

(1998) 05 KAR CK 0024
In the Karnataka High Court
Case No : Writ Appeal No. 5173 of 1997

Karnataka Electricity Board, Bangalore and another	APPELLANT
Vs	
Sarang Steel Fabricators, Belgaum	RESPONDENT

Date of Decision : 30-05-1998

Acts Referred:

Electricity Act, 1910 — Section 24 (2), 26 (6)

Citation : (2001) 5 KarLJ 315

Hon'ble Judges : R.P. Sethi, C.J.;V. Gopala Gowda, J

Bench : Division Bench

Advocate : Sri N. Krishnananda Gupta, for the Appellant; Sri Jayakumar S. Patil, for the Respondent

Final Decision : Allowed

Judgement

V. Gopal Gowda, J.—The appellant-Electricity Board has challenged the impugned order passed by the learned Single Judge quashing the Annexure-E, dated 27-9-1993 which is impugned in the writ petition insofar as it relates to the direction to the respondent-consumer to deposit the disputed amount u/s 24(2) of the Indian Electricity Act, 1910 (hereinafter called the "Act" for short) with the Electrical Inspector.

2. The learned Counsel appearing for the appellant Sri N.K. Gupta submits that the learned Single Judge has erred in holding that the amount mentioned in Annexure-E has not become due and therefore neither sub-section (2) nor proviso thereto of Section 24 of the Act will apply. The second ground of attack is that the learned Single Judge has failed to notice that the claim of the appellant-Board is not obliterated and is only postponed till the matter is resolved by the Electricity Inspector with regard to the defective matter. Therefore, he submits that the finding recorded by the learned Single Judge in the impugned order that the amount mentioned in the demand notice at Annexure-E has not become due and therefore, the proviso to sub-section (2) of Section 24 of the Act has no application is not tenable in law. The learned Counsel for the appellant further

submits that the learned Single Judge failed to notice and interpret correctly that proviso to sub-section (2) of Section 24 of the Act confers power upon the Board to call upon the consumer to deposit the amount due towards the incorrect recording of the meter. Power is conferred upon it u/s 24(1) of the Act to disconnect the installation, if the consumer fails to comply with the demand of the Board. The prohibition contained under sub-section (2) of Section 24 shall not apply in case a licensee/Board has made a request to the consumer to deposit the sum with the Electrical Inspector of the licence charges or other sums in dispute. The learned Single Judge has not considered the phrase used in the proviso "other sums in dispute" which enables the Board to call upon the consumer-respondent to deposit the same with the Electrical Inspector under the said proviso. The amount referred therein is the other sums in dispute. Therefore, the finding recorded by the learned Single Judge to the effect that the amount has not become due and therefore, the proviso to sub-section (2) of Section 24 of the Act is not applicable, is wholly incorrect. The learned Single Judge further erred in holding that the back billing claim of the Board on account of slow recording remains mere claim and amount would become due only after determination by the Electrical Inspector and therefore, such a claim u/s 24(2) will not apply when Section 24(1) is not applicable. The said finding of the learned Single Judge is contrary to proviso to sub-section (2) of Section 24 of the Act. The learned Counsel made elaborate submission that Section 24(1) confers power upon the Board for disconnection of the installation of the consumer if there is any arrears of consumption of energy or other sums due and Section 24(2) provides that where there is dispute or difference between the licensee and the consumer the same has to be determined by the Electrical Inspector which has been referred to him, before any notice the Board shall not exercise the powers conferred upon it until the Electrical Inspector render decision on the dispute referred to him. Further, the learned Single Judge failed to take into consideration that the notice was given by the Board exercising the right conferred upon it under proviso to sub-section (2) of Section 24 demanding the consumer to deposit the amount in dispute with the Electrical Inspector and the amount in dispute is subject to the determination of the Electrical Inspector. Thus the Board is empowered to make such claim with the consumer demanding to deposit of the amount with the Electrical Inspector. Therefore, the learned Counsel submits and justifies the issuance of the impugned notice at Annexure-E to the writ petition to the respondent-consumer as perfectly legal and valid and the same is within the power conferred upon Board under the Act. The learned Counsel further submits that the learned Single Judge has not considered the decisions referred at the Bar and has held that the proviso to sub-section (2) of Section 24 of the Act has not been dealt in any of the decisions relied upon by him and those decisions have been rendered considering the cases where power was invoked by the Board under proviso to Section 26(6) of the Act. Therefore, the learned Counsel submits that the interpretation of proviso to sub-section (2) of Section 24 by the learned Single Judge is not correct. Hence, the impugned order is liable to be quashed. The learned Counsel further submits that the ratio

laid down by the Division Bench of this Court in case of H.M.P. Cements v Karnataka Electricity Board, is a case, where this Court has considered the power under proviso to sub-section (2) of Section 24 and it has been held that if any dispute is referred to the Electrical Inspector, before notice the Board shall not invoke proviso to sub- section (2) of Section 24 and it is incumbent on the part of the consumer to deposit the amount demanded in the notice with the Electrical Inspector. The learned Counsel further submits that the learned Single Judge has failed to take into consideration the proviso to sub-section (2) of Section 24 of the Act, which confers power upon the Board to safeguard its interest of revenue. The appellant's learned Counsel submits that non-consideration of the legal contentions urged by him before the learned Single Judge has rendered the impugned order error in law and the same suffers from illegality. Therefore, he requests this Court to invoke its power and appellate jurisdiction and prayed to set aside the impugned order and dismiss the writ petition filed by the respondent-consumer.

3. Learned Counsel Sri Jayakumar S. Patil, appearing for the respondent-consumer vehemently submits that the impugned order passed by the learned Single Judge is legal and valid as the same is in accordance with law and the respondent-consumer is not liable to deposit the amount mentioned in Annexure-E as the said amount is in dispute which is required to be determined by the Electrical Inspector. The contention of the Board with regard to the slow recording of the meter has been seriously disputed by the respondent and the same has to be determined by the Electrical Inspector. Hence, he submits that this Court need not exercise its appellate jurisdiction to annul the impugned order passed by the learned Single Judge.

4. After considering the rival contentions of both the parties and perusing the impugned order and the provisions of sub-section (2) of Section 24 and proviso to sub-section (6) of Section 26 of the Act and impugned notice at Annexure-E, we now proceed to examine the correctness of the submissions of the learned Counsel appearing for the appellant-Board. Sub-section (2) of Section 24 and sub-section (6) of Section 26 are extracted hereunder:

"24. Discontinuance of supply to consumer neglecting to pay charge.-

(1) XXX XXX XXX.

(2) Where any difference of dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:

Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request".

"26. Meters.-

(1 to 5 omitted as unnecessary.)

(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".

5. A careful reading of the above said provisions of the Act reveals that so far as the dispute with regard to the slow recording of meter is concerned, Section 26 of the Act confers power upon both the licensee as well as consumer to apply to the Electrical Inspector by giving notice to the other party of not less than 7 days of his intention to do so. Sub-section (6) clearly states, if 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 by the Electrical Inspector upon the application of either party. If, in the opinion of such Inspector the meter has 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. Proviso to sub-section (2) of Section 24 of the Act provides that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request. It clearly states that any difference or dispute between the licensee and the consumer has to be determined by the Electrical Inspector which has been referred to him. The prohibition contemplated in sub-section (2) of Section 24 of the Act shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue. From the reading of the above said section, it makes it very clear that the power conferred under sub-section (1) of Section 24 for disconnection of supply to consumer shall not be effective unless the licensee has made a demand in writing to the consumer to deposit either charges or other sums in dispute with the Electrical Inspector. This makes further clear that the Board has got every right to call upon the consumer by issuing a notice to pay the sum or other

charges in dispute before invoking its power u/s 24(1) of the Act for disconnection of the supply of energy to the consumer. If the payment of licence charges or other sum in dispute are deposited by the consumer, he has got a right under sub-section (6) of Section 26 and proviso to that section to get such dispute referred to the Electrical Inspector for adjudication. Till such dispute is adjudicated the licensee-Board shall not invoke the power u/s 24(1) of the Act and the consumer is required to deposit the disputed amount, The learned Single Judge has failed to appreciate and interpret the right and power contemplated upon the Board, in view of the specific right conferred upon the Board under proviso to sub-section (2) of Section 24 of the Act. Proviso to sub-section (6) of Section 26 of the Act states that the dispute or difference between the parties with regard to the correctness of the meter referred to in sub-section (1) of Section 26 of the Act shall be decided upon the application of either party, by an Electrical Inspector and in the opinion of such Inspector if the meter has 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. The learned Single Judge has erred in not considering the right conferred upon the parties. Therefore, the finding of the learned Single Judge that the dispute raised by the consumer on the ground that the meter is faulty and is recording excessively and the bills raised, are challenged as per the meter recording and therefore, the amount demanded by the Board at Annexure-E is not actually due is untenable in law. The further conclusion of the learned Single Judge is that the amount has not become due to the Board under sub-section (1) of Section 24 and consequently proviso to sub-section (2) of Section 24 will not apply is also not tenable in law. Therefore, the reasoning and the interpretation of the provisions referred to above and the various decisions referred by the learned Single Judge at paragraphs 8, 8.1 of the impugned order are not attracted to the facts of the case. A plain reading of the above said provisions of the Act abundantly makes clear that the power is conferred upon the Board under sub-section (1) and proviso to sub-section (2) of Section 24 to call upon the consumer to pay the amounts towards charges for energy or any other sums other than the charge for energy. If there is any dispute with regard to that amount, such dispute shall be referred to the Electrical Inspector. The licensee shall not exercise the power until the decision is rendered by the Electrical Inspector in that regard. It further makes it clear that the prohibition contemplated under sub-section (2) of Section 24 shall not apply in case the licensee has made a demand in writing to the consumer to deposit the amount due. Therefore, proviso to sub-section (2) of Section 24 is attracted to the facts of the case on hand.

6. The learned Single Judge has failed to take into consideration the unreported Division Bench judgment of this Court relied upon by the appellant's Counsel in H.M.P. Cements case, *supra*. The said Division Bench of this Court has considered both Sections 24 and 26 of the Act and also the judgment of the Supreme Court in *Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai*, . The ratio

laid down in the said case squarely applies to the facts of the case.

7. Therefore, in our opinion, the impugned order suffers from error in law and also bad in law. Hence, the same is not sustainable in law.

8. In this view of the matter, we allow the appeal and set aside the impugned order, consequently writ petition is dismissed. In the facts and circumstances of the case, no costs.