(2014) 07 MP CK 0295

In the Madhya Pradesh High Court

Case No : WP No. 4056/2014

The Hotel Adityaz Limited — APPELLANT

Vs

Madhya Pradesh Kshetra Vidyut Vitran Co. Ltd. — RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 226
Electricity Act, 1910 — Section 26, 26(6)
Electricity Act, 2003 — Section 126, 126(2), 126(3), 127, 135

Citation : (2014) 3 JLJ 58 : (2015) 1 MPHT 81 : (2014) 3 MPLJ 552

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.K. Katare and M.B. Mangal, Advocate for the Appellant; Vivek Jain, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—This petition filed under Article 226 of the Constitution challenges the supplementary electricity bill dated 1.7.2014 (Annexure P/1), the Panchnama (Annexure P/2) and the interim assessment of tariff (Annexure P/3).

2. The facts as canvassed by Shri D.K. Katare, learned counsel for the petitioner are that petitioner Hotel Adityas Ltd., is a registered company under the Companies Act, 1956. The petitioner obtained high tension connection of 300 KV through service connection. The petitioner is paying monthly electricity bill regularly. It is stated that while giving high tension connection of 300 KV to the hotel, the service meter is installed on the electric poll, which is near to the outer gate of hotel premises. It is situated in an open space and is near about 70 ft. away from the hotel premises. The height of electric poll is 20 ft. and it is on the public place, not approachable by particular individual. For installation and providing supply of high tension connection of 300 KV, it is essential to install the CT/PT Box. This box is installed at the height of 20 ft. and is attached with high tension line of 33 KV. It is submitted that the box is covered and sealed by the

respondent-authorities, which cannot be approached by any individual except the expert authorities of respondent-company. It is the case of the petitioner that before approaching the CT/PT Box, 33 KV line needs to be shut down with the prior permission of Superintending Engineer. The CT/PT box was sealed by officials of the respondents. The respondents used to conduct regular inspection of the hotel. A MR report is submitted by the team of respondent-company. The latest MR reports for the months of May and June, 2014 are filed as Annexures P/5 and P/6. Relying on Annexures P/5 and P/6, it is contended that on the date of inspection, i.e., 1.5.2014 and 1.6.2014, no deficiency or fault was found which clearly demonstrates that there was no tampering in the service line or in CT/PT box. In addition, it is urged that annual inspections by higher authority of department were conducted and during these inspections also no fault was found in the premises. It is submitted that annual inspection report is not supplied to the petitioner.

3. Shri D.K. Katare, learned counsel for the petitioner has taken pains to submit that the documents Annexure R/5, dated 9.7.2013, 20.6.2014, 12.8.2011 and 24.4.2013 show that the sealing arrangement was found as "same". There are two heads in these documents, namely, HT meter checking/testing proforma. The heads are "as found" and "as provided". Shri Katare submits that against the heading "as found", the team has given the finding that "it was same as provided". If continuously till 20.6.2014 (Annexure R/6) everything is found "same as provided", it is clear that there is some malicious act because of which it is alleged by the respondents that there is some tampering in the secondary box of CT/PT unit. In addition, it is submitted that one Shri Nitin Manglik, Divisional Engineer of respondent-department organized a party in the petitioner hotel on 1.5.2013. There was some quarrel between Shri Manglik and the staff of hotel. Said Shri Manglik lodged a complaint before Consumer Forum, which was ultimately rejected by Forum on 13.9.2013. Shri Katare submits that Shri Manglik had threatened the employees of hotel that the hotel will have to face consequences for the said incident. It is submitted that the impugned documents are outcome of the said incident and an example of vengeance of Shri Manglik.

4. It is urged that on 30.6.2014, a Panchnama was allegedly prepared and on the next day, i.e. on 1.7.2014, the General Manager of the hotel was called in the office of the respondents. His signatures were obtained and copy of supplementary bill (Annexure P/1) was furnished to him. Thereafter, the petitioner submitted representation (Annexure P/8) for furnishing copy of MR report, annual report and documents on which signatures of Manager of petitioner company were obtained. Thereafter, the petitioner submitted another detailed representation dated 5.7.2014 stating that the whole action is based on malafide and ulterior motive to harm the petitioner.

5. Shri Katare further submits that on the date of inspection/raid, CT/PT box was not removed in the presence of any employee of the petitioner company. Shri Katare assailed the action on the grounds that the inspection report filed with the

return makes it clear that everything was found in order. It was duly certified and, therefore, the whole action is per se illegal and malafide; the CT/PT box cannot be tampered by the petitioner. It is connected with 33 KV line. Unless the said line is shut down, nobody can approach the CT/PT box. The line can be shut down only by respondents and, therefore, the act of tampering in CT/PT box cannot be attributed to the petitioner. It is urged that there is no assessment by the electrical inspector and, therefore, the figure arrived at in supplementary bill, Annexure P-1, is bad in law. Reliance is placed on Clause 10.2.3.2 of M.P. Electricity Supply Code, 2014 (for brevity, the ''Code''). It is further submitted that the determination of the figure in Annexure P-1 is arbitrary and runs contrary to clause 10.2.3.2 of the Code. It is urged that the allegation of tampering in CT/PT box or breaking of the seal can be ascertained only after examination of CT/PT box by the laboratory. Before undertaking aforesaid exercise of examination by laboratory, the assessment and imposition of a bill to the tune of Rs. 1,11,30,271.33 paise is wholly arbitrary and impermissible. It is further submitted that the action of the respondents runs contrary to Section 126 of the Electricity Act, 2003 (for brevity, the ''Act'') and clause 9.1.1 of the Code. Shri Katare submits that along with the return, the respondents have filed the document dated 9.7.2014 (Annexure R/1), whereby petitioner''s representation dated 5.7.2014 is rejected. This runs contrary to Section 126(3) of the Act.

6. Lastly, it is urged that the petitioner has a right to run business and earn livelihood. This fundamental right flowing from Article 19(1)(g) of the Constitution is taken away by disconnecting the electricity supply since 30.6.2014. This seriously affects the business and livelihood of the employees dependent on the company. It is submitted that unless the petitioner is found guilty by a court of competent jurisdiction, the electricity supply cannot be disconnected. Shri Katare in support of his contentions relied on the judgments of Supreme Court, reported in Smt. Basantibai Vs. M.P. Electricity Board, Indore and Others, . He also relied on Hamidullah Khan, Jabalpur Vs. The Chairman, Madhya Pradesh Electricity Board, Rampur, Jabalpur and Others, . These judgments are relied on to bolster the contention that without referring the matter about correctness of recording of consumption by meter by electrical inspector, the action of Board in deciding that the meter was incorrect, is bad in law. He also relied on 1992(2) MPWN 277 (Hotel Utsav (M/s) v. M.P.E.B.). He also relied on Maina Swamy Vs. State of Madhya Pradesh and others, . It is submitted that the dispute, which is of highly technical nature, must be decided by technical authority/electrical inspector.

7. On the other hand, Shri Vivek Jain, learned counsel for the respondents submits that the CT/PT box and meter was installed inside the main gate of hotel premises on a structure of about 23 ft. height. The installation was in such a manner that 33 KV line approaches the DP structure and the lines do not go directly to the meter. As compared to it, low tension connection where the supply lines directly go to the meter and then to the load, in high tension connection the lines first go to CT/PT box, which diverts the power to the load and also diverts

proportionate power to the meter. It is stated that in petitioner''s hotel, the CT/PT box was installed at the top of DP structure whereas the meter was installed at low level of said structure at eye level. Wires/Cable comes from CT/PT to the meter. Any interference with CT/PT has a direct effect on the amount of power coming to the meter and thus affects recording of meter consumption. It is specifically pleaded that the DP structure, CT/PT box and meter are inside the hotel main gate and in the compound of the hotel. It cannot be approached by a common person or outsider without permission and knowledge of the hotel management. The installation report of CT/PT box is filed as Annexure R-1. At the time of installation, the CT/PT box was sealed by a lead seal as well as by a paper seal.

8. The respondents have stated that a theft of electricity was detected in the hotel premises during inspection carried out on 30.6.2014. The videography was undertaken and photographs of the entire happenings were also taken. An additional circuit was found attached to the secondary box of CT/PT Unit, from which the current and voltage going to the meter could be stopped and regulated. The photographs are filed as Annexure R/2 to demonstrate the height, location and size of CT/PT box. The photographs throw light as to how a tampering is made in the CT/PT secondary box. In Annexure R/2, a healthy CT/PT box is shown and below it, the tampered CT/PT box in question is shown. This contains an additional device by which alleged tampering had taken place. Shri Vivek Jain strenuously contended that the entire CT/PT box was taken out by means of a crane and sealed after seizure. The electrician of the hotel, namely, Sunil Sharma signed on the Panchnama. He denied the allegation of the petitioner that the entire exercise of 30.6.2014 was conducted behind the back of the petitioner. He submits that Annexures R/5, R/6 and R/7, on which Shri Katare relied, contain the signatures of same Sunil Sharma, the hotel representative. Shri Jain submits that he is relying on reports, Annexures R/5 to R/7, submitting that these are correct and in hotel''s favour but denying that nobody was present during preparation of Panchnama. By taking this Court to the Panchnama, Annexure P/2, it is submitted that same Sunil Sharma was present on behalf of the petitioner and he even obtained the copy of Panchnama. It is submitted that no physical visit as alleged had taken place in petitioner''s premises every month. Now a days, meter reading is done every month by automatic meter reading instrument. This instrument sends data by modem to the concerned office of respondent. Physical visit to consumer premises is not required. By taking this Court to Annexures R/5 to R/7, Shri Vivek Jain submits that sealing arrangement is examined in relation to meter box (outer and inner), MD Knob, Meter Terminal Box, TTB and Meter Body. The CT/PT box is also called as ME Box. He submits that entry regarding ME Secondary Box and ME Body is kept blank, which shows that there is no certification of its correctness or non-tampering by the respondents.

9. At this stage, this Court asked Shri Katare whether he is disputing that CT/PT box and ME Secondary Box/Body are same. He said that he is not disputing the

same.

10. Shri Jain by taking this Court to various paragraphs of his reply stated that there is no illegality in the action of the respondents which warrants interference by this Court under Article 226 of the Constitution. He submits that the case of the petitioner falls within the ambit of Section 135 of the Act and not u/s 126 of the Act. It is stated that the disconnection of electricity is not without authority of law. He placed reliance on various sections of the Act. He submits that this being the case of theft and dishonesty, the petitioner is properly dealt with as per various provisions of the Act and Code. Dealing with the question of assessment, it is urged that the assessment of the unit has been done by taking the units at 1.5 times as mentioned in the assessment sheet itself. The billing of the units so obtained has to be made at twice rate as per Section 154 of the Act. The petitioner has erroneously interpreted it. The billing needs to be made at twice rate, while the units will be arrived at 1.5 times. Reliance is placed on Chapter 10 of the Code and Sections 155 and 154 of the Act. The allegations of malafide are specifically denied. It is submitted that there is no thread relation between the incident of Shri Manglik and the action impugned herein. It is submitted that Shri Manglik is Incharge of different projects and has no connection or control on the consumption related aspects of distribution and vigilance etc. Shri Jain also relied on certain judgments.

11. No other point is pressed by the parties.

12. I have heard learned counsel for the parties and perused the record.

13. In the aforesaid factual backdrop, the case can be divided into two compartments. The first compartment is regarding the facts of the matter. It is regarding the aspect whether the meter, CT/PT box etc. were found to be in order by the various inspection teams. The rival contentions advanced show that there is a diametrically opposite stand taken by the parties in this regard. Prima facie, Annexure R/5 to R/7 show that there is no certification by the respondents regarding CT/PT and its secondary box. This is a highly disputed question of fact, which can be established by leading evidence. Similarly, stand of petitioner that meter reading was done on periodical basis, inspection was carried out and everything was found to be in order, is also specifically disputed. This is also a highly disputed question of fact. Similarly, in view of stand of Shri Jain that 33 KV line was shut down during last one year on many occasions, it is not possible to give any finding whether the alleged manipulation or act of dishonesty was done during this period or otherwise. The location of the poll, in which CT/PT box is installed etc. and whether inspection was carried out in presence of hotel staff and whether signatory of Panchnama and other documents has any relation with hotel are also purely questions of fact which needs to be established by the parties before the court of competent jurisdiction. This is trite in law that disputed questions of fact cannot be gone into and examined in a writ petition.

14. The second compartment is regarding legal and jurisdictional aspect. It is

strenuously contended by Shri Katare that in the present case the mandate of Section 126 of the Act is not followed. The exorbitant supplementary bill is prepared, which runs contrary to the Act and Code. The electricity connection is disconnected without authority of law, which hits his fundamental right founded upon Article 19(1)(g) of the Constitution. This aspect needs consideration.

15. By relying on the judgments in Smt. Basanti Bai, Hamidullah Khan and Hotel Utsav (supra), it is urged that a dispute of technical nature can be decided only by technical inspector. In absence of a decision taken by technical inspector, the entire action is bad in law and impermissible. In the opinion of this Court, the aforesaid judgments relied by petitioner are based on erstwhile Electricity Act of 1910. On introduction of 2003 Act, the said Act is no more applicable. The interpretation of this Court in various judgments including in Smt. Basanti Bai (supra) is based on 1910 Act. However, the Apex Court opined as under:-

If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-section (6) of section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of section 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such case of fraud.

16. The case of Smt. Basanti Bai (supra) is recently considered by Supreme Court in Civil Appeal No. 4023/2014 (Western Elect. Supp. Co. Of Orissa vs. M/s. Baba Baijnath Roller & Flour Ltd.), decided on 26.3.2014. The Apex Court opined as under:-

Section 26 is relevant only when there is any difference or a dispute arises in connection with correctness of a meter, in that case the matter shall be decided, upon being applied by either party, by an Electrical Inspector and in the opinion of the Inspector if it is found that the meter is defective, the Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during such time not exceeding six months but if there is a question of fraud in tampering with the meter, in that case there is no question of applicability of Section 26 of the said Act in such a matter.

In two decisions of this Court in Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, and J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, it has been held that in cases of tampering or theft or pilferage of electricity, the demand raised falls outside the scope of section 26 of the Electricity Act. If that is so, neither the limitation period mentioned in Section 26 of the Electricity Act nor the procedure for raising demand for electricity consumed would arise at all. In this view of the matter, that part of the order of the Division Bench of the High Court, directing that there should be a reference to the Electrical Inspector, shall stand set aside.

In the light of this judgment also, it is clear that Section 26 of 1910 Act and Section 126 of 2003 Act have no application in cases of dishonesty and electricity theft.

17. It is profitable to mention here that in Electricity Act 2003, Section 126 finds place in Chapter-Part XII with the heading "Investigation and Enforcement", whereas Section 135 is in Part XIV under the heading "offences and penalties". Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. It can be noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall u/s 135 of the 2003 Act. Section 135 of the 2003 Act falls under Part XIV relating to "offences and penalties" and title of the section is "theft of electricity". The section opens with the words "whoever, dishonesty" does any or all of the acts specified under clauses (a) to (e) of sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, sub-section (1-A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorised in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under sub-sections (2) to (4) of the said section. Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorised use of electricity". This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an "unauthorised use of electricity". Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the 2003 Act. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. Thus, it would be clear that the expression "unauthorised use of electricity" u/s 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted u/s 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of

the terms and conditions of supply, then, the case would fall u/s 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall u/s 135 of the Act. Therefore, there is a clear distinction between the cases that would fall u/s 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act. This view is taken by Supreme Court in The Executive Engineer and Another Vs. Sri Seetaram Rice Mill, .

18. In the present case, it is apparent that the allegations against the petitioner fall within the ambit of Section 135 of the Act. The opening words of Section 135 are that "whoever, dishonestly does any or all of the acts specified u/s 135 of the Act". Since the impugned orders are in the realm of Section 135, Section 126 of the Act has no application in the present case. Thus, reliance on Section 26 of 1910 Act and Section 126 of 2003 Act is misconceived. Apart from this, u/s 135, there is no scope of preferring representation to respondents. Hence, decision on any such representation by Annexure R/11 dated 9.7.2011 is of no consequence. More so, when validity of this rejection is not called in question.

19. The Apex Court in Sri Seetaram Rice Mill (supra) has clarified the distinction between Sections 126 and 135 of 2003 Act. In Part XV of 2003 Act, Special Courts are constituted. Section 153 deals with constitution of Special Courts. Section 154 envisages the procedure and power of Special Courts. Sub-section (5) of Section 154 gives exclusive power to Special Court to determine the "civil liability" against consumer or a person in terms of money for theft of energy, which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of 12 months preceding the date of detection of theft of energy or the exact period of theft if determined, whichever is less. The said Court needs to determine the amount of ''civil liability'' for the purpose of its recovery. Sub-section (6) makes it clear that in the event amount so recovered is less than the determination, the excess amount can be recovered. If amount so recovered is more than the determination, it shall be refunded by the Board or licensee within fortnight. "Civil Liability" is defined in the Explanation appended to subsection (5) aforesaid. It reads as under:-

Explanation.-For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139.

20. A conjoint reading of Section 154 of the Act and clause 10.2.3.2 and 10.2.5

of the Code shows that the respondents are equipped with the power to prepare supplementary bill and determine the amount to be mentioned in the supplementary bill. The special provision is made in the Electricity Act whereby giving power to the Special Court to determine the quantum of "civil liability". The Special Court will determine the actual amount and in the event any excess amount is recovered from the customer, it needs to be refunded. This is settled in law that if a Statute provides that a thing needs to be done in a particular manner, it has to be done in the same manner. Since Section 126 of the Act has no application in the fact situation of this case, the grievance of the petitioner can be taken care of in Part XIV and XV of the aforesaid Act. In Sri Seetaram Rice Mill (supra), the Apex Court opined that writ courts normally should only deal with primary question of jurisdiction or the matter which goes to the very root of the jurisdiction and where the authorities have acted beyond the provisions of the Act. It is made clear in the said judgment that "it should only be for the specialized Tribunal or appellate authorities to examine the merit of assessment or even factual matrix of the case (para 86). In para 57, the Apex Court opined that it would have been proper for the High Court to remand the matter to competent authority for its adjudication on merits in accordance with law. The High Court is not obliged to determine the validity of the demand which squarely fell within the domain of specialized authority. At the cost of repetition, the Apex Court opined that High Court should have remanded the case to the concerned officer with a direction to the consumer to file its objection including non-applicability of the tariff before the assessing authority and for determination in accordance with law.

21. Considering the aforesaid, I am not inclined to enter into the question of determination of amount and deem it proper to leave it for the Special Court to undertake this exercise.

22. Reliance is placed on Harsh Wood Products Pvt. Ltd. Vs. State of Madhya Pradesh and Others, , to canvass that unless allegations of theft are established, electricity connection cannot be disconnected. In the opinion of this Court, this judgment is also based on certain provisions of Electricity Act (9 of 1910). In 2003 Act, a special provision is made in this regard, which reads as under:-

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity;

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity.

The above quoted provision gives statutory power to the authorities to disconnect the connection in certain circumstances. This power is recognised by Supreme Court in Sri Seetaram Rice Mill (supra). At the time of decision of Harsh

Wood Products (supra), 2003 Act did not come into force and there was no such enabling provision like (1A) aforesaid. In view of this enabling provision, I am unable to hold that action of respondent is without authority of law. The earlier judgment is clearly distinguishable.

23. The constitutionality of aforesaid enabling provision is not under challenge. This provision gives power of disconnection. This is settled in law that in absence of challenging the enabling provision, Courts must treat it a valid provision. See, Molar Mal (Dead) Through L.Rs. Vs. M/s. Kay Iron Works(P) Ltd., .

24. So far allegation of malafide is concerned, there is no material on record to establish the relation between the incident of Shri Nitin Manglik with the impugned orders/action. Shri Nitin Manglik is not impleaded eo nomine. In absence thereof, the allegation of malafide cannot be entertained. Kindly see, State of Punjab and Others Vs. Chaman Lal Goyal, . A Division Bench of this Court in Bhagwati Singh Verma Vs. State of M.P., gave the same opinion.

25. In nutshell, the stand of the parties shows that there are highly disputed questions of fact involved, which cannot be adjudicated in a writ petition. Section 126 has no application in the present case. Section 135 squarely covers the matter. There are Special Courts established for deciding the cases relating to dishonesty and electricity theft. The petitioner will get full opportunity of defence in those proceedings. The said Special Court will determine the question of "civil liability". Thus, no case is made out for interference by this Court under Article 226 of the Constitution. It is made clear that this Court has not given any finding on the merits of the case.

26. For the reasons stated above, interference and admission is declined. Petition is dismissed. No costs.

