

(1994) 10 KL CK 0002
In the High Court Of Kerala
Case No : O. P. No. 876 of 1994

M/s. Southern India Marine Products Co. (Pvt.) Ltd	APPELLANT
Vs	
K.S.E.B. and Another	RESPONDENT

Date of Decision : 06-10-1994

Acts Referred:

Electricity Act, 1910 — Section 26, 26(3), 26(6)

Citation : (1994) 2 KLJ 773

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : Antony Dominic, for the Appellant; O.V. Radhakrishnan, for the Respondent

Judgement

K.G. Balakrishnan, J.—Petitioner is a registered company engaged in the manufacture of Ice. The Company had got installed a power meter having 3 phases and was allotted consumer No. 852. Bills were issued on the basis of meter readings. Petitioner has paid these bills except the bill relating to the month of November, 1993. On 25-11-93 first respondent issued a bill for Rs. 68,636/-. Along with the bill 2nd respondent issued a letter directing the petitioner to pay the amount. In Ext. P 4 letter it was stated that the power meter installed at the petitioner's premises was seen reversely rotating and that tamper proof box was not provided. On receipt of Exts. P 3 and P 4 petitioner represented the matter to the Chief Engineer and petitioner objected to the levy. The respondents did not consider the objection raised by the petitioner but resorted to the extreme steps of disconnection of the electric supply. Petitioner challenges this proceedings and seeks to quash Exts. P 3 and P 4. Petitioner also prays that the dispute be referred to an electrical Inspector. On behalf of the 2nd respondent, the Asst. Executive Engineer, a counter-affidavit is filed. It is submitted that on 10-11-93 the Anti-Power Theft Squad of the K. S. E. Board conducted a surprise inspection at the premises of the petitioner. The Squad found that the "B" phase of the power meter was seen reversely rotating due to wrong connection of the C. T. and that the tamper proof box was not provided. It

was found that the meter was recording only 1/3rd of the actual energy consumed; The above loss was calculated and additional bill was issued to the petitioner. The consumer was bound to provide tamper proof box as part of the conditions of supply of electricity. Accordingly, the consumer was issued with Ext. P3 bill. Petitioner had filed original petition challenging Ext. P3 and this Court directed the petitioner to pay a portion of the amount. It is alleged that Section 26 of the Indian Electricity Act has no application and the additional bill was issued not due to faulty meter.

2. I heard petitioner's counsel and the standing Counsel for the K.S.E.B. The main contention urged by the petitioner's counsel is that in the instant case the meter itself was found defective and, therefore, the matter is to be referred to the Chief Electrical Inspector as contemplated u/s 26(6) of the Indian Electricity Act. Section 26 of the Act deals with electric meters. Section 26 says that the energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of correct meter, and the licensee shall cause the consumer to be supplied with such 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. Section 26(3) says that 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. We are concerned with Section 26(6) of the Act which reads as follows:

Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or not correct the meter 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 of quantity:

Provided that before either a licensee or a consumer applied 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.

According to the petitioner the disputes now raised by the petitioner are to be referred to Electrical Inspector but this is disputed by the respondents' Counsel. According to them there is no defect with regard to the meter installed at the premises of the petitioner and the dispute could be referred to the Electrical Inspector only when there is a defect in the meter. From Section 26 (6) of the Act it is clear that the matter could be referred to the Electrical Inspector when there is a dispute as to whether the meter is correct or not.

3. Going by the facts of this case, respondents' contention is that the meter was seen reversely rotating due to wrong connection of the CT and that the meter was recording 1/3rd of the actual energy consumed. The above defect cannot be said to be a defect of the meter. The meter itself was correct but the connection given to the meter was in a defective manner.

4. Petitioner's counsel relied on the decision reported in *M.P.E.B.V. Basantibai* (AIR 1988 Supreme Court 71) and contended for the position that in the present case the matter is to be referred to the Electrical Inspector. That was a case where the proprietor of an oil mill had 3 phase connection and in 1983 the meter was found burnt and this was brought to the notice of the Assistant Engineer of the Board. Petitioner was asked to deposit the price of the meter but no meter was installed and electric supply was not restored. Petitioner was asked to pay the supplementary bill on the basis that the meter was not recording the actual energy supplied and consumed and it was found that one phase out of three phases was not working and the meter was running two phases only. It was in that background a dispute arose as to whether the meter was correct or faulty and therefore section 26 (6) of the Act could apply. The Supreme Court while analysing the scope and ambit of Section 26(6) of the Act held.

It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-sec. (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of S. 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is / is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act."

5. In an earlier decision reported in *Gadag v. Electrical Inspectorate, Govt. of Mysore* (AIR 1962 Mys. 209) the Supreme Court had occasion to consider this and observed as follows:

In my opinion, the legislative intent underlying S. 26 (6) of the Act is similar. The only question into which the Inspector or other authority functioning under that sub-section might investigate is, whether the meter is a false meter capable of improper use or whether it registers correctly and accurately the quantity of electrical energy passing through it. If in that sense, the meter installed by respondent 2 in this case was a correct meter as it undoubtedly was and as it has been admitted to be, the fact that respondent 2, even if what the petitioner states is true, so manipulated the supply lines that more energy than what was consumed by the petitioner was allowed to pass through the meter would not render the meter which was otherwise correct and incorrect meter"

6. From the above decision, it is clear that where an electric meter is not registering the correct consumption of energy because there is a defect in the

writing or giving connection to the meter. Section 26 (6) will not be attracted as the meter as such is not defective. The scope of enquiry of the Electrical Inspector could only be with regard to the defective nature of the meter and if once the electrical connections are given properly the meter works and gives the correct reading, it cannot be assumed that there is a defect in the meter and in that event Section 26 (6) has no application. So, the matter cannot be referred to an Electrical Inspector. The petitioner filed the writ petition challenging the bills served on him I do not find any reason to quash Exts. P3 and P4 If the petitioner is aggrieved by this, he may file statutory appeal against Ext. P3 and P4. Without prejudice to such rights of the petitioner, O P is disposed of.