

(1994) 06 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30870 of 1993

M/s. Sharda Oil Industries Pvt. Ltd., Nunaihi

APPELLANT

Vs

Authority/Superintending Engineer, U.P. State Electricity
Board and another

RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Electricity Supply (Consumers) Regulations, 1984 — Regulation 2, 23(1)

Citation : AIR 1994 All 386

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Vinod Sinha, for the Appellant; S.C. and Sudhir Agrawal, for the Respondent

Final Decision : Allowed

Judgement

1. M/s. Sharda Oil Industries Private Limited, Nunai,hi district Agra -- the petitioner in this writ petition under Art. 226 of the Constitution is a private limited company registered as such under the Companies Act. It is engaged in the business of manufacturing mustered oil and for that purpose it runs a factory operated by electricity. The sanctioned load of electricity connection No. 123S77/H.V.-2 is admittedly 350 K.VA. The petitioner is thus a "consumer" within the meaning of the term defined in Regulation 2(b) of the Electric Supply (Consumers) Regulations, 1984 (hereinafter referred to as the Regulations).

2. The main reliefs sought for in this petition are for issuance of a writ order or direction in the nature of certiorari quashing the order dated 19-8-1993 passed by the 1st respondent and the bill dated 1-1-1993 issued by the 2nd respondent (Annexures-19 and 10 respectively to the writ petition) and a writ of mandamus directing the respondents to refund Rs.4,41,000/- along with LPS and fuel charges deposited by the petitioner under protest on the basis of the bill dated 1-1-1993.

3. Admittedly a new meter was installed in the premises of the petitioner's factory (in short the factory premises) on 22-10-1992. Meter reading were taken by the Assistant Engineer (Meter) and S.D.O. on 30-10-1992 and again on 30-11-1992. On 30-11-1992 the Sub-Divisional, Officer found total consumption of energy in terms of unit as 37234 units and no fault in the meter etc. was detected nor was any mal practice and pilferage/theft of energy noticed on any of the More said dates of meter reading. A surprise checking/ inspection was, however, conducted on 22-12-1992 by E.E. (Test), E.E. (Dist.) and S.D.O./A.E. (Dist.) who noticed the following irregularities suggestive of malpractice/ theft of energy :

"On checking it was found that meter is stopped. 190 amp load found running. For further investigation window and cubical were opened. The seals provided on them found tampered. I.P.O. provided on box also found repasted. Gqdrej lock have also been tampered. For further checking T.T.B. was opened. It was observed that C.T.'s of R. & B. phase have also been sorted out by the screw provided for this purpose on the T.T.B. The current 1.3A on each R. and B. phases is coming from the C.T.'s but not reaching to the meter from T.T.3. Pressure on T.T.B. found correct."

4. The Checking party reported for an action to be taken according to Rules on the basis of the checking report. The Executive Engineer, Urban Distribution Division III, Agra made a provisional assessment on 22-12-1992 itself on the sanctioned load of 350 KVA (Kilo Volt Ampiers) and assessed 25700 units of energy consumption on the basis of statutory formula LHFD. Out of the units aforesaid, 67000 units were found paid earlier and 1,90,000 units were to be paid. The amount calculated thereon at thrice the scheduled rate was worked out to be Rs. 8,26,000/- i.e. $(1,90,000 \times 1.45 \times 3)$. The petitioner by means of letter dated 22-12-1992 (Annexure -- C, A. 1 to the counter affidavit), expressed willingness to deposit whatever amount was lawfully assessed on the basis of the checking. Relevant portion of the letter aforesaid reads as thus :

"AAJ DINANK 22-12-1992 KO MERE AUDYOGIK CONNECTION....PER HUI CHECKING MEN JO BHI NYAYO-CHIT ASSESSMENT HOGA USE MAIN JAMA KARNE KO TAIYAR HUN".

According to the provisional assessment the petitioner was to pay a sum of Rs. 8,26,500/-. A cheque for the said amount was handed over on behalf of the petitioner to the Executive Engineer on 22-12-1992 itself. On 23-12-1992 however, the petitioner submitted a representation against the provisional assessment and even filed a suit, being original suit No. 915 of 1992 before the Civil Judge, Agra and obtained an ex parte order dated 24-12-1992 directing the respondents to continue electric supply to the petitioner provided the petitioner furnished bank guarantee for Rs. 8,26,500/-. The suit was later on withdrawn and it is unnecessary to give further details about the suit. The Executive Engineer issued final assessment-cum-bill dated 1-1-1993, according to which the energy consumed by the petitioner in terms of unit as per checking report

dated 22-12-1992 was worked out on the basis of formula $LFHD-350 \times .85 \times .75 \times 20 \times 61 = 2,72,212$ units out of which 75, 888 units were already billed and remaining 1,96,324 units were to be paid. The charges on these units were worked out to be Rs. 8,54,009-40/- to which were added certain other charges such as fuel cost and variation charges amounting to Rs. 13,397-15/-; other charges amounting to Rs. 3,001-61/-; and electricity duty on 1,96,324 units amounting to Rs. 11,779-40/-. The total amount payable by the petitioner, according to final assessment was Rs.8,82,197-07/-.

5. Against final assessment dated 1-1- 1993 the petitioner went up in appeal. By means of notice dated 21-1-1993 the petitioner was required to deposit Rs.4,41,000/-i.e. about 50% of the amount assessed against it. The said amount was deposited on the same date as would be evidence from the. receipt, annexed as Annexure-16 to the writ petition. The appellate authority respondent No. 1 maintained the final assessment and dismissed the appeal vide order dated 19-8-1993. The petitioner has now approached this court for quashing the final assessment as also the appellate order.

6. Sri S. P. Gupta, senior Advocate and Sri Sudhir Agrawal were heard for the petitioner and respondents respectively.

7. Learned counsel appearing for the petitioner urged that the Executive Engineer while finalising the provisional assessment was duty bound to give an opportunity to the consumer to state his point of view in view of the explicit requirement of regulation 23(i) of the Regulations. He urged that the language in which regulation 23(i) is formulated is suggestive of the fact that the Executive Engineer, while finalising assessment cases, should act objectively and record reasons in support of the assessment made by him. It was submitted by Sri S. P. Gupta that the assessment order and the appellate order were vitiated due to obscurity of reasons. Sri Sudhir Agrawal, learned counsel appearing for the respondents refuted the submissions made on behalf of the petitioner and urged that the assessment was finalised on the basis of the checking report in view of petitioner's letter dated 22-12-1992 (Annexure C.A.-1 to the counter affidavit) whereby the correctness of the facts found by the Inspecting authority were not disputed by the petitioner. Learned counsel for the respondent further urged that the contents of the letter dated 22-12-1992, in fact, amounted to admission of guilt and the matter was finalised in view of the request made by the petitioner for closing the matter on the basis of the checking report.

8. Having given my anxious consideration to the submission made at the Bar, I am of the view that since the assessment made under sub-regulation (i) of regulation 23 is appealable and the assessing authority is required to "finalise all the assessment cases after giving an opportunity to the consumer to state his point of view recording of reasons valid in law--in support of the final assessment is an implicit requirement of regulation 23 (i) for a valid order of assessment. "Reasoned decisions", observed Professor Wade, "are not only vital for the purposes of showing the citizen that he is receiving justice : They are also

valuable discipline for the Tribunal itself. That apart a consumer would particularly be deprived of his right of appeal on question of law in absence and due to obscurity of reasons in the order of assessment. The so called admission by the petitioner contained in the letter dated 22-12-1992 is not of much avail to the respondents inasmuch as what was stated in the application was that "JO BHI NYAYOCHIT ASSESSMENT HOGA USE MAIN JAMA KARNE KO TAIYAR HUN. "This statement of the petitioner did not absolve the assessing authority of its duty to assess the energy consumed by the petitioner and to determine the value thereof in accordance with law.

9. Guidelines for assessment in case of malpractice and theft of energy as contained in Annexure-1 to the Regulations, inter alia, provide that in case of using energy by creating obstruction in running of meter or interfering with the system of supply or wires etc., energy consumed in terms of unit would be determined by applying the formula i.e. unit assessed = $L \times F \times H \times D$ Where -

L is the connected load in KW; F denotes the type of supply;

H is the average No. of hours/days the supply is made available in the distribution mains feeding the consumer; and

D is No. of days for which supply is given.

10. I find substance in the submission made by the learned counsel for the petitioner that the assessment order, for its sustenance, must be based on correct application of statutory formula i.e. $L \times H \times F \times D$. I am of the view that an assessment order must for its sustenance, be passed after affording the consumer an opportunity to state his point of view and must also contain reasons rejecting the stand taken by the consumer and further that it must be based on correct application of the formula. Opportunity, in my opinion, would be illusory if the consumer is not informed of the basis on which the assessment is proposed to be made. He must be given an effective opportunity to contest the correctness of each of the various factors used in the statutory formula on which the assessment is proposed to be made. But since an order of assessment is appealable its correctness, if challenged, can be examined by the appellate authority inasmuch as the power of the appellate authority in this regard is co-extensive with that of the assessing authority. It can also examine the extent of prejudice, if any, caused to a consumer due to non-observance of the rules of natural justice embodied in regulation 23(i) of the Regulations. Question which is, therefore, required to be considered is whether the appellate order is in accordance with law?

11. Before examining the legality of the appellate order it may be observed that Annexure-19 to the writ petition which is sought to be quashed is not the order" rejecting petitioner's appeal. It is only a letter issued by the appellate authority to the Executive Engineer directing the latter to recover the balance amount due against the petitioner in view of the appellate order a copy of which has been annexed as Annexure-C.A.9 to the counter affidavit, whereby the appeals

preferred by the petitioner were rejected and the petitioner was required to deposit the balance 50% of the amount assessed against it.

12. For correct appreciation of the question involved in the case, the appellate order may be quoted as below :

(Matter in Vernacular -- Omitted ...(Ed.)

13. A perusal of the appellate order would indicate that the only reason given therein for rejecting petitioner's appeal is that the petitioner's indulgence in theft of energy was proved and the assessment order was passed well in accordance with the Regulations. In my opinion, the appellate order does not satisfy the test of a valid order and is liable to be quashed for obscurity of reasons. Regulation 23 of the Regulations provides, inter alia, that :

"(iii) The appellate authority shall dispose of the appeal after considering the submission of the appellant in the memorandum of appeal the material placed before him by the appellant and the enquiry records. It shall not be obligatory for the Appellate Authority to give a personal hearing, but if a request is made in that behalf he may grant such hearing to the appellant. The appellant may be represented at such hearing by a legal practitioner or any person duly authorised in that behalf."

"(v) The appellate authority shall give reasons for his conclusions except in cases where the appeal is allowed in toto. The order in appeal shall be final and binding on the consumer."

14. It is evident that the duty to record reasons is explicitly enjoined on the appellate authority. This necessarily means that the appellate authority would examine the points raised as also materials on record. Union of India (UOI) Vs. Mohan Lal Capoor and Others, , Beg, J. (as he then was) with whom Mathew, J. agreed, has explained reasons in the following words :

"Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinion and decisions recorded be shown to be manifestly just and reasonable."

15. As noticed above, the main grievance of the petitioner was that the statutory formula "LHFD" was not correctly applied and the appellate authority had failed to direct itself to the real issue and return a finding thereon. It is evident from the statutory formula that L stands for "connected load" in KW. According to the petitioner the connected load was 260 KVA. Whereas the respondents have taken 350 KVA as the connected load. In fact 350 KVA was the sanctioned/ contracted load which is distinct from "connected load" as defined in regulation 2(e). Further the petitioner was not liable to penal assessment in accordance with the statutory formula for the period between 22-10-1992 --the date of installation of

the new meter and 30-11-1992, the date on which the last reading was taken and no irregularity found. Admittedly the respondents have assessed right from 22-10-1992 to 22-12-1992 for total period of 61 days, as would be evident from the final assessment-cum-bill (Annexure-10 to the writ petition). The appellate authority has failed to address itself to the fact that the meter was found in order on 30-10-1992 and on 30-11-1992 and the irregularities giving rise to the impugned assessment were detected in surprise checking/ inspection conducted on 22-12-1992. The petition, in my opinion, is not liable to any penal assessment for the energy consumed by it up to the date of last meter reading i.e. 30-11-1992. It is true that in case there is no possible evidence to establish the period of pilferage, the factor "D" in the statutory formula is taken to be equivalent to 180 or the number of days elapsed from the date of connection/ installation of the meter till the date of detection of pilferage, whichever is less. But this applies to a case where there is no evidence on record to find out the number of days for which pilferage took place. As stated above, meter readings were taken on 30-10-1992 and again on 30-11-1992 and no fault was found. Therefore, while determining the number of days for which pilferage took place it has to be kept in mind that the petitioner cannot be held guilty of pilferage/ theft for the period anterior to 30-11-1992. But the appellate authority has erred in taking into consideration the period from the date of installation of meter.

16. Further the appellate order cannot be sustained on the reasons stated in the order. Sri Sudhir Agrawal, however, urged that the reasons are contained in the file. According to him reasons, as contained in the proceeding dated 19-8-1993 are thus: "Executive Engineer, Electricity Urban Distribution Division-III, Jamuna Bank Power House, Agra vide his letter No. 120893 dated 12-8-1993 has reported that aforesaid service connection was checked by a team of 4 Nos. Local Officers on 22-12-1992 in the presence of Sri Madhu Kar Gupta, representative and brother of the consumer Sri Rajiv Gupta.

On checking it was found that meter was stopped. The seal found tampered. L.P.O. provided on box also found reposted. Godrej lock has also been tampered., C.T.S of R and B phases have been sorted out by the screw provided for this purpose in T.T.B. The current 1.34 on each R, and B. phase is coming from the C.Ts. but not reaching to the meter from T.T.B.

Hence a detection of "theft at consumer premises" was established and the Executive Engineer, Electricity Urban Distribution Division-III, Agra raised an assessment of Rs. 8,26,500/- as per U.P. State Electricity Board instructions contained in the Annexure to O.M. No.209/HC/JBC/76 dated 14-10-1976 read with BPO. No. 1230/ C-IISEB (IX) dated 21-4-1975 which was accepted by the and paid vide cheque No. 799038 dated 22-12-1992 but was stayed on the application dated 24-12-1992 moved by the consumer to the Civil Judge Agra during the course of clearance of the cheque in the Bank.

On 20-1-1993 the consumer informed that the court case is being withdrawn and was deposited by him on 21-1-1993 Rs.4,41,00/-i.e. half of the assessment and

requested for reconnection of electrical supply pending appeal before higher authorities which was accepted to by the Executive Engineer as per the advise of higher authorities.

The consumers' appeals dated 15-1-1993, 20-2-1993, 9-3-1993 and 12-3-1993 have been carefully considered. Since the recognition has been given for checking report by the representative of the consumer and whole amount which was imposed upon the consumer was paid by cheque in full and the assessment so made is liable for payment by the consumer. Therefore, balance amount may be realised. Accordingly instructions may be sent to Executive Engineer UDD III Agra for realisation of amount. Consumer may be given due time for payment of balance amount."

17. The reasons a forestated are no reasons in the eye of law. The appellate authority ought to have examined, considered and decided the appeal against assessment in accordance with law as explained in this judgment.

18. Accordingly the writ petition succeeds and is allowed in part. The appellate order dated 19-8-1993 is quashed. The appellate authority shall decide the appeal in accordance with law and in the light of the observations made in the body of the judgment.

19. Petition allowed.