
(1977) 03 AHC CK 0035
In the Allahabad High Court
Case No : Special Appeal No. 535 of 1969

State Electricity Board, U.P. Banda

APPELLANT

Vs

Prakash Talkies

RESPONDENT

Date of Decision : 22-03-1977

Acts Referred:

Electricity Act, 1910 — Section 24, 24(1), 24(2)

Citation : AIR 1977 All 460

Hon'ble Judges : Yashoda Nandan, J;S. Malik, J

Bench : Division Bench

Advocate : A.K. Singh and H.P. Gupta, for the Appellant; M.L. Jaiswal and Gyan Prakash, for the Respondent

Final Decision : Allowed

Judgement

Yashoda Nandan, J.—This appeal by the State Electricity Board, Uttar Pradesh, which is a licensee within the meaning of Section 26 of the Electricity Supply Act, 1948, is directed against the judgment of a learned single Judge in a writ petition filed by respondent, Prakash Talkies.

2. The respondent runs a cinema house styled as Prakash Talkies, Banda. It had obtained electric connections for light and fans as well as for industrial power. The industrial power connection had been obtained for running the motor for the projector and metal rectifier. Officials of the vigilance department of the appellant visited the respondent's [premises and discovered that electrical energy supplied for the industrial power connection was being utilised for feeding a dynamo and a motor which generated D. C. Energy which, in turn, was used for running D. C. fans in the respondent's premises. The appellant Board took the view that since the respondent was using the energy supplied by it for running fans, it was liable to pay for the electricity consumed according to the rates applicable for supply of electrical energy for lights and fans. In the appellant's view the respondent could not legitimately pay for the energy consumed for running the dynamo and motor for generating D.C. energy for use of fans at industrial current rates. The

appellant consequently sent a revised bill for the difference for the past several years. The respondent objected and asked for a clarification as to why a supplementary demand had been made from it. The respondent claimed that nothing was in arrears against it and the demand was unjustified. It inquired the reasons for the increase in the rates. The appellant-Board replied that since the respondent was using the electrical energy supplied by it for running fans, it (the respondent) was liable to pay at the rates fixed for the supply of electrical energy for light and fans. In the various notices demanding payment the appellant threatened the respondent with disconnection of electrical supply in case of non-payment. Aggrieved by the threats, the respondent filed a writ petition in this Court.

3. Before the learned single Judge it appears to have been urged by the learned counsel for the respondent that it was utilising the supply of industrial current for feeding the motor and the dynamo which generated D. C. current for the last several years openly. It was contended that the respondent was not using the A. C. current supplied by the appellant for directly running the fans themselves. The appellant, it was urged, was, therefore, not entitled to charge at the rates applicable to the electrical energy supplied for light and fans. On the other hand, the appellant's case was that the industrial power supplied by it was, in fact, being utilised for running the fans and consequently the appellant was justified in requiring payment at the rates applicable to the electrical energy for running fans. The learned single Judge took the view that from the pleadings of the parties "it is apparent there was a dispute between the parties whether there was an improper use of energy by the petitioner." The learned single Judge took the view that under Sub-clause (3) of Clause VI of the Schedule to the Indian Electricity Act, 1910 (hereinafter referred to as the Act) where any difference or dispute arises as to the improper use of energy the matter shall be referred to an Electrical Inspector and decided by him. The learned Single Judge went on to hold that u/s 24(1) of the Act the appellant was authorised to cut off the supply of energy after giving seven days' clear notice in writing, where any person neglects to pay any charge for energy due from him but by reason of Sub-section (2) of Section 24 of the Act "where any difference or dispute, which by or under this Act is required to be determined by the Electrical Inspector, has been referred to the Inspector before notice, as aforesaid, has been given by the licensee, the licensee shall not exercise the powers conferred by this section, until the Inspector gives his decision." Since in this case the dispute had not been referred to the Inspector till the writ petition came up for hearing before the learned Judge, the learned single Judge seems to have taken the view, on an interpretation of Section 24(1) and (2) of the Act, that if a dispute of the character mentioned in Sub-clause (3) of Clause VI of the Schedule of the Act arose, it was the duty of the licensee to refer the dispute for determination to the Electrical Inspector. Since in the instant case, undisputably, no such reference had been made by the appellant to the Electrical Inspector, the learned single Judge held that it was not open to the appellant to issue a notice of

disconnection of supply of electrical energy to the respondent. In the result, the learned single Judge allowed the writ petition in part and directed the appellant-Board not to disconnect the electricity supplied to the respondent till the dispute had been decided by the Electrical Inspector. The amount of Rs. 1500/- deposited by the respondent in compliance with the interim order was directed to remain in deposit with the appellant till such time as the dispute was determined by the Electrical Inspector.

4. This appeal involves the interpretation of Section 24 of the Act which runs as follows:

"24. 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 or other works, 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.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision;

Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to this consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue and the consumer has failed to comply with such request."

5. On a plain reading of this provision, it appears to us to be clear that there was no duty cast on the licensee to refer a dispute covered by Sub-clause (3) of Clause VI of the Schedule of the Act for determination to the Electrical Inspector. If a dispute of that character is raised by the consumer, in our opinion, it is for him to make a reference to the Electrical Inspector for determination thereof. Section 24(1) of the Act gives power to licensee where a consumer neglects to pay any charge for energy or any sum other than a charge for energy due from him to licensee in respect of the supply of energy to him to disconnect the electric supply after giving one week's notice in writing to the consumer for payment of the amount due. Sub-section (2) of Section 24 of the Act, which has been extracted above, applies only to those cases where a dispute has already been referred to the Electrical Inspector before occasion arises for issue of a notice u/s 24(1) of the Act. The intention of the Legislature appears to be that if the amount claimed to be due to the licensee is bona fide disputed by the

consumer and he has made a reference for determination of the same to the Electrical Inspector, the licensee shall not take any drastic action for discontinuance of supply of electrical energy during the pendency of the dispute or till such time as it is determined by the Electrical Inspector, Even in such a case the licensee is entitled to make a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit, of the licensee's further charges for energy as they accrue. In the event of such a request being made and the consumer's failure to comply with the same, the bar placed by Sub-section (2) on the licensee stands removed and the licensee is at liberty to take action in accordance with Section 24(1) of the Act. In the present case, no reference was made by the respondent for determination of any dispute to the Electrical Inspector before the issuance of the notice u/s 24(1) of the Act which was impugned in the writ petition giving rise to this appeal.

6. Learned counsel for the appellant contended that in the event of the claim by the licensee being disputed, no amount can be said to be due within the meaning of Section 24(1) of the Act and consequently no notice in accordance with that provision of the Act can be given legally. In support of his contention he placed reliance on a decision of Bombay High Court in Corporation of the City of Nagpur Vs. The Nagpur Electric Light and Power Company Ltd., . That decision in our opinion is clearly distinguishable. The Bombay High Court was called upon in that decision to construe Clause XII of the Schedule to the Act which is in the following terms:

"XII. Charge for supply for public lamps. The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps, and other charges are to be paid to him in connection therewith and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and the State Government or the local authority, as the case may be, and, where any difference or dispute arises, the matter shall be determined by arbitration."

From a reading of the reported decision it appears that the licensee had demanded from the Corporation concerned amounts for electrical energy supplied to it even though there had been no agreement between the parties with regard to the mode in which charges were to be ascertained. While one party claimed that the charges payable were to be measured on the voltage of the energy supplied, the other party asserted that realisations had to be made on the basis of the meter reading. In the absence of any basis for the charges to be paid by the appellant-Corporation, Clause XII, as quoted above, clearly was attracted. Clause XII does not apply to the electrical energy supplied to private consumers and it is confined in its operation to the supply of electrical energy to public lamps and other charges in connection therewith for electrical energy supplied to the State Government or local authorities alone.

7. For the reasons given, we allow this appeal and set aside the order of the

learned single Judge. The appellant-State Electricity Board, Uttar Pradesh shall be entitled to its costs from the respondent. The order of the learned single Judge is modified in so far as it is concerned with the payment of Rs. 1500/- made in compliance with the interim order passed by this Court. The appellant shall be entitled to adjust the amount in deposit towards the outstanding bills against the respondent.