

(1995) 01 OHC CK 0008
In the Orissa High Court
Case No : Original Jur. Case No. 8419 of 1993

Pawan Food Products

APPELLANT

Vs

Orissa State Electricity Board and Others

RESPONDENT

Date of Decision : 09-01-1995

Acts Referred:

Electricity Act, 1910 — Section 14(1), 22, 22A, 24, 24(1)

Citation : (1995) 01 OHC CK 0008

Hon'ble Judges : S.K. Mohanty, J;O.P. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Mohanty, J.—The Petitioner-company has assailed bill dated 7.10.1983 (Annexure-7) issued by the Executive Engineer, Electrical Division, Khurda, on behalf of the Orissa State Electricity Board, claiming an amount of Rs. 14,22,546.81 towards "under charge" for the period 13.2.1985 to 31.7.1993 (Annexure-8) stated to be u/s 24(1) of the Indian Electricity Act, 1910 threatening disconnection for non payment of the aforesaid amount,

2. Petitioner is a private limited company carrying on business in manufacture and sale of breads and biscuits at Janla within Khurda Electrical Division. On 2.8.1993 power supply was given to the Petitioner's unit determining the multiplying factor of the meter installed in his unit as 16 taking the current transformer ratio of the same as 800/5 Ampe. On the basis of that the multiplying factor was 14, the Petitioner company paid its energy charges till 13.2.1985 when the meter was replaced because of a defect in the old meter. After replacement of the new meter, energy bills were issued applying the multiplying factor as 8 taking current transformer ratio of the meter as 400/5 Amps. On 28.8.1993 the Asstt. Engineer, M.T. conducted meter test and submitted a report (Annexure-5), to the effect that the current transformer ratio of the meter as checked by injection Kit was 800/5 instead of 400/5. Accordingly thereafter the Board authorities prepared fresh bills taking the multiplying factor

as 16 for the period 1.3.2.85 to 31.7.93 and issued the same as Annexure 7 describing the amount claimed as "under charge".

3. On receipt of bill for the month of 8/93 in which the multiplying factor 16 was applied, the Petitioner assailed the same in O.J.C.7271 of 1993, which was disposed of on 13.10.1993 with the observation that the Petitioner's representation dated 13.9.1993 and further representation that may be made by him asking for a further test, may be disposed of by the authorities within a week and the decision communicated to the Petitioner. Thereafter, on the Petitioner's representation, the matter was referred to the Electrical Inspector, Bhubaneswar for making fresh test of the meter. Accordingly, the Petitioner's present meter was again tested on 8.11.1993 by the Deputy Electrical Inspector in presence of the Petitioner and the concerned Executive Engineer and as reported by the Electrical Inspector under Annexure-1 dated 12.11.1993, the current transformer ratio was found to be 800/5 " Amps.

4. Mr. Paikray for the Petitioner-company submitted that after replacement of new meter, the same was tested on 17.3.88, 9.12.88, 12.4.90, 7.8.91 and 20.4.92. The Board's vigilance squad also inspected the meter on 6.6.92 when they determined the multiplying factor at 8 and converted current transformer ratio at 400/5. Thus prior to 28.8.93 on all earlier occasions the test reports indicated the current transformer ratio to be 400/5 Amps. Consequently, the Board is not justified in claiming under charges with effect from 13.2.85 taking the current transformer ratio as 800/5 Amps and the multiplying factor as 16. He further contended that the bill for the under charges has been raised without complying the provisions of Section 26(6) of the Indian Electricity Act, 1910.

5. Mr. Rath, for the Board, on the other hand submitted that as there was defect in the meter which was pointed out in the middle of February, 1985 the same was replaced by the Board on 13.2.85, but while installing the new meter there was wrong recording of multiplying factor since although the current transformer that was installed had capacity of 800/5 Amps. a wrong recording was made that the capacity in fact was 400/5 Amps. Consequently the multiplying factor of the said meter was wrongly assumed as 8, although actual it should have been 16. He further submitted that in view of the report of the Electrical Inspector, the Petitioner is liable to pay under charges retrospectively with effect from 13.2.85 when the new meter with current transformer ratio of 800/5 Amps was replaced and bills having been accordingly raised, the writ petition is devoid of any merit.

6. Now, therefore, the moot question arises, whether the Petitioner is liable to pay the energy charges as raised in the impugned bills for the period 13.2.1985 to 7.11.1993 and If the Board is legally empowered to disconnect the electric supply line for non-payment.

7. Referring to Section 26(6) of the Indian Electricity Act, 1910, Mr. Peikray argued that even under the said provision, the Board is at best entitled to claim under charges upto a period of 6 months. In support of his argument that the

Board could only proceed under aforesaid provision, Mr. Paikiy cited a number of decisions of Madhya Pradesh and Karnataka High Courts and also of the Apex Court in *M.P.E.B. v. Smt. Basanti Bai* AIR 1989 S.C. 71. Sub-section (6) is attracted if there arises any difference or dispute as to the correctness of the meter fixed at the premises of the consumer and in that event on application of either the consumer or the supplier, the Electrical Inspector gets jurisdiction to decide the question and if he is of the opinion that the meter ceased to be correct, then he is to estimate the amount of energy supplied to the consumer or electrical quantity contained in the supply upto a period of six months. In the case at hand neither party has taken the stand that the meter was not correct. The only stand taken by the Board is that there is a mistake in calculation since the multiplying factor was wrongly recorded to be 8 although in fact it was 16. We, therefore, do not feel the necessity of referring to any of those decisions as they are not relevant for our purpose.

8. In support of raising the bill for "under charges", the learned Counsel for the Board relied on clause 32(g) of the Orissa State Electricity Board (General Conditions of Supply) Regulations, 1981, framed under the Electricity (Supply) Act, 1948. Clauses 31, 32 and 33 are the three clauses contained in Chapter VI of the Regulations dealing with charges for supply, payment of bills and grant of installments for clearing arrears dues. To facilitate examination of the question if Sub-clause (9) of clause 32 applies to the facts of the case at hand it is extracted hereunder:

Any mistake or omission in the bills presented may be revised and/or rectified by the Engineer on detection at any time and on such revision/rectification, a fresh bill shall be presented to the consumer and shall become payable in the manner indicated above.

9. It was argued on behalf of the Board that since the multiplying factor 8 was applied in preparation of the bill although in fact it was 16, there was a mistake in the bills earlier presented to the consumer and on revision a consolidated fresh bill for the entire period from 13.2.1985 to 11.7.1993, has been presented to him for the balance amount describing the same as under charges. In order to know the type of mistakes or omissions in the bills Sub-clause (g) is meant to be taken care of, it is necessary to refer briefly to the preceding Sub-clauses (a) to (f). Sub-clause (a) mentions when charges for electric energy is payable by the consumer and latter's liability to pay surcharge for delayed payment. Sub-clause (b) mentions the mode of sending bills to the consumer and the duty of the consumer in this regard. Sub-clause (c) speaks about the mode and time of payment by the consumer and liability to pay delayed payment surcharge. Sub-clause (d) speaks about payment of bills by cheque/draft on local Bank and remission by money order. Sub-clause (e) speaks about dispute of complaint with regard to the bills and payment of the billed amount, if necessary under protest. Sub-clause (f) provides that neglect on the part of the consumer to pay any bill presented to him within the prescribed period makes him liable for disconnection

of electric supply u/s 24(1) of the Indian Electricity Act, 1910 in the context of the preceding sub-clauses, the said words "error or omission in the bills" occurring in sub- Clause (g) "can only mean error or omission in preparation of the bill, and the error or omission is referable only to arithmetical error, mis-statement as to meter readings and the like. Further, the said words would clearly mean that the error or omission appears in the bill itself with reference to undisputed meter readings or calculation of energy charges supplying the tariff and the like. We are unable to read Sub-clause (g) as including any error recorded in the meter or in calculation of energy charges with reference to multiplying factor. Consequently we hold that Sub-clause (g) is not applicable to the facts of the fact.

10. Assuming however for a moment that Registration 32(g) applied to the facts of the case and the Board is entitled under law to raise a demand by way of under charges applying the multiplying factor 16, the question arises, if the consumer does not comply then what is the remedy of the Board. The only relevant provision in the Indian Electricity Act, 1910 is Section 24(1), which provides that where any person neglects to pay any charge for energy in respect of supply of energy to him, the licensee (in this case, the Board) may after written notice, disconnect the electric supply line without prejudice to its right to recover the charges by suit. Now the question arises, if the consumer has raised a bona fide dispute, can it be said that he has neglected to pay the energy charges and Board is therefore empowered to disconnect the electric supply line. The Board is a public body enjoying statutory powers and cannot be permitted to abuse its powers. Normally, arrears energy charges are realisable by a civil suit, as indicated in Section 24(1) itself. In order to enforce payment of energy charges, the Board is invested with coercive orders in Section 24(1) without bringing a suit for realisation of the same. If, however, the consumer raised a bona fide dispute as to the amount claimed by way of energy charges, it cannot be said that the consumer has neglected to pay the dues within the meaning of the said section and in such case if the Board threatens disconnection for non payment, then it amounts to abuse of power on the part of the Board. This has been so stated by this Court in *M/s Orissa Fibre v. Orissa State Electricity Board* AIR 1972 Ori 104.

11. In the case at hand as would be apparent from the discussions hereafter, the Petitioner has raised a bona fide dispute and therefore, it cannot be said that Petitioner has neglected to pay and therefore Board can exercise its powers u/s 24(1) of the Act to disconnect electric supply line. As indicated in Section 14(1) itself, it is always open to the Board to proceed against the consumer for realisation of its dues towards energy charges by way of civil suit.

12. Annexure-3 to the writ application is an extract from the Meter Testing/checking Register. Its genuineness is not in dispute. Herein as against 13.2.85 it is stated, that new T.V. Meter Sl. No. 3325 with 400/5 Amps. C.T. was installed on 13.2.85. This recording, according to Mr. Rath is a mistake and the C.T. ratio

should have been recorded as 800/5 Amps, in the said register.

13. Annexure-3 further reveals that the S.D.O. Laboratory, tested the meter on 17.3.1988 and checking the phase sequence and C.T. observed that the meter was O.K. On 9.12.88 the meter was taken for testing and was re-installed on 15.12.88 after testing in Bhubaneswar Testing Laboratory. On 23.10.89 meter was dismantled for fixing in temper proof box and was sent to M.R.T. Laboratory, Bhubaneswar, for testing S.D.O., E.I. Jatni has made an endorsement that on 12.4.90 the meter bearing No. 3877 was installed by S.D.O. M.R.T., Bhubaneswar after testing in the laboratory and that the connected G.T. was 400/5 and M.F. (Multiplying factor) was 8. Annexure-5 dated 28.8.93, the impugned test report. On the other hand indicates that meter No. 3377 was checked by injection kit and C.T. ratio was found to be 800/5 Amps. instead of 400/5.

14. Thus according to the Board, after 13.2.1988 for the first time on 26.6.93 the mistake in recording the C.T. ratio and multiplying factor was detected as in Annexure-5 and it was found that the C.T. ratio was actual 800/5 Amps. instead of 400/5. In other words, after 13.2.85 till 28.8.93 although the meter was checked on 17.3.88 and after removal to the testing laboratory on 9.12.88 and 23.10.89, the mistake, if any, at the time of recording on 13.2.85 was not detected. On the other hand the S.D.O., E.I., Jatai at the time of installation of the meter on 12.4.90 after test in the laboratory has clearly endorsed that the connected C.T. was 400/5 and multiplying factor was 8. Furthermore it appears that on 13.2.85 T.V. Meter Sl. No. 3325 was installed. On 12.4.90 meter bearing No. 3377 was installed and for the impugned test report dated 28.3.93 meter No. 3377 was checked. Thus, during the impugned period from 1985 to 1993, three different meters have been installed in the Petitioner's premises. When confronted learned Counsel for the Board was unable to clarify the position. In such background it is difficult to accept on the materials on record that C.T. ratio of the meter installed in the Petitioner's premises on 13.2.85 was in fact 800/5 Amps., but was wrongly recorded to be 400/5 Amps. thereby reducing the multiplying factor from 16 to 8.

15. Before parting, we may refer to the decision in Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay and Another, strongly relied upon by learned" counsel for the Board. In this case the notice u/s 24(1) of the Indian Electricity Act alleging non-payment of under charges for a period of 11 years was held legal and valid. For proper appreciation of the decision, it is necessary to know the salient facts of that case. The consumer, who was a manufacturer of barrels and drums was provided with a metering equipment with current transformer ratio 40:5 with authorised maximum demand of 210 KWs in 1960. Thereafter, the consumer set up a new automatic plant and because of this, authorised maximum demand was revised upwards from 210 KWs to 500 KWs and it became necessary to provide metering equipment with a higher C.T. ratio. Accordingly in 1961 the old current transformer with ratio 40 : 5 was replaced by one having ratio 80 : 5. Because of

replacement, it was necessary thereafter to multiply the reading recorded in the meter by 2 for arriving at the correct number of units of energy consumed. According to the licensee, due to some mistake the concerned officer of the concerned zone was not informed of the change effected and because of this, the energy consumed continued to be charged on the basis of the meter reading without multiplication by 2. It was the further case of the licensee that the mistake was detected in the year 1972 and accordingly demand for the under charge for the period 1961 to 1971 was made, but the same was not complied and therefore, the impugned notice u/s 24(1) of the said Act was issued. On above facts, the consumer's application for cancellation of the notice was heard and dismissed by a single Judge of Bombay High Court, upholding the notice. The consumer's appeal to a Division Bench was dismissed by the reported decision.

16. Before the Division Bench the consumer canvassed two points. The first point was that under aforesaid Section 24, the licensee was not entitled to disconnect the consumer's supply line for non-payment of that part of the claim which was barred by law of limitation. The second point was that there existed bona fide dispute with regard to the date from which the new metering equipment was installed and because of this, the power u/s 24(1) could not be exercised. Both the points were decided against the consumer. It was held that for issue of notice and taking action u/s 24(1), the "charge due" need not be restricted to the charge falling within the period of limitation and that in the facts of the case the dispute raised was frivolous and vexatious. It is thus found that the Bombay High Court upheld the notice u/s 24(1) of the Act mainly on the finding that the dispute raised by the consumer was not bona fide.

17. In the case at hand the impugned notice has not been assailed on the pointed ground that a part of the demand referred therein was barred by limitation. In the writ application it is merely stated that the demand of arrear charges was barred by limitation. The questions whether the demand or any part of it is barred by limitation, cannot be determined in this proceeding and can be gone into in a properly constituted suit, if brought by the licensee against the consumer. The two questions as to part of the claim of energy charges being barred by limitation and bona fide dispute raised by the consumer, arise out of interpretation of Section 24(1) of the Indian Electricity Act which is extracted below:

24(1). Discontinuance of supply to consumer neglecting to pay charge. - (1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply line of other words, being the property of the licensee through which energy may be supplied, and may discontinue the supply until such charge

or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

18. The words "neglects to pay any charge" and "due" occurring in the above sub-section give rise to aforesaid two questions. The aforesaid Act enjoins a duty on the licensee to supply electricity u/s 22 to the consumer within the area of supply, to comply directions issued u/s 22-A and order passed u/s 22 regulating the supply, distribution, consumption or use of electrical energy by the State Government. In the context of these provisions the license has been empowered u/s 24(1) to cut off the supply if the consumer neglects to pay any charge due so as to relieve him from the statutory obligation of complying Section 220. Considered in this light, the right of the licensee to disconnect supply of electric power cannot be restricted only to the charge which is not barred by limitation. The possibility of the consumer taking the plea of limitation in defence in a civil action cannot be a ground for striking down a notice u/s 24(1) of the Act and the word "due" occurring therein has to be given a wider meaning. We may not be understood as laying down that merely because a notice u/s 24(1) of the Act cannot be struck down for having included dues which were barred by limitation the licensee is entitled to recover the same in civil action ignoring the law of limitation as may be applicable to the facts of the case.

19. Now the meaning of the words "neglects to pay" occurring in Section 24(1) of the Act may be stated. For attributing negligence to a person proof of mere omission to do certain act is not enough. Omission must be without reasonable excuse. Therefore, if the consumer had a reasonable excuse for not paying the demanded charges, he cannot be said to have neglected to pay the same. On the materials on record as stated earlier, we have no manner of doubt that non-payment of the demanded dues by the Petitioner was for a genuine and reasonable excuse. Therefore, the licensee was not empowered to take action u/s 24(1). The licensee may work out his remedy as regards realisation of arrears dues from the consumer in a properly constituted civil action in which event it would be open to the consumer to take all available legal defences.

20. In the light of discussions in the foregoing paragraphs, we quash the impugned notice for disconnection. The question as to correctness and legality of the demand of under charges by the licensee from the consumer shall be gone into in an appropriate civil action if brought by the licensee. With this observation, the impugned notice is quashed and the writ application is accordingly allowed. In the facts of the case, we make no order as to costs.