

(2016) 11 AHC CK 0011

In the Allahabad High Court

Case No : Electricity Act, 1910 - Section 26(6)

M/s. I.G. Shoes Pvt. Ltd.

APPELLANT

Vs

Kanpur Electricity Supply Co. Ltd.

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Writ-C No. 63196 of 2005

Citation : (2017) 6 ADJ 163 : (2017) 122 ALR 297

Hon'ble Judges : Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : H.N. Singh, B. Narayan Singh, Rishi Kant Rai and Syed Faizan Ahmad, Advocates, for the Petitioner; Ranjit Saxena and Dr. S.K. Yadav, S.C, for the Respondents

Final Decision : Dismissed

Judgement

Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.—Heard Sri S.F.A. Naqvi, learned counsel for petitioner and Dr. S.K. Yadav, learned counsel for respondents.

2. The petitioner has sought a mandamus commanding respondents to recalculate bill for the period from 16.10.1995 to 31.12.2001 in the light of order dated 25.11.2004 of Director, Electrical Supply, U.P. Lucknow(hereinafter referred to as "Chief Electrical Inspector" or "CEI") who has held that Meter installed at the premises was wrongly declared slow by 49.91% in inspection report dated 23.1.1995 and therefore, all bills for the period from 16.10.1995 to 31.12.2001 are liable to be reduced.

3. It is evident from record that petitioner raised dispute before CEI by submitting his claim petition dated 20.1.2003 claiming that electrical meter already installed at the premises of petitioner was removed on 31.12.2001 and a new meter was installed. He further complained that all bills raised to the petitioner from 15.10.1994 to 31.12.2001 were founded on incorrect reading of

meter. Deciding the aforesaid application/claim submitted by petitioner, CEI has passed order dated 25.11.2004 directing respondents Kanpur Electricity Supply Company Limited, Kanpur (hereinafter referred to as "KESCO") to revise all electricity bills issued to petitioner for the period from 16.10.1995 to 31.12.2001.

4. The stand taken by respondent KESCO is that order dated 25.11.2004 is wholly without jurisdiction, beyond the scope of authority of CEI and therefore, it has no meaning or effect or consequence in the eyes of law. CEI had no power to pass such order. The stand of respondents thus, is that order of CEI is without jurisdiction, a nullity, hence there is no occasion to comply with the same. Hence writ petition deserves to be dismissed.

5. When we examined rival submissions in the light of power exercised by CEI in purported exercise of power under Section 26(6) of Indian Electricity Act, 1910 (hereinafter referred to as "Act, 1910"), we find that stand taken by KESCO is correct and in accordance with law. In our view, order dated 25.11.2004 passed by CEI does not come within Section 26(6) of Act, 1910. The detailed reasons for our conclusion as above are as under:-

6. The own case set up by petitioner is that it had a contracted load of 60 Horse Power of electric connection for industrial purpose. The electrical meter installed at the premises of petitioner earlier, was removed on 31.12.2001 and another meter was installed. This is evident from facts stated in order dated 25.11.2004 passed by CEI. Till the date of change of meter in December, 2001, petitioner received bills for Rs.21,41,624.10. Another bill for Rs.18,61,585/- was issued on account of theft/excess load. Counter affidavit and documents appended therewith show that a raid team conducted checking at petitioner's premises on 28.8.2002 and found direct connection passing through meter was utilized by petitioner to commit theft of electricity. The connected load was also found to the extent of 138.5 HP while contracted load was 60 HP. Consequently, assessment was made for theft of electrical energy and excess load. Under the provision of Electricity Supply Code, 2002 a demand of Rs.18,61,585/- was raised by an order of assessment made by Executive Engineer. This is also admitted by petitioner in paragraph 5 of writ petition that petitioner filed an appeal but Appellate Committee vide order dated 24.3.2003 dismissed appeal. Total amount of Rs.55,10,676.45 was found outstanding against petitioner which included assessment amount of Rs.18,61,585/-, electricity charges of Rs.21,41,624.10 and late payment, surcharge etc.

7. With regard to dispute of assessment of Rs.18,61,585/-, petitioner has already filed a separate Writ-C No. 19857 of 2003. Aforesaid writ petition has been decided by order of date and after setting aside impugned orders therein, matter has been remanded to Assessing Authority.

8. However, for the purpose of present writ petition, we are not concerned with the said issue of theft but we are concerned with the question whether CEI had any authority to look into matter relating to electricity bills issued on the basis of

earlier installed meter as also whether dispute of assessment bill issued on the allegations is within the ambit of Section 26(6) of Act, 1910 or not.

9. Section 26 (1) and 26(6) of Act, 1910 read as under:-

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.

(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. (emphasis added)

10. A perusal of aforesaid provisions makes it clear that a dispute if raised regarding correctness of meter, then Electrical Inspector will first examine, whether meter installed at the premises of consumer is correct or not and if it finds, that such meter has ceased to be correct, then it can estimate amount of energy supplied to such consumer for a period not exceeding six months provided there is no case of fraud.

11. In the present case, petitioner did not raise any dispute with regard to correctness of meter so as to be examined by the CEI whether particular meter was correct or not. Earlier meter was removed on 31.12.2001 and a new meter was installed on the said date at petitioner's premises. Disputed bills relate to the period from 15.10.1994 to 31.12.2001 i.e. for the period when earlier meter was installed at petitioner's premises. It is evident from record that petitioner did not raise any dispute regarding correctness of meter inasmuch as even at the time of removal of meter no such demand was raised by it. Meter was removed without any objection by petitioner and a new meter was installed.

12. Petitioner made complaint before CEI for the first time on 20.1.2003 i.e. after more than one year when earlier meter was already removed. At the time of making complaint before CEI on 20.1.2003, there was no dispute regarding correctness of meter which was lying installed at the petitioner's premises on the

date of complaint. Thus, in fact no dispute with regard to correctness of any meter was raised before CEI and in fact, petitioner sought to dispute bills issued to it, which dispute is beyond the scope of Section 26(6) of Act, 1910.

13. Similarly, with regard to assessment on account of theft of electrical energy, such dispute is also beyond the scope of Section 26(6) of Act, 1910 and this has been repeatedly held by Court from time to time.

14. In *Madhya Pradesh Electricity Board and Others v. Smt. Basantibai*, (1988) 1 SCC 23, Court had an occasion to look into this aspect and held that Section 26(6) of Act, 1910 has no application when there is dispute regarding commission of fraud or tampering with the meter and breaking body seal.

15. In *Belwal Spinning Mills Ltd. v. U.P. State Electricity Board* 1997(6) SCC 740 (supra) Court examined various provisions and said, if dispute or difference arises between licensee and consumer as to whether any meter has recorded or is recording correct reading or not, such dispute can be decided by Electrical Inspector and when he finds that meter has ceased to be correct then he can assess quantum of electricity consumed in preceding six months.

16. In *JMD Alloys v. Bihar Electricity Board* 2003(5) SCC 226 Court said that in case of tampering or theft or pilferage of electricity, demand raised falls outside the scope of Section 26 of Electricity Act.

17. In *Tata Hydro-Electric Power v. Union of India*, 2003(4) SCC 172, Court observed that if there is dispute regarding correctness of meter under statute it has to be referred to Electrical Inspector but if there is no dispute as to whether meter is defective there is nothing which prevents parties from referring the matter to Arbitration etc. Court said:-

"It is only where any difference or dispute arises as to whether any meter referred to in sub-section (1) of Section 26 is or is not correct, that dispute has mandatorily to be resolved by the Electrical Inspector. In resolving the dispute, the Electrical Inspector can make an estimate of the electrical energy supplied during such time, not exceeding six months, as the meter shall not in his opinion have been correct. For the remaining period, the register of the meter is deemed to be conclusive proof of such amount or quantity, in the absence of fraud. All this presupposes the existence of a dispute contemplated by Section 26(6) of the Act which has to be resolved by the Electrical Inspector."

18. In *Bombay Electricity Supply & Transport Undertaking v. Laffans (India) (P) Ltd. and another* (2005) 4 SCC 327 Court agreeing with law laid down in *Madhya Pradesh Electricity Board and Others v. Smt. Basantibai*(supra), *Belwal Spinning Mills Ltd. v. U.P. State Electricity Board*(supra) and *J.M.D. Alloys Ltd. v. Bihar SEB*, 2003 (5) SCC 226, said that:-

"...we would like to mention that the applicability of sub-section (6) of Section 26 is attracted only when the meter is not correct. Section 26(6) will have no applicability (i) if the consumer is found to have committed a fraud with the

licensee and thereby illegally extracted the supply of energy preventing or avoiding its recording, or (ii) has resorted to a trick or device whereby also the electricity is consumed by the consumer without being recorded by the meter. In effect the latter class of cases would also be one of fraud. Tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in non-registering of the amount of energy supplied to the consumer or the electrical quantity contained in the supply - are the cases which were held to be not covered by Section 26(6).."

19. In Sub-Divisional Officer (P), Uhbvnl v. Dharam Pal, 2006(12) SCC 222 it was held that in case of tampering there is no scope for reference to Electrical Inspector.

20. These authorities have been followed recently in Western Electricity Supply Co. of Orissa Ltd. & others v. M/s. Baba Baijanath Roller and Flour Mill P. Ltd., JT 2014 (4) SC 597 wherein Court referring to Section 26(6) of Act, 1910, has said:-

"it appears to us that Section 26 is relevant only when there is any difference or a dispute arises in connection with correctness of a meter, in that case the matter shall be decided, upon being applied by either party, by an Electrical Inspector and in the opinion of the Inspector if it is found that the meter is defective, the Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during such time not exceeding six months but if there is a question of fraud in tampering with the meter, in that case there is no question of applicability of Section 26 of the said Act in such a matter.."

21. Therefore, to attract Section 26(6) of Act, 1910 dispute must relate to meter whether it is correct or not. Electrical Inspector first has to examine correctness of meter. It is possible only when meter, regarding which dispute is raised, is available at consumer's premises. Only then Electrical Inspector would have any occasion to check whether meter is correct or not but not. Where dispute relates to correctness of bills raised by licensee or supplier of electricity to consumer, may be on the basis of allegation that meter was slow, but no dispute regarding meter is referred by consumer to Electrical Inspector, when meter was lying installed at its premises and instead meter was already replaced and a new meter has been installed and after some time, bill is disputed, Section 26 of Act, 1910 would have no application.

22. There was no dispute, no such matter was brought before CEI by complaint about meter but about bills it raised dispute. This was outside Section 26(6) of Act, 1910.

23. This view is also fortified from the fact that whenever any dispute is raised by consumer regarding correctness of meter, licensee/supplier is prevented by Section 26(4) from taking away or remove such meter so that matter may be examined and decided by Electrical Inspector. The purpose is clear, to preserve evidence for settlement of such dispute. Material evidence is meter itself. If it is

lost on the part of inaction of consumer, subsequently he would be dis entitled to raise dispute with regard to such meter which is not available at its premises.

24. In Bombay Electricity Supply (supra) almost similar situation existed. Court said:-

"According to Section 26(6), the readings would bind the appellant and respondent No. 1 both. It has never been the case of the appellant at any stage that the meter was not correctly recording the consumption of electricity on account of being nonfunctional due to any fraud committed or device or trick adopted by the consumer-respondent No. 1 or that the body seal of the meter was found broken or tampered with. The respondent No. 1 was accepting and honouring the demands raised by the appellant and, therefore, respondent No. 1 cannot be expected to have raised a dispute and sought for a reference for determination by Electrical Inspector. The appellant could not have, therefore, revised the demand for such period based on average consumption during the previous year. There is yet another reason why the entitlement of the appellant to recover charges from the respondent No. 1 may have to be denied. According to the proviso appended to sub-section (4) of Section 26, the licensee cannot take off or remove any such meter as to which difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined by the Electrical Inspector. The purpose is to preserve the evidence. The dispute shall be expeditiously disposed of by the Electrical Inspector by applying scientific method of investigation to find out if the meter was incorrect and if so then what was the extent of error. In the present case, the meters said to be incorrect have been removed and replaced by the appellant. Admittedly, no dispute has been raised and referred to the Electrical Inspector. The most material evidence being the meter itself has been lost by the act of the appellant in removing the incorrect meter. The appellant cannot be permitted to take advantage of its own act and omission the act of removing the meter and the omission to make a reference to the Electrical Inspector."

25. Applying exposition of law as noticed above, when earlier meter was replaced by new meter on 31.12.2001, at that stage or prior thereto, dispute could have been raised by petitioner about correctness of earlier meter. It was open to it to refer dispute to CEI for resolution under Section 26(6) and petitioner could have asked Licensee/supplier of electricity to make such a reference. This would have prevented licensee from changing meter.

26. Bills were issued from time to time but petitioner never made any request or intention to dispute such bills on the ground that meter was correct or incorrect.

27. However, petitioner also accepted replacement of meter on 31.12.2001 and installation of new meter. Later on, search team while conducting raid at petitioner's premises found direct supply through wire as a result whereof, electricity was being pilferaged. Then an assessment bill was raised which petitioner challenged in appeal and lost. Petitioner very well knew that

assessment on account of theft was beyond the scope of authority of CEI and that is why after losing battle before Appellate Committee, it came to this Court in Writ-C No.19857 of 2003. Said writ petition was pending. Then in his own wisdom it thought to raise dispute before EEI with regard to entire demand which includes earlier arrears of dues upto 31.12.2001 and assessment bill, on various grounds which were obviously not connected with correctness of meter installed at petitioner's premises. On 20.1.2003 when petitioner approached CEI, reference made was beyond the scope of Section 26(6) and hence CEI in the present case had no jurisdiction, whatsoever, to enter into dispute.

28. In the result, it is evident that order passed by CEI dated 25.11.2004 is wholly without jurisdiction and a nullity in the eyes of law.

29. That being so, petitioner cannot be allowed to seek a mandamus from this Court so as to get a patently illegal, without jurisdiction and nullity order executed by asking respondents to comply with. Relief sought by petitioner in this present petition cannot be granted. This Court cannot exercise its extraordinary equitable jurisdiction under Article 226 of Constitution of India so as to get a patently illegal order executed by respondents as that would amount to perpetuate an illegality which is not permissible either in equity or law or otherwise. Writ petition is thoroughly misconceived.

30. Dismissed.