

(2013) 09 BOM CK 0046
In the Bombay High Court
Case No : First Appeal No. 11 of 2002

Maharashtra State Electricity Board and The Assistant
Engineer, O and M Division M.S.E.B.

APPELLANT

Vs

M/s. Hindustan Gas Industries Limited and M/s. Praxiar India
Pvt. Ltd.

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Electricity Act, 1910 — Section 19, 2, 26, 26(6), 52

Citation : (2013) 6 ABR 328 : AIR 2013 Bom 183 : (2013) 6 ALLMR 241 :
(2013) 6 BomCR 36 : (2013) 6 MhLj 898

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Prashant Chavan, assisted with Mr. Nirw Shah, Mr. Ravindra Chile instructed by Little and Co, for the Appellant; Vikram Sathaye and Mr. Akash Menon Advocate instructed by . Khaitan and Co. for Respondent No. 1 and Mr. Ranbir Singh a/w. Mr. Ranjit R. Advocate instructed by . Malvi R. and Co., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The Special Civil Suit No. 510 of 1993 was filed by the M/s. Hindustan Gas and Industries Ltd. - Respondent no. 1 in the Court of Jt.C.J.S.D. at Kalyan. M/s. Praxiar India Ltd. - the respondent no. 2 company which acquired rights from the Respondent no. 1 lis pendente undertook in writing to abide by the result of the appeal. The appeal is against the Judgment and order dated 08-03-1999 in Special Civil Suit No. 760 of 1996 passed by the Learned Civil Judge Senior Division, Kalyan, District Thane, whereby the suit was decreed for to declare that letter bearing no. SA/Murbad/761 dated 30-04-1993 issued by the Maharashtra State Electricity Board (defendant referred hereinafter as "Board") to the Plaintiff Company was illegal. Facts briefly stated are:-

The plaintiff company, a regular consumer of the Board having Trivector meter No. 3004153 of Simco make, was intimated by the Board on 30-03-1993 to pay

towards slow operation of meter upon alleged test and assessment the Plaintiff replied the letter from the Board, on 12-04-1993 disputing the assessment on the ground of unilateral decision without giving any opportunity of hearing to the Plaintiff. The plaintiff had also applied to the Electrical Inspector by letter dated 12-04-1993 to stay the action of disconnection of power supply of the plaintiff Company. The dispute is still pending and undecided with the Electrical Inspector, Thane. The board by another letter dated 30-04-1993 again demanded the sum assessed by it and threatened to disconnect the electric supply, if payment is not made within 24 hours. The plaintiff company disputed the accuracy of the instruments used for alleged checking of the meter and challenged action threatened as illegal, without following procedure. The plaintiff Company filed suit with prayer for perpetual injunction to restrain disconnection of the electric supply and declaration that the action of the Board is illegal. The defendant had raised preliminary objection as to the jurisdiction of the Civil Court to entertain the suit on the ground that the Electrical Inspector was approached by the plaintiff prior to the filing of the suit. According to the Board the Plaintiff Company was required to keep/maintain the meter correct. The meter had fell down from February 1990 and was replaced on 30-08-1990 and assessment for six month was made u/s 26(6) of the Indian Electricity Act. The Board contended that the procedure u/s 52 of the Act was followed and the plaintiff company was supposed to approach the Electrical Inspector and had approached the Electrical Inspector prior to the filing of the suit. Defendant Board thus prayed for dismissal of the Suit.

2. The Trial court held that the Plaintiff was entitled for the relief of perpetual injunction. Letters dated 30-03-1993 and 30-04-1993 (Ex. 36) issued by the Board were declared illegal and unwarranted and the defendant Board was not entitled to disconnect the electric supply of the Plaintiff Company.

3. Heard submissions at the bar. Learned Advocate for the Appellant referred to the ruling in M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, . In paragraph 35 the Apex Court observed thus:-

35. We are unable to accept any of the aforesaid contentions. We have carefully perused the provisions of the Electricity Act and we find that those provisions provide for a different situation. Clause 39 will come into play whenever there is malpractice or pilferage on the part of the consumer or a fraud played by the consumer. The Electrical Inspector has no jurisdiction to deal with those matters. He can be approached only when there is a defective meter or any defect in wires, fittings, works or apparatus. As regards, Clause (VI) of the Schedule to the Electricity Act, it is not applicable unless distribution mains have been laid down under the provisions of Clause (IV) or Clause (V) and the supply of energy through those mains of any of them has commenced. The provisions of Section 26 of the Supply Act exclude the applicability of Clauses (1) to (V) of the schedule to the Board. Hence Clause (VI) of the schedule cannot by itself apply and that is why the second proviso to Section 26 clarifies the position that the

provisions of Clause (VI) of the Schedule shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced. The records before us do not disclose any pleading on the part of the consumers that the requirement of the second proviso to Section 26 have been satisfied. No question has been raised in that regard before the trial court. No doubt, the Full Bench of the High Court has placed reliance on Clause (VI) of the Schedule and the grounds raised in the SLP filed by the Board do not refer to the same. But in the absence of a specific pleading to that effect it cannot be presumed that Clause (VI) of the Schedule would apply. Even assuming that clause applied, it will not alter the situation. The difference or dispute referred to in sub-clause(3) of Clause (VI) will not cover fraudulent malpractice or pilferage. A perusal of the said sub-clause makes it evident that the matter shall be referred to an Electrical Inspector only in cases of defects mentioned therein and not otherwise. We have no hesitation to reject the contention of learned counsel for the consumers and hold that the provisions in clause 39 do not contravene the provisions of the Electricity Act.

Next reliance is made upon the ruling by this Court in *The Indian Seamless Steels and Alloys Ltd. and Another Vs. Rajendra Darda (Hon'ble Minister of State, Energy), Govt. of Maharashtra and Others*, . In paragraph 13 it is observed thus:-

13. At this stage, it would be necessary to deal with one of the issues which has been the subject matter of submissions before the Court. The period under dispute, it is common ground, is 7th February, 1995 to 13th April, 1995. The jurisdiction of the Electrical Inspector u/s 26(6) is to make an estimate of the electrical energy consumed during such time as the meter has not been correct. The Electrical Inspector is, therefore, duty bound to make an estimate of the consumption during this period. Condition 20(c) (vii) provides that the consumption of the month will be determined on the basis of the average consumption over the preceding three months" period. The consumption which has to be computed by the Electrical Inspector is for that period during which the meter is not correct u/s 26(6). This is further clarified by the subsequent part of Condition 20(c) (vii) which spells out that for a consumer billed on a quarterly or six monthly period, the consumption during the period when the meter is out of order will be the same consumption made by him during the preceding quarter or six months" period. The Electrical Inspector can make an estimate of electricity consumed for the period during which the meter has ceased to be correct and not in excess thereof.

On the other hand Learned Advocate for the respondent pressed in to service the ruling in *Belwal Spinning Mills Ltd. etc. Vs. U.P. State Electricity Board and another*, . In paragraph 49 it is observed thus:-

49. Such legislative change by the amendment of sub-section (6) of Section 26, in our view, has been introduced to set at rest any dispute between the licensee

and the consumer about the actual consumption of the quantity of electricity by the consumer where no fraud has been practiced by the consumer for all other period anterior to statutory period for estimation. There is good reason for such legislative change because it may not be possible to precisely determine exactly from which point of time the meter ceased to be correct. The scheme under Electricity Act clearly reveals that a correct meter is to be installed and such correct meter is to be maintained by the licensee in the premises of the consumer so that consumption of electricity is computed on the basis of reading in the meter. The scheme also reveals that unilateral decision of either of the parties about the correct status of the meter is not to be accepted by the other party if the other party raises objection as to the status of the meter. Whenever both parties do not accept a meter to be correct and the dispute is raised, such dispute is got to be resolved by referring to a statutory authority u/s 26(6), namely, the Electrical Inspector. Within the integrated scheme u/s 26 of the Electricity Act, it is not possible that even though dispute is raised about the malfunctioning of the meter such dispute will be treated as statutorily resolved for a limited period in accordance with the amended sub-section (6) of Section 26 but for other period anterior to the same, the dispute will remain unresolved and claim of the licensee be open to be challenged. Therefore, simply on the finding that meter had ceased to be correct by the Electrical Inspector on entering the reference a licensee may not be justified in contending that a particular meter had ceased to be correct from a particular point of time even though the licensee, despite its statutory duty to maintain the correct meter by repairing or rectifying the defective meter and by replacing it if necessary has failed to take appropriate step. Both Mr. Sen and the learned Solicitor General in their fairness, have submitted that beyond the statutory period for which no estimation for the consumption of electricity is to be made by the Electrical Inspector attaching statutory finality to such estimation, although the licensee is not precluded from raising revised claim for other period anterior to the statutory period of estimation but such claim will be open to be challenged by the consumer. In our view, by the amendment of subsection (6) of Section 26, the Legislature has intended to put an end of such contest between the licensee and the consumer and has set at rest of any dispute relating to any period anterior to the statutory period of estimation by providing that in a case of dispute as to functioning of meter, the reading in the meter for the period beyond the period of statutory estimation, will be final.

Learned Advocate for the Board and others respondent no. 1 then referred to the ruling in Bihar State Electricity Board and others Vs. Parmeshwar Kumar Agarwala, etc. etc., . In Paragraph 21 it is observed thus:

21. This is not at all, as it has been held by this court in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, that S. 26(6) of the 1910 Act does not authorize the Electricity Boards to issue any supplementary bill in respect of the energy consumed during the pendency of the dispute with an Electrical Inspector. We have mentioned about this decision because pursuant to

the notification, the Board did submit supplementary bills to the respondent-consumers. It seems to us that this action was really in conflict with the statutory provision contained in S. 26(6) of 1910 Act, as interpreted by this court in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, .

Reference is also made to the ruling in Bombay Electric Supply and Transport Undertaking Vs. Laffans (India) Pvt. Ltd. and Another, by Three Judges Bench of the Apex Court. In Paragraph 9 and 10 it is observed thus:-

9. What is contemplated by Section 26(6) is a running meter, but which on account of some technical defect registers the amount of energy supplied or the electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter which is either running slow or fast with the result that it does not register the correct amount of energy supplied. There is an additional reason for coming to such a conclusion. Section 26(6) confers power upon the Electrical Inspector to estimate the amount of 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. Where the meter is running slow or fast, it will be possible for the Electrical Inspector to estimate the amount of energy supplied to the consumer by determining the extent or percentage of error in recording the supply, whether plus or minus. However, where the meter is burnt or is completely non-functional, such an exercise is not at all possible. Therefore, Section 26(6) can have no application in a case where a meter has become completely non-functional on account of any reason whatsoever.

10. In Belwal Spinning Mills's case, this Court has held inter alia:-

(1) Any difference or dispute arising between the licensee and the consumer, as to whether any meter has recorded or is recording correct reading or not, can be raised by either party and referred, upon the application of either party, for decision by an Electrical Inspector.

(2) If the Electrical Inspector comes to the finding that the meter has ceased to be "correct", he has to determine the quantum of electricity consumed for the statutory period of six months, referred to in sub-section (6). The determination made by the Electrical Inspector on twin questions (i) whether meter was correct or not, and (ii) if the meter was not correct then the estimate of supply of electricity to the consumer for the statutory period of six months, is binding on the licensee and the consumer (subject only to judicial review by a competent Court).

(3) For any other period anterior to the statutory period, the legislature has in no uncertain terms indicated in the latter part of sub-section (6) that reading registered in the disputed meter will not only be presumed to be correct but such reading shall be conclusive proof of the quantity of electricity consumed or the amount of electricity supplied to the consumer. For any period other than the statutory period of six months, referred to in sub-section (6), the legislature has

intended by the amendment of sub-section (6) of Section 26 (as made by Act 32 of 1959) to put an end to such contest between the licensee and the consumer and has set at rest any dispute relating to any period anterior to the statutory period on estimation by providing that in a case of dispute as to functioning of meter, the reading in the meter for the period beyond the period of statutory estimation, will be final.

(4) Any unilateral decision of either of the parties about the correct status of the meter is not to be accepted by the other party if the other party raises objection as to the status of the meter.

(5) The estimate to be prepared by the Electrical Inspector, on the dispute being referred to him, may go only up to six months prior to the date of raising the dispute and reference but such estimate will only cover that period prior to raising the dispute during which, according to the Electrical Inspector, the meter had ceased to be correct.

(6) The estimate of supply of energy by the Electrical Inspector is to be made for a period not exceeding six months calculated backwards from the date of reference to the Electrical Inspector. Thus, it is the date of reference to Electrical Inspector which is conclusive of the period of six months; the date of inspection, the date of raising dispute and the date of adjudication are immaterial. (Here, we may add, that such period of six months shall apply).

Further reference is made to the ruling in *Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai*, . In paragraph 10 it is observed as follows:

10 In the instant case it appears from the report of the Assistant Engineer of the State Electricity Board that one phase of the meter was not working at all, so there is undoubtedly a dispute as to whether the meter in question is a correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. It is also evident from the said provision that till the decision is made no supplementary bill can be prepared by the Board estimating the energy supplied to the consumer, as the Board is not empowered to do so by the said Act. It is pertinent to refer in this connection to the observations made in the case of *Godag Belgiri, Municipal Borough, Godag Vs. The Electrical Inspector, Government Municipal Inspector, Government of Mysore and Another*, as follows:

What the Inspector may decide under sub-sec. (6) is whether or not the readings obtainable from the meter are accurate and whether the meter is faulty or mechanically defective, producing erroneous readings. That is the limited adjudication which in my opinion, an Inspector or other authority functioning under sub-sec. (6) may make under its provisions.

Learned Advocate for the respondent nos. 1 & 2 justified the action of the Plaintiff Company to file Civil suit by making reference to the observations by Hon"ble Supreme Court in paragraphs 8 and 9.

4. Before we take up the respective contentions of the parties, it is necessary to notice the provisions of Section 26 of the Indian Electricity Act, 1910. The Act makes detailed provisions for supply of electricity by licensees and provides for the rights and liabilities of the licensees and the consumers. Section 26 of the Indian Electricity Act, 1910 provides for the contingency of a dispute regarding the correctness of the meter recording the supply of electric energy to the consumer. Section 26 of the Indian Electricity Act, 1910 reads thus:-

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.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may, after giving him seven days" notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorized 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 1[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.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, 2[but he may by giving not less than forty-eight hours" notice in writing to the licensee require the licensee to connect or (1. Subs. by Act 32 of 1959, s. 2, for " Electric Inspector". 2. Subs. by s. 19, *ibid.*, for certain words.) disconnect such meter and on receipt

of any such requisition the licensee shall comply with it within the period of the notice].

(6) 1 [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.]

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply: Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided, also, that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4) (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation.-- A meter shall be deemed to be " correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) 1. Subs. by Act 32 of 1959, s. 19, for sub-section (6). shall be deemed to be " correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

5. The dispute between the parties is covered by the provisions of Section 26(6) of the Indian Electricity Act, 1910. It is obvious that the dispute is not arbitrable except by the Electrical Inspector as provided in Section 26(6). Further, even if the Electrical Inspector were to arbitrate upon the dispute, the only period of dispute which could be considered would be the period of six months immediately prior to the date on which the defect was noticed. Subsection (6) of

Section 26 of the Indian Electricity Act, 1910 provides that, barring the dispute for the aforesaid six months, the register of the meter shall, in the absence of fraud, be conclusive proof of the amount or quantity of electric energy supplied to the consumer. In other words, a statutory irrebuttable presumption is raised that prior to the period of six months the meter is deemed to be good and the rights and liability of the parties are concluded by reading of the meter, until and unless any doubt is raised about the correctness of the meter. Such doubt raised, if any must be finally scrutinized and decided by the Electrical Inspector on a reference made to such authority, the Board should not be permitted to install another meter simply by doubting the correctness of the earlier meter installed by it. Any such liberty to be given to the Board will amount to permitting the Board to short circuit and avoid the fair and impartial mechanism provided u/s 26 of the Indian Electricity Act. Any proposal of substitution of one meter by another meter should not be permitted until the correctness of the earlier meter installed is finally decided by Electrical Inspector as incorrect. Any liberty granted to the Board to continue to dislodge and dislocate one meter after another meter unreasonably, arbitrarily, whimsically and without the concurrence of the consumer will encourage mischief and high handedness of the Board and such action is bound to seriously impair the rule of law between the parties which is so delicately maintained by the different parts of Section 26 of the Indian Electricity Act. The different parts of Section 26 of the Act only manifest that the original correct meter once duly installed with the concurrence of concerned parties, acquires a sacrosanct status. After the installation, neither party has the right to take off or remove or replace the meter Sub-section (4) of Section 26 permits the originally installed correct meter to be taken off and removed by the Board, if at all such removal is necessary for the purpose of inspecting and testing. There is no unlimited liberty granted for the Board or the licensee to take off and remove the originally installed meter and replace the same by another meter by treating such other meter as correct. Sub-section (6) of Section 26 of the Electricity Act requires that save as estimated by the Electrical Inspector for a period not exceeding six months, the register of the meter shall be conclusive proof of the amount of energy supplied to the consumer. This limit of six months, is to be co related with the primary rule contained in sub-section (1) of Section 26 of the Act, which requires that the amount of energy supplied shall be ascertained by means of a correct meter.

6. On a conjoint reading of various sub-sections of Section 26 of the Electricity Act, it is evident that consumption of electricity or electrical quantity in the supply, shall be ascertained by means of a correct meter and the meter and other apparatus for recording the consumption of electricity by a consumer will be deemed to be correct if the recording is within the permissible limit of error as prescribed. If a dispute as to the correctness of the meter is raised by any party for reference, such dispute can be decided only by the Electrical Inspector and both the licensee and the consumer has to accept the guesstimate of supply of electricity to the consumer as may be determined by the Electrical Inspector for

the statutory period referred to in sub-section (6) of Section 26.

7. Although the licensee is clothed with the power to maintain a correct meter installed at the premises of the consumer and for such purpose can enter the premises of the consumer and the licensee can also repair or alter the meter and other electrical apparatus if found defective on checking or testing by the licensee, but if the dispute as to the correct status of the meter or other electrical apparatus is raised by the licensee or by the consumer by making reference to the Electrical Inspector under-section (6) of Section 26, then such dispute can be determined only by the Electrical Inspector and the meter or apparatus cannot also be changed by the licensee unless the dispute is resolved by the Electrical Inspector. If there is a dispute as to the proper functioning of the meter or check meter or other electrical apparatus under sub-section (6) of Section 26, the Electrical Inspector upon entering the reference would determine the dispute as to the proper functioning of the meter and other electrical apparatus and in the event the Electrical Inspector comes to the finding that the meter ceased to be correct, he is to determine the quantum of the electricity consumed during the statutory period of up to cap of six months referred to in sub-section (6) but for any other period anterior to the statutory period, the legislature, in no uncertain term, has indicated in the latter part of sub-section (6) of Section 26 that reading registered in the disputed meter will not only be presumed to be correct but such reading shall be conclusive proof of the quantity of electricity consumed or the amount of electricity supplied to the consumer provided that no fraud has been practiced by the consumer. In appreciating the intention of the legislature, the provision for treating the recording of the disputed meter to be the conclusive proof of the amount of quantity supplied to the consumer in the absence of fraud where a dispute is raised by either of the party about the functioning of the meter, cannot be ignored. Sub section (6) has been amended and the legislature has introduced a conscious departure by deleting the requirement of assessing the quantity of electricity consumed for the entire period during which the Electrical Inspector or the competent authority was of the opinion that the meter had ceased to be correct. In our view, by limiting the period for estimation to be made by the Electrical Inspector by the amendment of sub-section (6) and further providing that for the anterior period, in the absence of fraud, the register of the meter shall be conclusive proof of the supply of the electricity it is quite evident that even if it transpires that the installed meter ceased to be correct, then for the period anterior to the statutory period for which the estimation is not to be made by the Electrical Inspector, the register of the meter about the consumption of the electricity supplied to the consumer shall be binding between the parties by treating such recording as conclusive proof of the consumption in the absence of any fraud practiced by the consumer. By the amendment of sub-section (6) the Electrical Inspector has been purposely absolved from the duty to determine as to from which point of time beyond the said statutory period, the meter had ceased to function so that for such entire period, the estimation of the supply of electricity need not be

made. Such amendment of sub-section (6), only means that beyond the statutory period, in the event of dispute between the parties as to the proper functioning of the meter and other electrical apparatus, the consumer has liability to pay the estimated amount indicated by the Electrical Inspector limiting the estimate up to the statutory period and not beyond that but for the other anterior period the consumer is required to pay according to the consumption of electricity registered in the disputed meter provided there is no fraud practiced by the consumer because dispute of such anterior period remains unresolved by the change introduced by the amendment.

8. Such legislative change by the amendment of sub-section 6 of Section 26, has been introduced to set at rest any dispute between the licensee and the consumer about the actual consumption of the quantity of electricity by the consumer where no fraud has been practiced by the consumer for all other period anterior to statutory period for estimation. There is good reason for such legislative change because it may not be possible to precisely determine exactly from which point of time the meter ceased to be correct. The scheme under Electricity Act clearly reveals that a correct meter has to be installed and such correct meter is to be maintained by the licensee in the premises of the consumer so that consumption of electricity is computed on the basis of reading in the meter. The scheme also reveals that unilateral decision of either of the parties about the correct status of the meter is not to be accepted by the other party if the other party raises objection as to the status of correctness of the meter. Whenever both parties do not accept a meter to be correct and the dispute is raised, such dispute is got to be resolved by referring to a statutory authority u/s 26(6), namely, the Electrical Inspector. Within the integrated scheme u/s 26 of the Electricity Act, it is not possible that even though dispute is raised about the malfunctioning of the meter such dispute will be treated as statutorily resolved for a limited period in accordance with the amended sub-section (6) of Section 26 but for other period anterior to the same, the dispute will remain unresolved and claim of the licensee be open to be challenged. Therefore, simply on the finding that meter had ceased to be correct by the Electrical Inspector on entering the reference a licensee may not be justified in contending that a particular meter had ceased to be correct from a particular point of time even though the licensee, despite its statutory duty to maintain the correct meter by repairing or rectifying the defective meter and by replacing it if necessary has failed to take appropriate step. Beyond the statutory period for which no estimation for the consumption of electricity is to be made by the Electrical Inspector in view statutory ceiling to such estimation, the licensee is not in my view, entitled to demand meter bill. By sub-section (6) of Section 26, the Legislature has intended to put an end to controversy between the licensee and the consumer and has set at rest of any dispute relating to any period anterior to the statutory period of estimation by providing that in a case of dispute as to functioning of meter, the reading in the meter for the period beyond the period of statutory estimation, is made final and conclusive.

9. There is no any allegation that the plaintiff company had practiced fraud or had tampered with the meter or other electrical apparatus provided for recording the supply of electricity to the consumer, the consumer (the plaintiff) will be entitled to the statutory protection of correctness of the recording of the consumption for supply of electricity consumed in the meter as conclusive proof of such amount of quantity of electricity consumed for all the period anterior to statutory period of estimation u/s 26(6) of the Act because admittedly there is dispute as to the proper functioning of the meter installed at the premises of the consumer. In view of the statutory protection of conclusive proof of consumption of electricity for such period on the basis of reading in the meter and since no decision at all is given by the Electrical Inspector for the period of statutory cap also though unreasonably long period has elapsed, I find no ground to interfere in the impugned Judgment and order considering the facts and circumstances of this case.

10. In view of Section 26(6) Board will be precluded from raising any demand contrary to the liability of the respondent plaintiff and consequently will not be entitled to disconnect the electricity in the premises of the respondent plaintiff for non-payment for the consumption of electricity for any period earlier than the statutory period beyond the quantity registered by the installed meter. In the result, first Appeal is dismissed without any order as to cost.