
(1994) 03 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 3584 of 1990

Khurshed Sorabji Cooper

APPELLANT

Vs

Bombay Electric Supply and Transport Undertaking

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

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

Citation : AIR 1995 Bom 79 : (1995) 1 BomCR 483 : (1994) 96 BOMLR 670

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : J.J. Bhatt, for the Appellant; Phiroz Palkiwala, for the Respondent

Judgement

1. By this writ petition, the petitioner Khurshed Sorabji Cooper has challenged the supplementary bill dated 1 August, 1990 and the notice of disconnection dated 19 Nov. 1990 issued by the respondent -- The Bombay Electric Supply and Transport Undertaking (BEST). There is no controversy about the material facts of the case. The petitioner is supplied electrical energy by the respondent. A meter has been installed by the respondent for ascertaining the amount of energy supplied to the petitioner. Bills were raised from time to time by the respondent for the electrical energy supplied to the petitioner on the basis of the register of the said meter, which were duly paid by the petitioner. On 30 March 1989, the said meter was replaced by the respondent as its functioning was found by it to be defective. A letter was addressed to the petitioner by the Superintendent Consumers Senior of the respondent saying that due to some defect the old meter could not register the proper quantum of electrical energy passing through it during the period 24 August 1985 to 30 March 1989. A supplementary bill for a sum of Rs. 26,819.13 being the extra claim for the period from 24 August, 1985 to 30 March, 1989 was also enclosed with the said letter. By another notice dated 19 Nov. 1990, the petitioner was threatened with disconnection of supply in the event of his failure to pay the said amount. The petitioner has challenged the above notices of the respondent.

2. Mr. J.J. Bhatt, learned counsel for the petitioner submits that the petitioner being supplied with a meter, the amount of energy supplied to him can be ascertained only by means of the said meter. If any difference or dispute arises at any time as to whether the said meter is correct or not, such difference or dispute can be decided only by an Electrical Inspector and not by the licensee itself as has been done in this case. Counsel further submits that even in a case where the meter is found to be defective by the Electrical Inspector under sub-section (6) of Section 26 of the Act, the estimate of the amount of energy supplied to the consumer is restricted to a period not exceeding six months. In the instant case, the admitted position is that the respondent has estimated the supply of energy to the petitioner for a period of about 3 1/2 years. Learned counsel for the respondent, on the other hand, submits that sub-section (6) is attracted only if a difference or dispute arises as to the correctness of the meter. It does not apply to a case where the licensee finds that the meter is not correct and no dispute is raised by the consumer in regard to such a finding.

3. I have considered the rival submissions. On the face of the clear provision contained in sub-sections (1) and (6) of Section 26 of the Act, I find it difficult to accept the contention of the respondent that these sub-sections do not apply to a case where the meter is found to be incorrect by the licensee. This submission, in my opinion, goes counter to the clear language of sub-sections (1) and (6) of Section 26 of the Act, Section 26(1) provides:

(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.

It is clear from a reading of the above provision that a correct meter has to be supplied by the licensee.

Sub-section (6) deals with a contingency when any difference or dispute arises in regard to the correctness of the meter referred to in sub-section (1). It says:

(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.

It is clear even from a plain reading of sub-section (6) that the power of deciding whether a meter referred to in sub-section (1) is correct or not has been vested exclusively in the Electrical Inspector. It is the Electrical Inspector alone who can decide whether the meter has ceased to be correct and if he so decides, to estimate the amount of energy supplied to the consumer. The power to estimate the supply is, however, restricted to a period of six months.

Sub-section (6) further provides that in the absence of any finding of the Electrical Inspector that the meter has ceased to be correct, the register of the meter shall be conclusive proof of such amount or quantity.

The only exception to this presumption is a case of fraud.

The proviso to sub-section (6) which requires the Electrical Inspector to give seven days' notice to the other party of its intention to decide the correctness of the meter and to estimate the consumption clearly goes to show that the power of the Electrical Inspector under this sub-section is not an arbitrary power. He has to decide the matter only after due notice to the other party and on a proper consideration of the case made out by such party.

4. The admitted position in the present case is that the procedure laid down in sub-section (6) has not been followed. The licensee itself has decided that the meter had ceased to be correct and has estimated the quantity supplied for a period of three and half years and raised the impugned supplementary demand on the petitioner on the basis of such finding and estimate of its own. Such an action of the licensee is not contemplated by Section 26. It is not a case of fraud by the consumer which can bring it out of the restriction of the period for which such estimate can be made even by an Electrical Inspector. In such a situation, it is difficult to sustain the action of the respondent and the impugned demand raised on the petitioner on the basis thereof.

5. The above conclusion is fully supported by the decision of the Supreme Court in *Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai*, . In the above case, there was dispute whether the electricity meter was correct one or it was faulty not recording the actual electrical energy consumed in running the oil mill of the consumer. The Supreme Court held that the above dispute squarely falls within the provisions of Section 26 of the Act and, as such, it is the Electrical Inspector who alone is empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defects it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount of energy consumed and fix the amount to be paid in respect of such energy consumed within a period not exceeding six months. The supplier or licensee is not competent pending the determination of such dispute by the Electrical Inspector to raise a demand or to issue notice threatening disconnection of supply of electricity for nonpayment of supplementary bill prepared and sent by it. The Supreme Court in the above case clearly observed that the board is not competent to prepare and send a

supplementary bill in respect of energy consumed by the customer from the one phase which stopped functioning and did not record any consumption of energy. It may be pertinent to mention that in the case before the Supreme Court the power connection was checked by an Assistant Engineer of the Board and it was found that out of three phases one phase was not working. The board in such circumstances prepared a supplementary bill and forwarded the same to the consumer. The said supplementary bill being challenged before the Madhya Pradesh High Court, it was held that since the dispute relates to whether the meter is or is not correct has to be decided by the Electrical Inspector and so long as the dispute is not decided, the Electricity Board was not competent to prepare the supplementary bill or revise the bill as the said power is entrusted to the Electrical Inspector under sub-section (6) of Section 26 of the Indian Electricity Act, 1910. On appeal by the Board, the decision of the Madhya Pradesh High Court was affirmed by the Supreme Court in the above case.

6. The facts of the present case are identical to the case before the Supreme Court. Here also the dispute relates to whether the electricity meter is correct one or faulty not recording the actual electrical energy consumed by the petitioner. The dispute was not referred to the Electrical Inspector as contemplated by the sub-section (6) of Section 26 but was decided by the respondent itself. A supplementary bill in respect of the estimated amount of energy consumed by the petitioner was issued by the respondent. This action, as already observed, cannot be sustained in view of clear provision contained in Section 26(6) of the Act. The impugned letter dated 1 August, 1990 and the supplementary bill annexed thereto and the notice dated 19 Nov. 1990 issued by the respondent are therefore, set aside.

7. The counsel for the respondent fairly stated before me that it may be difficult at this stage after long lapse of time to refer the dispute to the Electrical Inspector as contemplated by sub-section (6) of Section 26 of the Act and even if it is possible it will expose the parties to fresh round of litigation.

8. The counsel for the petitioner appreciate the difficulty of the respondent and fairly submits that to avoid a fresh round of litigation, the petitioner is prepared to pay the supplementary demand for a period of six months if the court so directs without insisting on the compliance of Section 26(6) of the Act.

9. I appreciate the stance of the counsel for the petitioner. The demand raised in this case by the respondent for a period of 3 1/2 years is to the tune of Rs. 26,000/-. Even if its decision and estimate are found to be correct by the Electrical Inspector, the amount payable for a period of six months by the petitioner will be relatively insignificant. Under the circumstances, I think, with a view of doing full and complete justice between the parties, it will be appropriate to direct the petitioner to pay a sum of Rs. 6,000/- to the respondent as the amount due under subsection (6) of Section 26. Mr. Bhatt, learned counsel for the petitioner in all fairness agrees to pay the said amount.

10. In that view of the matter, I do not propose to remand the matter to the respondent to refer the dispute to the Electrical Inspector. I direct the petitioner to pay a sum of Rs.6,000/- in full settlement of the claim of the respondent. The payment may be made within four weeks from today.

11. In the result, the writ petition is disposed of in the above terms.

12. Under the facts and circumstances of the case, there shall be no order as to costs.

Certified copy expedited.

Petition disposed of accordingly.