

(1995) 03 RAJ CK 0042
In the Rajasthan High Court
Case No : Civil Special Appeal No. 51 of 1987

Smt. Abha Devi

APPELLANT

Vs

Rajasthan State Electricity Board and Another

RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Raj 102

Hon'ble Judges : B.R. Arora, J;A.P. Ravani, J

Bench : Division Bench

Advocate : J.T. Purohit, for the Appellant; G.M. Bhanddari, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Arora, J.—The appellant, who is the original petitioner in S.B. Civil Writ Petition No. 2833 of 1986, challenged the Demand of Rs. 7616.81 created by the Rajasthan State Electricity Board vide letter dated 4-12-1986 (Annexure 1) pertaining to the month of Sept. 1986, and the bill of the same date (Annexure 1/A).

2. The contention of the learned counsel for the appellant, challenging the demand raised by the R.S.E.B. before the learned single Judge as well as before us, is that the Demand created is not authorised by any provisions of law and Section 26(6) of the Indian Electricity Act casts a duty upon the Board to get the consumption of electricity determined from the Electrical Inspector and in the absence of determination by the Electrical Inspector, the demand could be created only on the basis of the meter-reading in the Registrar of Meters. The learned single Judge, by his judgment dated 5-1-1987, dismissed the writ petition filed by the petitioner-appellant by holding that the R.S.E.B., on the basis of the calculation made by them, have created the demand. The calculation has been given in Annexure 1 and Annexure 1/A and if the calculation is wrong, the same can be rectified. It has, also, been observed by the learned single Judge that such demand, where the disputed question of fact arises, cannot be

challenged by filing a writ petition and neither any question of interpretation of any statute arises nor is there any mala fide alleged against the respondents. The learned single Judge, also, observed that if there is a bona fide error of miscalculation then the proper course for the petitioner-appellant is to file a civil suit.

3. The demand by the respondents was raised vide Annexure 1 and Annexure 1/A. The details for raising the demand have been given in Annexure 1 and the Bill Annexure 1/A has been prepared in pursuance to the demand raised by Annexure 1. The demand has been made on the basis of the average consumption. If there is any mistake in the calculation then that cannot be gone into in the extraordinary jurisdiction of this Court. That is a matter which can be decided in a regular civil suit by a competent Civil Court on the basis of the evidence produced by the respective parties. The equitable jurisdiction vested in this court under Article 226 of the Constitution of India is meant for enforcement of the rights and not for the determination or establishment of the right where a disputed questions of facts are involved. In the present case: whether the meter was defective or it was not recording the correct reading or any wrong calculation has been made by the respondents in raising the demand vide Annexure 1 and Annexure 1 / A, are the disputed questions of facts which cannot be determined by this Court in the absence of relevant material and the evidence. On the basis of the material available on record, it cannot be said that the demand raised by the respondents, suffers, from any infirmity. We are in agreement with the view taken by the learned single Judge that if there is any error in the calculation then that can be rectified by the competent authority and where the disputed question of facts arise then the same cannot be gone into in the equitable jurisdiction in the absence of material available on record.

4. In the result, we do not find any illegality in the judgment/ order passed by the learned single Judge. The Special Appeal, filed by the appellant-petitioner, is, therefore, dismissed.