

(1995) 07 KL CK 0038

In the High Court Of Kerala

Case No : W.A. No. 16 of 1995 and O.P. No's. 27 of 1985 and 8414 of 1990

Southern India Marine Products Company (Private) Ltd.

APPELLANT

Vs

Kerala State Electricity Board and Another

RESPONDENT

Date of Decision : 04-07-1995

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79
Electricity Act, 1910 — Section 26, 26(6), 26(7)

Citation : (1996) 1 CivCC 71

Hon'ble Judges : M.M. Pareed Pillay, C.J.; P. Shanmugam, J

Bench : Division Bench

Advocate : Antony Dominic, in W.A. No. 16 of 95, Joseph Vellappally and Jagan, in O.P. 8414 of 90, for the Appellant; O.V. Radhakrishnan, for the Respondent

Judgement

P. Shanmugam, J.—These three matters raise common questions of law. The facts of each case are given below separately for better appreciation of the case.

2. W.A. No. 16/1995: The Petitioner in O.P. No. 876/1994 is the Appellant. The Appellant-Company is engaged in the manufacture of ice. By the impugned communication (Ext. P-4) dated 29th November 1993 the Assistant Executive Engineer stated that on inspection of the electrical installation in the premises of the Appellant on 10th November 1993 the following defects were noticed. (1) "B" phase of the power meter is seen reversely rotating due to wrong connection of the C.T. (2) Tamper proof box is not provided.

3. On the basis of the said report the Respondent issued an additional bill amounting to Rs. 68,636. The Appellant submitted objection (Ext. P-5), dated 29th December 1993, which did not dispute the defects pointed out by the Assistant Executive Engineer. The explanation of the Appellant was that the defect was not occasioned by reason of their act. As against the assessment made in Exts. P-3 and P-4 the Appellant filed the O.P. seeking to quash those communications and also for a mandamus to direct the Respondents to refer the dispute to the Electrical Inspector. The O.P. was dismissed and hence the appeal.

4. O.P. No. 27/1985: The Petitioner is a partnership firm carrying on the business of running an Ice Plant at Chavakkad. The Special Officer (Revenue) of Kerala State Electricity Board issued a supplementary invoice for Rs. 1,62,480.58 for short assessment of current charges for the period July 1971 to September 1976 on the ground that it was detected that due to wrong connection the meter was not indicating the consumption correctly. As against these proceedings the Petitioner preferred O.P. No. 755/1977 before this Court. By judgment, dated 9th March 1979 this Court directed a proper investigation into the matter by a competent officer after giving due notice to the Petitioner. Thereafter the Superintending Engineer, Electrical Circle, Trichur investigated the case after giving due notice to the parties and examining the Petitioner, the Engineer-in-charge the then Assistant Engineers and gave a report to the Chief Engineer (Electrical). The Chief Engineer in his considered order, dated 24th January 1980 gave the finding to the effect that due to the wrong connection in the metering set, only 50 per cent of the actual consumption was recorded. The order also took into account the readings per month before and after the inspection and finding of the defect in the wiring of the meter. The Chief Engineer has also stated that die proof was also produced on examination of the experts in the field of metering test. The fact of defective wiring in the metering set was pointed out and mahazar was prepared by the Assistant Engineer, which was witnessed by one of the representatives of the firm. Besides two independent witnesses were also examined during the enquiry. The further finding is to the effect that it was established beyond all reasonable doubt that the assessment made was incorrect due to the faulty connections to the metering set. Accordingly the Chief Engineer issued a revised supplementary invoice for Rs. 99,383.27. The Petitioner thereafter filed a representation before the Chief Electrical Inspector (Statutes), Trivandrum, who by order, dated 26th November 1984 (Ext. P-7) confirmed the findings of the Chief Engineer. In the order it is stated as follows:

Therefore based on the relevant records produced by the MRT staff I presume that the meter connection in the premises was faulty. The type of wrong connection as is indicated will reduce the consumption recorded by the meter to 50 per cent of the actual consumption. This is seen to have been cross verified by rectifying the mistake in the connection and taking the subsequent readings. A comparison of the reading before rectifying the defect and after rectification of the defect clearly show that the presumption that the reading indicated by the meters was 50 per cent of the actual consumption is correct. Hence I find that the energy consumption by the consumer during period from 1971 to 1976 was being short recorded on account of the wrong connection in the meter, to the extent of 50 per cent. On the basis of this a scientific re-assessment of the actual current charges would definitely have resulted in the invoice which has been served on the consumer. Therefore notwithstanding the procedural irregularities in making the re-assessment, I feel that there have been genuine consumption of the electricity by the consumer which went unrecorded because of the wrong connection existing in the meter, during the period from 1971 to 1976 and the

consumer is liable to pay the amount indicated in the invoice that is Rs. 99,382.77.

The O.P. is preferred against the concurrent findings of the Chief Engineer as well as the Chief Electrical Inspector (Statutes), Trivandrum.

5. O.P. No. 8414/1990: The Petitioner is a partnership firm owning tea factory. The Assistant: Engineer, Electrical Section, Peermade by his communication dated January 1983 (Ext. P-1) issued a revised assessment based on the inspection report of the Assistant Executive Engineer. According to the said inspection on 8th November 1982 it was found that the current circuit of one of the C.Ts. was connected wrongly. As such the element was producing the necessary torque and the meter was working with a theoretical error of 66.66 per cent minus. The meter got stopped functioning correctly in the month of May 1978. It was recording only 1/3 of the actual consumption. Hence the assessment was revised by multiplying by 3, the consumption already recorded and assessed as the theoretical error is 66.66 per cent minus. The communication also enclosed a detailed bill for Rs. 1,58,115.18. The Petitioner immediately preferred a petition before the Regional Electrical Inspector, Kottavam u/s 26(6) of the Indian Electricity Act, 1910 for a declaration to declare that the energy meter is correct and for consequential reliefs. The Regional Electrical Inspector in his order, dated 17th. May 1983 stated as follows:

Since inspection of meter was conducted by two responsible and graduate Engineers of Electricity Board and it has been reported that the C.T. connections were done wrongly on 8th November 1982 at the time of inspection. I don't find any reason to disbelieve the Respondent's statement that the meter was faulty on 8th November 1982. Secondly, the wrongly inserted C.T. was kept as an evidence even at the time of my inspection of the above meter Examining the meter connections on 4th May 1983 by me it was noticed that there is every possibility of wrong connections from the C.T. secondaries. Even though the polarity markings on the C.Ts. were not clearly visible, colour code identification of secondary leads could be easily distinguished. If the C.Ts. were connected to the meter at the time of installation or subsequently without much care or without much knowledge and experience, there had been every possibility of a wrong connection of C.Ts. to the meter since, one of the C.Ts. had been inserted wrongly on one of the incoming lines. Based on the above possibilities, circumstantial evidences and believing the statements of the II and III Respondents it is concluded that the meter was incorrect at the time of the inspection by the Respondents. But it is to be mentioned that the meter was recording correctly at the time of my inspection.

Having found so the Regional Electrical Inspector restricted the claim for the fault to six months. As against this order both the Petitioner as well as the Board preferred appeals before the Government of Kerala. The Government by order, dated 30th July 1990 (Ext. P-5) held that the Regional Electrical Inspector has no jurisdiction in the matter since admittedly the meter registering electrical

energy was in perfect condition. It was only due to the fault in the wiring the total energy that was consumed did not pass through the meter. The Government has found as follows:

Here the Plantations and the Kerala State Electricity Board both have agreed that the meter is not incorrect, unless the meter is incorrect, Section 26(6) of the Indian Electricity Act will not attract. Therefore I find that there is no role for Electrical Inspector to arbitrate in this matter.

The Government upheld the revised assessment and dismissed the appeal filed by the Plantation (Petitioner). The above O.P. is filed against the order of the Government (Ext. P-5) and other connected orders.

6. In all these three matters, on inspection it was noticed that the meters installed in the respective premises were not functioning due to wrong connection or wiring and therefore the energy that was consumed was not correctly recorded. The main question that arises for consideration is whether a defect in the wiring or wrong connection can be treated as a defect of the meter? In O.P. Nos. 27/1985 and 8414/1990 there are independent findings to the effect that the wiring and connection to the meter were defective and therefore the meter was not recording the consumption correctly. In W.A. No. 16/1995 the Petitioner in the explanation has admitted the defects found on surprise inspection and pleaded that it was not due to their fault. In this case the meter was seen reversely rotating due to wrong connection of the C.T. The contention of the Petitioner was that the matter must be referred to the Electrical Inspector u/s 26(6) of the Indian Electricity Act.

7. Counsel on behalf of the Petitioners submitted that inasmuch as the meter was not working either due to wrong connection or defective wiring, the defect should be attributed only to the meter. Therefore the dispute whether any meter is correct or not correct has to be decided only by the Electrical Inspector. And further in such cases the amount of energy supplied has to be estimated only for the period not exceeding six months. Thus the sum and substance of the submission was that the meter was defective and that the dispute has to be referred and decided only by the Electrical Inspector. Section 26 of the Indian Electricity Act, 1910 deals with meters. The Explanation to Sub-section (7) of Section 26 is as follows:

Explanation.-A meter shall be deemed to be "correct" if it registers the amount of energy supplied or the electrical quantity contained in the supply within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in Sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

In all these cases the meters referred to above were capable of registering the amount of energy supplied. However, the meters could not register the amount of energy supplied due to the fact that the wiring given to the meter was not

properly made. Therefore there is no question of dispute as to the correctness of the meter. But it is only due to the wrong connection to the meter which has resulted in the meter not registering the quantity supplied to the consumer. It is a human error or omission either knowingly or not in properly connecting the meter. It is not disputed in all these cases that there was wrong connection of the wire to the meter which resulted in the meter rotating in reverse direction, showing only a lesser percentage of the actual consumption. Only if the question actually arise for consideration there is an obligation to refer the dispute. A somewhat similar question arose before the Full Bench in *Kesava Bhat v. Subraya Bhat* 1979 KLT 767 that is whether the question of tenancy arise as soon as the plea was raised. The Full Bench held that only if the question actually "arises" for consideration the matter may be referred to the Land Tribunal. It cannot be the intention of the legislature to refer "disputes" the moment the meter was not recording properly. It should be seen verified and decided that there is no manipulation, tampering or fraud with the wiring or connection to the meter. It is quite possible that meter could be made to go wrong or go wrong on its own due to accidental or mistaken connection to the meter. So long as there is no defect in the meter itself no question arise whether the meter is correct or not. Therefore there is no scope for invoking Sub-section (6) of Section 26 of the Indian Electricity Act so as to decide as to whether the meter is correct or not.

8. A similar question arose for consideration before a Division Bench of this Court in *M.C. Mammen v. K.S.E.B.* 1995 (1) K.L.J. 48 in which one of us (M.M. Pareed Pillay, Ag. C.J. as he then was) was a party. The Division Bench held in that case as follows:

In a case where an electrical meter is not registering correct consumption of energy on account of the defectiveness in the wiringt Section 26(6) cannot be attracted. In a case where only the meter is defective, the question of arbitration by the Electrical Inspector would arise. In a case where it is found out that there is defective wiring, who was responsible for the same is not relevant u/s 26(6). In other words, in cases, where there is defective wiring and as a result of it the meter has not properly recorded the energy, Section 26(6) cannot be attracted. It can be attracted only in a caso where the meter is defective.

The Division Bench has referred and followed che Supreme Court decision in *Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, and M/s Southern India Marine Products Co. Pvt. Ltd. v. K.S.E.B. and Anr.* 1994 (2) K.L.J. 773. In the decision in *Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai*, the Supreme Court has considered the scope of Section 26(6). The Supreme Court held that the Electrical Inspector has no jurisdiction to decide the cases of fraud. The Electrical Inspector can decide only the dispute as to whether the meter is or is not correct or it is inherently defective or faulty in not recording correctly the electricity consumed. The Supreme Court further referred with approval the decisions and findings of the Mysore High Court in *Gadag Betgiri, Municipal Borough, Gadag v. Electrical Inspector, Govt. Electrical Inspectorate,*

Govt, of Mysore AIR 1962 Mys. 209 and M.P. Electricity Board, Jabalpur and Another Vs. Chhaganlal, which are as follows:

What the Inspector may decide under Sub-section (6) is whether or not the readings obtainable from the meter are accurate and whether the meter is faulty or mechanically defective, producing erroneous readings. That is the limited adjudication which in my opinion, an Inspector or other authority functioning under Sub-section (6) may make under its provisions.

* * * In my opinion, the legislative intent underlying Section 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. It in that sense, the meter installed by Respondent 2 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 an incorrect meter. A.I.R 1952 Mys. 209.

(emphasis added)

Where an electric meter is not registering correct consumption of energy not because there is any defect in the meter but because the wiring is defective Section 26(6) will not be attracted and the meter not being defective the question of arbitration by Electrical Inspector will not also arise. M.P. Electricity Board, Jabalpur and Another Vs. Chhaganlal, .

(emphasis added)

The Electrical Inspector has got a limited jurisdiction to decide as to whether the meter is mechanically defective or faulty. But the manipulated supply lines, by which more energy than what was consumed by the Petitioners which were allowed to pass through the meter would not render the meter defective which was otherwise correct. A contrary view taken by Madhya Pradesh High Court in Abdul Razak v. M.P. Electricity Board 1982 M.P.L.J. 37 was reversed by the Supreme Court. In M.P. Electricity Board, Jabalpur and Another Vs. Chhaganlal, it was held where an electric meter is not registering correct consumption of energy not because there is any defect in the meter but because the wiring is defective Section 26(6) will not be attracted. The question who is responsible for the defective wiring is not material for the purpose of Section 26(6) of the Act.

9. Learned Counsel appearing on behalf of the Petitioners further drew our attention to the fact that in the supreme court decision in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, the Supreme Court affirmed the judgment of the Madhya Pradesh High Court. In this case also the matter has to be referred to an arbitrator to decide the dispute. But the fact disclosed in the

Supreme Court decision warranting for the reference to arbitration was due to the fact that the meter was burnt. The same was brought to the notice of the Electricity Board and the consumer wanted to restore the electric supply by installation of another meter. A supplementary bill was raised stating that the meter was not recording actual energy supplied. As against this demand the Petitioner filed writ petition before the Madhya Pradesh High Court which was allowed. On appeal the Supreme Court confirmed the decision of the Madhya Pradesh High Court. But the principle regarding the jurisdiction of the Inspector which has been set out in AIR 1962 Mys. 209 and M.P. Electricity Board, Jabalpur and Another Vs. Chhaganlal, was confirmed.

10. Therefore the decision in M/s Srikrishna Rajendra Mills Ltd. v. Chairman, K.E.B. Bangalore AIR 1991 Kar 345 where the Karnataka High Court took the view that the dispute regarding non recording by the meter would have been investigated and loss of revenue, if any, should have been ascertained by the competent authority prescribed under the law, namely the Electrical Inspector, has not laid down the correct law.

11. The decision in Hamidullah Khan, Jabalpur Vs. The Chairman, Madhya Pradesh Electricity Board, Rampur, Jabalpur and Others, referred by the Petitioners may not apply to the facts of the case on hand. In that case the Electricity Board unilaterally removed the meters and installed a check meter, on the ground that the meters in question were not recording the consumption correctly and digital figures were found disturbed. So it is clearly a case of defect in the meter and therefore the High Court quashed the demand. In another decision in Smt. Basantibai Vs. M.P. Electricity Board, Indore and Others, it was held that where the Electricity Board raised a demand for 2/3rd consumption on the ground that the consumer's meter is recording only 1 /3rd consumption the meter has to be referred to the Electrical Inspector following the decision in Smt. Basantibai Vs. M.P. Electricity Board, Indore and Others, The case in Smt. Basantibai Vs. M.P. Electricity Board, Indore and Others, dealt with the case of burnt meter whereas in this case there was no particulars as to the nature of the meter and how only 1/3rd of consumption was recorded. In the absence of such a finding the said decision cannot apply to the facts of the case on hand. In another decision in K.C. Cooper v. Bombay Electric Supply and Transport Undertaking AIR 1955 Bom 79 the meter was replaced by the Board as its functioning was found to be defective. Thereafter a letter was sent by the Board stating that due to some defect the old meter could not register the proper quantum of energy. When demand was raised on that basis it was held that the dispute as to the correctness of the meter has to be decided by the Electrical Inspector. The Bombay decision also followed the Supreme Court decision cited above. In this case admittedly the meter was found to be defective and was replaced. Therefore Section 26(6) of the Act was sought to be enforced. The facts and circumstances of the case in the Bombay decision are entirely different from the facts on hand.

12. Lastly learned Counsel for the Petitioners referred to the reference order in O.P. No. 8414 of 1990, dated 23rd January 1995 wherein the learned Judge took the view that the decision of the Division Bench in which one of us is a party Pareed Pillay, Ag. C.J., as he then was in 1995 (1) K.L.J. 48 has to be considered by a larger Bench. We do not agree. We have considered and followed the Supreme Court decision in the light of other decisions which were approved by the Supreme Court on the point and therefore the decision rendered in 1995 (1) K.L.J. 48 does not require any reconsideration by a larger Bench.

13. Another contention raised on behalf of the Petitioners was based on the regulations relating to conditions of supply of electrical energy. Rule 48(b) of the said Regulation says that when any difference or dispute arises as to the improper use of energy or any alleged defect in wiring, fitting, works of apparatus or such other matters, the same shall be referred to the Chief Electrical Inspector to Government and be decided by them. According to the Petitioners there is a dispute as to the improper use of energy and alleged defect in wiring and therefore the matter should be referred to the Chief Electrical Inspector. The Regulations which are made in exercise of the powers conferred by Section 79(j) of the Electricity (Supply) Act, 1948, cannot override the provisions of Section 26 of the Indian Electricity Act. All these regulations are subject to the Indian Electricity Act as well as the Electricity (Supply) Act, 1948. In our view the question of referring to the Chief Electrical Inspector will not arise when the meter is not inherently defective. In this context the learned Counsel appearing on behalf of the Board referred to the decision in Punjab State Electricity Board Vs. Bassi Cold Storage, Khara and another, wherein it has been held that matters which are directed by the Act as determinable by arbitration-only can be decided by arbitration and no other. Therefore there is no scope for referring to the Electrical Inspector when there is defect in the wiring. The reference can only be in case where the meter was itself defective. Regulations have to be read in the light of the provisions of Section 26(6) of the Act.

14. Another contention raised on behalf of the Petitioners is that the claim of the Board is clearly barred by the Limitation Act. The said contention is not sustainable for the reason that the Petitioners are bound by the conditions of the supply of electrical energy. The claim of the Board is that the Petitioners' consumption of electricity have not been correctly assessed and they are directed to pay the charges for what they had been consumed. If the Petitioners want the electricity supply to be continued as per the terms of the supply Act they have to pay their consumption as well as the arrears. In so far as the consumption charges which had been failed to be collected the provisions of the Limitation Act will not apply. The relationship between the Petitioners and the Board is governed by the terms and conditions of the supply of electrical energy and therefore there is no question of limitation in reference to the arrears due. The Board has not put up a claim in a civil court so as to plead the period of limitation. The Petitioners are directed by the Board to pay the charges for what they have consumed and on their risk of not remitting the dues the relationship

may be put an end to and the connection withheld.

15. For all these reasons we hold that there are no merits in the contentions raised by the Petitioners and accordingly we dismiss the Original Petitions and Writ Appeal, however no order as to costs.

The counsel appearing on behalf of the Board has no objection if the Petitioners are permitted to remit the arrears in equal monthly instalments. Accordingly we direct the Respondent Electricity Board to permit the Petitioners to pay the arrears due to the Board in 50 equal monthly instalments.

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