopi Nath, J

Bench : Division Bench

Advocate : Aditya Narain, for the Appellant; V.K. Mehrotra, for the Respondent

Final Decision : Allowed

Judgement

M.N. Shukla, J.—By means of this writ petition under Article 226 of the Constitution the petitioner has challenged his liability to pay the amount of electricity dues demanded from him by the State Electricity Board, Uttar Pradesh vide Recovery Certificate dated 11-12-1974 (Annexure 7 to the writ petition) tendered to the Collector, Varanasi for execution against the petitioner.

2. The petitioner installed an Electric Pumping Set near his residence in Village Ganjari in the district of Varanasi in the year 1968 and the Pumping Set was supplied electricity by respondent No. 1, A dispute has arisen over the electricity charges outstanding against the petitioner. The Recovery Certificate was for a total sum of Rs. 3912.30 out of which the petitioner admits his liability to the extent of Rs. 1699.90, which amount has admittedly been paid by the petitioner to respondent No. 1 during the pendency of the writ petition. The dispute, therefore, is now confined to the balance of Rs. 2212.40. This is also admitted that this liability relates to the period 20-1-1972 to 31-10-1974 in respect of the energy supplied to the petitioner for working the pumping Set. The parties are also agreed on the fact that prior to 1972 electricity was directly supplied to

motors and the State Electricity Board (briefly described as the Board) used to realise electricity charges on the basis of the power of the electric motor used by a particular owner. The said rate was Rs. 10/- per horse power per month. The Pumping Set of the petitioner was of 7.5 horse power and he paid the entire electricity charges at the rate of Rs. 75/- per month regularly up to 31-12-1971. This fact is not disputed in the counter-affidavit. The Board subsequently changed its policy and electric power meters were provided to the private Pumping Sets and charges were realised according to the unit of power/electricity consumed at the rate of Rs. 0.20 per unit plus development charges at the rate of Rs. 3 per horse power of electric meter per month. In the counter-affidavit it has been stated that the rate was actually Re. 0.18 per unit. Besides, the charge of Rs. 3/- per horse power per month is also admitted in the counter-affidavit but it is described as fixed charge instead of development charge. The Pumping Set was installed at the petitioner's premises admittedly on 20-1-1972 and at the time of installation the minimum reading was 42 units which fact is also admitted in the counter-affidavit. Subsequently the system was again altered and with effect from 1-11-1974 the Board started realising charges at the rate of Rs. 5/- per horse power per month of the electric motor, inclusive of development tax etc, and irrespective of the electricity consumed. These facts have also been admitted in the counter-affidavit.

3. In the circumstances the controversy arose only on two points, namely, whether (1) between the period 20-1-1972 and 31-10-1974 the meter reading was not actually taken by the employees of the Board regularly and the bills were being issued for alleged consumption of units of energy, based on sheer guess, The petitioner actually made a number of complaints of respondent No. 1 in this connection some of which have been annexed to the writ petition as Annexures 3, 4 and 8 dated 14-4-1972, 5-1-1973 and 4-2-1975 respectively. This allegation that bills were being issued not on the basis of the actual reading of the meter but on speculation was categorically made in paragraph 9 of the writ petition and the defence of respondent No. 1 as disclosed in paragraph 9 of the counter-affidavit was merely this that during the aforesaid period the petitioner's house was found to be closed. The petitioner substantiated his allegations by filing Annexure 5 which is chart of the units of energy actually consumed by the petitioner. This gives a lie to the defence of respondent No. 1. We may refer to only two major circumstances established by Annexure 5. Firstly, on 5-10-1972 the meter exhibited a reading of 1961 indicating that 35 units had been consumed. Likewise on 2-12-1972 the meter showed a reading of 2000 and showed that 39 units had been actually consumed. As against this in the chart filed by respondent No. 1 as Annexure 1 to the counter-affidavit the meter is not shown as indicating any consumption of unite but is noted by letters H C meaning thereby that the house was closed during that period. We are not inclined to disbelieve the averments made in the writ petition and substantiated by the material evidence placed before us, namely, the actual readings noted in the meter. On the other hand, there is no evidence before us on the basis of

which it may be accepted that the employees of respondent No. 1 visited the house of the petitioner and found the door closed. No such complaint was ever made against the petitioner at the relevant time. This plea has been taken in the counter-affidavit for the first time and we reject the same.

4. The second circumstance borne out by the chart Annexure 5 is that on certain occasions the actual reading shown by the meter was in fact higher than the one alleged to have been noted by the employees of respondent No. 1. Thus, for instance, on 15-7-1972 the reading of the meter according to Annexure 5 of the writ petition was 1926 whereas according to the chart (Annexure 1 to the counter-affidavit) the reading on that date was only 1716. To take only a few more illustrations, it is manifest from Annexure 5 to the writ petition that the first reading of the meter was taken on 15-7-1972. On the other hand, from Annexure 1 to the counter-affidavit it appears that two readings were taken prior to that date i.e. one in April 1972 and the reading was 1404 and another in June 1972 and the reading was 1614. The petitioner's allegation is that no readings of the meter were actually taken on behalf of respondent No. 1 and the bills were served on the petitioner on mere whims and conjectures. There is no averment in the counter-affidavit that any readings of the meter were taken either in the presence of the petitioner or after notice to him nor has any of the dates of the last reading been disclosed. The counter-affidavit filed on behalf of respondent No. 1 and the material placed before us in the shape of annexure thereto are far from convincing and on their basis we are unable to reject the petitioner's contention and accept the allegation made for the first time in the counter-affidavit

5. Even if It were assumed that, the reading of the meter was made by the agents of the Board, the mode in which it purports to have been done was manifestly illegal and cannot be endorsed. The U. P. Electricity Board was constituted u/s 5 of the Electricity (Supply) Act, 1948 (Act No. LIV of 1948), which runs as follows:

"5. Constitution and composition of State Electricity Board. (1) The State Government shall as soon as may be after the issue of the notification under Sub-section (4) of Section 1 constitute by notification in the official Gazette a State Electricity Board under such name as shall be specified in the notification.

(2) The Board shall consist of not less than three and not more than seven members appointed by the State Government

3. (* * * *)

(4) of the members.

(a) one shall be a person who has experience of and has shown capacity in commercial matters and administration.

(b) one shall be an Electrical Engineer with wide experience; and

(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electric supply undertaking.

(5) One of the members possessing any of the qualifications specified in Subsection (4) shall be appointed by the State Government to be the Chairman of the Board.

(6) A person shall be disqualified from being appointed or being a member of the Board if he is a member of Parliament or of any State Legislature or any local authority.

(7) No act done by the Board shall be called in question on the ground only of the existence of any vacancy in or any defect in the constitution of the Board."

Admittedly energy was being supplied in the present case to the petitioner by the U. P. Electricity Board. The Board may really be said to have stepped into the shoes of a licensee and its rights and duties must be deemed to be more or less on par with those of a licensee under the Indian Electricity Act, 1910. In fact, Section 26 of the Electricity (Supply) Act, 1948 says:

"26. Board to have powers and obligation of licensee under Act IX of 1910. Subject to the provisions of this Act. the Board shall, in respect of the whole State have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (IX of 1910) and this Act shall be deemed to be the licensee of the Board for the purposes of that Act....."

Therefore, the Courts cannot approve of the Board choosing any haphazard or capricious mode of determining the financial liability of a consumer. The matter must be regulated by law and not left to the vagaries of amorphous considerations. It is also important that no liability should be reckoned without an assured opportunity of the consumer's awareness of such obligation. A demand, which is not founded on any data or which proceeds from fictitious and imaginary material, must in its very nature be deemed to be arbitrary and cannot stand legal scrutiny. In order to eliminate such element of arbitrariness the law has prescribed a definite procedure which is frequently not complied with and therefore becomes a disquieting source of the consumer's resentment. The Indian Electricity Act, 1910 and the Rules framed thereunder envisage a positive machinery for determining the amount payable by a consumer for consumption of electric energy. Section 26 of the Indian Electricity Act, 1910 provides that the amount of energy supplied to a consumer shall be ascertained by means of a correct meter. Sub-section (4) of Section 26 of the Indian Electricity Act, 1910 in so far as it is relevant for the present case, reads as follows:

"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."

It is thus clear that the licensee or his agent is entitled to access to the meter for the purpose of inspection and test at any reasonable time on informing the consumer of his intention.

6. The relationship between the consumer and the licensee is governed by a statutory contract entered into in the prescribed form. The form is prescribed by Rule 27 of the Indian Electricity Rules, 1956 framed u/s 27 of the Indian Electricity Act, 1910. Rule 27 lays down that the model conditions of supply contained in Annexure VI of the Rules may be adopted by the licensee for the supply of energy. The procedure for ascertaining the amount of energy consumed is clearly envisaged in clause 13 of Annexure VI which is to the following effect:

"13. Access to premises and apparatus-- The licensee's servants possessing a written authority signed by the engineer or manager of the licensee are entitled at all reasonable times and on informing the occupier to enter the premises to which the energy is supplied for the purpose of inspecting meters and for other purposes connected with the apparatus belonging to the licensee."

The substantive provision in the Act on which the prescribed form appears to have been based is contained in Section 20 of the Indian Electricity Act, 1910, the relevant part of which is extracted below:

"20. Powers for licensee to enter premises and to remove fittings or other apparatus of licensee.-- (1) A licensee or any person duly authorised by a licensee may. at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, or any premises or land, under, over, along, across, in or upon which, the electric supply lines or other works have been lawfully placed by him for the purpose of-- (a) inspecting, testing, repairing or altering the electric supply lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee; or

(b) ascertaining the amount of energy supplied or the electrical quantity contained in the supply; or

(c) removing, where a supply of energy is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply lines, meters, fittings, works or apparatus belonging to the licensee."

It is thus quite clear that a licensee or his agent is authorised to enter any

premises to which energy is supplied for the specific purpose of ascertaining the amount of energy supplied or the electrical quantity contained in the supply. Subsection (1) of Section 20 specifically provides that this entry or access to the premises where the meter would be available which would indicate the amount of energy consumed should be done after informing the occupier of the intention of such agent to visit the premises to inspect the meter. Clause (a) of Sub-section (1) of Section 20 also authorises the licensee or his agent to enter the premises for the purpose of inspecting, testing etc. the electric supply lines, meters, fittings, works and apparatus for the supply of energy. The word "inspect" is of wide amplitude and surely includes the meter reading for the purpose of ascertaining the unite of energy consumed. The Legislature has advisedly used the expression "inspecting" ,and "testing" in Clause (a) of Section 20 which shows that though "testing" may be necessary for discovering any defects or removal of any shortcomings in the meter, the simple "inspection" of the meter may be done only for the purpose of noting the readings therein. This is also in consonance with the dictionary meaning of the term "inspect". According to Webster's Dictionary the meanings of the word "inspect" are "to look upon, to view closely and critically, to detect errors, to scrutinise, to view and examine officially etc."

7. Taking these provisions in the Act and the Rules together we are inclined to draw the inference that the object of the Legislature was that the amount of energy consumed, which would be the basis for determining the charges to be paid by the consumer, must be determined by the process of meter reading. The requirement of law which we wish to underline in this connection is that this meter reading is required under the Act and the Rules to be done not behind the back of the consumer but after notice to him. That is why Section 20 as well as Clause 13 of the prescribed form (Annexure VI) use the expression "at all reasonable times and on informing the occupier of his intention before entering into any such premises." It is obvious that the liability of the consumer is directly proportionate to the quantum of energy consumed by him. It is, therefore neither expedient nor legal that meter reading be done in the absence of the consumer. It is such ex parte and behind-the-back readings which are the main source of dissatisfaction. Apart from other things, practical expediency demands that the manifestation of mechanical processes provided as the criterion for fixing liability should neither be concealed from the consumer's view nor deciphered by some authority or person behind his back. The possibility of an Inspector or agent of the Board never visiting the premises for meter reading but supplying imaginary units of consumption, for the preparation of bills cannot altogether be ruled out. The allegations in the instant case are to that effect. In fact, most of the grievances of the consumers regarding the misreading of meters would automatically disappear if a procedure is adopted whereby the reading is done in the presence of the consumers, unless he virtually absents himself. The licensee must establish that its agent actually visited the premises for the purpose of inspecting and reading the meter after notice to the consumer

but was prevented from doing so on account of some default of the consumer. In the absence of such notice or information to the consumer the licensee cannot be heard to say that the attempt of reading the meter proved abortive or that the consumer or his agent foiled such attempt. It is for this reason that the allegations made in the counter-affidavit did not find favour with us.

8. We are also unable to accept the respondent Board's statement in the counter-affidavit that in the instant case the meter was not correct. The allegation in substance was that for some fault of the petitioner the meter ceased functioning or exhibiting any units of consumption. This again is a matter which cannot be left to chance or speculation. For this a procedure is contemplated under the Act and the Rules. Section 26 of the Indian Electricity Act, 1910. casts a duty on the licensee to get the meter corrected where it is supplied by the licensee. Likewise where the meter is the property of the consumer, it is his duty to get the meter corrected. Sub-section (2) of Section 26 provides that where the licensee fails to get the meter corrected the consumer shall cease to be liable to pay for the hire of the meter. In the same way where the consumer fails to get the meter corrected the licensee may cease to supply energy. In the case in hand the meter belonged to the Board and it was the duty of the Board to get it corrected, In case, however, the Board found that the meter was not correct or it was "constant", to use the expression employed in the counter-affidavit, the proper course for the Board would have been to proceed under Sub-section (4) of Section 26. It could, at any reasonable time and on informing the consumer of its intention have access to the meter for the purpose of "inspecting" and "testing" it and in case a default could be attributed to any act of the consumer all reasonable expenses of, and incidental to such "inspecting", "testing", "taking off" and "removing" of necessary, could be recovered from the consumer. There is not a whisper in the counter-affidavit on behalf of respondent No. 1 that any such defect in the meter was noticed at any stage or any inspection and testing was done with the object or any such notice was given to the consumer or allegation made. In the circumstances we are unable to give credence to the plea for the first time introduced in the counter-affidavit that the meter was defective or "constant" and, therefore, an extraordinary device was resorted to by the Board for the purpose of determining the amount of energy consumed. It is amazing that although it is averred in the counter-affidavit that the enquiry made into the state of the petitioner's meter revealed that the seals thereof were tampered with and the glass was broken with the result that the running of the recording disk was found impeded, no action was, however taken when such defects are alleged to have been noticed. Sub-section (6) of Section 26 lays down the following procedure which should be adopted in case of sick meters or meters which are not correct:

1. In the event of controversy as to whether or not a meter is not correct, it must be referred to an Electrical inspector.
2. Such reference can be made upon an application made by either party.

3. The Electrical Inspector shall decide as to whether the meter has ceased to be correct.

4. Where it is detected that the meter is not correct the Inspector shall estimate the amount of energy supplied to the consumer during the period of dispute.

5. That where such estimate has to be made, this can be utilised only for a maximum period of six months during which the alleged defect of the meter lasts.

It is evident from the above provision that this procedure of calculating the estimated amount of energy on the basis of past consumption is not intended to be made applicable to a period exceeding six months. The object seems to be that expeditious steps must be taken for removing the defects of the meter and if during the period the defect continues this method of proceeding on the basis of estimate may be resorted to. It is clear from his own allegations of respondent No. 1 in the counter-affidavit that the procedure contained in Sub-section (6) of Section 26 was not complied with in the present case. It has been averred in paragraph 7 of the supplementary counter-affidavit filed by the Board that on a reconsideration (evidently after the filing of the counter-affidavit in the case) the average of the consumption of the units by the petitioner was calculated as 454 units which was arrived at on the basis of the maximum average consumption recorded by the petitioner's meter after the first three months following the installation of the meter in January 1972. The respondent No. 1 has evidently acted in contravention of Law. In the first piece It is not the case of respondent No. 1 that it took any steps for referring the question as to whether the meter was not correct to the Electrical Inspector concerned. In fact, no specific date of the discovery has been disclosed. Secondly, as we have already discussed, it is not possible to believe that respondent No. 1 would not have cared to make any such allegation of the defect in the meter and bring it to the notice of the petitioner. For the first time in the counter-affidavit filed in this Court an assertion has been made that the meter was not correct, which does not hold water. Thirdly, it is admitted that the dispute between the parties relates to the period 20-1-1972 to 31-10-1974 i.e. a period much longer than six months. In the supplementary counter-affidavit it is stated that the estimate was based on the average consumption of energy during the period of three months i.e. January, February and March 1972. The demand as shown in the recovery certificate Annexure 7 was for the period commencing from January 1972 and ending October 1974 and the revised bills now proposed to be issued shall according to paragraph 7 of the supplementary counter-affidavit be based on the average consumption of the first three months following January 1972. This will be in violation of Sub-section (6) of Section 26 because the period for which an estimate based on average drawn from past consumption may be utilised cannot exceed six months.

9. On the facts of the instant case as established by affidavits and documents filed by the parties we are satisfied that no notice or information was given to the petitioner by the Board during the relevant period of its intention to note the

readings in his meter and further that, in fact, no such reading was made by the Board or its agent. The implications of Section 26 of the Indian Electricity Act, 1910 are very clear but they appear to escape invariably the reluctant attention of the Electricity Board. The dictates of law are imperative but we are constrained to remark that they are observed more in their breach than in observance. Which Board cares to inform the consumer or ensure his presence or that of his agent before embarking upon a reading of the meter? Perhaps none, That is why sometimes incorrect or even positively false bills are issued which the helpless consumer is obliged to pay or face penal consequences, This is the root cause of the real and persisting grievance of the consumers which can be redressed by scrupulously observing the provisions of Section 26 of the Indian Electricity Act, 1910. We consider it necessary to emphasise that a demand made by the U. P. Electricity Board or other licensee from a consumer for any sum of money with respect to alleged supply of energy, if it is not based on an actual reading of the meter or is the result of such reading taken without notice or information to the consumer, is not a valid demand and if resisted by the consumer, such claim cannot be legally recovered from him.

10. Thus, considered from different points of view the conclusion becomes irresistible that the demand made from the petitioner on the basis of the recovery certificate was illegal. In view of the important question of law involved in the instant case and the gravity of the allegations made by the petitioner we are satisfied that it is a fit case for the exercise of our jurisdiction under Article 226 of the Constitution. It is true that normally in a case of ordinary contractual liability the writ would not be an appropriate remedy but where the action of a public authority invested with statutory powers is challenged, the writ petition is maintainable, even though the relief claimed arises out of an alleged breach of contract. This proposition of law was laid down by the Supreme Court in *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, . We have already referred to the provisions of law under which a form is prescribed for entering into a contract which would govern the relationship between the parties in the matter of supply and consumption of electrical energy.

11. For the reasons stated above this writ petition is allowed with costs. The Recovery Certificate dated 11-12-1974 (Annexure 7 to the writ petition) is quashed and the respondent Board is restrained from recovering the amount demanded therein from the petitioner. It is, however, made clear that respondent No. 1 shall be entitled to retain the amount already paid by the petitioner during the pendency of this writ petition and admitted as its liability.