

(2012) 03 KL CK 0293
In the High Court Of Kerala
Case No : W.A. No. 2196 of 2009

Kerala State Electricity Board and Others	APPELLANT
Vs	
Managing Director, M/s Annapuram Rubber Products (P) Ltd. and Others	RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Electricity Act, 1910 — Section 26(6)

Citation : AIR 2012 Ker 169 : (2012) 2 ILR (Ker) 591 : (2012) 2 KLJ 806

Hon'ble Judges : C.N. Ramachandran Nair, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : P. Santhalingam and Sri S. Sharan S.C., K.S.E.B, for the Appellant;
O. Ramachandran Nambiar and Sri Geen T. Mathew, for the Respondent

Final Decision : Allowed

Judgement

Ramachandran Nair, J.—Writ Appeal is filed by KSEB challenging the judgment of the learned Single Judge vacating the order of the Deputy Chief Engineer of the KSEB sustaining an electricity bill raised on respondent based on data gathered on inspection conducted by the Anti Power Theft Squad (APTS) of the KSEB. We have heard Senior counsel Sri P. Santhalingam appearing for KSEB and also counsel appearing for the respondent. The respondent is an industrial consumer of electricity with LT-IV-3 phase connection with an authorised connected load of 80 KW. On 19-2-1999 the factory premises of the respondent was inspected by the Special Squad constituted by the KSEB along with their local Engineer. During inspection, the team noticed that the B phase of the CT power meter was reverse connected thereby neutralising even consumption recorded in the other two phases. In order to check whether the meter which was found to be in sealed and intact condition was working properly, the inspection team in the presence of the respondent's representative tested the meter at respondent's factory itself by applying load to each phase of the meter. In the course of testing it was found that the first and second phases were working properly. On applying load to the

third phase, the meter disk was found rotating in the reverse direction. It was noticed that the petitioner was in full swing operation for 8 hours a day and was maintaining even support generator system to take care of production in the event of power failure. In spite of 8 hours production confirmed by the employees, power consumption was found to be ridiculously low when compared to the connected load and production capacity of the plant. The reason for this low consumption was found to be only on account of reverse connection given to one phase of the meter which not only did record the consumption in that phase, but reversed the meter recording to the extent of the power consumed in that line. As a result of this, the consumption recorded in the meter was only one third of the actual consumption and, therefore, for short-assessment a bill was raised estimating two third consumption for the period commencing from 15-10-1994 to the date of inspection i.e. 19-2-1999. The reason for demanding arrears from 15-10-1994 was that the three separate meters connected on 21-1-1994 in each phase of supply was replaced by a single three phase CT meter on 15-10-1994.

2. The demand of power charges for short-assessment which amounted to Rs. 2,95,294.55 for the five years period was questioned in appeal before the Deputy Chief Engineer, KSEB. The Deputy Chief Engineer considered the contentions of the respondent, verified the mahazar and other records and passed Ext. P-6 sustaining the demand. It is against this order the respondent filed the O.P. before the learned Single Judge contending that the demand confirmed by the appellate authority is not sustainable because of violation of Section 26(6) of the Indian Electricity Act, 1910, in as much as the meter was not inspected or the matter got referred to the Electrical Inspectorate for estimation of power consumption. While Senior counsel appearing for the appellant opposed the findings on fact and law by the learned Single Judge, counsel appealing for the respondent supported the judgment. The question to be considered is whether a reference for inspection of the meter and estimation of power consumption by the Electrical Inspectorate as required u/s 26(6) of the Indian Electricity Act is applicable to this case. As already stated, the inspection is covered by mahazar prepared by the inspection team which is signed by the representative of the respondent. It is seen therefrom and from the appellate order of the Deputy Chief Engineer that the meter was found in perfect and sealed condition. Even though there was no tampering with the meter, what was found is that supply given to the meter was in the reverse direction in one phase of the meter which led to the disk in the meter rotating in the reverse direction leading to negative recording of actual consumption. If the allegations are true, then the net effect is that consumption recorded in the meter will be exactly one third of the actual consumption because reverse rotation of the disk will lead to not only failure in recording consumption in that phase, but the consumption in the other two phases to that extent will be reduced. Respondent's counsel submitted before us that the allegation is baseless and respondent has no involvement in the matter. However, when this argument was advanced, the Deputy Chief Engineer who

decided the appeal considered the production in the factory, the connected load and the consumption that should be there for normal operation for 8 hours which respondent was operating as per statement given by employees. The clear finding of the Deputy Chief Engineer is that the consumption is not commensurate with normal operations of the respondent with a connected load of 80 KW. The further finding is that besides the power supplied by the KSEB, the respondent was using an alternate support generator set with a capacity of 82.5 KVA which shows that production was full swing. On testing the recorded consumption against power requirement for normal operation for 8 hours, the Deputy Chief Engineer found that with the recorded consumption respondent can work only one and a half hours a day. On the other hand, the employees made statement to the inspecting team that the plant was working minimum 8 hours a day. What was found by the Deputy Chief Engineer in the appeal is that the ridiculously low consumption recorded in the meter with a connected load of 80 KW with a minimum of not less than 8 hours operation a day is on account of the reverse connection in one of the phases to the CT meter leading to recording of one third of the actual consumption thereby allowing two third of the consumption to escape from recording in the meter. It is only on this basis the consumption at actual was estimated by making two third addition and bill was raised. After going through the order of the appellate authority, we notice that it is a well written order not only supported by principles of law but by logic and reason and based on data collected from employees regarding minimum number of hours the factory was working. The appellate authority in fact estimated monthly consumption realistically based on connected load and the number of hours of operation and found that as against an average of 16000 units required for 25 days production with 8 hours work a day, the monthly consumption recorded from 9-10-1994 ranges from 521 units to 4099 units. We do not think any more evidence is required to sustain the appellate order modifying the bill as it is made absolutely on rational basis and by estimating the actual consumption of power. The only question to be considered is whether Section 26(6) will apply to a situation like this and if the failure to refer the matter to the Electrical Inspectorate will lead to invalidation of the bill raised by KSEB based on data gathered in inspection by APTS. Section 26(6) deals with cases of defect in the meter and in this case the meter on inspection was found to be remaining intact in the premises of the respondent and the seals were also not tampered with. When the meter was tested on the date of inspection at site in the presence of the respondent's representative by applying load to each of the three phases, the meter was found to be working in order. So much so, during testing of the meter in the presence of the respondent's representative, it was working properly. The irregularity or manipulation was only in respect of the reverse connection to one phase of the meter which led to the disk in that phase of the meter rotating in the reverse direction. It is immaterial whether this is a genuine mistake committed by the KSEB while giving connection or whether it is a manipulation done by the respondent because in either case the actual consumption was not recorded in the meter which justifies estimation of

consumption. Even though the very finding that one phase was recording consumption in the reverse direction itself will justify estimation, still the Deputy Chief Engineer followed a rational basis by estimating power consumption required for 8 hour operation for 25 days in a month and when this was applied, he noticed that if regular production was there for 8 hours a day as stated by the employees, the meter has not recorded consumption at actual or anywhere near to it. In fact, the finding of the Deputy Chief Engineer is that on an average 16000 units are required for production in the factory in a month, whereas on account of reverse connection in one phase of the meter the consumption recorded was ranging from 521 units to 4099 units. We are of the view that the appellate order is a well-reasoned order and, therefore, there was no justification for the learned Single Judge to have reversed the findings on a technical ground i.e. failure to refer the matter to the Electrical Inspectorate. As already stated by us, the Electrical Inspectorate has a role u/s 26(6) only when the meter is found defective and not when the meter is perfectly in order and the recording happened to be in reverse direction only because of connection given in the wrong direction. We, therefore, hold that Section 26(6) has no application in a case where meter was working perfectly in order and consumption could not be recorded or consumption recorded is in the reverse direction which is on account of wrong connection. We, therefore, allow the appeal by vacating the judgment of the learned Single Judge and restoring the bill raised which is modified and confirmed by the appellate authority.