

(2000) 09 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 9615 of 2000

Shree Plywoods (Pvt) Ltd.

APPELLANT

Vs

Bihar State Electricity Board. and Others

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

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

Citation : (2000) 4 PLJR 844

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : L.K. Bajla, S. Kamal, for the Appellant; M.K. Jha, for the Respondent

Judgement

R.M. Prasad, J.—In this writ petition, petitioner is aggrieved by the electric bill dated 1.9.2000, contained in Annexure-4 whereby and where under a demand of Rs. 20,92,281/- has been raised by the Respondent-Bihar State Electricity Board, hereinafter referred to as "the Board", unilaterally increasing the recorded monthly consumption of the petitioner by one and half times on the ground that the meter of the petitioner was found defective. In short, the relevant facts are that the petitioner, which is a company registered under the Companies Act, receives electricity from the Board for his factory and has a contract demand of 120 KVA and, as such, falls in the category of a High Tension consumer. They received monthly bills up to July, 2000 on the basis of meter reading from the Respondents and has been paying them accordingly. On 24.8.2000, a team of Engineers of the Respondent-Board and its MRT division visited the factory of the petitioner and inspected its meter, and prepared an inspection report in which they noted the details of the meter installed as well as its reading and its seals. All the seals were found intact. In the inspection report under the column "remark" the inspecting team noted that the meter could not be tested because B Phase Current was showing 03 Ampere, hence, it is doubtful case. Copy of the inspection report has been annexed as Annexure-1. On 25.8.2000 the team again came and made further inspection and prepared another report and in the

"remark" column it was noted that during inspection on 24.8.2000 current in B phase was not found and condition was retained. All the seals were found intact. It was again checked and found B Phase current missing. CT Box seals were opened to see the condition inside and noticed that CT load wire joint was melted causing current in B Phase zero, thus, recording 1/3 less consumption. At the same time, it is mentioned that due to power interruption testing could not be carried out and condition of CT Box (L.T. bushing) of transformer, meter box and meter room retained by sealing with bits mentioned in Sl. 9 for further testing. No. further test of the meter has since been done by the Respondents. On the basis of the meter reading recorded in the inspection report itself on 25.8.2000, the Respondent Executive Engineer issued the impugned bill to the petitioner in which the Respondents have multiplied the consumption recorded in the meter for the month of August, 2000, which was 21960.5 units, by 3/2 i.e. 150% and thus the recorded consumption of 21960 units has been increased to 32941 units. Similarly, the KVA reading which was recorded as 78.8 KVA has also been multiplied by 3/2, i.e. 150% and instead of 78.8 KVA the petitioner has been charged at 121.76 KVA. Over and above the Respondents have further increased the actual KWH as well as KVA consumption of the petitioner during the months of May, 1999 to July, 2000 by 1,64,923 units and 594 KVA respectively. While doing so, in respect of KWH, the Respondents have taken the reading of April, 1999 and the present reading of July, 2000 and by deducting the former from the latter, has worked out the total consumption during the months of May, 1999 to July, 2000 and similarly they have assumed the KVA consumption in the months of May, 1999 to July, 2000 @ 121.76 KVA per month and have deducted there from the actual consumption of 1350 KVA, and have charged the petitioner for the balance.

2. It is alleged that the reading of 3,16,909.4 was the present reading shown in the bill for the month of April, 1999, and thus, without assigning any reason whatsoever for the retrospective increase during the period May, 1999 to July, 2000, the Respondents have raised a huge bill of Rs. 8,98,949/- for the month of August, 2000. It is contended that no further testing was, however, done by the Respondents and on mere assumption that the meter was defective such a huge demand has been raised by the Respondents.

3. It is contended by the learned counsel for the petitioner that in view of the law laid down by the Supreme Court in the case of Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, the Respondents are not at all empowered to raise such bills on their unilateral assumption that the meter is defective. According to the learned counsel for the petitioner, it is only the Electrical Inspector, who is empowered u/s 26 (6) of the Indian Electricity Act 1910 to decide the issue as to whether the meter is defective or not and if he finds that the meter is defective, then the consumption of electricity is to be estimated by him for a period not exceeding six months. It is submitted that the Supreme Court in the said case has laid down that pending such adjudication by the Electrical Inspector, Respondent Board is not entitled to raise any such bill or to

disconnect the electric line of the consumer. It is, thus, submitted that the issue being no longer *res Integra*, the bill raised by the Respondent Board is wholly unauthorized and is fit to be quashed on this ground alone.

4. Learned counsel for the Board, on the other hand, contended that the provisions of Section 26 (6) of the Indian Electricity Act is not at all attracted in the present case, where the petitioner has not even raised any dispute that the meter is defective. In fact, the petitioner has admitted by putting his signature on the inspection report that the meter was defective. It is submitted by the learned counsel for the Board, it is only where difference and dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter is to 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 is empowered to estimate the amount of energy supplied to the consumer or the electrical quantity supplied during such time, not exceeding six months, as the meter shall not in the opinion of such Inspector have been correct. But, according to the learned counsel for the Board, no dispute or difference has been raised by the petitioner that the meter was defective and, thus, the said provision contained in Section 26 (6) of the Act is not at all attracted in the present case, more so when it is not the case of the petitioner that under proviso to sub-section (6) they ever gave any notice of their intention to apply the Electrical Inspector. According to him, the present case is covered by clause 16.9 (B) of the Tariff published in the Bihar Gazette on June 23, 1993. In this regard, he also relied upon the decision of the learned Single Judge of Allahabad High Court, reported in *The Premier Ice Factory, Kanpur Vs. The Commercial Manager, Kanpur Electricity Supply Administration and Another*, .

5. Learned counsel for the petitioner, in reply, submitted that the present case is squarely covered by the decision of the Supreme Court in *Basanti Bai's* case. It is submitted that in the said case also the dispute related to whether the electricity meter was correct one or it was faulty, not recording actual electrical energy in running the Oil Mill of the consumer. In the said case also the power connection was checked by the Assistant Engineer of the Respondent-Board and it was found that out of three phases one phase was not working. The body seal of the meter was found to be intact. In fact, according to the learned counsel for the petitioner, the case of the petitioner stands on better footing as in the case of *Basanti Bai* in which case it was also alleged that the petitioner got the meter burnt as the meter of the Board did not burn ordinarily and also that the body seal of the meter was broken, yet it was held by the Apex Court that such dispute squarely falls within the provisions of Section 26 (6) of the Indian Electricity Act, and as such, it is the Electrical Inspector, who alone is empowered to decide the dispute.

6. This Court finds substance in the submission of the learned counsel for the petitioner. The present case, in my opinion, is squarely covered by the aforementioned decision of the Apex Court in the case of *Basanti Bai*. In the said

case the Apex Court on consideration of the Report of the Assistant Engineer of the State Electricity Board that one phase of the meter was not working at all, held that there was undoubtedly a dispute as to whether the meter in question was correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. The Apex Court also on consideration of the said provision held that till the decision is made no supplementary bill shall be issued threatening disconnection of supply of electricity, as the Board is not empowered to do so under the said Act.

7. This Court is unable to appreciate as to how the present case can be said to be covered by clause 16.9 (B) of the Tariff which reads as follows.

16.9 (B) If at any time, a consumer (where CT has been installed for the purpose of metering) is found pilfering electricity by tampering connection of CT, correct energy shall be assessed as follows :

(i) If one wire is found removed from the CT or the connection is reversed then the energy consumption shall be assessed as three times the recorded energy consumption during the period of pilferage or for a period of six months, whichever is less.

(ii) If the CT is found to be tampered in case of multiple CT ratio, the highest ratio shall be considered for assessing energy consumption.

(iii) Such assessed units shall be charged at three times the tariff applicable to the consumer. Bare reading of the said provision shows that it is only where CT has been installed for the purpose of metering and it is found pilfering electricity by tampering connection of CT, correct energy is to be assessed in the manner provided for in sub-clause (i), (ii) & (iii) and not where in the inspection report the Inspecting authority finds all seals done intact and it was on account of melting of CT load wire joint which caused current in B phase zero and, thus, recording less consumption that the energy can be assessed in the manner provided for in the aforementioned sub-clause (i), (ii) & (iii) In the present case, it is not even alleged that there was any pilfering of electricity by the consumer which is only covered by clause 16.9(B) of the Tariff.

8. Learned counsel for the Board then also tried to place reliance on clause 16.8 of the Tariff which provides that to the event of meter being out of order of burnt, stopped or having ceased to function for any reason during any month months, the consumptions for that month/months shall be assessed average consumption of previous three months from the date of meter being of order or the average consumption the corresponding three months of the previous year's consumption or the Minimum Monthly Guarantee, whichever the highest. Such consumption will be treated as actual consumption for all piratical purposes until the meter replaced/rectified. Operational surcharge power factor surcharge and electricity duty shall be levied on consumption so calculated. This Court fails to appreciate as to how the said provision shall at all be attracted. Learned counsel for the Board has tried to refer to the heading to the said clause which reads

"Billing when" meter has either gone defective or burned or stopped", in order to contend that in the present case the admitted fact is that the meter is defective and, as such as cording to him, the Board under the said clause is competent to raise bill on the basis provided therein. This Court is at able to accept the said submission of the learned counsel for the Board. It is by now well settled that heading of a provision will not control or govern the contents of the provision itself. The provision contained in clause 16.8 of the Tariff only talks of the event of meter being out of order i.e. burnt/stopped or having ceased to function for any reason and, thus, there is no scope for covering such cases where in course of inspection it is found that due to any reason the consumption was being recorded less in the meter. It is not a case where the meter has been burnt or completely stopped or ceased to function in which case the method of reading of consumption of the electricity can be calculated in pursuance to the said clause. However, in a case where it is alleged that the recording of consumption is less, in my opinion, there cannot be any difficulty to raise the bill of consumption of electricity on the basis of actual recording in the meter subject to final decision of the. Electrical Inspector on reference being made to him either by the Board or by the consumer whoever, feels aggrieved.

9. The decision of the learned Single Judge of Allahabad High Court has got no application to the facts of the present case, inasmuch as in the said case, the petitioner has not made any such application as required by Section 26(6) of the Indian Electricity Act to the Electrical Inspector in regard to the dispute being raised before the Court and, thus, the Court held that it cannot be said that the Respondent-Board were not entitled to demand the arrears due against it because of the provisions contained in sub-section (6) of Section 26. Rather, I would like to add here that under the facts and circumstances of the present case, the Board can raise the demand only pursuant to the consumption recorded in the meter unless it makes reference to the Electrical Inspector under sub-section (6) of Section 26 with respect to the dispute relating to the dispute raised by it that the meter was recording 1/3rd less consumption till final decision is taken by the Electrical Inspector.

10. In the instant case, the dispute relates to whether the meter is correct one or it is faulty, not recording the actual energy consumption by the consumer (petitioner). So in view of the law settled by the Apex Court in Basanti Bai's case (supra), this dispute squarely falls within the provisions of Section 26 sub-section (6) of the said Act and as such, this Court is of the view that the Electrical Inspector alone is empowered to decide the said dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of the electrical energy then the Inspector will estimate the amount of energy consumed and fix the amount of such energy consumed within a period not exceeding six months. Writ application is, thus, allowed and the impugned demand raised in the bill dated 1.9.2000, contained in Annexure-4 is quashed. The Respondents are directed to refer the said dispute to the Electrical Inspector, who shall decide as to whether the meter

is faulty and/or due to some defect it has not registered the actual consumption of electrical energy and will also estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding six months. Meanwhile as the petitioner has not disputed about the recording of the actual consumption in the meter, the Respondent will raise a fresh bill as per the actual consumption recorded in the meter and the same shall be paid by the petitioner. In the facts and circumstances, however, these shall be no order as to costs.